Appendix XVIII

FENE Manual

**Financial Early Neutral Evaluation (FENE)**

**Training Manual**

**FENE From The Beginning**

On the heels of the initial success of Hennepin County Family Court Services’ Social Early Neutral Evaluation (ENE) pilot program, attorneys Kathy Kissoon and Suzanne Remington approached then Presiding Family Court Judge James Swenson with the idea of developing a similar program for evaluating financial issues in dissolutions. Soon a committee of the bench and bar representatives was formed to explore the idea.[[1]](#footnote-1) Committee members researched other jurisdictions, looking for program models to bring early evaluative services to divorcing couples. The search included programs in New York, New Jersey, and California, but an element deemed essential by the committee – that the evaluation would occur early in the process – was lacking in the studied programs. Unable to find an existing model that fit the program criteria, the committee embarked on designing its own process. Admittedly, the new process borrowed heavily from the Social ENE program, which was steadily gaining credibility in Hennepin County.[[2]](#footnote-2)

Inseparable from the ENE process in Hennepin County is the concept of Early Case Management. Early Case Management was deemed a best practice by the Minnesota Supreme Court on April 23, 2004.[[3]](#footnote-3) The hallmark of Early Case Management is the Initial Case Management Conference (ICMC), an informal hearing designed to take place within three weeks after the filing of the case. At the ICMC, the judicial officer meets with the parties and counsel (if counsel is retained) and identifies the issues in dispute, sets a valuation date, directs discovery, and initiates a discussion about what services would be best for this particular family and their circumstances. By design, the ICMC offers judicial officers flexibility to adapt the process to the particular case and the style of the judicial officer, but the core message of the ICMC is that every family is strengthened by maintaining as much control as possible regarding their children and their finances.

At the ICMC, families are offered various tools to help resolve disputes. The range of options for custody and parenting time issues include processes provided by the Court – through Family Court Services in Hennepin County – such as mediation, custody evaluation, family group conferencing, or Social Early Neutral Evaluation. Processes for financial disputes include a court-sponsored Settlement Program (often used after discovery is complete or later in the case), court-sponsored Financial Early Neutral Evaluation, private mediation, arbitration, or consensual special magistrates. All of these processes – together with traditional litigation processes like motions for temporary relief – form a toolbox from which the family, counsel, and the judicial officer can collaborate to pick the right tool for the unique facts and circumstances of a particular case.

The focus of this manual is to provide both procedural and substantive information about developing a Financial Early Neutral Evaluation program (FENE), and ideas for making it work in a variety of settings.[[4]](#footnote-4) This manual will first look at the model for FENE developed in Hennepin County; second, it will analyze the types of cases and the settlement rates in Hennepin County while also surveying methods employed in other jurisdictions such as Minnesota and Colorado; and, finally, it will provide an index of forms developed by the Hennepin County FENE Committee and the Anoka County FENE Committee together with various other reference articles.

**PRACTICE TIP**

Highlights of the ICMC Pitch

There is no more important time to impress upon litigants the importance of early resolution of their case – whether financial or social – than at the Initial Case Management Conference. There are four primary components to the “pitch” made at an ICMC:

(1) that this is an opportunity for the judicial officer to reach out to the parties directly and encourage them to maintain control of their family and their finances and work toward resolution in a timely and amicable manner; (2) that about 70% of the families who participate in ENEs resolve their cases and do so in a short period of time; (3) that early resolution will result in a huge savings emotionally (if only by shortening the sometimes excruciating anxiety of being in family law litigation) and financially; and (4) that the professionals who are providing ENE services are eminently qualified (sometimes more qualified or experienced than the judicial officer) to help them resolve this matter and that frequently more is learned about a family during the informal ENE process than actually comes out in a formal trial.

 For a detailed example of an ICMC pitch by a Judicial Officer, please see “Custody/Parenting Time ENE “Script” by Judge James T. Swenson, included in the appendix. The principles and concepts delineated by Judge Swenson apply in Social and Financial disputes.

Financial Early Neutral Evaluations are initiated by Court order in Hennepin County.[[5]](#footnote-5) The ENE process is voluntary and, if the parties wish to participate in FENE, they choose from a roster of attorneys and accountants who have agreed to serve as Evaluators, have completed FENE training, and been approved by the FENE Committee. After the parties have selected an Evaluator (or ranked prospective Evaluators), the judicial officer may attempt to reach the Evaluator immediately (often

right from the bench) to determine if the Evaluator is available for the appointment. Otherwise, the judicial officer will tell the parties that the judicial officer will contact prospective Evaluators (in the order selected by the parties) and appoint an Evaluator by separate order. All FENE Orders should be accompanied by a description of the process so that what has been orally explained to the parties by their counsel, their judicial officer, and later the Evaluator, is also reinforced in writing.[[6]](#footnote-6)

For those familiar with Social ENE, there are two significant differences between the original program and FENE. First, Financial ENE is a public-private partnership between the Court and the family law bar. Unlike Social ENE, where Family Court Services provides the Evaluators, the Financial ENE Evaluators are private practitioners. Second, the Financial ENE providers operate as individuals rather than as part of a two-person team. It was determined that two-person teams were not essential in the financial realm because the Committee did not sense the same concerns about gender bias in financial matters as it did with custody and parenting time. Moreover, it was the belief of the Committee that the cost of two-person teams and the difficulty in scheduling sessions would outweigh the benefits of collaboration.

**HENNEPIN COUNTY FENE SLIDING FEE SCALE**

|  |  |
| --- | --- |
| Gross Annual Family Income | Hourly Rate of Evaluator |
| 0 - $25,000 | $0.00 |
| $25,000 - $50,000 | $50.00 |
| $50,000 - $75,000 | $75.00 |
| $75,000 - $100,000 | $100.00 |
| $100,000 - $125,000 | $150.00 |
| $125,000 - $250,000 | $250.00 |
| Over $250,000 | $300.00 |

As part of the ICMC, the Court also determines the fee the Evaluator will be paid and the allocation between the parties. The fee determination is based primarily on the gross annual income of the parties but can also be impacted by the size and complexity of the marital estate, and the fees being charged by attorneys, if the parties are represented by counsel.

The Court memorializes the appointment of the FENE Evaluator with a written Order.[[7]](#footnote-7) The Order contains contact information, the fee determination, the issues in dispute, whether domestic abuse is involved, and the details the various deadlines.[[8]](#footnote-8)

In Hennepin County, the goal of the FENE program is to conclude cases within sixty days of the ICMC and to have a report back to the Court within seventy-five days of the ICMC. These timelines can be extended by agreement of the parties and the Evaluator, which is then memorialized by them submitting a proposed order extending time for completion. The concept of early completion is to guide the parties to resolution before they expend significant financial and emotional resources on litigation. Ideally, the parties are able to resolve matters before the litigation process itself causes the parties to become entrenched, which virtually guarantees a lengthy and expensive court battle. Even though the Court is involved in the appointment process, the remainder of the FENE process is confidential. In the Hennepin County model, Evaluators do not reduce opinions to writing; instead, the evaluations are delivered orally. This provides two main benefits: (1) there is no temptation or ability to introduce a written opinion into litigation if the FENE is unsuccessful, and (2) it prevents the parties from focusing on particular words, phrases, and recommendations by parsing the Evaluators’ words, rather than focusing on resolving the dispute. An Evaluator is also not permitted to contact the Court regarding the FENE, except to report to the Court that the case did not resolve, or that a settlement has been reached (and the terms of the settlement). Documents produced or exchanged by the parties during the process are confidential, unless the documents would otherwise have been discoverable, such as tax returns, financial statements, debt statements, investment information and the like. Under no circumstances are the thoughts, impressions, or opinion of the Evaluator admissible outside the FENE process. The bench must safeguard the integrity of the ENE process by prohibiting efforts by counsel or parties to inject confidential information into the litigation

**PRACTICE TIP**

Immunity and Malpractice Issues

All providers of ENE services are encouraged to discuss their professional services with their liability insurance carrier to ensure coverage for providing Evaluations. The Hennepin County FENE Committee has not found any cases that deal directly with ENE providers and whether an Evaluator would enjoy quasi-judicial immunity. However, quasi-judicial immunity has been extended to assessors because the public interest requires full independence of action and decision on the assessor’s part. Stewart v. Case, 54 N.W. 938, 938 (Minn. 1893). Quasi-judicial immunity has also been extended to jurors, commissioners appointed to appraise damages when property is taken under eminent domain, prosecutors, and persons designated as arbitrators. Gammel v. Ernst & Ernst, 72 N.W.2d 364, 368 (Minn. 1955).

Quasi-judicial immunity has been extended to a guardian ad litem, when the Minnesota Supreme Court wrote:

A guardian ad litem is an officer of the Court. The guardian’s duty is to act within the course of that judicial proceeding in furtherance of the best interests of the child for whom the guardian has been appointed. The guardian must be free, in furtherance of the goal for which the appointment was made, to engage in a vigorous and autonomous representation of the child. Immunity is necessary to avoid harassment from disgruntled parents who may take issue with any or all of the guardian’s actions.

*Tindell v. Rogosheske*, 428 N.W.2d 386, 387 (Minn. 1988) (citations omitted).

 It is the consensus of the Hennepin County FENE Committee that the use of a Court Order appointing the evaluator is an important component to protect Evaluators from liability. Evaluators are advised not to conduct ENE sessions without a Court Order.

 Most recently, the Minnesota Supreme Court addressed the issue of immunity in the context of an expert appointed by the Court pursuant to Rule 706 of the Minnesota Rules of Evidence. In *Peterka v. Dennis*, the Court wrote:

The public policy concerns identified above support extending immunity to Rule 706 experts whose participation must not be chilled and who must be free to render independent and unbiased advice to the court without fear of harassing litigation by dissatisfied parties. Such experts provide an important service to the court and extending immunity to them will encourage continued participation.

764 N.W.2d 829, 835 (Minn. 2009).

 A copy of the *Peterka* decision is included in the Appendix.

**PRACTICE TIP**

ENE Has A Place For Counsel At The Table

Unlike some forms of mediation where clients attend sessions without the direct input from their counsel, the ENE programs sponsored by Hennepin County require that counsel of record attend the sessions. The primary reasons for requiring counsel participation are to ensure that settlements reached at the session are not undone by after-the-fact consultation between counsel and client, and to ensure that the process itself covers all of the important issues between the parties so that the agreement is comprehensive and enduring.

 For a resource on representing clients in ENE, please see the article “Using Early Neutral Evaluations for Effective Representation” written by Referee Kevin McGrath and attorney Joani Moberg in the April 19, 2007, Hennepin Lawyer magazine and included in the Appendix.

process. Confidentiality, we have found, leads to candid exchanges and an environment conducive to problem-solving and settlement.

**Conducting The Evaluation**

**FENE: A step-by-step approach**

The secret to the initial success of Financial ENE and Social ENE wherever it has been introduced should not be a surprise to many experienced providers of dispute resolution services. These programs provide parties with the essential components that are necessary for a case to resolve:

1. *An opportunity to be heard.* Parties get a chance to tell their stories, with the help of counsel, but in their own words to Evaluators who have been presented to them as experts in financial aspects of

divorce. ENE provides this opportunity early in the process and gives the party his or her so-called “day in court” in an informal arena where the focus can then be shifted to problem solving, not castigating the other party.

2. *Empathy from the Evaluator.* When receiving feedback from the Evaluator, the party knows he or she has been heard because the Evaluator, in a way not always possible for a judicial officer in a Court setting, carefully chooses his or her language to be certain to convey to each party that what they have said was heard and is important. This emphasis on effective listening – a hallmark borrowed from the mediation process – goes a long way to ensure buy-in to the process.

**PRACTICE TIP**

Four Situations That Favor ENE

Over Mediation or Settlement Conferences

1. *Difficult opposing counsel.* Use the Evaluator to help you reign in an opposing counsel who is being difficult in a case. Encourage caucusing between the Evaluator and the parties and counsel so that you can discuss your difficulties and invite the Evaluator to help. The Evaluator can control difficult counsel by asking to meet privately with counsel so that control can be regained but not at the expense of embarrassment in front of the client.

2. *Difficult client.* Use the ENE process to give your client a “reality check” by having the Evaluator affirm the advice you are already providing. The Evaluator may also be able to deliver the message in a more direct or emphatic way, since he or she is not an advocate. Having an expert appointed by the Court confirm with your client that his or her view of spousal maintenance or other financial issues is not in step with likely outcomes in Court can only serve to help counsel get cases settled.

3. *Unpredictable judicial officer*. ENE is a place where clients can be heard and receive feedback from an expert, but it is also a place where counsel can seek fast and learned input from a court-appointed expert without the associated risks of unpredictable judicial officers or the costs of temporary motions or trials.

4. *Opposing counsel needs an education*. If you are confronted with counsel who seems to be reasonable enough but takes positions not consistent with the law, draw on an Evaluator to help you educate opposing counsel; doing so sooner rather than later will serve the parties well in the outcome.

3. *Feedback from an expert.* ENE provides the parties and their counsel an opportunity to hear about the strengths and weaknesses of their case from a neutral person appointed by the Court. This feedback gives counsel and parties a meaningful opportunity to hear about the issues and how they are perceived by someone who is detached from the case.

4. *A process for settlement.* Usually, after the delivery of the evaluation, ENE provides an opportunity to generate ideas for settlement, with or without the assistance of the Evaluator. Sometimes, the Evaluator may be able to withhold his or her opinion and move the process to settlement facilitation. There are cases that are ripe for settlement, and which can be resolved without the Evaluator ever delivering an opinion. If parties are stuck, a skilled Evaluator can inject ideas into the negotiations that could lead to resolution. All that being said, it is important to note that although the settlement process is facilitative, it is not mediation. The Evaluator does not maintain the same neutrality as a mediator.

Keeping these core concepts in mind, let’s look at how a Financial Early Neutral Evaluation is conducted.

1. *Contact From the Court.* In the Hennepin County model, the preferred method for appointing an Evaluator is for the judicial officer to call the Evaluator chosen by the parties (and counsel) from

the courtroom during the Initial Case Management Conference and make the appointment and schedule an initial meeting or telephone conference. Sometimes, this contact is not possible because of schedules or other issues in the courtroom. In these cases, the parties should make a prioritized list of Evaluators and the judicial officer can contact the Evaluators in the order of preference expressed by the parties and then issue the Order for a Financial Early Neutral Evaluation. Because of the strict timelines for FENE, it is imperative that this Order be issued the same day or as soon as possible after the ICMC so that the case does not languish.

We have found that it is important for the judicial officer to use the form Order created by the FENE committee and for all of the elements to be completed. Some areas that have proven problematic if not addressed in the Order are the setting of the Evaluator’s fees (see Fee Scale above), how the fees will be paid (as between the parties), and contact information for counsel and the parties (particularly in self-represented cases). In addition, the existence of an Order For Protection should be noted.[[9]](#footnote-9) The Order should be faxed to the Evaluator so that the Evaluator can immediately begin working on the case. Remember, when an Evaluator is appointed, the Evaluator steps in the Court’s shoes not only to try to resolve the case, but to manage the case as to discovery and the narrowing of issues.

Evaluators will need to conduct a conflict check to be certain that they can accept the appointment, and it is helpful if a legal assistant or other contact at the law firm can perform this function if the Evaluator is not available.

Within a week or ten days of the ICMC, counsel and the Evaluator should, at a minimum, have a telephone conference to discuss any issues involving the exchange of information, possible use of neutral experts, and scheduling matters. The Evaluator should send out his or her FENE agreement,[[10]](#footnote-10) and make sure that payment terms are understood. Some Evaluators require a retainer while others bill for each session at the conclusion of the session. The initial (and sometimes only) evaluation session should follow shortly thereafter.

2. *The Initial Meeting.* The Initial Meeting is important as it sets the stage for how the evaluation will proceed and how the parties and counsel will view and perceive the Evaluator. It is important for each Evaluator to determine what his or her own style is and for each Evaluator to be comfortable conducting the session, rather than trying to emulate a style that simply does not fit the Evaluator’s personality.

At the Initial Meeting, Evaluators should define the limits of the process, set ground rules for how the Evaluation will be conducted, set the expectations for how counsel and the parties are to behave, and identify the issues to be evaluated.

In setting limits for the process, it is important to inform parties that the Evaluator is not the assigned judicial officer, that he or she does not speak for the judicial officer, and that the strict confidentiality of the process prohibits communication with the judicial officer. At the same time, it is suggested that Evaluators share their experience and expertise with the parties and counsel, reminding them that they selected the Evaluator for his or her skills, talent, and experience, and that the Evaluator’s experience in family law is what they are getting from the process. In short, it is suggested that Evaluators toot their own horns to help build themselves up as experts in the field with training specifically tailored to conducting FENEs. If the judicial officer weighed in with positive comments about the chosen Evaluator, these combined messages will help the parties feel confident in their selection of an Evaluator.

FENE is an opportunity to prevent parties from engaging in divisive and expensive litigation, or it is an opportunity to help the parties change their approach from fighting against each other to problem solving with each other. Setting a positive tone, establishing limits on behavior, and ensuring a respectful process is an important part of FENE.

Gaining agreement on the issues that are in dispute and subject to evaluation is another key step. During this process, it is possible to obtain or confirm agreements on issues or facts that might otherwise be in dispute. This can serve to narrow the issues for Evaluation or for the Court if the case does not settle. This is a time for the Evaluator to ensure that the parties and counsel know that it is not the Evaluator’s job to do the work; it is the counsels’ and parties’ jobs to gather and analyze the information to be presented to the Evaluator. We have experienced cases where counsel made claims, for example, to a non-marital asset but expected the Evaluator to conduct the tracing and do the appropriate analysis. Doing the work of counsel and the parties is not the job of the Evaluator, and this should be conveyed at the Initial Meeting.

Perhaps the most important part of any first meeting is to allow the parties – in conjunction with counsel, if represented – to have an opportunity to be heard. We have found that satisfaction with the process is tied directly to parties feeling heard, and this is an opportunity for Evaluators to use skills that are borrowed from mediation, to actively listen and display empathy. If the parties feel heard, it is our experience that they are much more willing to follow the recommendations and opinions of the Evaluator.

3. *Homework.* If the case does not settle in full at the Initial Meeting, the Evaluator will assign homework to the parties and counsel to ensure the next session will be productive. It may be necessary to assign tasks such as:

* 1. Hiring a neutral expert to perform a cash flow analysis, a non-marital tracing, or a business valuation, as examples. (There is an Order Appointing a Neutral contained in these materials.)
	2. Directing counsel and the parties regarding what documents need to be exchanged and provided to the Evaluator so that the process can move forward.
	3. Assigning counsel to put together balance sheets that can be distributed at or prior to the next session.
	4. Putting together a to-do list for counsel and the parties so that the matter stays on task. Perhaps scheduling a conference call with counsel during the interim time between the Initial Meeting and the follow-up meeting to check on the progress of the homework.
	5. Confirming a time and date for the next session.

4. *Delivering the Opinion.* Before delivering an opinion, it is always helpful for the Evaluator to check-in with counsel and the parties to determine if a change to a facilitative process would be helpful for purposes of settlement. Sometimes, the process of hearing the parties and allowing the parties to voice opinions, fears, and concerns is enough to remove impediments to settlement. If this is the case, it is appropriate to withhold an opinion and instead work to secure agreements. If agreement cannot be reached, the opinion can always be delivered later.

If it is determined that an opinion should be delivered, this is the time to reiterate the role of the Evaluator (to provide a candid opinion on how the case would resolve, based on the facts presented and the law), to clarify that the Evaluator does not speak for the Court, but that he or she has experience and expertise that gives real meaning to the analysis of this dispute. Finally, include a reminder that the process is confidential and that the recommendations will not be shared with anyone, particularly the Court.

If the Evaluator was successful in actively listening to the parties as they made their cases, he or she will have no trouble summarizing their positions to further ensure they feel heard. It is important to empathize with each party’s position and to acknowledge the struggle involved in coming to an opinion. The parties will be reassured by knowing that a recommendation was thoughtful and not made lightly.

An effective Evaluator will state the strengths and weaknesses of each position, cite the law when it applicable or particularly important, and let the parties know that this voluntary process still puts them in a decision-making position, a much better position than giving all of the authority over their financial matters to the Court. While opinions should be delivered with authority (depending on how strongly the Evaluator feels about the issues), all opinions are more speculative than certain, and leaving open some room for uncertainty will allow for settlement discussions after the opinion is delivered.

Prior to delivering an opinion, it is helpful to reiterate the risks and the costs of litigation, the real lack of certainty in decisions made by the Court, and the amount of time that will take place before a decision is made. In other words, there is a significant human cost to litigation along with a financial cost, and few people leaving a divorce trial thinking that it was a pleasurable experience. By leaving some uncertainty in an opinion, the Evaluator leaves room for other ideas – ideas generated by the parties and counsel. This may be critical when it is time to work on resolution of the dispute.

5. *Closing the Deal.* Following the delivery of the Evaluator’s opinion, counsel frequently wants an opportunity to consult privately with their clients. At this time, it is important to inform the parties that the matter is moving to a facilitative stage – a stage where the Evaluator will help the parties reach agreement. Gaining agreements to use techniques like caucusing privately with each side or meeting separately with just counsel will give the Evaluator a full set of tools to make this transition.

This is not a time to allow the parties or counsel to engage in argument with the Evaluator. Instead, they should be reminded that the Evaluator’s opinion is just one option, and that their energy would be best used by looking at creative options to resolve the case.

Again, the Evaluator is not a mediator. Indeed, such a role is not possible after delivery of an opinion of the case. It is hoped that by allowing the parties to be heard, by gaining their trust, and by carefully giving an opinion that allows room for negotiation, this part of the process will follow naturally.

6. *Memorializing Agreements.* If agreements are reached, in whole or in part, the Evaluator’s role, as a Court-appointed person, is to see that the agreements are reduced to writing in an enforceable manner. Sometimes, it is apparent that the parties need time to digest the information and that a memorialized agreement is not possible. Other times, the momentum of the session takes over and the Evaluator should work to ensure the agreements are reduced to writing or put on the record.

There are many techniques used by Evaluators to memorialize agreements, whether they are complete agreements or partial agreements. Some examples:

1. Write up a simple agreement on a legal pad that contains language that the parties intend to be bound by the agreements, and have the parties and counsel sign off on the agreement, attaching a balance sheet to detail property settlements.
2. Using a computer, projector, and screen, write up a letter agreement with counsel and the parties taking part in the drafting of the agreement, and gaining the consent of all involved that the letter may be sent to the assigned judicial officer.
3. Calling the Court and asking if the assigned judicial officer could make his or her courtroom and court reporter available to read the agreements on the record. Often, the assigned judicial officer will preside over such a session to ensure procedural safeguards are in place.
4. Perhaps the least effective, but sometimes necessary, technique is to simply allow the counsel to draft an agreement to be submitted to the Court. This can result in settler’s remorse or protracted disagreements about language, but not all parties are prepared to settle on the spot. A good technique, in these cases, is to gain permission to send a letter to the Court reporting that settlement was reached and that an agreement should be received by a date certain.

In every case, some report must be submitted to the Court at the end of seventy-five days, if you are following the Hennepin County model. The letter could simply state that no agreements were reached and the matter should be back on the Court’s calendar, agreements were reached and they are submitted to the Court in an agreed upon manner, or that progress is being made and an Order Extending Time is requested.[[11]](#footnote-11) Unless you have the authority of counsel and the parties to communicate substantive issues to the Court, your report to the Court should be procedural in nature only. This is necessary to preserve the confidentiality of the process.

 **CONCLUSION**

 Financial Early Neutral Evaluation has proven to be an effective method – both in terms of time and money spent – of dispute resolution. FENE is not the answer for each and every case. In fact, cases should be carefully screened for willingness of the parties to problem solve and compromise. For the cases where FENE is the agreed-upon method of dispute resolution, its combination of early intervention, coordination of discovery, opportunity for the parties to be heard, delivery of an opinion, and avenue for facilitated settlement discussions makes it a valuable tool in reaching the goals of Minnesota’s courts of reducing the time and acrimony involved in resolving divorces.

**SURVEY OF OTHER ENE PROGRAMS**

Other Models

**Colorado.** Attorneys and mental health providers in Adams County within the southern suburbs of Denver have developed an ENE model, after training from the Hennepin County teams, where a two-person team of providers tackles both the custody and parenting time issues as well as the financial issues in the same setting. The Colorado programs are in the early stages, but reports are that success rates are similar or better than those found in Hennepin County.

**Anoka County, Minnesota.** In 2007, under the leadership of Judge Sharon Hall, the Anoka county bench, within the Tenth judicial district, established an ECM/ENE pilot for custody/parenting time and financial issues. The bar served a key role in persuading the bench that ECM/ENE should be explored and could be tailored to meet local resources and preferences. The pilot took approximately eight months to establish. The ENE settlement rates exceed 80%. Although the pilot began with five judges conducting ICMCs on their blocked cases, recently the Anoka bench voted to expand the pilot so that all dissolutions will be set for ICMC.

**Brown County, Minnesota.** Judge John Rodenberg was the first judge outside of Hennepin County to implement Early Case Management and ENE. As the only judge in Brown County, which is in the Fifth Judicial District, Judge Rodenberg did the previously unthinkable: he announced to the bar that all cases would be set for an ICMC, and he created a private-provider Social ENE program by turning to mental health professionals and attorneys in the rural area. During the first year of implementation, nearly 50% of dissolutions settled at the ICMC.

**Duluth, Minnesota.** In Duluth, the Court did not have a Family Court Services Department to draw on, so it turned to the bar and to social workers in the area to provide ENE services. The Duluth pilot went from start up to launch in less than six months. Two-person teams from private practice provide Social ENE services while FENEs are conducted by individual family law attorneys. Duluth, within St. Louis County and the Sixth judicial district, launched its SENE and FENE pilot in January 2008. All dissolutions filed in 2008 were subject to ICMC. More than 40% of the cases settled at the ICMC. The vast majority of unsettled cases elected referral to ENE. In 2008, about 21% of all dissolution and custody cases were assigned back to the six-member bench, and nearly 80% resolved either at the ICMC, in ENE, or in mediation. The Duluth pilot also found its own way to implement Early Case Management when two of the six judges in the district (Judge Sally Tarnowski and Judge Shaun Floerke) agreed to handle all initial dissolution proceedings as ICMCs with the agreement that cases that did not settle at the ICMC or in ENE would be put back in the assignment wheel and divided among all six judges. **CONTINUED NEXT PAGE**

**SURVEY OF OTHER ENE PROGRAMS CONTINUED**

**Fillmore County, Minnesota.** Judge Robert Benson, a District Court Judge in the Third Judicial District chambered in Fillmore County, has used Financial Early Neutral Evaluations since 2005, primarily using the services of Twin Cities dispute resolution provider Steve Schmidt. Mr. Schmidt makes regular trips to the Courthouse in Preston and conducts FENEs.

Settlement rates for the combined FENE and SENE cases in the Third and Fifth Judicial Districts are 81%.

As the chair of the Strategic Planning Committee for the Judicial Council, Judge Benson has been instrumental in ensuring that ECM/ENE is included within the branch priorities.

**Itasca County, Minnesota.** In 2008, Itasca County within the Ninth Judicial District, began exploring ECM/ENE. Again, strong bar leadership was instrumental in the start-up process. The pilot is in the launch stage for summer 2009. Two of the three judges chambered in the county will conduct ICMCs and refer cases to Social and Financial ENE. Resources are notably scarce in this rural area of the State and so the pilot has been created specifically with such limitations in mind. The Blandin Foundation has provided a grant to subsidize the availability of ENE to litigants who qualify as In Forma Pauperis.

**Ramsey County, Minnesota.** The Ramsey pilot began after a group of attorneys requested FENE training, which was provided in May 2007. The pilot evolved such that all the referees began conducting ICMCS, and some judges did as well. Recently, the bench voted to require ICMCs on all dissolution cases, regardless of case assignment to referee or judge.

 Under the leadership of Judges Rodenberg and Benson, the Third and Fifth districts established an inter-district ECM/ENE pilot. This is yet another example of how this initiative brings stakeholders together.

1. The original committee members were lawyers Suzanne Remington (chair), Ben Henschel, Kathy Kissoon, Kevin McGrath, Susan Rhode, and Steve Schmidt. Then Presiding Family Court Judge James Swenson represented the bench. Leadership of the committee passed in 2005 to current Family Court Presiding Judge Tanja Manrique. McGrath joined the bench as a Family Court Referee in 2006 and remains on the committee. He is the principal author of this Training Manual. [↑](#footnote-ref-1)
2. Social ENE was instituted in 2002. [↑](#footnote-ref-2)
3. See In Re Family Court Early Case Management and ADR Best Practice Guidelines and Volunteer Pilot Order Projects in First, Second, Fourth, Cass County in the Ninth and the Tenth Judicial Districts in Appendix. [↑](#footnote-ref-3)
4. This manual is designed as a supplement to the more comprehensive publication: “Early Neutral Evaluation: A Creative Approach To Settling Custody And Parenting Time Disputes” written by Yvonne Pearson and published by Hennepin County Family Court Services. [↑](#footnote-ref-4)
5. Early Neutral Evaluation is a form of Alternative Dispute Resolution approved by the Minnesota Supreme Court. Rule 114 is included in the Appendix to this manual. [↑](#footnote-ref-5)
6. See FENE Program Description in Appendix. [↑](#footnote-ref-6)
7. See Order for Evaluation in Appendix. [↑](#footnote-ref-7)
8. It is imperative that the Order is completed within 72 hours and transmitted via facsimile to the Evaluator so that there is ample time for case preparation in advance of the first meeting. [↑](#footnote-ref-8)
9. ENE is the only form of Rule 114 ADR available when issues of domestic violence are alleged. [↑](#footnote-ref-9)
10. See sample FENE agreement in Appendix. [↑](#footnote-ref-10)
11. See Order Extending Time in Appendix. [↑](#footnote-ref-11)