IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PETITION FOR THE ADOPTION OF AMENDED TENNESSEE SUPREME COURT RULE 31, APPENDIX A TO RULE 31, AND SUPREME COURT RULE 31 A

DOCKET NO. ADM2018-00425

COMMENT TO PROPOSED RULE 31 AMENDMENTS
BY JOE E. MANUEL, ATTORNEY-AT-LAW

COMES, Joe E. Manuel, in response to this Court's Order soliciting comments to the proposed Rule 31 Amendments:

COMMENTS:

1. **Rule 31, § 18(e):** The jurisdiction of the ADRC or the Supreme Court of Tennessee to regulate the conduct, etc. of mediators or neutrals is a fundamental issue. And, one that has seemingly been ignored in certain respects and would continue to be ignored under the proposed Petition by the ADR Commission (hereafter the "Petition").

Although the ADRC Proposal reminds us that the ADRC's jurisdiction is limited to Rule 31 Neutrals serving in "eligible civil actions", the current and proposed Rule 31 requires Rule 31 Mediators to "report to the ADRC" . . . **" as to any mediation conducted by the Rule 31 Mediator including those mediations which are not subject to Rule 31**".[See, **Rule 31, § 18(e)** and **§ 19(a)(8)**]. Indeed, the front page of the ADR News (Spring 2018) reminds us of this obligation.

I am unable to reconcile how the ADRC has the jurisdiction to require a "Rule 31 Mediator" to report information that is by definition activity outside the ambit of Rule 31 ? I do not find it persuasive that jurisdiction is conveyed just because the AOC wants to know.

2. **Rule 31, § 2 (i)**. The term "Rule 31Mediation" combined with the definition of "Eligible Civil Action" is the essence of Rule 31's jurisdiction. The Petition proposes to change the definition by adding the phrase **"or related to an eligible Civil Action"**. [See, proposed **Rule 31, § 2 (i)**].

A matter is either within the pending lawsuit or it is not. I suggest that the terminology "related to an eligible civil action" is overly elastic. Does it mean that it will impact someone who is "kin to the parties to the lawsuit" ? I suggest there has never been a divorce with children wherein multiple relatives of the divorcing couple were not affected or impacted by the Parenting Plan. The term is so elastic that it could be utilized to expand the scope of Rule 31 to infinity and beyond.

I applaud the Petition's suggestion for the additional language : **"2. In any civil dispute in which the Rule 31 Mediator and the parties have agreed in writing that the mediation will be conducted pursuant to Rule 31".** This does expand the scope of Rule 31, but only when the Parties and the Mediator wish to bring the mediation underneath the Rule 31 tent. This Mediator has included such a provision in his Mediation Agreement for years. It will be helpful to have an actual provision within **Rule 31** to rely upon as authority for this practice.

3. **Rule 31, § 10(e).** Prohibition upon Preparation of a Marital Dissolution Agreement and/or Parenting Plan for filing with the Court.

The prohibition with regard to a Martial Dissolution Agreement (MDA) in my view does clearly constitute the practice of law. It is not a form document and requires substantial legal knowledge to prepare.

The Parenting Plan is a far different matter. It is a form. Yes, the form is ultimately signed by counsel and the Court. And, yes, it should require consideration of many sophisticated and legal factors. Nonetheless, at the end of the day it is still a "fill in the blanks form" that has been blessed by the Supreme Court.

Let us consider some scenarios:

1. A married couple in a Rule 31 Mediation, whether represented or not and regardless of whether their counsel is present, is guided through the discussion of Parenting and Parenting Time by the Mediator, the Parties tell the Mediator what to place in the multitude of blanks. And, the Mediator literally fills in the blanks. The Parenting Plan form is completed and the Mediator hands the completed Parenting Plan to the parties (and/or their counsel). So, this constitutes the "practice of law" and the Mediator has sinned by violating Rule 31 ?

2.Would it be permissible for the Mediator to use the Parenting Plan as a guide for the Parties' discussion of Parenting and Parenting Time; record their answers upon a blank sheet of paper corresponding to the enumeration of the Parenting Plan; when finished with all issues in Parenting Plan, hand the sheet of paper with entries corresponding to the

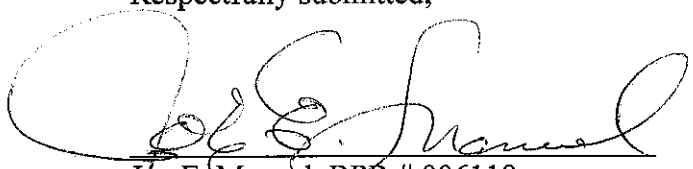
blanks and enumeration of the Parenting Plan to the Parties. [The Parties could then fill in the Parenting Plan form themselves and go to Court without counsel or take it to counsel to fill in the Parenting Plan form]. And, this approach would comply with Rule 31 ?

3.Does it make a difference if the Parties hold the pen and write down the information in the blanks contained within the Parenting Plan rather than the Mediator during the Mediation session ?

The approach taken by the Petitioner appears to be clearly a "difference without a distinction" in my view. I respect the ADRC's authority to issue Advisory Opinions. However, I most respectfully disagree with **Advisory Opinion 2017-0002** and in my view it is ill considered. Thus, this interpretation should not be memorialized in the text of **Rule 31**.

We are bombarded daily with pleas from this Court to make legal processes more transparent, more accessible and more available to people. Yet, in my view, the existing **Rule 31** interpretations regarding the Parenting Plan are totally inconsistent with making legal processes more available because it places an unreasonable obstacle in the path of parties who may wish to proceed *pro se* in their divorce. And, this proposed Rule should not be adopted by the Supreme Court.

Respectfully submitted,



Joe E. Manuel, BPR # 006119
240 Forest Avenue, Suite 301
Chattanooga, TN 37405
Telephone: 423-266-3535
Facsimile: 423-266-3136

CERTIFICATE OF SERVICE

I hereby certify that this document has been served upon the below listed individual via electronic transmission utilizing the email address set forth herein:

James M. Hivner, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37919-1407
appellatecourtclerk@tncourts.gov

This 11th day of May, 2018.

Joe E. Manuel, BPR # 006119
240 Forest Avenue, Suite 301
Chattanooga, TN 37405
Telephone: 423-266-3535
Facsimile: 423-266-3136