

**TENNESSEE SUPREME COURT
ALTERNATIVE DISPUTE RESOLUTION COMMISSION**

IN RE:

JAMES R. FINNEY,

Respondent.

**DECISION OF ALTERNATIVE DISPUTE RESOLUTION COMMISSION ON
GRIEVANCE FILED JANUARY 3, 2006**

This cause came on for decision after initiation of this action by the filing of a grievance against the Respondent pursuant to Tenn. Sup. Ct. Rule 31, §11(a) by Kevin Graham, an attorney representing a party in a mediation held by the Respondent on December 9, 2004. Said grievance was initially heard by a Grievance Committee (“Committee”) composed of three members of the Alternative Dispute Resolution Commission (“ADRC”) as set out in Tenn. Sup. Ct. Rule 31, §11(c), on March 28, 2006. Said Committee was comprised of duly appointed members Allen Blair, Suzanne Landers, and Gayden Drew, IV. Said Committee provided a decision on the grievance and Respondent timely filed an appeal of the Committee’s decision on April 25, 2006 pursuant to Tenn. Sup. Ct. Rule 31, §11(e). The parties stipulated and agreed that they understood that they were entitled to a de novo hearing before the ADRC members who were not part of the Grievance Committee and the parties expressly waived their rights to such hearing and agreed that the appeal shall be decided on the record by agreement filed August 24, 2006. The parties agreed that the record included the following documents:

- a. Complaint filed by Mr. Graham dated December 29, 2005.
- b. Transcript of March 28, 2006 Grievance Committee Hearing
- c. Response Statement filed by Mr. Finney dated May 19, 2006.
- d. Response Statement filed by Mr. Graham dated May 30, 2006.

- e. Any additional briefs and/or affidavits in this matter filed on or before September 15, 2006. Grievant's attorney, Gregory D. Cotton filed a Brief in Support of Respondent's Response to Grievance on September 14, 2006.

Commission members ("Commission") reviewed the record as stated above and held a conference call on October 24, 2006. Present during this call were Commission Chairperson Hayden D. Lait, and Commission members Ben H. Cantrell, Stephen E. Cox, J. Wallace Harvill, Glenna M. Ramer, D. Bruce Shine and Howard H. Vogel. Also present was Mary Rose Zingale, Programs Manager for the Administrative Office of the Courts as staff person for the Commission.

The Commission, after full review, discussion and upon the record as a whole, hereby finds as follows:

1. The mediation giving rise to this grievance was a court-ordered mediation and is encompassed by Tenn. Sup. Ct. Rule 31.

2. Respondent sent a letter dated December 15, 2004 concerning the mediation at issue to the Honorable Lee Moore, Judge of the Circuit Court for the Twenty-Ninth Judicial District at Dyersburg. The letter included the following language: "*I experienced some problems in this mediation which I feel the court should be aware of... It is my opinion that the ... cooperated and acted in good faith. Their settlement offer in light of the evidence presented to me was reasonable. Lastly, I found that the ... did not mediate in good faith.*" In addition, the letter stated "*I told Mr. Graham that he came adamant and so he agreed*"

3. Providing this letter to the judge with the language as described constitutes a violation of Tenn. Sup. Ct. Rule 31(5)(a). This section of the Rule specifically provides that a final report of a mediator to the court shall include only the following: "(i) whether both parties appeared and participated in the Rule 31 ADR Proceeding; (ii) whether the case was completely or partially settled; and (iii) whether the Rule Neutral or Rule 31 Neutrals request that the costs of the neutral services be charged as court costs." The Rule does not permit the mediator to provide any further information to the court.

4. Said letter and statements made within said letter also violate Tenn. Sup. Ct. Rule 31(10)(d). This section of the Rule specifically provides that a Rule 31 Neutral shall “*Preserve and maintain the confidentiality of all information obtained during Rule 31 ADR Proceedings and shall not divulge information obtained by them during the course of Rule 31 ADR Proceedings without the consent of the parties, except as otherwise may be required by law.*” The Rule does not permit the mediator to express his/her thoughts to the court or anyone else, as to whether parties have mediated in good or bad faith or allow the mediator to tell anyone what was said in the mediation.

5. Respondent acknowledged in paragraph 15 of his “Brief In Support of Repondent's Response to Grievance Filed by Kevin R Graham, Esq.”, that Respondent drafted a letter to the court and “requested” the attorney for the defendant to prepare it for his signature. Section 6 of the Standards of Professional Conduct for Rule 31 Neutrals states that “A Neutral shall be impartial. Impartiality means freedom from favoritism or bias in word, action, and appearance.” Having one party to the mediation prepare a letter to the court concerning the mediation and actions of the other party in the mediation clearly suggests an appearance of bias.

6. The Respondent’s actions in this matter are unacceptable violations of Tenn. Sup. Ct. Rule 31.

7. That pursuant to Tenn. Sup. Ct. Rule 31(11)(d), the Respondent should be suspended as a Tennessee Supreme Court Rule 31 listed mediator for sixty (60) days commencing December 1, 2006. Respondent shall not be reinstated as a Rule 31 listed mediator until he has completed a Tennessee Continuing Legal Education Commission approved one (1) hour course on mediation ethics. Once the suspension time has ended and Respondent has completed and provided proof of attendance at the required mediation ethics course to the Programs Manager of the Administrative Office of the Courts, Respondent can otherwise request renewal of his Rule 31 mediator listing.

IT IS, THEREFORE, the unanimous decision of the Commission that James R. Finney’s Rule 31 mediator listing is hereby suspended for a term of sixty (60) days commencing on December 1, 2006. In addition, James R.

Finney's Rule 31 mediator listing shall not be renewed until the suspension period had ended, he has complied with all Rule 31 renewal requirements and has, in addition, completed a Tennessee Continuing Legal Education Commission approved one (1) hour course on mediation ethics.

Dated this 2nd day of November, 2006.



Hayden D. Lait, Esq.
Chairman, Alternative Dispute
Resolution Commission

Certificate of Service

I, Mary Rose Zingale, Programs Manager for the Administrative Office of the Courts, hereby certify that a copy of the foregoing decision has been forwarded this the ____ day of November, 2006, to Mr. Gregory Cotton, 6263 Poplar Avenue, Suite1032, Memphis, TN, 38119 and Mr. Kevin Graham, 40 North Pauline Street
Memphis, TN 38105.

Mary Rose Zingale