

**IN THE FOURTH CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE**

\_\_\_\_\_) )  
[Represented by attorney]: ) )  
VS. ) NO. \_\_\_\_\_ ) )  
\_\_\_\_\_) )  
[Represented by attorney]: ) )

Delivered in open Court today to: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Plaintiff's counsel _____ <input type="checkbox"/> Defendant <input type="checkbox"/> Defendant's counsel _____ <input type="checkbox"/> other _____  _____ Deputy Clerk
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<b>Copies shall be provided to these persons at the following fax #s:</b> <input type="checkbox"/> Plaintiff's counsel _____, FAX# _____ <input type="checkbox"/> Defendant's counsel _____, FAX# _____ <input type="checkbox"/> Mediator _____, FAX# _____ <input type="checkbox"/> CMC, FAX #594-1890  _____ Deputy Clerk
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<b>Copies shall be provided to these persons by U.S. Mail:</b> <i>(check where applicable)</i> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant  _____ Deputy Clerk
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**ORDER OF REFERENCE TO MEDIATION**

This court having determined that a reference to mediation is appropriate (pursuant to statute, and/or the Court's own motion, and/or the motion of a party), it is hereby ORDERED that:

1. (Judge to initial applicable provisions:)

\_\_\_\_(a) A Rule 31 mediator shall be chosen by the two attorneys. The parties shall submit to mediation within 180 days of filing of this action for divorce, absent entry of a Final Decree disposing of the same. If there is to be only one attorney, either party shall make this known to the Court, so that the Court may name a mediator.

\_\_\_\_(b) A Rule 31 mediator has not been selected by counsel. **Therefore, counsel and the parties shall today proceed immediately from court directly to the Community Mediation Center (CMC), 912 Gay Street (the former Andrew Johnson Hotel), Suite L-300, telephone number 594-1879, for intake and payment of \$25.00 per person administration fee. CMC shall place the parties with:**

- \_\_\_\_\_ a Rule 31 mediator,
- \_\_\_\_\_ a Rule 31 attorney mediator,
- \_\_\_\_\_ a Rule 31 attorney mediator trained in domestic violence issues.

\_\_\_\_(c) The parties do not have minor children.  
\_\_\_\_(d) The parties have minor children.

*The actual mediation sessions shall begin only after completion of the Parent Education Seminars below within the last 24 months.* The parties are directed to attend the next available parent education seminar, enrolling immediately **only with one of the following**:

CHILD AND FAMILY, TENNESSEE, 524-7483, or  
COOPERATIVE PARENTING AND DIVORCE, 414-2235  
DOWNTOWN YWCA PARENTING CLASSES, 523-6126 or  
INTEGROUS COUNSELING CENTER, 521-0008, or  
PARENT PLACE PARENTING PROGRAM, 544-0577

2. Mediation shall be pursued in good faith at each and every session, and shall be concluded as efficiently and expeditiously as possible. To that end, *if this is a pre-divorce case, counsel (and/or the party/ies, if unrepresented) shall provide the mediator a copy of a 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.

3. The mediator shall file a first report with the clerk of the court within five (5) business 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 thirty (30) days thereafter until the mediation is concluded. The court will use the mediator's report(s) as to appearance and participation to assess the good faith efforts of a participant.

**5. 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.**

6. 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.

7. Whether or not the mediator is an attorney, the court urges counsel to consider not

attending the mediation sessions, and to hold themselves available for their clients by telephone. If the mediator is not an attorney, the court requires counsel to consult with the mediator by telephone (or, if need be, in person) before the second and any subsequent sessions. If counsel do attend sessions, 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.

8. 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.

9. 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 five (5) business days of the last day of the last mediation session.

10. 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, THEY SHALL DO SO IN WRITING, STATING THAT THE RECORDED SUMMARY SHALL CONSTITUTE A CONTRACT BETWEEN THE PARTIES BINDING THEM TO THE TERMS AND CONDITIONS ANNOUNCED IN THE RECORDED AGREEMENT.** The mediator shall have the sole decision as to whether an agreement is to be in full written form or recorded. Counsel and their parties are bound by said decision. They shall assist the mediator in the accomplishment of **(A)** or **(B)**. However, nothing in this provision shall preclude a party from seeking redress for fraud, misconduct, or misrepresentation discovered after mediation.

11. Proof of completion of the Parent Education Seminars 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\_\_.

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JUDGE BILL SWANN