

# Summary of Proposed Amendments to Rule 31, Governing the Conduct of Mediators

by Margaret M. Huff

On July 15, 2013, the Tennessee ADR Commission petitioned the Tennessee Supreme Court to adopt amendments to the Court's Rule 31. On July 22, 2013, the Court published the proposed amendments. The deadline for any written comments on the proposed amendments to the rule governing the conduct of mediators is January 15, 2014.

The proposed changes to Rule 31 include the following:

- Section 2 would include:
  - New definition of “Active Rule 31 Mediator”
  - New definition of “Inactive Rule 31 Mediator”
  - Revised definition of “Order of Reference” to include either a “written or standing order” entered “in or related to” a civil action.
  - Revised definition of “Rule 31 ADR proceedings” with deletion of the words “initiated by the court.”
- Section 3 would allow mediations by consent, without a court order:
  - Rule 31 ADR proceedings may be initiated “by consent of the parties” in addition to entry of an Order of Reference
- Section 4:
  - Responsibility for maintaining the list of Rule 31 Mediators listed by the ADR Commission would change from clerks of each judicial district to the Programs Manager of the Administrative Office of the Courts, with posting of specified information.
- Section 5:
  - Subsection (a) would be amended by changing the words “file” and “filed” to “submit” and “submitted” and would allow the court to specify a deadline for the reports that varies from the rule’s “within 60 days of the initial meeting of the parties.”
  - Subsection (b) which requires status reports every 30 days, unless the Order of Reference states otherwise, would be deleted.
  - Subsection (c) would be amended by changing the words “filed” to “submitted.”
- Section 9
  - Subsection (d)(4) currently provides for advisory opinions to be published in the ADR News. The amendment would add “and on the AOC website.”
- Section 10
  - New subsection (e) would provide: “Rule 31 Neutrals may assist the parties by serving as a scrivener to record or memorialize the terms of the settlement agreement.”
  - New subsection (f) would provide: “Rule 31 Neutrals shall not be called as a witness to enforce any terms of the resulting agreement.”
- Section 11
  - Subsection (b)(18) provides that a synopsis of a Grievance Committee opinion may be published in the ADRC quarterly newsletter. The amendment would add “and on the AOC website.”
- Section 17

- Subsection (a) regarding Rule 31 Mediators in General Civil Cases would be amended:
  - Subsection (a)(1)(A) would add “as evidenced by two references accompanying application for listing”
  - Subsection (a)(1)(B) would add the words “full time” and a definition: “Full time practical work experience shall be defined as 35 hours or more of work per week.”
  - Subsection (a)(2)(A) would change “certification” to “listing” and add a sentence: “Misconduct shall not include failure to pay board or agency dues when there is no intent by the applicant to practice in the licensed occupation or profession in any jurisdiction other than Tennessee.”
- Subsection (b) regarding Rule 31 Mediators in Family cases would be amended:
  - (1)(B) would include revised wording: “. . . full time practical work experience in psychiatry, psychology, counseling, family mediation, social work, education, law or accounting” and a new definition: “Full time practical work experience shall be defined as 35 hours or more of work per week.”
  - (1)(C) would add the words “full time” and the definition “Full time practical work experience shall be defined as 35 hours or more of work per week.”
  - (1)(E) would change the word “lawyers” to “applicants”
- Subsection (d)(1) currently refers to graduates of accredited law schools and would add “or accredited graduate schools.” The phrase “passed a law school mediation course” would be amended to: “passed a mediation course.” The phrase “four years of practical work experience” would be amended to “four years of full time practical work experience.” A new provision would be added: “(iii) Alternative dispute resolution professors at accredited law schools or graduate schools who have taught a mediation course which awards at least three semester hours credit for at least two semesters and which includes the curriculum components set forth in this Rule or their substantial equivalent as determined by the ADRC and who have four years of full time practical work experience.”
- Section 18
  - In subsection (b), “annual report” is changed to “annual report form” and the following sentences are added: “The Rule 31 Mediator must not be the subject of three or more open complaints made to the Board or Agency charged with hearing complaints about the applicant’s professional conduct. If there are three or more open complaints with the relevant Board or Agency, the Mediator will be put on the inactive list by the ADRC until the applicant has advised the ADRC that three or more open complaints no longer exist.”
  - In subsection (c) regarding Inactive Status, the following language would be added: “A Rule 31 Mediator placed on inactive status for at least fifteen consecutive calendar years will not be eligible to apply to the ADRC for reactivation. After fifteen consecutive calendar years, the Rule 31 Mediator’s listing will be terminated and the Rule 31 Mediator will have to fulfill listing requirements pursuant to Rule 31, Section 17.”
- Section 19
  - In subsection (b)(2) “annual reports” would change to “annual renewal forms”

- Subsection (b)(3) would add to the duties of the Programs Manager of the Administrative Office of the Courts: “and to maintain a current list of Rule 31 mediators on the AOC website.
- Subsection (b)(5) would change the Program Manager’s duties to include processing grievances against Rule 31 “Mediators,” not just “non attorney Mediators.”