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### Yesterday's Vision, Tomorrow's Challenge: Case Management and Alternative Dispute Resolution in Tennessee

Penny White

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# Yesterday's Vision, Tomorrow's Challenge: Case Management and Alternative Dispute Resolution in Tennessee

JUSTICE PENNY J. WHITE\*

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## I. INTRODUCTION

With a view toward implementing procedures to assist courts in securing the just, speedy, and inexpensive determination of disputes, the Tennessee Supreme Court created in January 1992 the Dispute Resolution Commission (Commission).<sup>1</sup> The Commission was charged with studying case management and alternative dispute resolution (ADR) techniques, determining their potential benefits, and recommending the implementation of alternative methods for case management and dispute resolution as well as for the overall improvement of the administration of justice in Tennessee.<sup>2</sup>

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\* The Honorable Penny J. White is an Associate Justice of the Tennessee Supreme Court.

1. Order Establishing Tennessee Supreme Court Commission on Dispute Resolution (Jan. 24, 1992).

2. Report of the Tennessee Supreme Court Commission on Dispute Resolution 3 (June 1994) [hereinafter Report] (on file with *The University of Memphis Law Review*).

From these challenging directives, the Commission began a thirty-month comprehensive study which canvassed existing case management and ADR techniques throughout the country. Rather than simply recommending the adoption of an existing program from some neighboring jurisdiction, however, the Commission worked diligently to tailor recommendations regarding case management and dispute resolution to the Tennessee legal environment. The Commission produced a draft report which it circulated to members of the bench and the bar. As a result of the numerous comments received, the Commission modified some of its recommendations. In June 1994, the Commission published its conclusions in a lengthy final report directed to the Tennessee Supreme Court. The report recommended the adoption of case management and dispute resolution techniques which were previously alien to the Tennessee civil justice system.<sup>3</sup>

The recommendations of the Commission demonstrated that consideration of alternative means for resolving disputes must focus not only on popular extrajudicial methods, such as mediation, arbitration, case evaluation, and summary jury trials, but must include intra-judicial case management techniques as well.<sup>4</sup> As a result, the Commission recommended significant modifications to Tennessee Rules of Civil Procedure 16, 26, and 68.<sup>5</sup> Additionally, the Commission recommended the adop-

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3. *Id.* at 15-21, 44-62.

4. While the nomenclature of ADR methods is fairly consistent in the literature, Tennessee Supreme Court Rule 31 specifically defines each of the ADR methods available in Tennessee. TENN. SUP. CT. R. 31 § 2(c)-(h).

5. The suggested revision of Tennessee Rule of Civil Procedure 26.02(2) allowed the discovery of the "existence and contents of any insurance agreement" which may be liable to satisfy all or part of a judgment. The suggested revision to Tennessee Rule of Civil Procedure 68 required a trial court to award fees and costs to a party whose offer of judgment was not accepted if the judgment obtained was one of no liability or twenty-five percent less than the offer if the offer was made by the defendant, or twenty-five percent more than the offer if the offer was made by the plaintiff. Unless the court found that the offer was not made in good faith, the award would be mandatory. *See* Report, *supra* note 2, at 20-21. The supreme court did not accept these recommendations, but did request the Tennessee Supreme Court Commission on Civil Rules to comment on the Rule 68 proposal. Both of these recommendations are beyond the scope of this brief overview of case management and ADR methods in Tennessee.

tion of court-annexed ADR methods in Tennessee which would authorize trial judges "in their discretion and with meaningful opportunities for party input, to require parties to participate in nonbinding ADR proceedings."<sup>6</sup> By taking this incremental approach, the Commission anticipated that ADR would develop in Tennessee through the actual hands-on experiences of the judges, attorneys, and litigants who use its methods.<sup>7</sup>

## II. CASE MANAGEMENT

Tennessee Rule of Civil Procedure 16 is the primary instrument available to judges who wish to exercise control over litigation pending in their courts. Prior to the recent amendments, Rule 16 allowed pretrial conferences but generally limited the objectives of such a conference to matters of trial efficiency.<sup>8</sup> While the catch-all provisions of that rule arguably gave trial judges inherent power to effect the pretrial disposition of the case as well,<sup>9</sup> that use of the rule was the exception in Tennessee. Based on federal studies and on the federal counterpart to Rule 16, the Commission recommended amendments to Rule 16 geared toward authorizing and encouraging comprehensive trial management techniques.<sup>10</sup>

As a result of the Commission's recommendations and the supreme court's independent study, Rule 16 was amended. The new rule closely resembles the federal counterpart and autho-

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6. Report, *supra* note 2, at 44.

7. *Id.*

8. For example, Tennessee Rule of Civil Procedure 16 provided that the "court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider (1) The simplification of the issues; (2) The necessity or desirability of amendments to the pleadings; (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; (4) The limitation of the number of expert witnesses; (5) Such other matters as may aid in the disposition of the action." Tenn R. Civ. P. 16 (1995).

9. See Tenn. R. Civ. P. 16(5) (1995).

10. See FED. R. CIV. P. 16 adv. comm. note ("Empirical studies reveal that when a trial judge intervenes personally at an early stage to assume judicial control over a case and to schedule dates for completion by the parties of the principal pretrial steps, the case is disposed of by settlement or trial more efficiently and with less cost and delay than when the parties are left to their own devices.").

rizes trial judges to utilize the full panoply of case management techniques believed to be essential to any overall attempt to improve user satisfaction, expedite court proceedings, and lessen the financial and emotional cost of litigation.<sup>11</sup> As amended, Rule 16 allows the court to enter scheduling orders effecting discovery procedures.<sup>12</sup> It allows the court to require authorized representatives to attend conferences and to discuss, among other things, settlement, referrals to masters, and the use of "extrajudicial procedures, including ADR, to resolve the dispute."<sup>13</sup>

Amended Rule 16 provides desirous trial judges with mechanisms to control and manage litigation which is pending in their courts. While providing authority for judicial intervention, the rule does not dictate methods, thereby leaving to the trial judge the much needed flexibility to devise methods appropriate to the particular lawsuit and locale. As the Commission recognized: "[J]udges know best how to manage particular cases, and should not be required to adopt particular management practices in particular cases. They should, however, be given more explicit authority, resources, and encouragement to utilize effective management practices."<sup>14</sup>

The amendments to Rule 16 have done just that. They represent a vision aimed at allowing judges to more effectively manage litigation. The remaining challenges of training judges, who are lawyers, not managers, to utilize the rule's provisions and of instilling in lawyers a recognition that judicial case management will become the norm in Tennessee await us. The former is already being accomplished in judicial education programs; the latter will undoubtedly follow as judges utilize their newly honed managerial skills in courtrooms and chambers across Tennessee.

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11. See Brookings Institution, Task Force Report, *Justice for All: Reducing Costs and Delay in Civil Litigation* 14-27 (1989).

12. TENN. R. CIV. P. 16.01.

13. *Id.* at 16.02, 16.03.

14. Report, *supra* note 2, at 14.

### III. ALTERNATIVE DISPUTE RESOLUTION

Traditionally lawyers have been trained as advocates. They have utilized their skills in an adversary, adjudicatory forum presided over by individuals who have been trained identically. In recent years, methods of dispute resolution focusing on negotiation rather than adjudication have gained prominence. Despite the unavailability of empirical proof, the public generally perceives ADR methods as being less expensive, more efficient, and more satisfactory than adjudicatory methods.<sup>15</sup> As a result, the use of non-adjudicatory methods to resolve disputes began to increase in the early 1990s even with the absence of a court-sanctioned ADR program in Tennessee.<sup>16</sup> Additionally, the use of ADR methods in the federal courts in Tennessee,<sup>17</sup> the creation of community dispute resolution programs,<sup>18</sup> and the creative efforts of judges in Tennessee's metropolitan areas,<sup>19</sup> some of whom adopted local rules authorizing ADR methods before the Commission's report, all influenced the court's determination that the creation of an ADR procedure for civil actions in Tennessee was essential to the court's responsibility to supervise the administration of justice in the state.

Drawing largely from the Commission's recommendations, with some notable exceptions,<sup>20</sup> the supreme court adopted in December 1995 Rule 31 which authorizes the use of various ADR methods "all selected after consideration of the case and

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15. *Id.* at 29-30.

16. *Id.* at 31-33.

17. See Judge R. Allan Edgar, *A Judge's View—ADR and the Federal Courts—The Eastern District of Tennessee*, 26 U. MEM. L. REV. 995 (1996); Magistrate Judge J. Daniel Breen, *Mediation and the Magistrate Judge*, 26 U. MEM. L. REV. 1007 (1996).

18. See Jill Richey Rayburn, *Neighborhood Justice Centers: Community Use of ADR—Does It Really Work?*, 26 U. MEM. L. REV. 1197 (1996).

19. See Judge Marietta Shipley, *Family Mediation in Tennessee*, 26 U. MEM. L. REV. 1085 (1996).

20. Among the exceptions was the court's decision to include all domestic cases as potential eligible civil actions for ADR techniques, despite the Commission's recommendation that certain domestic cases in which violence is a pending threat be excluded. The court opted instead to rely on the good judgment of judges, attorneys, and neutrals to assure that inappropriate cases are not referred to ADR programs.

the circumstances, and all intended to make the process of dispute resolution more efficient, more economical, and equally fair."<sup>21</sup> The rule applies to "eligible civil actions,"<sup>22</sup> defined to include most actions filed in the circuit, chancery and probate courts.<sup>23</sup> It is a court-annexed program and as such envisions initiation upon motion by a party or, for certain types of resolution methods, upon the court's motion.<sup>24</sup>

Recognizing the incremental approach suggested by the Commission, the rule obliges the judge to confer with counsel or the parties before ordering participation in any ADR proceeding to determine whether participation is appropriate and, if so, the most appropriate method given the nature of the dispute.<sup>25</sup> Only with the consent of all the parties can the court require participation in the most labor-intensive ADR methods.<sup>26</sup> Additionally, the rule requires persons acting as neutrals<sup>27</sup> to advise the court if utilizing ADR methods in the particular case is "likely to be inappropriate, unfair, or detrimental in the referred action."<sup>28</sup>

Another feature of the annexed system is the supervision which the supreme court exercises over those individuals allowed to serve as neutrals. While the rule authorizes both

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21. Order Establishing Rule 31 Tennessee Supreme Court Rules Regarding Alternative Dispute Resolution pmb. (Dec. 18, 1995). For the complete text of Rule 31, see *infra* Appendix.

22. TENN. SUP. CT. R. 31 § 1. An eligible civil action includes "all civil actions except forfeitures of seized property, civil commitments, adoption proceedings, habeas corpus and extraordinary writs. The term 'extraordinary writs' does not encompass claims or applications for injunctive relief." TENN. SUP. CT. R. 31 § 2(b).

23. TENN. SUP. CT. R. 31 § 2(a).

24. TENN. SUP. CT. R. 31 §§ 3, 11.

25. TENN. SUP. CT. R. 31 § 11(b).

26. The rule allows the court to require parties to participate in judicial settlement conferences, mediation, and case evaluations, even absent consent, but only after conferring with counsel or the parties about the appropriateness of the referral. Conversely, only upon agreement of all the parties can the court require participation in the more labor-intensive methods including nonbinding arbitrations, summary jury trials, or mini-trials. TENN. SUP. CT. R. 31 § 3.

27. Dispute resolution neutrals include those acting as mediators, arbitrators, case evaluators, or judges or juries in summary jury trials or mini-trials. TENN. SUP. CT. R. 31 § 2(i).

28. TENN. SUP. CT. R. 31 § 12(C).



laypersons and attorneys to act as neutrals, all neutrals performing ADR functions under Rule 31 must be certified by the court in accordance with established qualifications and training requirements.<sup>29</sup>

The reaction to Rule 31 has been largely positive. Attorneys, judges, legislators, and litigants have demonstrated an interest in the rule and its potential to improve the administration of justice in Tennessee. Motivated by the desire to enhance the quality of justice by providing an *alternative, not a replacement* to the present system, the court is anxious to view the rule in operation in order to ascertain whether it meets the desired expectations. Success will be measured not only in terms of increased efficiency and decreased costs but also in terms of increased access to justice. If ADR systems provide individuals who might not otherwise have a means of resolving their disputes access to a means of peaceful resolution, it is successful. In that regard, one of the remaining challenges is to accumulate sufficient resources to implement ADR programs in the general sessions and juvenile courts across Tennessee. Surely, the ever-growing dockets handled by the dedicated judges in our general sessions and juvenile courts could be reduced by the implementation of ADR methods in those forums. More importantly, the trauma and distress experienced by hundreds of users of the system in those "People's Courts" could undoubtedly be reduced, and perhaps the satisfaction felt enhanced.

Similarly, we must assure that the mechanisms of Rule 31 are accessible not only to corporate America and to middle class citizens but to the impoverished as well. The rule will have ridiculed its purpose if it operates only to include those who can pay for its alternatives. It must be equally available to those who cannot pay.

Likewise, we must assure that the availability of the alternative methods anticipated by the rule is uniform throughout the

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29. TENN. SUP. CT. R. 31 § 7. The rule creates the Alternative Dispute Resolution Commission whose responsibility includes recommending standards and qualifications as well as certification procedures for neutrals in Tennessee. TENN. SUP. CT. R. 31 § 12. That commission's report is due in June 1996.

thirty-one judicial districts in Tennessee. Litigants in Mountain City must have the same opportunity to mediate, arbitrate, or evaluate their cases outside the courtroom as those in Memphis. Our challenge is not only one of assuring that resources are allocated fairly but also one of assuring that judges are trained properly in the mechanisms of the rule. While we cannot assure that qualified neutrals will live in every judicial district in Tennessee, we can take steps to assure that those who enjoy the privilege of serving as a neutral in Tennessee's court-annexed plan likewise accept the responsibility of making their services available in remote geographic areas and to those with sparse financial means.

In adopting a court-annexed plan, we have accepted the responsibility of assuring that the system is fair, uniform, and ethical. Rule 31 imposes ethical obligations on neutrals. For example, neutrals are required to disclose potential conflicting relationships, to advise the participants of their qualifications, to instruct the participants on the procedure which they will use, to remain impartial, and to maintain confidentiality.<sup>30</sup> While there is little dispute about those base level requirements for a neutral in any ADR program, many difficult ethical issues remain. We must determine the duration of the neutral designation. When can an attorney who has acted as neutral act as an attorney, guardian ad litem, or in any other judicial or quasi-judicial capacity in a case involving the disputants to a proceeding the attorney-neutral conducted? What is the effect of an attorney-neutral's participation in a matter on the attorney's firm's future representation of the disputants? Is an attorney who acts as a neutral engaging in the practice of law so that he or she is subject to discipline for transgressions under the Code of Professional Responsibility? If so, what is the concomitant responsibility of a non-attorney neutral? Should neutrals be allowed to advertise or solicit, or do those questions depend on whether the neutral is an attorney or a non-attorney?

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30. TENN. SUP. CT. R. 31 § 12(E)-(I).

## IV. CONCLUSION

These resource and ethical challenges and many others await us as we embark on a new era in the administration of justice—an era which allows the users of our services to choose between traditional adjudicated resolution of disputes and modern negotiated resolution. The future of ADR in Tennessee, and most probably the country, will depend largely on whether ADR in practice mirrors its perception, that is, whether, when compared with traditional adjudicatory dispute resolution, it actually is more efficient, more economical, less traumatic, less disruptive, and equally fair. In addition, even if ADR in practice exceeds the present perception of its superiority, its future will also depend on our commitment as a profession to resolve the difficult ethical challenges, to solve the perpetual problem of inadequate resources, and to assure that the alternative methods are administered by trained neutrals and managed by informed judges. Only then will Rule 31 and its almost two thousand counterparts throughout the country<sup>31</sup> accomplish their motivating purpose—to enhance the quality of justice for the users of the American system of justice.

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31. A recent Internet search for laws related to ADR methods revealed over two thousand entries.

## V. APPENDIX

**IN THE SUPREME COURT OF TENNESSEE****IN RE: RECOMMENDATIONS REGARDING  
ALTERNATIVE DISPUTE RESOLUTION****ORDER ESTABLISHING RULE 31  
TENNESSEE SUPREME COURT RULES  
REGARDING ALTERNATIVE DISPUTE RESOLUTION**

Pursuant to a Report filed by the Alternative Dispute Resolution Commission, and after allowing time for and soliciting public comment, the Tennessee Supreme Court hereby adopts this Rule regarding alternative dispute resolution in Tennessee.

IT IS THEREFORE ORDERED that the Rule set forth herein be and hereby is adopted as Rule 31 of the Rules of the Supreme Court of Tennessee.

**RULE 31: ALTERNATIVE DISPUTE RESOLUTION**

## Preamble

In its continuing efforts to enhance the quality of justice for the citizens of the state of Tennessee, the Supreme Court commissioned a study on alternative dispute resolution in 1992. The Commission was charged with studying dispute resolution in Tennessee "with a view toward the use and implementation of procedures to expedite and enhance the efforts of the courts to secure the just, speedy, and inexpensive determination of disputes." The Commission on Dispute Resolution, through the excellent leadership of its chairperson and the faithful service of its members, engaged in a thorough investigation and made comprehensive recommendations to the court. We are extremely grateful to the Commission for its dedication and service and we thank the Commission, and the many other practitioners,

judges, and citizens, who have expressed their opinions on this important topic.

The Commission's considered recommendations, the growing caseloads which our courts face, and our responsibility to supervise the administration of justice in the courts in our state lead us to establish for Tennessee a system of court-annexed alternative dispute resolution methods. Our rule envisions the use of various methods of alternative dispute resolution, all selected after consideration of the case and the circumstances, and all intended to make the process of dispute resolution more efficient, more economical, and equally fair.

### **Section 1. Application.**

Pursuant to the provisions of this Rule, a court may order the parties to an eligible civil action to participate in an alternative dispute resolution proceeding in accordance with this Rule.

### **Section 2. Definitions.**

(a) "Court" includes Circuit, Chancery, Law & Equity, Probate, and General Sessions Courts exercising jurisdiction of courts of record.

(b) "Eligible civil action" includes all civil actions except forfeitures of seized property, civil commitments, adoption proceedings, and habeas corpus and extraordinary writs. The term "extraordinary writs" does not encompass claims or applications for injunctive relief.

(c) "Mediation" is an informal process in which a neutral person, called a mediator, conducts discussions among the disputing parties designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute.

(d) "Judicial settlement conference" is a mediation conducted by a judicial officer other than the judge before whom the case will be tried.

(e) "Non-binding arbitration" is a process in which a neutral person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which is non-binding.

(f) "Case evaluation" is a process in which a neutral person or a panel, called an evaluator or evaluation panel, after receiving brief presentations by the parties summarizing their positions, identifies the central issues in dispute as well as areas of agreement, provides the parties with an assessment of the relative strengths and weaknesses of their case, and may offer a valuation of the case.

(g) "Mini-trial" is a settlement process in which each side presents an abbreviated summary of its case to the parties or representatives of the parties who are authorized to settle the case. A neutral person may preside over the proceeding. Following the presentation, the parties or their representatives seek a negotiated settlement of the dispute.

(h) "Summary jury trial" is an abbreviated trial with a jury in which the litigants present their evidence in an expedited fashion. The litigants and the jury are guided by a presiding neutral person. After an advisory verdict from the jury, the presiding neutral person may assist the litigants in a negotiated settlement of their controversy.

(i) "Dispute resolution neutral" is any person who acts as a mediator, arbitrator, settlement conference judge, case evaluator, or presiding judge or juror in a mini-trial or summary jury trial in an effort to facilitate the resolution of the case by alternative dispute resolution methods.

(j) "Order of Reference" is an order of a court in an eligible civil action referring the parties to participate in an alternative dispute resolution proceeding and requiring the filing of a final report regarding the proceeding by the alternative dispute resolution neutral.

### **Section 3. Initiation.**

Upon motion of either party, or upon its own motion, a court, by order of reference, may order the parties to an eligi-

ble civil action to participate in a judicial settlement conference, mediation, or case evaluation. Upon motion of either party, or upon the court's motion, and with the consent of all parties, a court, by order of reference, may order the parties to participate in non-binding arbitration, mini-trial, summary jury trial, or other appropriate alternative dispute resolution proceedings. The Order of Reference shall direct that all alternative dispute resolution proceedings be concluded as efficiently and expeditiously as possible given the circumstances of the case. The court may include in the Order of Reference a schedule for conducting and completing the proceedings. The Order of Reference shall require the alternative dispute resolution neutral to file a final report with the court in accordance with Section 9 of these rules.

#### **Section 4. Evidence.**

Evidence of conduct or statements made in the course of court-ordered alternative dispute resolution proceedings shall be inadmissible in court to the same extent as conduct or statements are inadmissible under Tennessee Rules of Evidence 408.

#### **Section 5. Immunity.**

Persons acting as dispute resolution neutrals in court-ordered alternative dispute resolution proceedings shall be deemed to be engaged in the performance of a judicial function and for such acts shall be entitled to judicial immunity.

#### **Section 6. Confidentiality.**

A mediator, settlement judge, or other dispute resolution neutral shall preserve and maintain the confidentiality of all alternative dispute resolution proceedings except where required by law to disclose the information.

**Section 7. Dispute Resolution Neutrals.**

A dispute resolution neutral shall comply with all rules and procedures promulgated by the Tennessee Supreme Court regarding qualifications, compensation, and participation in any court-ordered alternative dispute resolution proceedings under this Act.

**Section 8. Costs.**

The costs of any alternative dispute resolution proceeding, including the costs of the services of the neutral, shall be charged as court costs. Parties proceeding in forma pauperis may request the court to waive or reduce the costs of the alternative dispute resolution proceeding. The alternative dispute resolution neutral may make a recommendation in the report to the court regarding the division of the costs.

**Section 9. Reports.**

The alternative dispute resolution neutral shall file a report with the court within thirty days of the initial meeting with the parties acknowledging that the alternative dispute resolution proceedings have been initiated. Thereafter, the neutral shall file status reports with the court every thirty days in the event the proceeding is not concluded, and shall file a final report with the court within the time provided by the court in its order of reference. The final report shall indicate (a) whether both parties participated in the alternative dispute resolution proceeding; (b) whether the case was completely or partially settled; and (c) any recommendations regarding the division of the costs. In the event the court does not establish a deadline for the final report in the order of reference, the final report shall be filed within sixty days of the initial meeting with the parties.



**Section 10.** Participation of attorneys.

Attorneys may appear with clients during alternative dispute resolution proceedings.

**Section 11.** Procedure for initiating participation.

(a) After all parties are before the court, the court may, on its own motion, or on the motion of any party, order the parties to participate in alternative dispute resolution proceedings authorized by these rules.

(b) Before ordering the parties to participate in alternative dispute resolution proceedings, the court shall confer with the attorneys for the parties and any unrepresented parties with regard to whether (1) participation in alternative dispute resolution proceedings is appropriate, and (2) if so, the most appropriate method of alternative dispute resolution for the case.

(c) The court may require appropriate parties or representatives to appear or be reasonably available by telephone to participate in alternative dispute resolution proceedings, including, if appropriate, a person or party with settlement authority. The court may determine, in its discretion, what method of appearance is appropriate.

(d) The clerks for each judicial district shall maintain and make available to the public upon request a list of alternative dispute resolution neutrals approved by the Commission on Alternative Dispute Resolution, their certifications, date of certifications, and their qualifications and experience.

**Section 12.** Commission on Alternative Dispute Resolution.

(a) The Supreme Court shall appoint a 12-member Alternative Dispute Resolution Commission and shall name one of the members as the Chair. The Commission shall have the responsibility for:

- (1) determining the minimum standards for neutrals who will be allowed to participate in court-ordered alternative dispute resolution proceedings;
- (2) determining the procedure for certification of neutrals for inclusion on the list of neutrals approved for court-ordered alternative dispute resolution proceedings;
- (3) drafting a brochure which details and explains alternative dispute resolution proceedings in Tennessee;
- (4) determining the standards of professional conduct, in addition to those applying to attorney neutrals in the Code of Professional Responsibility that shall be required of neutrals in court-ordered alternative dispute resolution proceedings;
- (5) designing mandatory training programs for neutrals participating in court-ordered alternative dispute resolution proceedings;
- (6) assuring that all neutrals approved to participate in court-ordered alternative dispute resolution proceedings have participated in the mandatory training, have complied with certification requirements, and have certified their agreement to follow the guidelines and applicable standards and their understanding of the sanctions for failure to comply;
- (7) recommending to the court for certification and approval neutrals who have met the eligibility requirements;
- (8) evaluating the success of alternative dispute resolution proceedings based on participant satisfaction; quality of results; and effect on case management;
- (9) evaluating and reviewing each certified neutral for continued compliance with established standards;

- (10) suggesting rules and revisions in rules regarding alternative dispute resolution proceedings.

(B) Attorney and non-attorney neutrals must be approved by the Court before participating in any court-ordered alternative dispute resolution proceeding, must continually comply with all conditions, qualifications, and standards set for neutrals by the Court, and may be removed from participation upon noncompliance.

(C) Any attorney or non-attorney neutral participating in court-ordered alternative dispute resolution proceedings shall be trained in ascertaining the appropriateness of the use of alternative dispute resolution techniques in light of the parties' education, status, and prior relationship, and shall advise the court if based on the neutral's skill and training, alternative dispute resolution methods are likely to be inappropriate, unfair, or detrimental in the referred action.

(D) Neutrals are entitled to be compensated at a reasonable rate for participation in court-ordered alternative dispute resolution proceedings.

(E) Before commencing any alternative dispute resolution proceeding, any attorney or non-attorney neutral participating in court-ordered alternative dispute resolution proceedings shall make full disclosure of any known relationships with the parties or their counsel or the proceedings that may affect or give an appearance of affecting the neutral's neutrality.

(F) Before commencing any alternative dispute resolution proceeding, any attorney or non-attorney neutral shall advise the parties of the neutral's qualifications and experience.

(G) Before commencing any alternative dispute resolution proceeding, any attorney or non-attorney neutral shall discuss with the parties the rules and procedures which will be followed in the proceeding.

(H) A neutral shall be impartial toward all parties. Impartiality means freedom from favoritism or bias in favor of or against any party, issue, or cause.

(I) A neutral shall not give legal advice to parties to any alternative dispute resolution proceeding in which the neutral is participating. A person serving as a neutral in an alternative dispute resolution proceeding shall not participate as attorney, advisor, judge, guardian-ad litem, master or in any other judicial, or quasi-judicial capacity in the matter in which the alternative dispute resolution proceeding was conducted.

(J) A neutral shall make a report to the court which advises (1) whether both parties appeared and participated in the proceeding; (2) whether the matter was resolved; and (3) the costs of the proceeding. No other details of the proceeding shall be revealed to the court or any other person.

(K) A neutral shall avoid the appearance of impropriety in the neutral's relationship with any member of the judiciary or the judiciary's staff with regard to referrals for alternative dispute resolution proceedings or the results of proceedings.

ENTERED this 18th day of December, 1995.