MINNESOTA JUDICIAL BRANCH POLICY

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Minnesota Early Case Management (ECM) and Early Neutral Evaluation (ENE) Best Practices For Family Court

PURPOSE

Providing early resolution of family law cases is a strategic goal of the Judicial Branch. In an effort to achieve this goal, the State Court Administrator convened the Early Case Management/Early Neutral Evaluation ("ECM/ENE") Statewide Steering Committee. The Committee is comprised of judicial officers, attorneys, and evaluators who pioneered ENE in Minnesota 10 years ago. The Committee's charge is to develop Early Case Management and create Early Neutral Evaluation ("ENE") capacity in all judicial districts. As of November 2011, social ENE ("SENE")[1] and financial ENE ("FENE") programs are offered in all 10 judicial districts and nearly 60% of Minnesota counties.

The concept of Early Case Management is to assist parties in reaching resolution of family court cases before significant financial and emotional resources are expended on litigation. Ideally, parties are able to resolve matters before that process begins and causes them to become entrenched, virtually guaranteeing a lengthy and expensive court battle. An ENE follows from an Initial Case Management Conference (ICMC). In counties where ECM/ENE has been implemented, ICMCs are scheduled when the first pleading is filed. At the ICMC, the judicial officer explains ADR options to the parties, including the option to participate in available ENE program(s) and the benefits they have to offer. Participation in an ENE program is voluntarily, and the decision to do so is made at the ICMC.

ENE is a confidential, settlement-oriented, accelerated alternative dispute resolution process that moves families through court as quickly, fairly and inexpensively as possible. SENEs address custody and parenting time issues, and FENEs address financial issues. An SENE involves a two-person male/female team who meets with the parties and their attorneys, if represented. Each party makes a brief presentation of his or her position, responds briefly to the

[1] The ENE process regarding social issues is also referred to as a "CPENE" (custody and parenting time early neutral evaluation) in some counties.

other's presentation and answers questions from the evaluator(s). If there is a team of evaluator(s), they confer privately about their impressions. Ultimately, the evaluator(s) provides feedback to the parties about the likely recommendations they would receive if they participated in a full custody and parenting time evaluation, as well as their opinion about viable settlement options. Attorneys may then consult privately with their clients and the full group reconvenes and attempts to negotiate a settlement. An FENE involves only one evaluator, male or female, and follows the same process as an SENE. ENE processes are designed to be completed within 30 to 60 days of the date the ICMC is held. While parties are participating in these processes, judicial time is made more available to handle emergency, enforcement and post-decree matters, as well as matters that are not suited for ENE.

In April 2004, then Chief Justice Kathleen Blatz issued a Supreme Court Order authorizing judicial districts on a voluntary, discretionary basis to implement ECM/ENE in accordance with Best Practices Guidelines that had been developed at the time and attached to that Order.[2] Much experience has been gained since 2004 as counties and districts have implemented ECM and ENE. Currently, overall ENE settlement rates in Minnesota range from 60 to nearly 100 percent.

Building upon the original best practices guidelines, the ECM/ENE Statewide Steering Committee has developed the following:

These Best Practices and Recommended Practices serve to ensure consistent quality statewide while providing flexibility for individual counties and districts to tailor ECM and ENE programs to their unique needs.

[2] See the "Blatz Order and Best Practices Guidelines" posted on the ENE website.

BEST PRACTICES FOR
EARLY CASE MANAGEMENT AND ICMCs

I. ECM AND ICMC BEST PRACTICE ONE

Family court training for judicial officers should include training on early case management.

Comment: Management of family court cases is notably different than criminal, civil and other types of cases. With the development and expansion of ENE programs, the resources available to judicial officers in family court are continuing to evolve. Training specific to the management of family court cases is essential to the effective handling of those cases.

II. ECM AND ICMC BEST PRACTICE TWO

Every family court case should be scheduled for an individual ICMC to be held within three weeks, and no later than four weeks, from the date of filing the first pleading.[3]

Comment: The judicial officer's involvement soon after the filing encourages parties and their attorneys (if represented) to focus on resolving and narrowing the contested issues, and to develop a case management plan tailored to the specific issues of the case. This includes cases where no Affidavit of Service or Answer and Counter-Petition has been filed. Affidavits of Service are often filed after the filing of a Summons and Petition. Waiting for the affidavit of service to be filed can result in significant delays in the scheduling of an ICMC and parties' potential participation in an ENE. As a result, the "window of opportunity" to engage parties in an ADR process as successful as ENE before they become entrenched may be lost. Exceptions to the scheduling of an ICMC may certainly be made in unusual circumstances as determined by the judicial officer.

Cases that will likely result in default hearings or in which unrepresented parties are in agreement on all issues may be referred at the ICMC to the county Self-Help Center or to online forms to complete a Judgment and Decree, and a default or final hearing can be scheduled. This significantly shortens the time from filing to resolution of many family court cases.

Each ICMC may take as little as 10 minutes or as long as 60 minutes. However, they are typically scheduled for a 30-minute period. This allows the judicial officer adequate time to talk with the parties and counsel about alternatives to litigation, exchange of information and timelines for possible resolution of the case. ICMCs should not be scheduled "arraignment style" with more than one case scheduled at

[3] Exceptions to this requirement include domestic abuse proceedings, Expedited Child Support Process proceedings, and cases filed with a request to proceed by default or Administrative Dissolution.

the same time because each family court case has its own unique issues and facts for discussion at the ICMC.

III. ECM AND ICMC BEST PRACTICE THREE

No formal discovery or motions should be served, scheduled or filed before the ICMC.

Comment: *This best practice helps maintain parity in the process and ensure that parties are not unduly entrenched before the judicial officer has the opportunity to address them at the ICMC. A party may still submit an ex parte motion for custody or child support pursuant to statute or rule. These motions should rarely be filed and even more rarely granted. This best practice does not preclude informal discovery. (See also ENE Best Practice XI, which establishes a best practice precluding the service, scheduling or filing of discovery or motions during an ENE process.)*

IV. ECM AND ICMC BEST PRACTICE FOUR

Parties should submit ICMC data sheets to the judicial officer before the ICMC, which should not be filed in the court file.

Comment: *Parties submit informal data sheets to provide the judicial officer with basic information regarding children's names and ages, incomes and expenses, assets and debts, case numbers for other types of cases in which the parties are involved (e.g. domestic abuse, harassment or juvenile court proceedings, or criminal proceedings involving DANCOs (Domestic Abuse No Contact Orders) or other no contact orders), and whether any agreements have already been reached. Each county should also develop a way to inquire about domestic violence if there are no Orders for Protection, Harassment Restraining Orders or DANCOs, e.g. fear of harm, safety concerns in or out of court and/or other special issues in the ICMC data sheet.*

The ICMC data sheet is intended to provide just enough information to the judicial officer to tailor the ICMC to each particular case. They are typically prepared quickly and therefore may not be an accurate reflection of the parties' full circumstances. This preliminary information permits the ICMC to focus on the process by which the case might get resolved rather than on the accuracy or veracity of the data sheet. There were concerns expressed by the bar about signing a document without having conducted discovery or obtaining complete information. At the judicial officer's discretion, ICMC data sheets may be returned to parties/counsel at the conclusion of the ICMC, destroyed by the judicial officer or maintained by the judicial officer as part of his or her private case notes. ICMC data sheets are not admissible and cannot be used for impeachment purposes at trial.

V. ECM AND ICMC BEST PRACTICE FIVE

ICMCs should be conducted by a judicial officer who explains to the parties the purpose of the ICMC; the purpose of early case management; and options for proceeding with their case, including traditional litigation and options for alternative dispute resolution, including both social and financial early neutral evaluations.

Comment: Active judicial involvement and management of family court cases engages the parties in communication, and is essential to effectively and efficiently resolve those cases and facilitate early settlement. It is incumbent upon the judicial officer to personally explain that participation in ENE is voluntary, and that the process is confidential.

VI. ECM AND ICMC BEST PRACTICE SIX

Parties and their attorneys, if represented, should appear at the ICMC.

Comment: Attorneys have occasionally questioned the necessity of their or their client's appearance because ICMCs are informal. An ICMC is still a court appearance, and attorneys are obligated under the Rules of Professional Conduct to appear. Even if parties agree to participate in an ENE before the ICMC, it is important for parties to attend the ICMC to hear a description of ENE processes from the judicial officer, to learn about alternatives to ENE and to participate in the development of their case management plan.

VII. ECM AND ICMC BEST PRACTICE SEVEN

Judicial officers should screen for domestic violence, and discuss amendment of any orders for protection or harassment restraining orders as necessary to participate in ENE if selected.

Comment: In this context, "domestic violence" is not to be limited to the definition of domestic violence as set forth in Minn. Stat. § 518B, or to the existence of an Order for Protection. Domestic violence may be present without the existence of any court order or any police involvement. It may take many forms from actual physical assault to more subtle coercive, controlling behavior. It also may not be readily disclosed by a victim of such behavior. It is incumbent upon the judicial officer to be part of the screening process throughout the proceeding, in addition to counsel, ENE evaluators and other ADR professionals. It begins with the ICMC data sheet, and continues at the ICMC by appropriate inquiry of the Court, and through any ENE or other ADR process.

The existence of domestic violence does not preclude participation in an ENE. However, it does impact the judicial officer's development of a case management

plan, assessment of whether ENE or other ADR options are appropriate and, if so, how parties can safely and effectively participate in such a process.

If an existing Order for Protection or Harassment Restraining Order does not permit contact between the parties, participation in ENE without amendment of the no contact provisions in such an order may constitute a violation by the respondent in that proceeding. The no contact provisions may need to be amended by court order and/or the parties may need to be kept separated during an ENE. Note that amendment of an Order for Protection or Harassment Restraining Order does not affect any DANCO orders (Domestic Abuse No Contact Order) or other criminal no contact orders that may be in effect against one party on behalf of the other.

VIII. ECM AND ICMC BEST PRACTICE EIGHT

Judicial officers should not make decisions on disputed issues at the ICMC. However, any agreements reached by the parties at the ICMC should be incorporated into the ICMC order.

Comment: The ICMC is a resolution-focused, case planning conference, not a forum in which contested issues are argued and/or decided. Agreements may be read into the record. Any agreements read into the record and incorporated into the ICMC Order are binding on the parties.

IX. ECM AND ICMC BEST PRACTICE NINE

The decision to participate in an ENE is voluntary and should be made by the parties no later than the ICMC.

Comment: Referral to ENE is only available from the ICMC. Referral thereafter would not be early in the case. Engaging in lengthy and ultimately unsuccessful negotiations can further polarize and entrench parties in their positions thereby significantly reducing the likelihood of settlement in an ENE process. Parties remain free to participate in private ADR after an ICMC.

X. ECM AND ICMC BEST PRACTICE TEN

ENE Evaluator(s) should be selected at the ICMC.

Comment: The size of ENE rosters and availability of evaluators may vary greatly from county to county. In some counties, parties/counsel select the neutral(s) with whom they will work while others employ an ENE "coordinator" who selects the neutral(s).

Counties in which parties/counsel select their own neutral(s) believe that the ability to do so may create an incentive to participate in the ENE process, and that the opinion of a mutually agreed upon neutral may carry more weight during an evaluation thus increasing the likelihood of a settlement. Counties in which the neutral(s) are selected by a coordinator or other process that precludes self-selection believe that the work and low or no-cost cases are more equally divided among the neutrals. The reported settlement rates are similar in both approaches.

As counties consider a selection process, it is recommended that the local family law bar be consulted and that consideration be given to their selection preference. Regardless of the selection method employed, care should be taken to assure the appointment of qualified, trained and experienced ENE neutrals.

XI. ECM AND ICMC BEST PRACTICE ELEVEN

No formal discovery or motions should be served, scheduled or filed during the ENE process.

Comment: When ENE is selected, discovery is suspended except to the extent it is deemed necessary by the ENE evaluator(s). A moratorium on formal discovery and motions during the ENE process helps parties focus on the critical issues they face in a confidential, non-confrontational, and settlement-oriented alternative dispute resolution program. This best practice does not preclude informal discovery, the execution of Sworn Statements of Income, Assets & Liabilities, or formal discovery if deemed necessary by the evaluator(s). (See also ECM and ICMC Best Practice III, which establishes a best practice precluding the service, scheduling or filing of discovery or motions prior to the ICMC.)

XII. ECM AND ICMC BEST PRACTICE TWELVE

An ICMC order should issue on all cases and should include or address the following:

- **A. Any temporary or permanent agreements reached by the parties.**
- **B. Whether or not an order for protection, harassment restraining order, DANCO, and/or other criminal no contact order exists, or whether a party has indicated the presence of domestic violence.[4]**
- **C. The valuation date.**
- **D. ENEs/Neutrals:**
  1. **Appointment of any ENE evaluator(s) or other neutral(s).**
  2. **Required attendance by parties and counsel of record at all ENE sessions.**

[4] "Domestic violence" referred to hereinafter is as described in the comment to ECM and ICMC Best Practice Seven.

3. **Fee(s) for ENE(s) and allocation of payment of those fees between the parties.**
4. **Timelines for completion of any ENE process.**
5. **Confidentiality provisions regarding any ENE process.**

E. Discovery issues.

F. The next court contact (i.e., telephone status conference, review hearing, pretrial).

G. Procedures to schedule telephone conferences and hearings with the court.

Comment: Overall, this order memorializes the case management plan and any agreements reached at the ICMC, reiterates the confidentiality of ENE if selected, and ensures ongoing case management by the judicial officer.

Orders for Protection, Harassment Restraining Orders, domestic violence, etc. *This provision notifies any court-appointed neutral whether one party is prohibited from having contact with the other party and/or whether domestic violence[5] has been identified as an issue through the ICMC. This information will assist the neutral with respect to any alternative logistical arrangements that may be necessary for the evaluation, and help ensure that the process is free of coercion and that any agreements reached are voluntary.*

Valuation date. *The statutory valuation date is the date of the first scheduled pretrial. However, statistics show that ECM has reduced the number of pretrials. Addressing the valuation date at the ICMC permits parties to engage in settlement discussions with an agreed upon valuation date earlier than the statutory valuation date. Typically, the alternative to the statutory valuation date is the date of the ICMC. The ICMC order should include the valuation date, and reiterate the parties' statutory right to argue an alternative valuation date if circumstances warrant.*

Discovery issues. *See comment to Best Practice XI.*

Next court contact/future hearings, etc. *These provisions assist the Court in managing the case efficiently and expeditiously. They also assist in communicating to parties/counsel the Court's parameters for case management.*

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[5] See footnote 4.

BEST PRACTICES FOR
ENE PROCESSES AND PROGRAMS

I. ENE BEST PRACTICE ONE

Parties' participation in any ENE process should be voluntary.

Comment: ENEs will only generate successful outcomes if it is voluntarily selected by the parties. ENE may not be the appropriate ADR process for all cases. A victim of domestic violence[6] may be excused from an ENE process previously agreed to if he or she is no longer comfortable with the process.

II. ENE BEST PRACTICE TWO

ENE processes should be confidential as provided in General Rule of Practice 114.08.

Comment: This best practice is based on the confidentiality provisions set forth in Rule 114.08 of the Rules of General Practice, which provides: "Without the consent of all parties and an order of the court, or except as provided in Rule 114.09(e)(4), no evidence that there has been an ADR proceeding or any fact concerning the proceeding may be admitted in a trial de novo or in any subsequent proceeding involving any of the issues or parties to the proceeding." For a candid discussion of the issues to occur, parties must be able to trust that discussions held during an ENE process will be held in confidence by the evaluator(s) and from the Court, and will not be part of the underlying litigation. However, exceptions to confidentiality include mandated reporting of the abuse or neglect of a minor, duty to warn of the contemplation or commission of a ongoing crime, statements or conduct that could constitute professional misconduct or give rise to disqualification proceedings under the Rules of Professional Conduct for attorneys, and information that is otherwise discoverable. Confidentiality may also be waived by agreement of the parties to allow the evaluator(s) to communicate with the Court.

III. ENE BEST PRACTICE THREE

Each ENE program should develop minimum qualifications for neutrals that include completion of state-approved ENE training and minimum years of family law experience.

Comment: Evaluators must be seasoned professionals, able to screen for domestic violence,[7] able to gather relevant information efficiently and able to ascertain the merits and weaknesses of each party's case quickly. The weight of the evaluative opinion as to the likely outcome of a full evaluation is a key component of the program's success.

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[6] See footnote 4.

[7] See footnote 4.

Candid, credible, quick evaluative opinions provide the reality check and impetus for settlements in cases where the parties are mutually interested in avoiding the full purview of contested litigation.

IV. ENE BEST PRACTICE FOUR

Each ENE program should have a sliding fee scale.

Comment: A sliding fee scale ensures access to ENE programs by all parties regardless of income, and compensates private ENE providers appropriately in cases where parties have greater means.

V. ENE BEST PRACTICE FIVE

ENE evaluators should screen for domestic violence.[8]

Comment: Screening at every level of the case maximizes the likelihood that any domestic violence will be identified. The existence of domestic violence is important knowledge for the evaluator(s) to have in preparing for the ENE as alternative logistical arrangements may need to be made to conduct the evaluation. It also helps ensure that the process is appropriate, free of coercion and that any agreements reached are voluntary. A victim of domestic violence may be excused from an ENE previously agreed to if he or she is no longer comfortable with the process.

VI. ENE BEST PRACTICE SIX

SENEs should be conducted by teams of one male and one female.

Comment: The male-female composition of the SENE team is crucial to alleviate parental concerns about gender bias on custody issues in the family court system. By utilizing a dual gendered approach, teams can be paired to ensure that the full range of necessary skill sets is available on any given case. The team models how to constructively communicate, problem solve, speak respectfully and normalize differences of opinion while addressing difficult issues. The dual gendered team delivers a qualitatively enhanced evaluative opinion because they merge perspectives and thereby inject a more comprehensive and holistic view of the case. The team is better equipped to deliver creative options for settlement. The team approach enhances the ability to track the often complicated dynamics of the session. When one member is speaking, the other can collect their thoughts or observe the parents' non-verbal communication or dynamics between the attorneys;

[8] See footnote 4.

these observations often provide cues as to how to structure subsequent aspects of the session. The team can make strategic decisions regarding which member should say what to whom while delivering the evaluative opinion and making recommendations; this can be critical to how the parties react to the feedback.

VII. ENE BEST PRACICE SEVEN

SENEs should be completed within 45 days of the date of the ICMC order unless the deadline is specifically extended by the court upon request by the parties, counsel, and/or evaluator(s).

Comment: This timeline promotes early resolution of custody and parenting time issues. If parties are represented by counsel, counsel shall be responsible to request an extension of the ENE deadline from the Court and to submit a proposed order to the Court extending the deadline. If neither party is represented by counsel, the evaluator(s) shall be responsible to request an extension from the Court, and the Court shall be responsible for issuing an order extending the deadline. (See Recommended Practice IV.)

VIII. ENE BEST PRACTICE EIGHT

FENEs should be completed within 60 days of the date of the ICMC order unless the deadline is specifically extended by the court upon request of the parties, counsel, and/or evaluator(s).

Comment: This timeline also promotes early resolution of financial issues. However, because FENEs potentially require the gathering and review of multiple documents, additional time is provided to complete the evaluation. Additionally, parties who are also participating in an SENE may wish to complete that process first as the outcome may have an impact on the financial issues. If parties are represented by counsel, counsel shall be responsible to request an extension of the ENE deadline from the Court and to submit a proposed order to the Court extending the deadline. If neither party is represented by counsel, the evaluator(s) shall be responsible to request an extension from the Court, and the Court shall be responsible for issuing an order extending the deadline.

IX. ENE BEST PRACTICE NINE

Attorneys of record should attend all ENE sessions.

Comment: Participation by counsel of record is critical to any resolution of a case in an ENE. Attorneys have the ability to guide and advise their clients during the process. Failure to attend an ENE and a later attempt to advise a client about any

agreements reached can lead to an unraveling of those agreements. Counsel of record will also have the responsibility for drafting any Stipulation and Order incorporating any agreements reached in an ENE. Rule 114.07 of the General Rules of Practice allows the court to "require that the attorneys who will try the case attend ADR proceedings."

X. ENE BEST PRACTICE TEN

The evaluator(s) should communicate one of the following to the court at the conclusion of the ENE:

- **A. ENE is not appropriate for the case;**
- **B. No agreements were reached; or**
- **C. A partial or full agreement was reached and the general terms of those agreements as approved by the parties/counsel.**

Comment: Communication from the evaluator(s) regarding the outcome of an ENE assists the Court in continuing case management that is tailored to the case. This standard is consistent with Rule 114.10 of the General Rules of Practice, which, in pertinent part, provides as follows:

- ***(a) Adjudicative Processes.*** *Neither the parties nor their representatives shall communicate ex parte with the neutral unless approved in advance by all parties and the neutral.*
- ***(b) Non-Adjudicative Processes.*** *Parties and their counsel may communicate ex parte with the neutral in non-adjudicative ADR processes with the consent of the neutral, so long as the communication encourages or facilitates settlement.*
- ***(c) Communications to Court during ADR Process.*** *During an ADR process the court may be informed only of the following:*
  - *(1) The failure of a party or an attorney to comply with the order to attend the process;*
  - *(2) Any request by the parties for additional time to complete the ADR process;*
  - *(3) With the written consent of the parties, any procedural action by the court that would facilitate the ADR process; and*
  - *(4) The neutral's assessment that the case is inappropriate for that ADR process.*
- ***(d) Communications to Court after ADR Process.*** *When the ADR process has been concluded, the court may only be informed of the following:*
  - *(1) If the parties do not reach an agreement on any matter, the neutral shall report the lack of an agreement to the court without comment or recommendations;*
  - *(2) If agreement is reached, any requirement that its terms be reported to the court should be consistent with the jurisdiction's policies governing settlements in general; and*

(3) With the written consent of the parties, the neutral's report also may identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

RECOMMENDED PRACTICES FOR ENE PROCESSES AND PROGRAMS

I. RECOMMENDED PRACTICE ONE

The bench and bar should form a local ENE steering committee.

Comment: Local steering committees can assist in determining minimum qualifications for neutrals, developing sliding fee scales and creating ENE provider rosters. The development of quality ENE programs is most successful when steering committees include representatives from all stakeholder groups. It is recommended that steering committees include judicial officer(s), court administration staff, member(s) of the bar (private and/or legal aid attorneys), member(s) of domestic abuse advocacy groups and other community stake holders. This helps ensure that the various and sometimes competing interests of all involved are considered in developing ENE programs. Steering committees can also serve as a forum for feedback to and from evaluators, the Courts and counsel that assists in maintaining quality control.

II. RECOMMENDED PRACTICE TWO

Consider whether ENE neutrals should be Rule 114 qualified.

Comment: Being a Rule 114 qualified neutral indicates that an evaluator has received training in alternative dispute resolution. However, there are many individuals qualified to conduct ENEs that may not be Rule 114 qualified. In fact, there may be fewer mental health and/or child development professionals that are Rule 114 qualified than attorneys. The desirability of having only Rule 114 qualified evaluators should be weighed against the availability of such evaluators in any given county. Any non-qualified Rule 114 neutral appointed as an ENE evaluator is subject to the provisions of Rule 114. It is also important to understand the use of Rule 114 qualified and non-qualified neutrals with respect to the ADR compliant process.

III. RECOMMENDED PRACTICE THREE

Consider whether ENE neutrals should be required to participate in a minimum number of "ride-a-longs."

Comment: While ENE trainings include simulated interactive ENE exercises, ride-a-longs provide a unique opportunity to observe experienced ENE evaluators handle real life situations. However, ride-a-longs require the consent of the evaluator, the parties and counsel. When deciding whether to incorporate a "ride-a-long" requirement, consideration should be given as to whether such a requirement will impede the ability to obtain qualified ENE evaluators given the necessity of obtaining this consent.

IV. RECOMMENDED PRACTICE THREE

SENE rosters should include mental health and/or child development professionals.

Comment: Mental health and/or chemical dependency professionals can include social workers, psychologists, guardians ad litem, etc. Rosters that include such professionals provide parties the opportunity to select a neutral with a particular skill set that may be needed in the case. For example, a child development professional may be appropriate in a case involving an infant or toddler or a case involving domestic violence.[9] Or a mental health professional may be useful in a case where a party has mental health and/or chemical dependency issues. It is often desirable to pair an attorney and a non-attorney as an SENE team.

V. RECOMMENDED PRACTICE FOUR

Deadlines to complete an SENE or FENE may be extended by the court upon request by the parties or the evaluator(s).

Comment: The recommended deadlines for completion of social and financial ENEs are ideal case management goals. However, scheduling issues and other extenuating circumstances may occur that require extending those deadlines. The decision to extend those deadlines is part of the judicial officer's management of the case. ENE training advises evaluators that it is necessary for the evaluator(s) or counsel to request an extension of any court-ordered deadline. The evaluator(s) or counsel should provide the judicial officer with a proposed order extending the ENE completion deadline and continuing any status telephone conferences or court appearances, if necessary.

VI. RECOMMENDED PRACTICE FIVE

Incorporate any agreements reached during an ENE into a writing signed by the parties and counsel, if represented, at the conclusion of the ENE.

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[9] See footnote 4.

Comment: *It is not unusual for parties to believe they have an agreement at the conclusion of an ENE, and one party later reneges on the agreement. This creates enforceability issues for the parties and the Court, which in turn raises issues with respect to the confidentiality of the process. A written agreement eliminates those issues.*