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ALTERNATIVE DISPUTE RESOLUTION COMMISSION
 Nashville City Center, Suite 600
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 615-741-2687 Fax 615-741-6285

Commission Members
 Lary W. Bridgesmith, Esq.
 Hon. George H. Brown, Jr. (Ret.)
 Frank S. Cantrell, Esq.
 Leslie Gattas Coleman, Esq.
 Linda Nettles Harris, Esq.
 Edward P. Silva, Esq.
 Virginia Lee Story, Esq.
 I.C. (Jack) Waddey, Jr., Esq.
 Mary Ann Zaha

Supreme Court Liaison
 Hon. Sharon G. Lee

Rule 31 Continuing Mediation Education Accreditation Request Form

Provider Name: Charlotte Fleming, The Fleming Law Firm.
 Address: 409 Locust Street Springfield, TN 37172
 Telephone/Fax: 615-384-7750
 E-Mail Address: charlotte.fleming29@gmail.com

Course Title: Advanced Mediation Techniques: Working thru
 Date(s) Held: Thursday Dec. 7, 2017
 Location(s): Goodlettsville TN. Office-Two Mile Pike Imprese
 How to Register: Call 615-384-7750 or will be on website
 Fee for Members/Non-Members: \$295⁰⁰
 Does this course have CLE Commission NO, Not yet.

Approval?	Type of Credit Requested (General Continuing Education, General Mediation Issues, Mediation Ethics, or Family Law)	Start Time	End Time	Credit Approval (Office Use Only)
See Attached Description	CME 6 hours + lunch.	9:00	4:30	

OFFICE USE ONLY

Total Approved CME: 6 hours maximum
 Date Approved: September 11, 2017

PROPOSED CURRICULUM FOR ADVANCED MEDIATION

TECHNIQUES: Working Thru Impasse
DECEMBER 7, 2017 9:00 A.M. TO 4:30 P.M.

9:00 – 9:30	Welcome: Updates in Mediation Practice	<u>Approved for: .5 hours</u> <u>General Mediation Issues</u>
9:30 – 10:15	Role Play: Impasse Scenarios and Techniques to Break Thru	<u>Approved for: .75 hours</u> <u>General Mediation Issues</u>
10:15 – 10:30	Break	
10:30 – 12:00	General Education and Training: Domestic Relations 2017 Update	<u>Approved for: 1.5 hours Family Law OR</u> <u>1.5 hours General Continuing Education</u>
12:00 – 1:00	Lunch	
1:00 – 1:30	Discussion of the New Advisory Opinion (No. 2017-0002) prohibiting Mediators from drafting legal documents.	<u>Approved for: .5 hours</u> <u>General Mediation Issues</u>
1:30 – 2:30	Mediation Ethics: How to avoid giving “legal advice” during a Rule 31 Mediation.	<u>Approved for: 1 hour</u> <u>Mediation Ethics</u>
2:30 – 2:45	Break	
2:45 – 4:30	Role Play: Robust Round Robin Role Play	<u>Approved for: 1.75 hours</u> <u>General Mediation Issues</u>
4:30	Adjourn	

IN THE TENNESSEE ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Advisory Opinion No.: 2017-0002

The Alternative Dispute Resolution Commission received a request for an advisory opinion from a Tennessee Rule 31 Listed Mediator. The request has been modified for purposes of response within the context of Rule 31. The Ethics Advisory Committee, consisting of George Brown, Bill Young, and Virginia Story, Chair of the Committee, reviewed the request. The Ethics Advisory Committee presented it to the Alternative Dispute Resolution Commission and issued the following opinion.

Inquiry: Is drafting a Marital Dissolution Agreement or other legal document for presentation to the court by a Neutral in a mediation setting considered “participation as attorney” or is it considered an appropriate memorialization of a settlement agreement under Rule 31?

A Rule 31 Listed Mediator may assist the parties in memorializing the terms of the agreement by preparing a Memorandum of Understanding (“MOU”). A Rule 31 Listed Mediator should not prepare a Marital Dissolution Agreement or other legal document for presentation to the court. If the parties have attorneys, then the attorneys can prepare the paperwork necessary for filing with the court. If the parties do not have attorneys, then the parties can prepare the paperwork necessary for filing with the court.

Rule 31 § 10(c) regarding obligations of Rule 31 Neutrals advises:

“During and following Rule 31 ADR Proceedings, Rule 31 Neutrals shall:

- (1) Refrain from participation as attorney, advisor, judge, guardian ad litem, master, or in any other judicial or quasi-judicial capacity in the matter in which the Rule 31 ADR Proceeding was conducted.”

Rule 31 Appendix A §10 (a)(1) addresses concluding a dispute resolution proceeding by stating:

“The Neutral shall request that the terms of any settlement agreement reached be memorialized appropriately and shall discuss with the participants the process for formalization and implementation of the agreement.”

A Rule 31 Listed Mediator’s role can include preparing a Memorandum of Understanding (“MOU”). Rule 31 § 10(e) explains:

“The Neutral may assist the parties in memorializing the terms of the parties' settlement at the end of the mediation.”

A MOU can show that the parties have agreed to certain items in their divorce and the parties expect those items to be made a part of their divorce decree. Following the conclusion of mediation, the parties can then take the MOU to a lawyer and have the lawyer draft a Marital Dissolution Agreement that uses the MOU and includes additional language prepared by the attorney.

If the parties do not have attorneys and/or they choose to fill out the Parenting Plan themselves and submit it to the court for approval, the Mediator may discuss with the parties which categories their MOU agreements pertains to within the body of the Parenting Plan. The parties can review a copy of a Parenting Plan with the Mediator to make sure that it covers the results of the mediation. If both parties agree on all items in the Parenting Plan, then the parties must reduce that Parenting Plan to a formal Order and that Order must be submitted to the court for approval. A Rule 31 Mediator should not prepare legal documents, such as a Parenting Plan, that can be filed with the court for the parties to a mediation that the Mediator conducted.

As a public policy, it is important that the parties understand that the Mediator is not the advocate for either party nor is the Mediator the advocate for both parties. The obligation is on the Rule 31 Neutral to “refrain from participation as attorney” per Rule 31 § 10(c) and ensure this prevailing public policy is explained to the parties.

Date Issued: April 25, 2017

IN THE TENNESSEE ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Advisory Opinion No.: 2017-0001

The Alternative Dispute Resolution Commission received a request for an advisory opinion from a Tennessee Rule 31 Listed Mediator. The request has been modified for purposes of response within the context of Rule 31. The Ethics Advisory Opinion Committee, consisting of George Brown, Bill Young, and Virginia Story, Chair of the Committee, reviewed the request and issued the following opinion.

Factual Background:

Parties and counsel meet in a post-divorce Rule 31 Mediation with a Rule 31 Mediator to come to an agreement about a parenting issue. An agreement is reached and typewritten by the Mediator with the assistance of both parties and counsel for both parties. The Agreement is signed by both parties at the mediation.

Later, on the same day the mediation concluded, Party A leaves a voicemail for the Mediator that Party A is unhappy with the Agreement and wants to withdraw the Agreement. Party A also advises that Party A's counsel of Party A's unhappiness with the settlement and does not wish to proceed with the Settlement Agreement.

Inquiry 1: Should the Mediator file the required report of Mediator per Rule 31 § 5(a) and state that the matter "did settle" at the mediation despite one party's notification that the party no longer agrees to the settlement agreement?

Yes, the Mediator should file the required Report of Mediator and state that the matter "did completely settle" at the mediation according to TSC Rule 31 § 5(a).

Rule 31 § 5(a) addresses the Rule 31 Neutral's requirement to submit a final report to the court and provides the items the report shall include. Rule 31 § 5(a) states:

"The Order of Reference shall require the Rule 31 Neutral to submit a final report pursuant to Rule 5.06, Tenn. R. Civ. P., with the court at the conclusion of the Rule 31 ADR Proceeding. *The final report shall state only:* (i) which parties appeared and participated in the Rule 31 ADR Proceeding; (ii) whether the case was completely or partially settled; and (iii) whether the Rule 31 Neutral requests that the costs of the Neutral's services be charged as court costs. The report shall be submitted within the time specified by the court in the Order of Reference. In the event the Order of Reference does not specify a deadline, the final report shall be submitted within 60 days of the initial meeting with the parties, or within the time period specified by the court." [emphasis added]

If a party repudiates after the conclusion of the mediation, the party's attorney or the party if self-represented may present this information to the court. The mediator serves as a neutral and should not be involved in the ongoing attorney/client relationship.

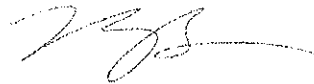
Inquiry 2: Does Rule 31 § 5(a) prohibit the Mediator from filing the Mediator's report with the court and stating that "Parties executed a Settlement Agreement at the Mediation session" despite one party's notification that it no longer agrees to the settlement agreement?

No, Rule 31 does not prohibit the Mediator from filing the Mediator's report with the court based on the factual background. In fact, Rule 31 § 5(a) mandates that the Mediator fill out the Report of Mediator in its entirety and file the Report of Mediator with the Court.

Per Rule 31 § 5(a), the Mediator's report shall state the following:

- “(i) which parties appeared and participated in the Rule 31 ADR Proceeding;
- (ii) whether the case was completely or partially settled; and
- (iii) whether the Rule 31 Neutral requests that the costs of the Neutral's services be charged as court costs.”

Date: January 24, 2017



Virginia Story, Chair of the TADRC Ethics
Advisory Opinion Committee

George Brown

Bill Young