

"EXHIBIT A"
NEW RULE 31B TO CURRENT RULE 31

RULE 31B: TENNESSEE DOMESTIC RELATIONS ARBITRATION RULE.

GENERAL PROVISIONS

Section 1. Application. The standards and procedures adopted under this Rule apply only to the arbitration of a Domestic Relations Dispute and only to dispute resolution neutrals serving pursuant to this Rule. They do not affect or address the general practice of alternative dispute resolution in the private sector outside the ambit of Rule 31B.

Section 2. Definitions.

(a) "Arbitration Agreement" means a written agreement signed by the parties that subjects a Domestic Relations Dispute between them to arbitration.

(b) "Arbitration Organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration or is involved in the selection of an arbitrator, excluding a court that makes an appointment.

(c) "Arbitrator" means an individual selected, alone or with others, to make an award in a Domestic Relations Dispute that is subject to an Arbitration Agreement.

(d) "Child-related Dispute" means a Domestic Relations Dispute regarding legal custody, physical custody, custodial responsibility, parental responsibility or authority, parenting time, right to access, visitation, parentage, or financial support regarding a child.

(e) "Court" means the local Tennessee court that has jurisdiction and venue to hear Domestic Relations Disputes.

(f) "Domestic Relations Dispute" means a contested issue arising under the domestic relations law of this State, unless otherwise excluded herein.

(g) "Party" means an individual who signs an Arbitration Agreement and whose rights may be determined by an award.

(h) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.

(i) "Order of Protection" means an injunction or other order, issued under the domestic-violence, family-violence, or stalking laws of the issuing jurisdiction, to prevent an individual from engaging in a violent or threatening act against, harassment of, contact or communication with, or being in physical proximity to another individual who is a party or a child.

(j) “Sign” means, with present intent to authenticate or adopt a writing:

- (1) to execute or adopt a tangible symbol; or
- (2) to attach to or logically associate with the writing an electronic symbol, sound, or process.

(k) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Section 3. Authority

(a) This Rule governs arbitration of a Domestic Relations Dispute.

(b) An arbitrator has no authority to issue an award that:

- (1) grants a legal separation, divorce, dissolution of marriage, or annulment;
- (2) terminates parental rights;
- (3) grants an adoption or a guardianship of a child or incapacitated individual;
- (4) determines the status of dependency or a child in need of protection; or
- (5) determines issues of civil or criminal contempt.

Section 4. Applicable Law. In determining the merits of a Domestic Relations Dispute, the matter shall be governed by the substantive laws of this state, including its choice of law rules, and its procedural laws where applicable.

COMMENT

The parties may consider including in their Arbitration Agreement certain administrative procedures, such as provided in the AAML Model Rules of Arbitration.

Section 5. Arbitration Agreement

(a) An Arbitration Agreement must:

- (1) be signed by the parties to the arbitration proceeding; and
- (2) identify in general nature the Domestic Relations Dispute the parties intend to arbitrate.

(b) Except as otherwise provided in subsection **(c)**, an Agreement to arbitrate a Domestic Relations Dispute that arises between the parties before or after the Agreement is made is valid and enforceable as any other contract and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.

(c) An Agreement to arbitrate a Child-related Dispute that arises between the parties after the agreement is made is unenforceable unless:

- (1) the parties affirm the agreement in writing after the dispute arises, or
- (2) the Agreement was approved by court in a domestic relations proceeding and incorporated in an order issued in that proceeding.

Section 6 Notice of Arbitration.

(a) A person initiates an arbitration proceeding by giving written notice to the other party(ies) to the Agreement as they provided, or, in the absence of such a provision, by certified or registered mail, return receipt requested, or an alternative commercial service that confirms delivery. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person promptly objects in the arbitration proceeding to the lack or insufficiency of notice, the person by participating in the proceeding waives any objection to lack of or insufficiency of notice.

Section 7 Application to the Court for Judicial Relief.

(a) When a domestic relations civil action is pending, an application to the court for judicial relief under this Rule shall be made to that court;

(b) If no domestic relations civil action is pending, then application for judicial relief under this Rule shall be made in the same manner that the filing of the initial action in a court with jurisdiction over the parties, subject matter jurisdiction, and venue;

(c) Upon application by a party to a court, a court may compel arbitration if the parties have entered into an Arbitration Agreement that complies with Section 5 unless a court determines under Section 12 that the arbitration should not proceed.

(d) Upon application by a party to a court, a court shall terminate arbitration if it determines that:

- (1) the parties have not entered into an Arbitration Agreement that complies with Section 5; or
- (2) under Section 12, the arbitration should not proceed.

(e) Unless prohibited by an Arbitration Agreement, on application of a party, a court may order consolidation of separate arbitrations involving the same parties and a common issue of law or fact if necessary for the fair and expeditious resolution of the Domestic Relations Dispute.

(f) Unless a domestic relations civil action between the parties is pending, an application to compel or terminate arbitration under this Rule must be served in the manner provided by law for the service of a summons in a civil action.

Section 8. Qualification and Selection of Arbitrator.

(a) Except as otherwise provided in subsection (b), unless waived in a writing signed by the parties, an arbitrator must:

- (1) be an attorney in good standing admitted to practice in this state; and
- (2) be trained in arbitration with AAML, ABA, AAA.; and
- (3) have practiced law and/or served as a judge in the state for a minimum of ten years and within the last five years, devoted on average 50% or more time to the area of domestic relations law.

(b) The identification in the Arbitration Agreement of an arbitrator, arbitration organization, or method of selection of the arbitrator controls how an arbitrator is selected.

(c) If an arbitrator is unable, unwilling to act, is not identified in an agreement, or if the agreed-on method of selecting an arbitrator fails, upon application of a party and certification that the proposed names of arbitrators are qualified pursuant to this section, a court shall select an arbitrator.

Section 9. Disclosure by Arbitrator: Disqualification

(a) Before serving as an arbitrator, an individual, after making reasonable inquiry, shall disclose to all parties any known fact a reasonable person would believe is likely to affect:

- (1) the impartiality of the arbitrator in the arbitration, including bias, a financial or personal interest in the outcome of the arbitration, or an existing or past relationship with a party, attorney representing a party, or witness; or
- (2) the arbitrator's ability to make a timely award.

(b) An arbitrator, the parties, and the attorneys representing the parties have a continuing obligation to disclose to all parties any known fact a reasonable person would believe is likely to affect the impartiality of the arbitrator or the arbitrator's ability to make a timely award.

(c) An objection to the selection or continued service of an arbitrator shall be made promptly:

- (1) to an arbitration organization that appointed the arbitrator according to their procedure; or
- (2) where the arbitrator was otherwise selected, upon application to a court for a stay of arbitration and disqualification of the arbitrator.

(d) If the arbitrator recuses or the parties agree to discharge an arbitrator or the arbitrator is disqualified, the parties by agreement may select a new arbitrator or request the appointing authority or a court, as appropriate, to select another arbitrator as provided in Section 8.

Section 10. Party Participation.

(a) A party may:

- (1) be represented in an arbitration by an attorney or be self-represented; and
- (2) be accompanied by an individual who will not be called as a witness nor act as an advocate.

(b) A party or representative of a party may not communicate *ex parte* with the arbitrator except to the extent that the person would be allowed to communicate with a judge under the Code of Judicial Conduct.

Section 11. Temporary Order or Award.

(a) Before an arbitrator is selected, upon application of a party, a court may enter a temporary order under Chapter 36 of the Tenn. Code Ann. and Tenn. R. Civ. P. 65 to preserve the *status quo*.

(b) After an arbitrator is selected:

(1) the arbitrator may make a temporary award under Chapter 36 of the Tenn. Code Ann. and Tenn. R. Civ. P. 65; and

(2) if the matter is urgent and the arbitrator is not able to act in a timely manner or provide an adequate remedy, upon application of a party, a court may enter a temporary order under Chapter 36 of the Tenn. Code Ann. and Tenn. R. Civ. P. 65.

(c) Upon application of a party, before a court confirms a temporary award made under subsection **(b)**(1) the court under Section 18 may correct or amend the award.

Section 12. Order of Protection Involving Party or Child.

(a) If a party is subject to an Order of Protection or an arbitrator determines there is a reasonable basis to believe a party's safety or ability to participate effectively in arbitration is at risk, the arbitrator shall stay the arbitration, subject to subsection **(b)**. Before the arbitration may proceed, after application by the party at risk, the party at risk must affirm the Arbitration Agreement in a writing and a court must determine:

- (1) the affirmation is informed and voluntary;
- (2) arbitration is not inconsistent with the Order of Protection; and
- (3) reasonable procedures are/were in place to protect the party from risk of harm, harassment, or intimidation.

(b) If an arbitrator determines that there is a reasonable basis to believe the case involves domestic abuse and/or child abuse or neglect, the arbitrator may make a temporary award to protect a party or child from abuse or neglect and must stay the arbitration.

(c) Upon application of a party to a court, a court may stay arbitration and review a determination or temporary award under this section.

Section 13. Powers and Duties of Arbitrator.

(a) An arbitrator shall conduct an arbitration in compliance with the rules or procedures of the appointing authority not inconsistent with this act, or in the absence of the rules or procedures, in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the dispute.

(b) An arbitrator shall provide each party a right to be heard, to present relevant and material evidence to the dispute, and to cross-examine witnesses.

(c) Unless the parties otherwise agree in a signed writing, an arbitrator's powers include the power to:

(1) meet with or interview a child who is subject of a Child-related Dispute;

(2) appoint a private expert at the expense of the parties;

(3) appoint an attorney, guardian ad litem, or other representative for a child at the expense of the parties; and

(4) allocate arbitration fees, attorney's fees, expert-witness fees, and other costs to the parties, as authorized by the Agreement or otherwise by law.

Section 14. Witnesses; Subpoenas; Depositions; Discovery

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon application to a court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate under the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(d) If an arbitrator permits discovery under subsection **(c)**, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this State.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this State.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this State.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another State upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another State must be served in the manner provided by law for service of subpoenas in a civil action in this State and, upon application to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this State.

COMMENT

This is Section 17 of the RUAA.

Section 15. Recording of Hearing. Except as required by this Section or other law of this State, arbitration hearing need not be recorded unless required by the arbitrator, provided by the Arbitration Agreement, or requested by a party.
Any part of an arbitration hearing concerning a Child-related Dispute shall be recorded.

Section 16. Award

(a) An arbitrator shall issue a written, dated and signed award not later than 30 days after the arbitration hearing has concluded, unless the Agreement or the rules of the appointing authority otherwise provide. The arbitrator shall deliver the award to each party by a method agreed on by the parties or, if the parties have not agreed on a method, by any method reasonably calculated to give the parties prompt notice.

(b) The award under this Rule must state the reasons on which it is based unless otherwise agreed by the parties.

(c) An award determining a Child-related Dispute must state the reasons on which it is based applying the laws of this state. Such an award is enforceable only after a determination and findings by the court that the provisions of the award are in the best interest of the child.

(d) An award under this Rule is of no legal effect whatsoever until and unless confirmed by a court. Temporary awards or interim orders of the arbitrator are subject to immediate confirmation regardless of the ongoing arbitration proceedings.

Section 17. Alteration or Amendment by Arbitrator of Unconfirmed Award.

(a) On motion of a party made before an application to confirm the award has been filed, the arbitrator may alter or amend the award:

- (1) if the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;
- (2) if the award is imperfect in a matter of form not affecting the merits on the issues submitted; or
- (3) to clarify the award.

Section 18. Confirmation, Alteration or Amendment of an Award

(a) After an arbitrator gives notice under Section 16(b) of an award, including an altered or amended award, a party may move the court for an order confirming the award.

(b) Upon application by a party, a court shall confirm an arbitration award:

- (1) where all parties to the arbitration agree in writing to the confirmation of the award; and
- (2) in all other circumstances, unless:
 - (i) the award was procured by corruption, fraud or other undue means;
 - (ii) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
 - (iii) the arbitrator(s) exceeded their powers;
 - (iv) the arbitrator(s) refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing to prejudice substantially the rights of a party; or
 - (v) there was no Arbitration Agreement and the party did not participate in the arbitration hearing without raising the objection.

(c) If an award determines a Child-Related Dispute, a court shall confirm the award if it finds that the award also:

- (1) complies with Section 16;
- (2) complies with the law of this State; and
- (3) is in the best interests of the child.

(d) Before a court confirms an award, the court also may alter or amend the award:

- (1) if the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;
- (2) if the award is imperfect in a matter of form not affecting the merits on the issues submitted; or
- (3) to clarify the award.

(e) Because of the court's *parens patriae* authority to protect children, a court's review of a Child-Related Dispute other than child support will be on the arbitral record, with no presumption of correctness, unless the trial court, upon motion or acting *sua sponte* elects to hear additional evidence or conduct a re-hearing. The trial court, in its discretion, may confirm the award without a hearing or upon notice and hearing may confirm and/or amend and confirm the award.

(f) A court's review of child support issues will be a review based on the arbitral record, with no additional proof introduced, unless otherwise directed by the Court.

(g) On confirmation, an award under this Rule is enforceable as a judgment.

Section 19. Enforcement of Confirmed Award

(a) The court shall enforce an award confirmed under Section 18, including a temporary award, in the manner and to the same extent as any other judgment.

(b) A court of this state shall grant full faith and credit to the judgment of a court of another state confirming an arbitration award in a Domestic Relations Dispute, that is not inconsistent with this Rule or the laws of this state.

Section 20. Appeal

(a) An appeal may be taken under this Rule from:

- (1) an order denying an application to compel arbitration;
- (2) an order granting an application to stay arbitration; or
- (3) confirming or denying confirmation of an award.

Section 21. Immunity of Arbitrator

(a) An arbitrator or arbitration organization acting in that capacity in a Domestic Relations Dispute is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) The immunity provided by this section supplements any immunity under law of this state other than this Rule.

(c) An arbitrator's failure to make a disclosure required by Section 9 does not cause the arbitrator to lose immunity under this section.

(d) An arbitrator is not competent to testify, and may not be required to produce records, in a judicial, administrative, arbitration, or similar proceeding about a statement, conduct, decision, or ruling occurring during an arbitration, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

- (1) to the extent disclosure is necessary to determine a claim by the arbitrator or arbitration organization against a party to the arbitration; or
- (2) to a hearing on a motion under Section 18(b)(2) as to confirmation of an award.

(e) If a person commences a civil action against an arbitrator arising from the services of the arbitrator or seeks to compel the arbitrator to testify or produce records in violation of subsection (d) and the court determines that the arbitrator is immune from civil liability or is not competent to testify or required to produce the records, the court shall award the arbitrator reasonable attorney's fees, costs, and expenses of litigation.

Section 22. Uniformity of Application and Construction. In applying and construing this Rule, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that have same or similar arbitration rules.

Section 23. Relation to Electronic Signatures in Global and National Commerce Act. This Rule modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Section 24. Transitional Provision. This Rule applies to arbitration of a Domestic Relations dispute under an Arbitration Agreement made on or after the effective date of this Rule. If an Arbitration Agreement was made before the effective date of this Rule, the parties may agree in a record that this Rule applies to the arbitration.

Section 25. Effective Date. This Rule takes effect on _____.