

IN THE FOURTH CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

_____))
_____))
VS. _____) NO. _____
_____))
_____))

ORDER OF REFERENCE TO MEDIATION

Pursuant to Tennessee Supreme Court Rule 31, this court having determined that a reference to mediation is appropriate (either pursuant to the Court’s own motion or by motion of a party), it is hereby ORDERED that:

1. Counsel and parties shall proceed immediately to the Community Mediation Center (CMC), 912 Gay Street, Suite L-300, telephone number 594-1879, (a) for intake; (b) for placement __ with a mediator __ with an attorney mediator __ trained in domestic violence issues; and (c) for the scheduling of mediation *to begin only after completion of the Parent Education Seminars below.*

2. Mediation shall be pursued in good faith at each and every session, and shall be concluded as efficiently and expeditiously as possible. *After reaching agreement on child/ren-related issues, the mediation shall move on to any remaining issues, then or at subsequent sessions. However, before the mediator shall move on to consider issues beyond the child/ren, counsel (and/or the party/ies, if unrepresented) shall provide the mediator a copy of an earlier-filed, fully executed stipulation in compliance with Local Rule 10. [This is one document, signed by both sides (not two documents each signed by a side).] To facilitate the presentation of the document to the mediator, either side may request from the judicial secretary an early Trial Management Conference. The Court will then issue its standard Trial Management Order, as usual. However, at the Trial Management Conference, counsel may inform the Court of his/her/their desire to limit the conference to Rule 10 issues only as a preparation for informed mediation.*

3. The mediator shall file a **first report** with the clerk of the court **within 10 days** of the initial meeting with the parties; the first report shall acknowledge that the alternative dispute resolution proceedings have been initiated. Other matters may be reported as well, e.g., resolution of part but not all of the issues, issues remaining, the schedule for further sessions, etc.

4. The mediator shall file **status reports** with the clerk of the court **every 30 days thereafter** until the mediation is concluded.

5. The mediator shall file a **final report** with the clerk of the court upon the successful conclusion of the mediation, or other final outcome. The final report shall indicate (a) whether both parties appeared and participated in the alternative dispute resolution proceeding, and (b) whether the case was completely or partially settled. **The final report shall be filed within 10 days** of the last day of the last mediation session.

6. The court will use the mediator's report(s) as to appearance and participation to assess the good faith efforts of a participant.

7. A MINIMUM OF FOUR MEDIATION SESSIONS, EACH OF WHICH SHALL TAKE PLACE ON A DIFFERENT DAY, IS REQUIRED BEFORE MEDIATION CAN BE DEEMED TO HAVE FAILED. THIS REQUIREMENT IS INFLEXIBLE. IT WILL NOT BE WAIVED, EVEN AT THE REQUEST OF THE MEDIATOR. Of course, success may be obtained in less than four sessions, and the mediation may end with all issues resolved before four sessions have been completed. **THE CASE WILL NOT GO TO ANY ADDITIONAL CONTESTED HEARINGS UNLESS ALL FOUR SESSIONS HAVE BEEN COMPLETED OR THE CASE RESOLVED IN FEWER SESSIONS.**

8. IMPASSE: If the mediator is an attorney; and if there have been at least two mediation sessions totaling at least six (6) hours; and if the attorney mediator certifies to the court that in the time remaining before trial the case will not be settled through mediation; then the court will consider, upon application of counsel, accompanied by the attorney mediator's certification, relaxation of the foregoing requirement.

9. Whether or not the mediator is an attorney, the court urges counsel to consider not attending the first mediation session, and to hold themselves available for their clients by telephone. If the mediator is not an attorney, the court requires counsel to attend the second and any subsequent sessions; however, the court anticipates that the mediator may from time to time ask counsel to withdraw to another room; during any such withdrawals, a party is free at any time to consult with his/her counsel. The mediation process and all its particulars are in the control of the mediator, with counsel having an important resource and advisory role to their respective clients as to issues, but not as to the mechanics or the conduct of the mediation.

10. Typically, the mediator's fee is borne by the parties equally, initially, subject to possible reapportionment at trial or through further orders. The parties are urged to request the CMC to use indigency status and/or statutory marriage license fee funds, where available, to reduce the cost of mediation.

11. If the mediation is successfully concluded in whole or in part, the mediator shall either: (A) **Immediately prepare a formal written mediation agreement, while the parties wait, setting out whatever understandings have been reached, and present it to the parties for immediate approval.** The agreement shall bear the names of the parties and the docket number(s) of the Fourth Circuit Court litigation and shall be binding upon the parties or, (B) the mediator shall tape **record a summary of whatever understandings have been reached in the presence of the parties.** At the conclusion of the recorded summary, if the parties affirm their understanding and agreement as recorded, the recorded summary shall constitute an oral contract between the parties binding them to the terms and conditions announced in the recorded agreement.

However, nothing in this provision shall preclude a party from seeking redress for fraud, misconduct, or misrepresentation discovered after mediation.

12. The parties are directed to attend the next available parent education seminar, TCA §36-6-408, enrolling immediately with one of the following:

CHILD AND FAMILY, TENNESSEE, 524-7483, or
COOPERATIVE PARENTING AND DIVORCE, 414-2235 or
STEPS CO-PARENTING DIVORCE EDUCATION, 981-7900
NEW HOPE COUNSELING CENTER, 579-9814

PROOF OF COMPLETION SHALL BE BY CERTIFICATE OF COMPLETION FROM THE PROVIDER, LODGED WITH THE CLERK AND PLACED IN THE FILE. THIS ATTENDANCE AND COMPLETION IS MANDATORY UNLESS FORMALLY WAIVED BY THE COURT BY ORDER PLACED IN THE FILE.

EXCEPT IN THE MOST UNUSUAL CIRCUMSTANCES, THE CASE WILL NOT GO TO ANY ADDITIONAL CONTESTED HEARINGS UNTIL THE PARTIES HAVE PROVED COMPLETION TO THE COURT, OR THE SAME HAS BEEN WAIVED BY THE COURT.

ENTER this _____ day of _____, 20__.

JUDGE BILL SWANN

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing has been hand-delivered to both sides in open court today by the undersigned.

Bailiff

I hereby certify that a true and exact copy of the foregoing will be FAXED immediately to the Community Mediation Center (594-1890) by the Clerk's office.

Deputy Clerk

Revised: 11/26/2002