

STATE OF MINNESOTA
IN SUPREME COURT
ADM09-8009



**ORDER PROMULGATING AMENDMENTS TO THE
GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS**

On July 14, 2017, the Alternative Dispute Resolution (ADR) Ethics Board filed a petition and recommendations regarding proposed amendments to Rule 114 of the General Rules of Practice, which governs alternative dispute resolution processes in civil cases. *See* Minn. Gen. R. Prac. 114.01–.14. The recommended amendments also addressed the Code of Ethics and enforcement procedures that govern neutrals who provide ADR services. *See* Minn. Gen. R. Prac. 114, app. In an order filed September 29, 2017, we opened a public comment period, and on December 19, 2017, we held a public hearing to consider the proposed amendments. On February 5, 2018, we appointed an ADR Workgroup to study the recommended amendments to Rule 114 of the General Rules of Practice and the public comments regarding those recommendations, noting that the input provided during the public-comment period suggested that a balance should be sought between the general objective of statewide uniformity in rules of procedure and rules that facilitate the use of effective and beneficial ADR processes, particularly well-functioning local or regional ADR practices. On September 26, 2018, the ADR Workgroup filed its report and recommendations regarding additional amendments that, the workgroup explained, would

clarify and refine some of the amendments originally recommended by the ADR Ethics Board.

We then referred the report and recommendations of the ADR Ethics Board, the public comments filed regarding that report, and the report and recommendations of the ADR Workgroup to the Advisory Committee for the General Rules of Practice. The Advisory Committee filed its Final Report on September 3, 2019, and a supplemental report on October 8, 2019, recommending that the court adopt some, but not all, of the recommendations made by the ADR Ethics Board and the ADR Workgroup. We opened a public comment period and then held a public hearing on January 29, 2020, at which the chair of the Advisory Committee and a member of the ADR Ethics Board spoke.

We have thoroughly reviewed the recommendations made by the ADR Ethics Board, the ADR Workgroup, and the Advisory Committee. We have carefully considered the many thoughtful, helpful public comments. We are grateful for the widespread participation by the ADR community in this lengthy process to update the ADR rules in a way that continues to facilitate the use of these important processes. We particularly appreciate the work undertaken by the ADR Ethics Board, the ADR Workgroup, and the Advisory Committee on these amendments.

Based on all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Rules 114 and 310 of the General Rules of Practice for the District Courts are amended as shown below. The amendments to Rules 114 and 310 are effective as of January 1, 2023, and shall apply to all court-annexed ADR processes commenced on or

after the effective date, unless the district court concludes that application of the rules as amended to a case pending on the effective date will work a manifest injustice, *see* Minn. Gen. R. Prac. 1.02.

2. The ADR Ethics Board is directed to establish waiver requirements and a deadline by which currently active Qualified Neutrals must demonstrate that they have complied with the training requirements set forth in these rules as amended and thus are qualified to be included on the ADR Rosters as amended. The deadline established by the ADR Ethics Board must be no later than January 1, 2024.

3. The ADR Ethics Board is directed to establish a deadline for individuals to submit applications to be listed on the roster of Qualified Neutrals within a set time frame from the completion of the required training.

4. The Advisory Committee comments are included for convenience and do not reflect court approval of those comments.

Dated: July 13, 2022

BY THE COURT:



Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

TITLE II. RULES GOVERNING CIVIL ACTIONS

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RULE 114. ALTERNATIVE DISPUTE RESOLUTION

Rule 114.01 Applicability

(a) Applicability to Actions. This rule governs court-annexed Alternative Dispute Resolution (ADR). All civil and family cases are subject to this rule ~~Alternative Dispute Resolution (ADR) processes, except: for those actions enumerated in Minnesota Statutes, section 484.76 and Rules 111.01 and 310.01 of these rules~~

- (1) As provided in Minn. Stat. § 604.11 (medical malpractice);
- (2) As provided in Family Court Rules 303 and 310;
- (3) Cases enumerated in Rule 111.01;
- (4) Cases excluded under Minn. Stat. § 484.76;
- (5) In rare circumstances where the court in its discretion finds ADR to be inappropriate or to operate as a sanction;
- (6) Where parties have proceeded in good faith to resolve the matter using collaborative law, the court may excuse the parties from using further ADR processes; and
- (7) Proceedings conducted by a special master appointed under Rule 53 of the Rules of Civil Procedure.

(b) Applicability of Ethics Rules to All Neutrals. All Neutrals serving in court-annexed ADR processes under this rule are subject to the authority of the ADR Ethics Board and the Code of Ethics for Court-Annexed ADR Neutrals, without regard to whether they are Qualified Neutrals as defined in Rule 114.02.

(c) Inability to Pay. If a party qualifies for waiver of filing fees under Minn. Stat. § 563.01 or if the court determines on other grounds that the party is unable to pay for ADR services, and free or low-cost ADR services are not available, the court shall not require that party to participate in ADR.

Advisory Committee Comments - 2022 Amendments

Rule 114 is amended broadly to collect the provisions that govern court proceedings involving court-annexed ADR. Provisions of the rules that relate solely to family law matters are now contained in Rule 310.

Rule 114 governs ADR as a tool in managing pending litigation. The procedures employed may mirror those available to resolve disputes wholly outside the court-based litigation process, but Rule 114 does not govern ADR in those non-court contexts.

Rule 114.01(b) is new and is designed to provide notice to Neutrals that they are subject to the authority of the ADR Ethics Board and its rules, and the Code of Ethics for Court-Annexed ADR Neutrals. The Board's rules and the Code are set forth in separate sets of rules.

Rule 114.01(c) retains and relocates the provisions of former rule 114.11(d). Where free or low-cost ADR services are available, inability to pay should not be a barrier to using ADR.

Rule 114.02 Definitions

The following terms shall have the meanings set forth in ~~this rule in~~ construing these rules and applying them to court-affiliated ADR programs.

(a) ~~ADR Processes~~ **Adjudicative Processes**

(1) *Arbitration*: A ~~process forum~~ in which a ~~Neutral or panel~~ third party renders an ~~specific award after presiding over an adversarial hearing at which consideration of the evidence and presentation by each party or and its counsel present its position. The award may be binding or non-binding, pursuant to the agreement of the parties. If the parties stipulate in writing that the arbitration will be binding, then the proceeding will be conducted pursuant to the Uniform Arbitration Act (Minn. Stat. §§ 572.08-.30). If the parties do not stipulate that arbitration will be binding, then the award is non-binding and will be conducted pursuant to Rule 114.09.~~

(2) *Consensual Special Magistrate*: A ~~process forum~~ in which a Neutral decides issues after the parties have presented their positions to a neutral in the same in a similar manner as a civil lawsuit is presented to a judge. This process is binding and parties have ~~includes~~ the right of appeal to the Minnesota Court of Appeals.

(3) *Summary Jury Trial*: A ~~process forum~~ in which ~~each party and their counsel present a summary of their position before a panel of jurors~~ a Neutral presides over the parties' abbreviated presentation of evidence and argument to a jury. The jury issues a verdict which may be binding or non-binding, according to the agreement of the parties. The number of jurors on the panel is six unless the parties agree otherwise. The panel may issue a ~~binding or non-binding decision advisory opinion~~ regarding liability, damages, or both.

(b) **Evaluative Processes**

(4) *Early Neutral Evaluation (ENE)*: A ~~process forum~~ in which ~~attorneys present the core of the dispute to a neutral evaluator in the presence of the parties~~ one or more Neutrals with experience in the subject matter of the dispute reviews information from the parties or their attorneys. This occurs after the case is filed but before formal discovery is conducted. The ~~Neutral then gives~~ may give an assessment of the strengths and weaknesses of ~~the case a~~

claim, case, or defense; an opinion of settlement value; and an opinion as to how the parties should expect the court to rule on the case or issue presented. The parties, with or without the assistance of the Neutrals, negotiate after hearing the Neutrals' evaluation. If settlement does not result, the Neutrals may help narrow the dispute and suggest guidelines for managing discovery.

(52) Non-binding Advisory Opinion. A process forum—in which the parties and their counsel present their position before one or more Neutral(s). The Neutral(s) then issue(s) a non-binding advisory opinion regarding liability, damages, or both.

(63) Neutral Fact Finding: A process forum in which the parties present evidence and argument to a Neutral who investigates and analyzes a factual dispute and issues findings. The findings are non-binding unless the parties agree to be bound by them.

(c) Facilitative Processes

(71) Mediation: A process forum—in which a Neutral third party facilitates communication and negotiation to promote voluntary decision making by the parties to the dispute. ~~between parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties.~~

(d) Hybrid Processes

(81) Mini-Trial: A forum process in which each party and their counsel, if any, present their positions before a selected representative for each party, a neutral third party, or both, to develop a basis for settlement negotiations. ~~The A Neutral(s)~~ may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding unless the parties agree that it is binding and enter into a written settlement agreement.

(92) Mediation-Arbitration (Med-Arb): A hybrid of mediation and arbitration in which the parties initially mediate their disputes; but if they reach impasse, they arbitrate any deadlocked issues. A process in which a Neutral first mediates the parties' dispute and then, in the event of an impasse, serves as arbitrator of the dispute. The decision may be binding or non-binding, pursuant to the agreement of the parties.

(3) Arbitration-Mediation (Arb-Med): A process in which the Neutral first serves as an arbitrator of the parties' dispute. Prior to issuing the decision, the Neutral will mediate. In the event of impasse, the Neutral discloses the decision which may be binding or non-binding, pursuant to the agreement of the parties.

(104) Other: Parties may create other by agreement create an ADR processes by means of a written agreement that defines the role of the Neutral. They shall explain their process in the civil cover sheet.

(e) Neutral. A “Neutral” is an individual ~~or organization~~ who provides an ADR process under this rule. A “qualified neutral” is an individual or organization included on the State Court Administrator’s roster as provided in Rule 114.12. ~~An individual neutral must have completed the training and continuing education requirements provided in Rule 114.13. An organization on the roster must certify that an individual neutral provided by the organization has met the training and continuing education requirements of Rule 114.13. Neutral fact finders selected by the parties for their expertise need not undergo training nor be on the State Court Administrator’s roster.~~

(f) Qualified Neutral. A “Qualified Neutral” is an individual or Community Dispute Resolution Program (CDRP) listed on the State Court Administrator’s roster as provided in the Rules of the Minnesota Supreme Court for ADR Rosters and Training.

Advisory Committee Comments - 2022 Amendments

Rule 114.02 is amended to clarify and update the specific processes available for use in court-annexed ADR. The mini trial is retained as an available process, although it is rarely used. The definitions of “Neutral” and “Qualified Neutral” are important under the revisions made to Rule 114. Any person providing ADR services under Rule 114 is a Neutral and thereby is subject to Rule 114 and is deemed under Rule 114.04(a) to have consented to the authority of the ADR Ethics Board.

The definition of “Consensual Special Magistrate” borrows from the Special Magistrate process set forth in Minn. Stat. § 484.74, subd.2a, which is limited to the Second and Fourth Judicial Districts. The two processes are different, however, and care should be taken when specifying which process is being selected. *See generally* Daniel S. Kleinberger, *The Consensual Special Magistrate, Minnesota's Appealable Alternative to Arbitration*, Bench & B. Minn. (Jan. 2016).

According to the ADR Ethics Board’s 2017 report to the Court, the definition of “Non-Binding Advisory Opinion” was added in 2007 to replace the Moderated Settlement Conference for civil matters as it was easier to understand the contours of the process and whether it was truly adjudicative as opposed to evaluative in nature. *See* Recommendations of the Minnesota Supreme Court Alternative Dispute Resolution Ethics Board, #ADM09-8009 11–12 (July 14, 2017). The Moderated Settlement Conference process is being reintroduced in family court Rule 310 as a process primarily used in the later stages of family court matters.

Rule 114.03 Notice By Court and Advice by Attorneys About ~~of~~ ADR Processes

(a) Notice. Upon request, and in cases where ADR is required under these rules, ~~t~~The court administrator shall provide, ~~on request,~~ information about ADR processes ~~available to the county~~ and the availability of a list of ~~N~~neutrals who provide ADR services in that county.

(b) Duty to Advise Clients of ADR Processes. Upon being retained to advise on any civil dispute potentially subject to rule 114, ~~a~~Attorneys shall provide clients with ~~the ADR~~ information about available ADR processes.

Advisory Committee Comment - 2022 Amendment

Rule 114.03 sets forth similar duties on the part of the court administrator (to provide information) and by attorneys for the parties (to advise their clients) about available ADR processes.

Rule 114.04 Selection of ADR Process and Appointment of Neutral

(a) Applicability of Ethics Rules. Neutrals serving under this rule shall be deemed to consent to the jurisdiction of the ADR Ethics Board and shall comply with the ADR Code of Ethics for Court -Annexed ADR Neutrals.

~~**Conference.** After service of a complaint or petition, the parties shall promptly confer regarding case management issues, including the selection and timing of the ADR process. Following this conference ADR information shall be included in the civil cover sheet required by Rule 104 and in the initial case management statement required by Rule 304.02.~~

~~In family law matters, the parties need not meet and confer where one of the parties claims to be the victim of domestic abuse by the other party or where the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party. In such cases, both parties shall complete and submit form 9A or 9B, specifying the form(s) of ADR the parties individually prefer, not what is agreed upon.~~

(b) Selection and Appointment. The parties, after service of the complaint, petition, or motion, shall promptly confer regarding selection and timing of the ADR process and selection of a Neutral. The parties shall include information regarding the ADR process in the submissions required by Rules 111.02 and 304.02.

If the parties agree on a process, the court should order the parties to participate in that process. If the parties cannot agree on an ADR process, the court shall order the parties to use a non-binding ADR process. In the event that the parties are unable to agree on a Neutral, the court shall make the selection of a Qualified Neutral. If the parties decide on a process and cannot decide on a Neutral, the court should not substitute its judgment on process. The court shall, with the advice of the parties, establish a deadline for completion of the ADR process.

Any individual providing ADR services under Rule 114 must either be a Qualified Neutral or be selected and agreed to by the parties.

~~**Court Involvement.** If the parties cannot agree on the appropriate ADR process, the timing of the process, or the selection of neutral, or if the court does not approve the parties' agreement, the court shall, in cases subject to Rule 111, schedule a telephone or in-court conference of the attorneys and any self-represented litigants within thirty days after the due date for filing initial case management statements pursuant to Rule 304.02 or the filing of a civil cover sheet pursuant to Rule 104 to discuss ADR and other scheduling and case management issues.~~

~~Except as otherwise provided in Minnesota Statutes, section 604.11 or Rule 310.01, the court, at its discretion, may order the parties to utilize one of the non-binding processes, or may find that ADR is not appropriate; provided that no ADR process shall be approved if the court finds that ADR is not appropriate or if it amounts to a sanction on a non-moving party. Where the parties have proceeded in good faith to attempt to resolve the matter using collaborative law, the court should not ordinarily order the parties to use further ADR processes.~~

~~(c) **Scheduling Order.** The court's Scheduling Order pursuant to Rule 111.03 or 304.03 shall designate the ADR process selected, the deadline for completing the procedure, and the name of the neutral selected or the deadline for the selection of the neutral. If ADR is determined to be inappropriate, the Scheduling Order pursuant to Rule 111.03 or 304.03 shall so indicate. **Removal.** If the court selects a Qualified Neutral without the consent of all parties, any party may file a notice to remove the Qualified Neutral. Such notice must be filed with the court and served on the opposing party within 7 days of notice of the court's appointment. Upon receipt of the notice to remove, the court shall select another Qualified Neutral. After a party has once disqualified a Neutral as a matter of right, a substitute Neutral may be disqualified by the party only by making an affirmative showing of prejudice to the chief judge or his or her designee by motion filed within 7 days of notice of the court's appointment.~~

~~(d) **Post-Decree Family Law Matters.** Post-decree matters in family law are subject to ADR under this rule. ADR may be ordered following the conference required by Rule 303.03(c).~~

~~**Notice to Court and Neutral.** In all filed actions, the parties shall notify the court administrator of any agreed Rule 114 ADR process and the name and contact information for the selected Neutral.~~

~~Upon appointment of a Neutral by the court, the court administrator shall provide a copy of the Order of Appointment to the Neutral.~~

~~(e) **Scheduling.** The Neutral shall schedule the ADR Session in accordance with the Order of Appointment.~~

Advisory Committee Comments - 2022 Amendments

Rule 114.04 is amended in several important ways. It now focuses on the requirements for selection of an ADR process and of a Neutral.

Rule 114.04(c) restates and relocates former rule 114.05(c). The seven-day period for removal of the initially assigned Neutral is taken from Gen. R. Prac. 114.05(c) (effective January 1, 2020). The seven-day period for removal for cause of a substituted Neutral is taken from Minn. Gen. R. Prac. 106 (effective July 1, 2019).

Rule 114.04(d) requires notice to the court of any agreed ADR process for actions that have been filed. This provision recognizes that actions may be pending for a year or longer without being filed and that ADR may still be required or undertaken during that period. When the action is filed, the parties are required to provide notice to the court administrator (who would otherwise be unaware of the Neutral's identity and contact information) and, if the court enters an order appointing a Neutral, the court administrator is required to provide the Neutral with a copy of the appointment order. The former Rule 114.04(d) is moved to Rule 310 because it relates exclusively to family law matters.

Rule 114.05 Selection of Neutral

~~(a) **Court Appointment.** If the parties are unable to agree on either a neutral or the date upon which the neutral will be selected, the court shall, in those cases subject to Rule 111, appoint a qualified neutral at the time of the issuance of the scheduling order required by Rule 111.03 or~~

~~304.03. In cases not subject to Rule 111, the court may appoint a qualified neutral at its discretion, after obtaining the views of the parties. In all cases, the order may establish a deadline for the completion of the ADR process.~~

~~(b) **Exception from Qualification.** Except when mediation or med arb is chosen as a dispute resolution process, the court, in its discretion, or upon recommendation of the parties, may appoint a neutral who does not qualify under Rule 114.12 of these Rules, if the appointment is based on legal or other professional training or experience. A neutral so selected shall be deemed to consent to the jurisdiction of the ADR Review Board and compliance with the Code of Ethics set forth in the Appendix to Rule 114.~~

~~(c) **Removal.** Any party or the party's attorney may file with the court administrator within 7 days of notice of the appointment of the neutral and serve on the opposing party a notice to remove. Upon receipt of the notice to remove the court administrator shall immediately assign another neutral. After a party has once disqualified a neutral as a matter of right, a substitute neutral may be disqualified by the party only by making an affirmative showing of prejudice to the chief judge or his or her designee.~~

~~(d) **Availability of Child Custody Investigator.** A neutral serving in a family law matter may conduct a custody investigation, or evaluation only (1) where the parties agree in writing executed after the termination of mediation, that the neutral shall conduct the investigation or evaluation; or (2) where there is no other person reasonably available to conduct the investigation or evaluation. Where the neutral is also the sole investigator for a county agency charged with making recommendations to the court regarding child custody and visitation, the neutral may make such recommendations, but only after the court administrator has made all reasonable attempts to obtain reciprocal services from an adjacent county. Where such reciprocal services are obtainable, the custody evaluation must be conducted by a person from the adjacent county agency, and not by the neutral who served in the family law matter.~~

Advisory Committee Comments - 2022 Amendments

Former Rule 114.05 is relocated to several new rules. Former Rule 114.05(a) is now part of new Rule 114.04(b).

Rule 114.06 Time and Place of Proceedings

~~(a) **Notice.** The court shall send to the neutral a copy of the Order of Appointment.~~

~~(b) **Scheduling.** Upon receipt of the court's order, the neutral shall promptly schedule the ADR process in accordance with the scheduling order and inform the parties of the date. ADR processes shall be held at a time and place set by the neutral, unless otherwise ordered by the court.~~

~~(c) **Final disposition.**~~

Rule 114.05 Notice to Court Upon Settlement

If ~~the case a filed action~~ is settled through an ADR process, the attorneys shall promptly notify the court and, whether filed or not, complete the appropriate court documents to bring the case to a final disposition.

Advisory Committee Comments - 2022 Amendments

Rule 114.05 is substantially similar to former Rule 114.06, although the notice and scheduling provisions have been relocated. The requirement of notice to the court in the event of settlement is new and is similar to Rule 115.10, which requires a moving party to give notice to the court if meet-and-confer efforts result in settlement of the issues raised by a motion. Rule 114.06 continues to require the prompt completion of documents necessary to close the court's file. The notice requirement in this rule applies only to filed actions; the requirement that settlement documents be prepared promptly applies to all actions, although there may be no requirement that those documents be filed if the action is not filed.

Rule 114.076 Attendance at ADR Sessions Proceedings

(a) **Privacy.** ~~Non-binding ADR sessions processes~~ are not open to the public except with the consent of all parties.

(b) **Attorney Attendance.** The court may require that the attorneys who will try the case attend the ADR proceedings sessions in a manner determined by the court.

(c) **Attendance at Adjudicative Sessions.** Unless the court has ordered otherwise, ~~Individuals with the authority to settle the case need not attend adjudicative ADR sessions processes aimed at reaching a decision in the case, such as arbitration,~~ as long as such individuals are reasonably accessible, ~~unless otherwise directed by the court.~~

(d) **Attendance at Evaluative, Facilitative, and Hybrid ADR Sessions.** Unless the court has ordered otherwise, ~~Individuals with the authority to settle the case shall attend all evaluative, facilitative, and hybrid ADR sessions non-adjudicative processes aimed at settlement of the case, such as mediation, mini-trial, or med-arb, unless otherwise directed by the court.~~

(e) **Sanctions.** The court may impose sanctions for violations of this rule ~~failure to attend a scheduled ADR process only if this rule is violated.~~

Advisory Committee Comments - 2022 Amendments

Rule 114.06 is substantially similar to former Rule 114.07. The committee has clarified that the requirements for attendance at ADR sessions apply to "sessions" and not "processes." The committee believes this nomenclature to be more precise in identifying the events where attendance is required.

Rule 114.078 Confidentiality Use of ADR Evidence in Court

(a) Evidence. Without the consent of all parties and an order of the court, ~~or~~ except as provided in paragraph (c) Rule 114.09(e)(4), no evidence from an ADR process that there has been an ADR proceeding or any fact concerning the ADR process proceeding may be admitted in a trial de novo or in any subsequent later proceeding involving any of the issues or parties ~~to the proceeding~~.

(b) Inadmissibility. Subject to Minnesota Statutes, section 595.02 and except as provided in paragraphs (a) and (d), no statements made nor documents produced in non-binding ADR processes that which are not otherwise discoverable shall be subject to discovery or other disclosure. Such evidence is inadmissible for any purpose at a later the trial, including for impeachment.

(c) Adjudicative Evidence. Evidence in consensual special ~~master~~ magistrate proceedings, binding arbitration, or in non-binding arbitration after the period for a demand for trial expires, may be used in subsequent later proceedings for any purpose for which it is admissible under the rules of evidence.

(d) Sworn Testimony. Sworn testimony in a summary jury trial may be used in subsequent later proceedings for any purpose for which it is admissible under the rules of evidence.

~~**(e) Records of Neutral.** Notes, records, and recollections of the neutral are confidential, which means that they shall not be disclosed to the parties, the public, or anyone other than the neutral, unless (1) all parties and the neutral agree to such disclosure or (2) required by law or other applicable professional codes. No record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved.~~

Advisory Committee Comments - 2022 Amendments

Rule 114.07 is substantially identical to former Rule 114.08, though former Rule 114.08(e) is relocated to new Rule 114.08(a).

Rule 114.08 Neutral's Duty of Confidentiality

(a) Records of Neutral. Notes, records, impressions, opinions and recollections of the Neutral are confidential, and the Neutral shall not disclose them to the parties, the public, or any third person, unless (1) all parties and the Neutral agree to such disclosure, or (2) disclosure is required by law or other applicable professional codes or permitted by these rules. No record or recording of an ADR session may be made or disclosed without the agreement of all parties and the Neutral. If an ADR session is conducted in a court facility where proceedings are automatically recorded, the recording made shall not be used for any purpose in the case without the agreement of all parties and the Neutral.

(b) Disclosure to the Court. The Neutral may only disclose to the court information permitted to be disclosed under Rules 114.10–.11.

Advisory Committee Comment - 2022 Amendments

Rule 114.08 is a new rule that is intended to establish clear guidelines for maintaining the confidentiality of court-annexed ADR proceedings. Rule 114.08(a) includes a provision for confidentiality of a record that is unavoidable and would otherwise violate the no-recording rule. Some ADR proceedings are conducted in courtrooms where security protocols provide for automatic recording whenever the courtroom is occupied. The rule does not encourage conducting ADR sessions in such courtrooms, but recognizes that such a courtroom may be the best available location.

Rule 114.09 Arbitration Proceedings

(a) General.

~~Parties may use are free to opt for binding or non-binding arbitration. Whether they elect binding or non-binding arbitration, the parties may construct or select a set of rules to govern the process. The agreement to arbitrate must state what rules govern. If the parties elect binding arbitration, and their agreement to arbitrate is otherwise silent, the arbitration will be deemed to be conducted pursuant to Minn. Stat. § 572.08 *et seq.* (“Uniform Arbitration Act”). If they elect non-binding arbitration, and their agreement is otherwise silent, they shall conduct the arbitration pursuant to Rule 114.09, subsections (b)–(f). Parties are free, however, to contract to use provisions from both processes or to modify the arbitration procedure as they deem appropriate to their case.~~

(1) Non-Binding Arbitration. Any non-binding arbitration shall be conducted pursuant to Rule 114.09, subsections (b)–(f). Parties may agree to modify the arbitration procedure as they deem appropriate.

(2) Binding Arbitration. Any binding arbitration shall be conducted pursuant to Minn. Stat. ch. 572B (“Uniform Arbitration Act”), subject to any agreed upon modifications permitted under the Act.

(3) Modification. For binding and nonbinding arbitration the parties may agree to any procedural rules not inconsistent with either the Uniform Arbitration Act or this rule.

(b) Evidence.

(1) Except where a party has waived the right to be present or is absent after due notice of the hearing, the arbitrator and all parties shall be present at the taking of all evidence.

(2) The arbitrator shall receive evidence that the arbitrator deems necessary and relevant to understand and determine the dispute. Relevancy shall be liberally construed in favor of admission. The following principles apply:

(i) *Documents*. If copies have been delivered to all other parties at least 14 days before the hearing, the arbitrator may consider written medical and hospital reports, records, and bills; documentary evidence of loss of income, property damage, repair bills or estimates; and police reports concerning an accident which gave rise to the case. Any other party may subpoena as a witness the author of a report, bill, or estimate, and examine that person as if under cross-examination. Any repair estimate offered as an exhibit, as well as copies delivered to other parties, shall be accompanied by a statement indicating whether ~~or not~~ the property was repaired. If the property was repaired, the statement must indicate whether the estimated repairs were made in full or in part and must be accompanied by a copy of the receipted bill showing the items repaired and the amount paid. The arbitrator shall not consider any opinion contained in a police report ~~opinion~~ as to ultimate fault. In family law matters, the arbitrator may consider property valuations, business valuations, custody reports and similar documents.

(ii) *Other Reports*. The written statement of any other witness, including written reports of expert witnesses not enumerated above and statements of opinion that which the witness would be qualified to express if testifying in person, shall be received in evidence if: (1) copies have been delivered to all other parties at least 14 days before the hearing; and (2) no other party has delivered to the proponent of the evidence a written demand at least 7 days before the hearing that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to the rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(iii) *Depositions*. Subject to objections, the deposition of any witness shall be received in evidence, even if the deponent is not unavailable as a witness and if no exceptional circumstance exist, if: (1) the deposition was taken in the manner provided for by law or by stipulation of the parties; and (2) fewer than 14 days before the hearing, the proponent of the deposition serves on all other parties notice of the intention to offer the deposition in evidence.

(iv) *Affidavits*. The arbitrator may receive and consider witness affidavits, but shall give them only such weight to which they are entitled after consideration of any objections. A party offering opinion testimony in the form of an affidavit, statement, or deposition, shall have the right to withdraw such testimony, and attendance of the witness at the hearing shall not then be required.

(3) ~~Attorneys must obtain~~ The issuance of subpoenas to compel ~~for attendance at hearings is governed by through the court administrator, pursuant to~~ Minn. R. Civ. P. 45. The attorney issuing or a party requesting the subpoena shall modify the form of the subpoena to show that the appearance is before the arbitrator and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be grounds for an adjournment or continuance of the hearing. If any witness properly served with a subpoena fails to appear or refuses to be sworn or answer, the court may conduct proceedings to compel compliance.

* * *

(e) The Award.

(1) No later than 14 days after the date of the arbitration hearing or the arbitrator's receipt of the final post-hearing memorandum, whichever is later, the arbitrator shall file with the court the decision, together with proof of service on all parties by first class mail or other method of service authorized by the rules or ordered by the court.

(2) If no party has filed a request for a trial within 21 days after the award is filed, the court administrator shall enter the decision as a judgment and shall promptly transmit notice of entry of judgment to the parties. The judgment shall have the same force and effect as, and is subject to all provisions of law relating to, a judgment in a civil action or proceeding, except that it is not subject to appeal, and may not be collaterally attacked or set aside. The judgment may be enforced as if it had been rendered by the court in which it is entered.

(3) No findings of fact, conclusions of law, or opinions supporting an arbitrator's decision are required.

(4) Within 90 days after its entry, a party against whom a judgment is entered pursuant to an arbitration award may move to vacate the judgment on only those grounds set forth in Minnesota Statutes Chapter 572B.

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Advisory Committee Comments - 2022 Amendments

Rule 114.09 is substantially unchanged. Statutory references are updated to the current codification of the Minnesota Uniform Arbitration Act.

Rule 114.10 Communication with Neutral Parties and Court in ADR Process

(a) Adjudicative Processes. Neither the parties nor their representatives shall communicate ex parte with the ~~the~~ Neutral unless approved in advance by all parties and the ~~the~~ Neutral.

(b) Evaluative, Facilitative, and Hybrid Non-Adjudicative Processes. Parties and their counsel may communicate ex parte with the Neutral in evaluative, facilitative, and hybrid 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 Neutral may inform the court ~~may be informed only~~ of only the following:

(1) Without comment or recommendations, whether the case has undergone an ADR process and whether it has or has not been resolved;

(2) Whether ~~The failure of~~ a party or an attorney has failed to comply with the order to attend the process or pay the court-ordered fees;

(3) Any request by the parties for additional time to complete the ADR process;

(4) With the written consent of the parties, any procedural action by the court that would facilitate the ADR process; ~~and~~

(5) The ~~Neutral's~~ assessment that the case is inappropriate for that ADR process; ~~and~~

(6) A ~~Neutral~~ may, with the consent of the parties or by court order, disclose to the court information obtained during the ADR process.

(d) Communications to Court after ADR Process. When the ADR process has been concluded, the Neutral may inform the court ~~may only be informed of only~~ 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~~ That the case has been settled and may also include a copy of the written agreement;

~~(2) Without further comment, that the case has not been settled and, with 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 or their counsel, that resolution of , 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 resolution of the dispute; the possibility of a settlement.~~

~~(3) That some or all of the fees have not been paid; or~~

~~(4) Notice of the court of parenting time adjustments required by Rule 310.03(c)(3).~~

Advisory Committee Comments - 2022 Amendments

Rule 114.10 contains important restrictions on communications about the ADR process. The rule addresses two similar potential concerns: ex parte communications between the parties and the Neutral and communications between the Neutral and the court. Neither type of communication is forbidden in all circumstances, as the parties may consent to additional communications.

Rule 114.11 **Funding Fees**

(a) Setting of Fee. The Neutral shall be paid according to the terms of the agreement with the parties, their attorney, or as ordered by the court ~~and the parties will determine the fee.~~ All fees of Neutral(s) for ADR services shall be fair and reasonable.

(b) ~~Responsibility for Payment Remedies for Non-Payment.~~ The parties shall pay for the neutral. It is presumed that the parties shall split the costs of the ADR process on an equal basis. The parties may, however, agree on a different allocation. Where the parties cannot agree, the court retains the authority to determine a final and equitable allocation of the costs of the ADR process. If parties or attorneys fail to pay the Neutral, the court, with notice to the parties and counsel and upon filing of an affidavit from the Neutral or a party, may issue an order granting such relief as the court deems just and proper. The Neutral, in seeking relief under this rule, shall maintain confidentiality as required by these rules. The Neutral has the right to suspend services if not paid in accordance with the court order or agreement with the parties and/or their attorneys.

(c) ~~Sanctions for Non-Payment.~~ If a party fails to pay for the neutral, the court may, upon motion, issue an order for the payment of such costs and impose appropriate sanctions.

(d) ~~Inability to Pay.~~ If a party qualifies for waiver of filing fees under Minnesota Statutes, section 563.01 or if the court determines on other grounds that the party is unable to pay for ADR

~~services, and free or low-cost ADR services are not available, the court shall not order that party to participate in ADR and shall proceed with the judicial handling of the case.~~

Advisory Committee Comment - 2022 Amendments

Rule 114.11 provides for the payment of fees to Neutrals. The rule creates a process for seeking an order compelling payment of a Neutral's fees. The rule requires that the Neutral maintain any required confidentiality under the rules, but this requirement is not intended to be a significant constraint, as the agreement (or order) to pay a Neutral, the billings by the Neutral, and the failure to pay can be submitted without disclosure of any confidential information from the ADR process. The rule also confirms that a Neutral is entitled to suspend the provision of services if payments due are not made. Amended Rule 114.10(d)(3) also confirms the right of the Neutral to communicate with the court about unpaid fees.

Rules 114.12 to .14 are deleted and their subject matter moved to the separate Rules of the Minnesota Supreme Court for ADR Rosters and Training.

Rule 114.12 Rosters of Neutrals

~~(a) Rosters. The State Court Administrator shall establish one roster of neutrals for civil matters and one roster of neutrals for family law. Each roster shall be updated and published on a regular basis. The State Court Administrator shall not place on, and shall delete from, the rosters the name of any applicant or neutral whose professional license has been revoked. A qualified neutral may not provide services during a period of suspension of a professional license. The State Court Administrator shall review applications from those who wish to be listed on the roster of qualified neutrals, which shall include those who meet the training requirements established in Rule 114.13, or who have received a waiver under Rule 114.14.~~

~~(b) Fees. The State Court Administrator shall establish reasonable fees for qualified individuals and organizations to be placed on either roster.~~

Rule 114.13 Training, Standards and Qualifications for Neutral Rosters

~~(a) Civil Facilitative/Hybrid Neutral Roster. All qualified neutrals providing facilitative or hybrid services in civil, non-family matters, must have received a minimum of 30 hours of classroom training, with an emphasis on experiential learning. The training must include the following topics:~~

- ~~(1) Conflict resolution and mediation theory, including causes of conflict and interest-based versus positional bargaining and models of conflict resolution;~~
- ~~(2) Mediation skills and techniques, including information gathering skills, communication skills, problem solving skills, interaction skills, conflict management skills, negotiation techniques, caucusing, cultural and gender issues and power balancing;~~
- ~~(3) Components in the mediation process, including an introduction to the mediation process, fact gathering, interest identification, option building, problem solving, agreement~~

~~building, decision making, closure, drafting agreements, and evaluation of the mediation process;~~

~~(4) Mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, standards of practice and mediator introduction pursuant to the Civil Mediation Act, Minnesota Statutes, section 572.31.~~

~~(5) Rules, statutes and practices governing mediation in the trial court system, including these rules, Special Rules of Court, and applicable statutes, including the Civil Mediation Act.~~

~~The training outlined in this subdivision shall include a maximum of 15 hours of lectures and a minimum of 15 hours of role playing.~~

~~**(b) Civil Adjudicative/Evaluative Neutral Roster.** All qualified neutrals serving in arbitration, summary jury trial, early neutral evaluation and adjudicative or evaluative processes or serving as a consensual special magistrate must have received a minimum of 6 hours of classroom training on the following topics:~~

~~(1) Pre-hearing communications between parties and between parties and neutral; and~~

~~(2) Components of the hearing process including evidence; presentation of the case; witness, exhibits, and objectives; awards; and dismissals; and~~

~~(3) Settlement techniques; and~~

~~(4) Rules, statutes, and practices covering arbitration in the trial court system, including Supreme Court ADR rules, special rules of court and applicable state and federal statutes; and~~

~~(5) Management of presentations made during early neutral evaluation procedures and moderated settlement conferences.~~

~~**(c) Family Law Facilitative Neutrals.**~~

~~All qualified neutrals serving in family law facilitative processes must have:~~

~~(1) Completed or taught a minimum of 40 hours of family mediation training which is certified by the Minnesota Supreme Court. The certified training shall include at least:~~

~~(a) 4 hours of conflict resolution theory;~~

~~(b) 4 hours of psychological issues related to separation and divorce, and family dynamics;~~

~~(c) 4 hours of the issues and needs of children in divorce;~~

~~(d) 6 hours of family law including custody and visitation, support, asset distribution and evaluation, and taxation as it relates to divorce;~~

~~(e) 5 hours of family economics; and,~~

~~(f) 2 hours of ethics, including: (i) the role of mediators and parties' attorneys in the facilitative process; (ii) the prohibition against mediators dispensing legal advice; and, (iii) a party's right of termination.~~

~~Certified training for mediation of custody issues only need not include 5 hours of family economics. The certified training shall consist of at least 40 percent role playing and simulations.~~

~~(2) Completed or taught a minimum of 6 hours of certified training in domestic abuse issues, which may be a part of the 40-hour training above, to include at least:~~

- ~~(a) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;~~
- ~~(b) 3 hours of domestic abuse screening, including simulation or role playing; and,~~
- ~~(c) 1 hour of legal issues relative to domestic abuse cases.~~

~~(d) Family Law Adjudicative Neutral Roster.~~

~~All qualified neutrals serving in a family law adjudicative capacity must have had at least 5 years of professional experience in the area of family law and be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses for family law, service as court appointed adjudicative neutral, including consensual special magistrates, service as referees or guardians ad litem, or acceptance by peers as experts in their field. All qualified family law adjudicative neutrals shall have also completed or taught a minimum of 6 hours of certified training on the following topics:~~

- ~~(1) Pre-hearing communications among parties and between the parties and neutral(s);~~
- ~~(2) Components of the family court hearing process including evidence, presentation of the case, witnesses, exhibits, awards, dismissals, and vacation of awards;~~
- ~~(3) Settlement techniques; and,~~
- ~~(4) Rules, statutes, and practices pertaining to arbitration in the trial court system, including Minnesota Supreme Court ADR rules, special rules of court and applicable state and federal statutes.~~

~~In addition to the 6 hour training required above, all qualified family law adjudicative neutrals must have completed or taught a minimum of 6 hours of certified training in domestic abuse issues, to include at least:~~

- ~~(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;~~
- ~~(2) 3 hours of domestic abuse screening, including simulation or role playing; and,~~
- ~~(3) 1 hour of legal issues relative to domestic abuse cases.~~

~~(e) Family Law Evaluative Neutrals.~~ ~~All qualified neutrals offering early neutral evaluations or non-binding advisory opinions (1) shall have at least 5 years of experience as family law attorneys, as accountants dealing with divorce related matters, as custody and visitation psychologists, or as other professionals working in the area of family law who are recognized as qualified practitioners in their field; and (2) shall have completed or taught a minimum of 2 hours of certified training on management of presentations made during evaluative processes. Evaluative neutrals shall have knowledge on all issues on which they render opinions.~~

~~In addition to the 2 hour training required above, all qualified family law evaluative neutrals must have completed or taught a minimum of 6 hours of certified training in domestic abuse issues, to include at least:~~

- ~~(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;~~
- ~~(2) 3 hours of domestic abuse screening, including simulation or role playing; and,~~
- ~~(3) 1 hour of legal issues relative to domestic abuse cases.~~

~~(f) **Exceptions to Roster Requirements.** Neutral fact finders selected by the parties for their expertise need not undergo training nor be included on the State Court Administrator's roster.~~

~~(g) **Continuing Training.** All qualified neutrals providing facilitative or hybrid services must attend 18 hours of continuing education about alternative dispute resolution subjects within the 3-year period in which the qualified neutral is required to complete the continuing education requirements. All other qualified neutrals must attend 9 hours of continuing education about alternative dispute resolution subjects during the 3-year period in which the neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences. The qualified neutral is responsible for maintaining attendance records and shall disclose the information to program administrators and the parties to any dispute. The qualified neutral shall submit continuing education credit information to the State Court Administrator's office within sixty days after the close of the period during which his or her education requirements must be completed.~~

~~(h) **Certification of Training Programs.** The State Court Administrator shall certify training programs which meet the training criteria of this rule.~~

Rule 114.14 Waiver of Training Requirement

~~A neutral seeking to be included on the roster of qualified neutrals without having to complete training requirements under Rule 114.13 shall apply for a waiver to the Minnesota Supreme Court ADR Review Board. Waivers may be granted when an individual's training and experience clearly demonstrate exceptional competence to serve as a neutral.~~

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TITLE IV

RULES OF FAMILY COURT PROCEDURE

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RULE 310. ALTERNATIVE DISPUTE RESOLUTION

Rule 310.01 Applicability

(a) **When ADR Required.** All family law matters in district court are subject to Alternative Dispute Resolution (ADR) processes as established in this rule and Rule 114, except for:

1. actions enumerated in Minnesota Statutes, ~~chapter~~ § 518B.01 (Domestic Abuse Act),
2. contempt actions, ~~and~~

3. maintenance, support, and parentage actions when the public agency responsible for child support enforcement is a party or is providing services to a party with respect to the action, and
4. proceedings conducted by a special master appointed under Rule 53 of the Rules of Civil Procedure.

(b) **ADR When There Is Domestic Abuse.** The court shall not require parties to participate in any facilitative process where one of the parties claims to be the victim of domestic abuse by the other party or where the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party. In circumstances where the court is satisfied that the parties have been advised by counsel and have agreed to an ADR process established in Rule 114 that will not require face-to-face meeting of the parties, the court may direct that the ADR process be used.

(c) **Exceptions for Previous ADR Efforts.** The court shall not require parties to attempt ADR if they have previously engaged in an ADR process under Rule 114 ~~with a qualified neutral~~ and reached an impasse with respect to the current, pending issue(s).

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Rule 310.03 Family-Law Specific ADR Procedures

(a) **Early Neutral Evaluation.** In family law cases, there are two types of Early Neutral Evaluation (ENE) processes, Financial Early Neutral Evaluation (FENE) and Social Early Neutral Evaluation (SENE). FENE involves financial issues. SENE involves custody and parenting time issues and is conducted by a team of no fewer than two Neutrals unless agreed otherwise by the parties.

(b) **Moderated Settlement Conference (MSC).** A Moderated Settlement Conference (MSC) is a process in which an experienced Neutral offers evaluative impressions to parties to assist in the settlement process in the later stages of family court matters.

(c) **Parenting Time Expediting and Parenting Consulting.**

(1) **Parenting Time Expediting.** Parenting Time Expediting is a process in which a Neutral is appointed by the court pursuant to Minn. Stat. § 518.1751 to serve as a Parenting Time Expeditor (PTE). A PTE is limited to addressing parenting time disputes not addressed in court orders, interpreting court orders, and determining if violations of court orders occurred. The process is a hybrid of mediation/arbitration and begins with neutral facilitation of parenting time disputes. If parties are unable to agree, the PTE will make a decision, which is binding unless modified or vacated by the court.

(2) Parenting Consulting. Parenting Consulting is a process defined by the agreement of the parties in which the Parenting Consultant (PC) incorporates neutral facilitation, coaching, and decision making. Terms of the process are defined by the agreement of the parties and incorporated into a court order.

(3) Notice to Court of Parenting Time Adjustments. If adjustments are made to the parenting time previously ordered or agreed upon, the Neutral, or if the Neutral does not do so, counsel for the parties if either party is represented, or in the case both parties who are unrepresented, one of the self-represented parties as designated by the Neutral, shall file a report with the court, limited to stating the specific adjustments to the parenting time terms.

(d) Availability of Child Custody Investigator. A Neutral serving in a confidential ADR process in a family law matter may not conduct a custody investigation/evaluation in the same matter unless (1) after full disclosure by the Neutral of the nature of the change in roles, the parties agree in writing executed after the termination of the ADR process, that the Neutral shall conduct the investigation/evaluation; (2) the court finds there is no other person reasonably available to conduct the investigation/evaluation and orders the custody investigation/evaluation; and (3) the Neutral informs the parties in writing that disclosures will not be kept confidential.

Advisory Committee Comments - 2022 Amendments

Rule 310 is amended to collect and update the provisions in these rules relating to court-annexed ADR for use in family law matters. These rules are consistent with the provisions of Rule 114, which contains more general provisions that apply in family law matters as well as other civil cases.

Rule 310.03(c) is a new rule that provides explicitly for parenting time expeditors and parenting consultants and defines their respective roles. Subdivision 3 of the rule requires that any change in parenting time or schedules must be filed by the Neutral with the court. This information is required by the court to modify child support requirements based on any change in parenting time as a result of the parenting time expediting process or the agreement of the parties working with a parenting consultant. This rule change, applicable to final resolution of parenting time adjustments, is intended to remove any confusion over the statute that protects the confidentiality of a Parenting Time Expeditor's notes and records. *See* Minn. Stat. § 518.1751, subd. 4a. The change in parenting time is expressly made the basis for changing child support obligations, and must therefore be made part of the court's record by filing. *See* Minn. Stat. §§ 518A.35, .36. The rule does not authorize filing other documents.

[Note: Rules 114.12 and 114.13, shown here, are new rules governing ADR Rosters, Training, Ethics, and Enforcement Procedures. The content of these rules is taken from existing rules 114.12–.14 of the General Rules of Practice, and the current Appendices to Rule 114. Additions and deletions are shown in typical fashion to distinguish existing language from added language]

RULE 114.12 ADR ROSTERS AND TRAINING

Subdivision 1. Applicability of Rules; Definitions.

(a) Applicability of Rules. These rules apply to ADR Neutral rosters and training requirements maintained by the State Court Administrator’s office. The definitions for any terms used in these rules are as found in Rules 114 and 310 of the Minnesota General Rules of Practice for the District Courts, and as set forth below.

(b) Definitions.

(1) “Classroom training” includes both interactive training conducted in person and interactive training conducted through virtual means. Classroom training also includes a “ride- along.”

(2) “Experiential learning” includes, but is not limited to, a “ride-along.”

(3) “Ride-along” means observation of a real-life ADR process, including observation by remote means, conducted by a Qualified Neutral. With consent of the parties and under the supervision of the Qualified Neutral, the ride-along may also include participation in the ADR process.

Subd. 2. Rosters of Neutrals; Fees.

(a) Rosters. The State Court Administrator shall establish ~~one roster of neutrals for civil matters and one roster of neutrals for family law~~ rosters of Qualified Neutrals in the following categories:

(1) Civil

(A) Civil Facilitative/Hybrid

(B) Civil Adjudicative/Evaluative

(2) Family

(A) Family Law Facilitative/Hybrid

(B) Family Law Hybrid

- (i) Parenting Time Expeditor
- (ii) Parenting Consultant

(C) Family Law Evaluative/Hybrid

- (i) Social Early Neutral Evaluation
- (ii) Financial Early Neutral Evaluation
- (iii) Moderated Settlement Conference

(D) Family Law Adjudicative

The State Court Administrator shall review applications from individuals who apply to be listed on the roster of Qualified Neutrals, which shall include those who meet the training requirements established in subdivision 4, or who have received a waiver under subdivision 4(m). Each roster shall be updated and published on a regular basis. The State Court Administrator shall not place on, and shall delete from, the rosters the name of any applicant or a Neutral whose professional license has been suspended or revoked. A Qualified Neutral may not provide services during a period of suspension of a professional license unless a waiver is granted by the ADR Ethics Board. The State Court Administrator shall review applications from those who wish to be listed on the roster of qualified neutrals, which shall include those who meet the training requirements established in rule 114.13, or who have received a waiver under rule 114.14. A Qualified Neutral shall immediately notify the State Court Administrator if his or her professional license has been suspended, revoked, or reinstated.

(b) Fees. The State Court Administrator shall establish reasonable fees for qualified individuals and organizations to be placed on either roster.

Subd. 3. Qualification of Neutrals.

(a) Qualification. To become a Qualified Neutral, an applicant must have completed the certified training requirements provided in these rules. Once qualified, the Neutral must comply with the continuing education requirements set out in ~~Rule~~ subdivision 4(j)–(k) of this Rule to remain on the roster.

(b) Community Dispute Resolution Programs (CDRPs). A Community Dispute Resolution Program (CDRP) is one certified by the State Court Administrator pursuant to Minn. Stat. ch. 494. Each CDRP may place its organization on the appropriate roster of Qualified Neutrals as a provider of services pursuant to these rules provided that the CDRP maintains records and ensures that any Neutral providing services that are subject to these rules satisfies the roster requirements for those services. These Neutrals are subject to the jurisdiction of the ADR Ethics Board when providing services within the scope of these rules, and shall follow the Code of Ethics set forth in this Rule. ~~Rule 114 Code of Ethics for Court-Annexed ADR Neutrals.~~

Subd. 4. Training, Standards and Qualifications for Neutral Rosters.

(a) Civil Facilitative/Hybrid Neutrals Roster.

(1) Qualifications. All ~~q~~Qualified ~~n~~Neutrals providing facilitative or hybrid services, that include a mediation component in civil, non-family matters, must have received a minimum of 30 hours of classroom training, with an emphasis on experiential learning.

(2) Training. The training outlined in this subdivision shall include a maximum of 15 hours of lectures and a minimum of 15 hours of experiential learning. The certified training must include the following topics:

~~(1A)~~ (1A) Conflict resolution and mediation ~~theory-theories~~, including: the principle of party self-determination, root causes of conflict, and interest-based versus positional bargaining, and models of conflict resolution, intercultural conflict, and mediator bias awareness and power balancing dynamics;

~~(2B)~~ (2B) Mediation skills and techniques, including information gathering skills, communication skills, problem solving skills, interaction skills, conflict management skills, negotiation ~~techniques-strategies~~, caucusing, cultural and gender issues, ~~and power balancing;~~

~~(3C)~~ (3C) Components in the mediation process, including an introduction to the mediation process, ~~fact gathering, information sharing~~, interest identification, option building, problem solving, agreement building, decision making, closure, drafting agreements, and evaluation of the mediation process;

~~(4D)~~ (4D) Mediator conduct, including conflicts of interest, confidentiality and admissibility of evidence, neutrality, ethics, standards of practice, support of party self-determination, and mediator introduction pursuant to the Civil Mediation Act, Minnesota Statutes, sections 572.31–.40;

~~(5E)~~ (5E) Rules, statutes and practices governing mediation in the trial court system, including these rules, Special Rules of Court, and applicable statutes, including the Civil Mediation Act; and

(F) The importance of parties understanding and selecting the mediation model in which they are participating.

~~The training outlined in this subdivision shall include a maximum of 15 hours of lectures and a minimum of 15 hours of experiential learning.~~

(b) Civil Adjudicative/Evaluative Neutrals Roster.

(1) Qualifications. All ~~q~~Qualified ~~n~~Neutrals ~~servicing in providing~~ arbitration, summary jury trial, early neutral evaluation and adjudicative or evaluative ~~services processes~~ or serving as a consensual special magistrate must have received a minimum of 6 hours of classroom training. ~~on the following topics:~~

(2) Training. The certified training must include the following topics:

~~(1A)~~ (1A) Pre-hearing communications between parties and between parties and ~~n~~Neutral;

(2B) Components of the hearing process including evidence; presentation of the case; witnesses, exhibits, and objectives; awards; ~~and~~ dismissals;

(3C) Settlement techniques; ~~and~~

(4D) Rules, statutes, and practices covering arbitration in the trial court system, including Supreme Court ADR rules, special rules of court and applicable state and federal statutes; and

(5E) Management of presentations made during early neutral evaluation procedures and moderated settlement conferences.

(c) Family Law Facilitative/Hybrid Neutrals Roster.

(1) Qualifications. All ~~qualified neutrals serving in family law facilitative processes~~ providing family law facilitative or family law hybrid services that include a mediation component must have received a minimum of 40 hours of classroom training, with an emphasis on experiential learning.

(2) Training. The certified training shall consist of at least 40 percent experiential learning. The training must include at least:

~~(1) Completed or taught a minimum of 40 hours of family mediation training which is certified by the Minnesota Supreme Court. The certified training shall include at least:~~

~~(aA) 4 hours of conflict resolution theory, including intercultural conflict and mediator bias awareness;~~

~~(bB) 4 hours of psychological issues related to separation and divorce, and family dynamics;~~

~~(cC) 4 hours of the issues and needs of children in divorce;~~

~~(dD) 6 hours of family law including custody and parenting time, visitation, child and spousal support, asset distribution and ~~evaluation~~ valuation, and taxation ~~as it relates to divorce~~;~~

~~(eE) 5 hours of family budget and finances ~~economies~~; and~~

~~(fF) 2 hours of ethics, including: (i) self-determination of the parties; (ii) the role of mediators and parties' attorneys in the facilitative process; (iii) the prohibition against mediators dispensing legal advice; and, (iv) ~~(iii) a party's right of termination~~ the parties' rights to terminate the mediation process; and-~~

~~Certified training for mediation of custody issues only need not include 5 hours of family economics. The certified training shall consist of at least 40 percent role playing and simulations.~~

~~(2G) Completed or taught a A minimum of 6 hours of certified training in domestic abuse issues, which ~~may~~ must be a part of the 40-hour training above, to include at least:~~

~~(1i) 2 hours about domestic abuse in general, including definition of battery legal definitions, dynamics of abusive relationships, and types of power imbalance;~~

~~(2ii) 3 hours of domestic abuse screening, including simulation or role-playing; and,~~

~~(3iii) 1 hour of legal issues relative to domestic abuse cases.~~

(d) Family Law ~~Adjudicative~~ Hybrid Neutrals Roster - Parenting Time Expeditor.

~~(1) Qualifications. All Qualified nNeutrals providing parenting time expediting services must: have had at least 5 years of professional experience; (1) be qualified family law facilitative Neutrals under subdivision 4(c); (2) demonstrate at least 5 years of experience working with high-conflict couples in the area of family law and; and (3) be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses related to high conflict couples for family law; service as court appointed adjudicative neutral, including consensual special magistrates, service as referees or guardians ad litem, or acceptance by peers as experts in their field.~~

(2) *Training.* All qualified ~~family law adjudicative neutrals~~ Parenting Time Expeditors (PTEs) shall have also completed ~~or taught~~ a minimum of 12 ~~6~~-hours of certified training, including at least 40% experiential learning, on the following topics:

- (A) Overview of family law Neutral roles and distinguishing the PTE role;
- (B) Emotional and psychological dynamics of separation and divorce;
- (C) Code of Ethics for Court-Annexed ADR Neutrals and the PTE statute;
- (D) Appointing orders;
- (E) Orientating parties to the process;
- (F) Managing the parenting time expediting process, including decision making;
- (G) Addressing domestic abuse in parenting time expediting;
- (H) Protocols and fees;
- (I) Standards and best practices;
- (J) Avoiding and handling complaints; and
- (K) Drafting summaries and decisions.

- ~~(1) Prehearing communications among parties and between the parties and neutral(s);~~
- ~~(2) Components of the family court hearing process including evidence, presentation of the case, witnesses, exhibits, awards, dismissals, and vacation of awards;~~
- ~~(3) Settlement techniques; and~~
- ~~(4) rules, statutes, and practices pertaining to arbitration in the trial court system, including Minnesota Supreme Court ADR rules, special rules of court, and applicable state and federal statutes.~~

~~In addition to the 6-hour training required above, all qualified family law adjudicative neutrals must have completed or taught a minimum of 6 hours of certified training in domestic abuse issues, to include at least:~~

- ~~(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;~~
- ~~(2) 3 hours of domestic abuse screening, including simulation or role playing; and~~
- ~~(3) 1 hour of legal issues relative to domestic abuse cases.~~

(e) Family Law Hybrid Evaluative-Neutrals Roster - Parenting Consulting.

~~(1) Qualifications. All Qualified nNeutrals providing parenting consulting services must: offering early neutral evaluations or nonbinding advisory opinions (1) be qualified family law facilitative Neutrals under subdivision 4(c) shall have at least 5 years of experience as family law attorneys, as accountants dealing with divorce related matters, as custody and visitation psychologists, or as other professionals working in the area of family law who are recognized as~~

~~qualified practitioners in their field; and; (2) demonstrate at least 5 years of experience working with high conflict couples in the area of family law; and (3) be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses related to high conflict couples, or acceptance by peers as experts in their field. shall have completed or taught a minimum of 2 hours of certified training on management of presentations made during evaluative processes. Evaluative neutrals shall have knowledge on all issues on which they render opinions.~~

~~In addition to the 2 hour training required above, all qualified family law evaluative neutrals must have completed or taught a minimum of 6 hours of certified training in domestic abuse issues, to include at least:~~

- ~~(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;~~
- ~~(2) 3 hours of domestic abuse screening, including simulation or role playing; and~~
- ~~(3) 1 hour of legal issues relative to domestic abuse.~~

(2) Training. Parenting Consultants shall have also completed a minimum of 18 hours of certified training, including at least 40% experiential learning, on the following topics:

- (A) Emotional and psychological dynamics of separation and divorce;
- (B) Developmental needs of children;
- (C) Addressing domestic abuse in the parenting consulting process;
- (D) Appointing orders;
- (E) Fee agreements and billing;
- (F) Managing the parenting consulting process;
- (G) Standards and best practices;
- (H) Statutes and rules, including the Code of Ethics for Court-Annexed ADR

Neutrals;

- (I) Issues and techniques;
- (J) Drafting summaries and decisions; and
- (K) Avoiding and handling complaints.

(f) ~~Exceptions to Roster Requirements. Family Law Evaluative/Hybrid Neutrals Roster – SENE.~~

~~Neutral fact finders selected by the parties for their expertise need not undergo training nor be included on the State Court Administrator's roster.~~

(1) Qualifications. All Qualified Neutrals providing Social Early Neutral Evaluations (“SENE”) must: (1) be qualified family law facilitative Neutrals under subdivision 4(c); (2) have at least 5 years of experience as family law attorneys, mental health professionals dealing with divorce-related matters, or as other professionals working in the area of family law; and (3) be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses related to high conflict couples, or acceptance by peers as experts in their field.

(2) Training. Neutrals performing SENE must have observed two SENEs and completed 12 hours of certified training, including at least 40% experiential learning, on the following topics:

(A) Demonstration of a judicial officer’s Initial Case Management Conference orientation;

(B) Pre-SENE considerations and staging the SENE;

(C) Introduction to the process;

(D) Information gathering;

(E) SENE team consultation;

(F) Feedback;

(G) Attorney-client caucus;

(H) Negotiation;

(I) Completing the process;

(J) Reporting to the court; and

(K) Addressing domestic violence in SENE and FENE.

(g) Family Law Evaluative/Hybrid Neutrals Roster - FENE.

(1) Qualifications. All Qualified Neutrals providing Financial Early Neutral Evaluations (“FENE”) must: (1) be qualified family law facilitative Neutrals under Rule 4(c); (2) have at least 5 years of experience as family law attorneys, as accountants dealing with divorce-related matters, or as other professionals working in the area of family law; and (3) be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses related to family law related finances, or acceptance by peers as experts in their field.

(2) Training. Neutrals performing FENE must have observed two FENEs, and completed 12 hours of certified SENE training and 5 hours of certified FENE training, including at least 40% experiential learning, on the following topics:

(A) Pre-FENE considerations;

(B) the financial evaluative meeting;

(C) making sure the parties are heard;

(D) delivering the opinion;

(E) concluding the FENE; and

(F) finalizing the agreement.

(h) Family Law Evaluative/Hybrid Neutrals Roster - MSC.

(1) Qualifications. All Qualified Neutrals providing a Moderated Settlement Conference (“MSC”) must be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses related to family law, or acceptance by peers as experts in their field.

(2) Training. Neutrals performing MSCs must have observed one MSC and have completed 4 hours of certified MSC training, including at least 40% of the training experiential learning, with the training to include the following topics:

- (A) When MSC process is appropriate;
- (B) Logistics of MSC process;
- (C) Dealing with attorneys and parties in highly entrenched positions;
- (D) How to share opinions without alienating parties or attorneys;
- (E) Managing domestic abuse situations (e.g. OFP, DANCO, HRO);
- (F) Confidentiality and communication with judicial officers; and
- (G) MSC notes and records in discovery process.

A Neutral already listed on the Family Law Evaluative/Hybrid Neutrals Roster—SENE or on the Family Law Evaluative/Hybrid Neutrals Roster—FENE may alternatively satisfy the training requirements for the MSC Roster by either (a) observing one MSC, or (b) completing a one-hour classroom training covering the subject matters listed above.

(i) Family Law Adjudicative Neutral Roster.

(1) Qualifications. All Qualified Neutrals providing family law adjudicative services must: (1) have at least 5 years of professional experience in the area of family law, and (2) be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses for family law, service as court-appointed adjudicative Neutral, including consensual special magistrates, service as referees or guardians ad litem, or acceptance by peers as experts in their field.

(2) Training. All qualified family law adjudicative Neutrals shall have also completed a minimum of 6 hours of certified training on the following topics:

- (A) Pre-hearing communications among parties and between the parties and Neutral(s);
- (B) Components of the family court hearing process including evidence, presentation of the case, witnesses, exhibits, awards, dismissals, and vacation of awards;
- (C) Settlement techniques; and
- (D) Rules, statutes, and practices pertaining to arbitration in the trial court system, including this rule, Special Rules of Practice for the District Courts, and applicable state and federal statutes.

In addition to the 6-hour training required above, all qualified family law adjudicative Neutrals must have completed a minimum of 6 hours of certified training in domestic abuse issues, to include at least:

- (i) 2 hours about domestic abuse in general, including legal definitions, dynamics of abusive relationships, and types of power imbalance;
- (ii) 3 hours of domestic abuse screening, including simulation or role-playing; and,
- (iii) 1 hour of legal issues relative to domestic abuse cases.

(g)(i) Continuing Training Education for Facilitative, Hybrid, and Evaluative Neutrals. All Qualified Neutrals providing facilitative, hybrid, or evaluative services must attend 18 hours of continuing education about alternative dispute resolution subjects within the 3-

year period in which the ~~Qualified Neutral~~ is required to complete the continuing education requirements. ~~These hours may be attained through course work and attendance at state and national ADR conferences. All other qualified neutrals must attend~~ Up to 9 hours of continuing education ~~can be from participation in a facilitated consultation group with other Neutrals, about alternative dispute resolution subjects during the 3-year period in which the neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences.~~ The ~~Qualified Neutral~~ is responsible for maintaining attendance records and shall disclose the information to program administrators and the parties to any dispute. The ~~Qualified Neutral~~ shall submit continuing education credit information to the State Court Administrator's office within ~~sixty 60~~ days after the close of the period during which his or her education requirements must be completed.

(k) Continuing Education for Adjudicative Neutrals. ~~Qualified Neutrals providing adjudicative services must attend 9 hours of continuing education about alternative dispute resolution subjects during the 3-year period in which the Qualified Neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences. The Qualified Neutral is responsible for maintaining attendance records. The Qualified Neutral shall submit continuing education credit information to the State Court Administrator's Office within sixty days after the close of the period during which his or her education requirements must be completed.~~

(h) Certification of Training Programs and Trainers. The State Court Administrator shall certify training programs which meet the training criteria of this rule. In order to qualify as a certified training program, one or more trainers must meet the following requirements:

(1) Have taken a training as set forth in this rule or equivalent training on the same topic before teaching it;

(2) Be a Qualified Neutral if providing ADR services in Minnesota. If a trainer from out of state is not on the roster, the Minnesota ADR rules/law topics as required in this section, including the Code of Ethics for Court-Annexed ADR Neutrals, must be taught by a local expert who is on the roster;

(3) Demonstrate 5 years of experience as a Neutral in the ADR process being taught; and

(4) Demonstrate experience as a trainer using the role play / experiential learning format required by these rules.

(m) Waiver of Training Requirement. ~~A neutral~~ An individual seeking to be included on the roster of ~~Qualified Neutrals~~ without having to complete training requirements under ~~these rules~~ Rule 114.13 shall apply for a waiver to the Minnesota Supreme Court ADR Ethics Review Board. Waivers may be granted when an individual's training and experience clearly demonstrate exceptional competence to serve as a ~~Neutral~~.

Rule 114.13 Code of Ethics & Enforcement Procedures

A. CODE OF ETHICS FOR COURT-ANNEXED ADR NEUTRALS

Introduction

Rule 114 of the Minnesota General Rules of Practice provides that alternative dispute resolution (ADR) must be considered for certain ~~nearly all~~ civil cases filed in district court. The ADR Ethics Review Board, appointed by the Supreme Court, approves individuals and Community Dispute Resolution Programs (CDRPs) ~~organizations who that~~ are qualified under the rules governing Rule 114 to act as neNeutrals in court-referred cases.

This Code of Ethics governs Neutrals appointed or serving by agreement of the parties in any court-annexed ADR proceedings.

Individuals and rostered CDRPs, and individuals who volunteer for rostered CDRPs, when providing ADR services under Rules 114 or 310 of the General Rules of Practice ~~organizations approved by the ADR Review Board~~ consent to the jurisdiction of the ADR Ethics Board and to compliance with this Code of Ethics. The purpose of this code is to provide standards of ethical conduct to guide neNeutrals who provide ADR services, to inform and protect consumers of ADR services, and to ensure the integrity of the various ADR processes.

In order for ADR to be effective, there must be broad public confidence in the integrity and fairness of the process. Neutrals have a responsibility not only to the parties and to the court, but also to the continuing improvement of ADR processes. Neutrals must observe high standards of ethical conduct. The provisions of this Code should be construed to advance these objectives.

Neutrals should explain the ADR ~~orient the parties to the process to the parties~~ before beginning a proceeding. Neutrals should not practice, condone, facilitate, or promote any form of discrimination on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age. Neutrals should be aware that cultural differences may affect a party's values and negotiating style.

~~This introduction provides general orientation to the Code of Ethics. Comments accompanying any rule explain and illustrate the meaning and purpose of the rule. The Comments are intended as guides to interpretation but the text of each rule is authoritative. Failure to comply with any provision in this Code of Ethics may be the basis for the ADR Ethics Board to impose any of the remedies or sanctions set out in these rules, removal from the roster of neutrals maintained by the Office of the State Court Administrator and/or for such other actions as may be taken by the Minnesota Supreme Court.~~

Violation of a provision of this Code shall not create a claim for relief ~~cause of action~~ nor shall it ~~create any~~ presumption that a legal duty has been breached. Nothing in this Code should be deemed to establish or augment any substantive legal duty on the part of neNeutrals.

Subdivision 1. Impartiality. A ~~ne~~Neutral shall conduct the dispute resolution process in an impartial manner and shall serve only in those matters in which the Neutral she or he can remain impartial and evenhanded. Impartiality means freedom from favoritism or bias either by word or action, and a commitment to serve all parties as opposed to a single party. If at any time the ~~ne~~Neutral is unable to conduct the process in an impartial manner, the ~~ne~~Neutral shall withdraw.

Subd. 2. Conflicts of Interest.

(a) A conflict of interest is a direct or indirect financial or personal interest in the outcome of the proceeding or any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or which might reasonably create an appearance of partiality or bias. The Neutral must be committed to the parties and the ADR process and not allow pressures from outside the ADR process to influence the Neutral's conduct or decisions. A ~~ne~~Neutral shall disclose all actual and potential conflicts of interest reasonably known to the ~~ne~~Neutral. After disclosure, the Neutral may serve, with the consent of the parties shall decline to participate unless all parties choose to retain the neutral. Even with the consent of the parties, the Neutral must exercise caution in circumstances that would raise legitimate questions about the integrity of the ADR process. If a conflict of interest impairs a Neutral's impartiality, the Neutral shall withdraw regardless of the consent of the parties. The need to protect against conflicts of interest shall govern conduct that occurs during and after the dispute resolution process. Without the consent of all parties, and for a reasonable time under the particular circumstances, a ~~ne~~Neutral who also practices in another profession shall not establish a professional relationship in that other profession with one of the parties, or any person or entity, in a substantially factually related matter.

(b) Neutrals acting as arbitrators shall disclose to the parties in writing at the time of selection, or promptly after it becomes known, any actual or potential conflict of interest known to the Neutral arbitrator.

Subd. 3. Competence. ~~A neutral shall serve as a neutral only when she/he has the necessary qualifications to satisfy the reasonable expectations of the parties. No person shall serve as a Neutral unless they possess the qualifications and ability to fulfill the role that the Neutral has been requested or assigned to serve and must decline appointment, request assistance, or withdraw when a dispute is beyond the Neutral's competence. No individual may act as a Neutral for compensation without providing the parties with a written statement of qualifications prior to beginning services. The statement shall describe the Neutral's educational background and relevant training and experience in the field.~~

Subd. 4. Confidentiality. The Neutral shall discuss issues of confidentiality with the parties before beginning an ADR process, including limitations on the scope of confidentiality and the extent of confidentiality provided in any private sessions that a Neutral holds with a party. The ~~ne~~Neutral shall maintain confidentiality as required to the extent provided by Rules 114.08, and 114.10, and 114.11 of the General Rules of Practice, and any additional agreements made with or between the parties.

Subd. 5. Quality of the Process. A ~~ne~~Neutral shall work to ensure a quality process. A quality process requires a commitment by the ~~ne~~Neutral to diligence and procedural fairness. A Neutral shall ensure that the reasonable expectations of the parties concerning the timing of the ADR process are satisfied and shall exert every reasonable effort to expedite the process, including prompt issuance of written reports, awards, or agreements. A Neutral shall withdraw from an ADR process or postpone a session if the process is being used to further illegal conduct, or if a party is unable to participate due to drug or alcohol abuse, or other physical or mental incapacity. A ~~ne~~Neutral shall not knowingly make false statements of fact or law. ~~The neutral shall exert every reasonable effort to expedite the process including prompt issuance of written reports, awards, or agreements.~~

Subd. 6. Advertising and Solicitation. A ~~ne~~Neutral shall be truthful in advertising and solicitation for alternative dispute resolution. A ~~ne~~Neutral shall make only accurate and truthful statements about any alternative dispute resolution process, its costs and benefits, the ~~ne~~Neutral's role and her or his skills ~~or~~ and qualifications. A ~~ne~~Neutral shall refrain from promising specific results.

In an advertisement or other communication to the public, a ~~ne~~Neutral who is on the ~~R~~oster of Qualified Neutrals may use the phrase "qualified neutral under ~~Rule 114 of the Rules of the Minnesota Supreme Court for ADR Rosters and Training General Rules of Practice.~~" It is not appropriate to identify oneself as a "certified" ~~ne~~Neutral.

Subd. 7. Fees; Requirement of Written Agreement for ADR Services; Prohibited Actions.

(a) Fees. A ~~ne~~Neutral shall fully disclose and explain the basis of compensation, fees and charges to the parties. The parties shall be provided sufficient information about fees at the outset to determine if they wish to retain the services of a ~~ne~~Neutral. A ~~ne~~Neutral shall not enter into a fee agreement that which is contingent upon the outcome of the alternative dispute resolution process. The fee agreement shall be included in the written agreement and shall be consistent with a court order appointing the Neutral. A Neutral shall establish a protocol for regularly advising parties on the status of their account and requesting payment of fees. If one party does not pay the fee, and another party declines to cover the fee, the Neutral may withdraw, proceed, or suspend services for both parties until payment is made. If proceeding with services, the Neutral shall not refuse participation by any party based on payment status. A Neutral who withdraws from a case shall return any unearned fee to the parties. A ~~ne~~Neutral shall not give or receive any commission, rebate, or similar remuneration for referring a person for alternative dispute resolution services.

(b) Requirement of Written Agreement for ADR Services. In any civil or family court matter in which ADR is used, the Neutral shall enter into a signed written agreement for services with the parties either before or promptly after the commencement of the ADR process. The written agreement shall be consistent with any court order appointing the Neutral. If any court order requires the Neutral to do something that would violate these rules, the Code of Ethics for Court-Annexed ADR Neutrals, or any applicable court rules or statutes, the Neutral must decline appointment or defer appointment until the parties obtain amendment of the appointment order or obtain a subsequent order. The written agreement shall include, at a minimum, the following:

- (1) A description of the role of the Neutral.
- (2) If the Neutral’s role includes decision making, whether the Neutral’s decision is binding or non-binding.
- (3) An explanation of confidentiality and admissibility of evidence.
- (4) If the Neutral is to be paid, the amount of compensation, how the compensation will be paid, and include a notice that the Neutral could seek remedies from the court for non-payment pursuant to Rule 114.11(b) of the General Rules of Practice for the District Courts.
- (5) If adjudicative, the rules of the process.
- (6) That the Neutral must follow the Code of Ethics for Court-Annexed ADR Neutrals and is subject to the jurisdiction of the ADR Ethics Board.
- (7) Neutrals for facilitative and evaluative processes shall include the following language in the agreement signed at the commencement of the process:
 - (A) the Neutral has no duty to protect the interests of the parties or provide them with information about their legal rights;
 - (B) no agreement reached in this process is binding unless it is put in writing, states that it is binding, and is signed by the parties (and their legal counsel, if they are represented) or put on the record and acknowledged under oath by the parties;
 - (C) signing a settlement agreement may adversely affect the parties’ legal rights;
 - (D) the parties should consult an attorney before signing a settlement agreement if they are uncertain of their rights; and
 - (E) in a family court matter, the agreement is subject to the approval of the court.

(c) Prohibited Actions by Facilitative and Evaluative Neutrals. A Neutral in a facilitative or evaluative process shall not:

- (1) Draft legal documents that are intended to be submitted to the court as an order to be signed by a judge or judicial officer;
- (2) Regardless of a Neutral’s qualifications or licenses, provide therapy to either party nor provide legal representation or advice to any party or engage in the unauthorized practice of law in any matter during an ADR process; or
- (3) Require a party to stay in the ADR process or attempt to coerce an agreement between the parties.

MEDIATION

~~Subd. 1 8. Self-Determination: in Mediation.~~ A mediator shall act in a manner that recognizes that mediation is based on the principle of self-determination by the parties. ~~It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. The primary responsibility for the resolution of a dispute and the shaping of a settlement agreement rests with the parties. A mediator shall not require a party to stay in the mediation against the party’s will.~~

B. RULES OF THE MINNESOTA ADR ETHICS BOARD

~~RULE 114 APPENDIX. CODE OF ETHICS ENFORCEMENT PROCEDURE~~

Introduction

(a) Application. These rules are to be applied in a manner that protects the public, instructs Neutrals, and improves the quality of court-annexed alternative dispute resolution practice under Rules 114 and 310 of the General Rules of Practice for the District Courts and the Code of Ethics for Court-Annexed ADR Neutrals in Minnesota court proceedings. To the extent possible, the remedies provided for in these rules are intended to be rehabilitative in nature.

(b) Inclusion on Roster; Revocable Privilege. Inclusion on the list of Qualified Neutrals pursuant to the Rules of the Minnesota Supreme Court for ADR Rosters and Training General Rules of Practice 114.12 is a conditional privilege, revocable for cause.

Subdivision 1. Scope. ~~This procedure applies~~ These rules apply to complaints against any individual or community dispute resolution program ~~organization~~ subject to Rules 114 or 310 of the General Rules of Practice for the District Courts, The Code of Ethics for Court-Annexed ADR Neutrals, or the Rules of the Minnesota Supreme Court for ADR Rosters and Training. ~~or organization (neutral) placed on the roster of qualified neutrals pursuant to Rule 114.12 or serving as a court appointed neutral pursuant to 114.05(b) of the Minnesota General Rules of Practice.~~ Collaborative attorneys or other professionals as defined in Rule 111.05(a) of the Minnesota General Rules of Practice are not subject to the Rule 114 Code of Ethics for Court-Annexed ADR Neutrals and Enforcement Procedure ~~these rules~~ while acting in a collaborative process under that Rule 111.05, nor are court appointed special masters under Rule 53 of the Rules of Civil Procedure or court appointed experts appointed under Rule 706 of the Rules of Evidence.

Subd. 2. Procedure.

(a) Complaint.

~~(1)A.~~ A complaint must be in writing, signed by the complainant, and submitted electronically or mailed or delivered to the ADR Ethics Review Board at 25 Rev. Dr. Martin Luther King Jr. Blvd., Suite 120, Saint Paul, MN 55155-1500. The complaint shall identify the Neutral and make a short and plain statement of the conduct forming the basis of the complaint.

~~(2)B.~~ The State Court Administrator's Office ADR Ethics Board, in conjunction with one ADR Review Board member the State Court Administrator's Office, shall review the complaint and determine whether the Board has a reasonable belief that recommend whether the allegations(s), if true, would constitute a violation of the Code of Ethics for Court-Annexed ADR Neutrals, and whether to refer the complaint to mediation. The State Court Administrator's Office and ADR Review Ethics Board may also request additional information from the complainant if it is necessary prior to making a recommendation.

~~(3)C.~~ If the allegations(s) of the complaint, if true, do not constitute a violation of the Code of Ethics for Court-Annexed ADR Neutrals, the complaint shall be dismissed and the

complainant and the ~~n~~Neutral shall be notified in writing. The ADR's Ethics Board's decision is final and no further review is permitted.

(b) ~~D~~. Investigation. If the complaint is not dismissed, the Board will review, investigate, and act as allegation(s) of the complaint, if true, constitute a violation of the Code of Ethics, the Board will undertake such review, investigation, and action it deems appropriate. In all such cases, the Board shall send to the ~~n~~Neutral, by ~~certified mail~~ electronic means, a copy of the complaint, a list identifying the ethical rules which may have been violated, and a request for a written response to the allegations and to any specific questions posed by the Board. It shall not be considered a violation of Rule 114.08(ea) of the Minnesota General Rules of Practice, or of Rule IV of the Code of Ethics for Court Annexed ADR Neutrals, Rule 114 Appendix or these rules, for the ~~n~~Neutral to disclose notes, records, impressions, opinions, or recollections of the ADR process complained of as part of the complaint procedure. Except for good cause shown, if the ~~n~~Neutral fails to respond to the complaint in writing within thirty (30) 28 days, the allegations(s) shall be deemed admitted.

~~E. The complainant and neutral may agree to mediation or the State Court Administrator's Office or Board may refer them to mediation conducted by a qualified neutral to resolve the issues raised by the complainant. Mediation shall proceed only if both the complainant and neutral consent. If the complaint is resolved through mediation, the complaint shall be dismissed, unless the resolution includes sanctions to be imposed by the Board. If no agreement is reached in mediation, the Board shall determine whether to proceed further.~~

(c) ~~F~~. Response and Decision.

(1) Upon receipt of the Neutral's response, a member of the ADR Ethics Board shall lead the investigation and shall write a report with findings and recommended actions to the Board. The Board shall determine by clear and convincing evidence whether the ethical code has been violated, and if so, determine what remedies or sanctions would be appropriate.

(2) After review and investigation, the Board shall advise the complainant and ~~n~~Neutral of the Board's ~~action~~ findings, conclusions, and sanctions in writing by electronic means or U.S. Mail certified mail sent to their respective last known addresses. If the neutral does not file a request for an appeal hearing as prescribed in section G, the Board's decision becomes final. If the ADR Ethics Board makes a finding that ethical violations have occurred and is imposing sanctions, the Neutral shall have the right to request reconsideration or to proceed directly to a formal hearing. If no ethical violations have been found or the complaint has been resolved informally, there is no right to a hearing.

~~G. The neutral shall be entitled to appeal the proposed sanctions and findings of the Board to the ADR Ethics Panel by written request within fourteen days from receipt of the Board's action on the complaint. The Panel shall be appointed by the Judicial Council and shall be composed of two sitting or retired district court judges and one qualified neutral in good standing on the Rule 114 roster. Members of the Panel shall serve for a period to be determined by the Judicial Council. One member of the Panel shall be designated as the presiding member.~~

~~(1) **Discovery.** Within 30 days after receipt of a request for an appeal hearing, counsel for the Board and the neutral shall exchange the names and addresses of all persons known to have knowledge of the relevant facts. The presiding member of the Panel shall set a date for the exchange of the names and addresses of all witnesses the parties intend to call at the hearing. The Panel may issue subpoenas for the attendance of witnesses and production of documents or other evidentiary material. Counsel for the Board and the neutral shall exchange nonprivileged evidence relevant to the alleged ethical violation(s), documents to be presented at the hearing, witness statements and summaries of interviews with witnesses who will be called at the hearing. Both the Board and the neutral have a continuing duty to supplement information required to be exchanged under this rule. All discovery must be completed within 10 days of the scheduled appeal hearing.~~

~~(2) **Procedure.** The neutral has the right to be represented by an attorney at all parts of the proceedings. In the hearing, all testimony shall be under oath. The Panel shall receive such evidence as the Panel deems necessary to understand and determine the issues. The Minnesota Rules of Evidence shall apply, however, relevancy shall be liberally construed in favor of admission. Counsel for the Board shall present the matter to the Panel. The Board has the burden of proving the facts justifying action by clear and convincing evidence. The neutral shall be permitted to adduce evidence and produce and cross-examine witnesses, subject to the Minnesota Rules of Evidence. Every formal hearing conducted under this rule shall be recorded electronically by staff for the Panel. The Panel shall deliberate upon the close of evidence and shall present written Findings and Memorandum with regard to any ethical violations and sanction resulting there from. The panel shall serve and file the written decision on the Board, neutral and complainant within forty five days of the hearing. The decision of the Panel is final.~~

Subd. 3. Remedies and Sanctions.

(a) Available Sanctions. The Board may impose sanctions, including but not limited to:

- (1) Issue a private reprimand.
- (2) Designate the corrective action necessary for the Neutral to remain on the roster.
- (3) Notify the appointing court and any professional licensing authority with which the Neutral is affiliated of the complaint and its disposition.
- (4) Issue a public reprimand on the ADR webpage of the Minnesota Judicial Branch website, which shall include publishing the Neutral's name, a summary of the violation, and any sanctions imposed. The public reprimand may also be published elsewhere.
- (5) Remove the Neutral from the roster of Qualified Neutrals, and set conditions for reinstatement if appropriate.

In situations where the conduct is unintentional and minimal, the Board may determine that an informal remedy, including discussions with the Neutral, which may include the complainant, is appropriate to resolve the complaint in lieu of a sanction.

(b) Standards for Imposition of Sanctions. Sanctions shall only be imposed if supported by clear and convincing evidence. Conduct considered in previous or concurrent ethical

complaints against the Neutral is inadmissible, except to show a pattern of related conduct the cumulative effect of which constitutes an ethical violation.

~~C. Sanctions against an organization may be imposed for its ethical violation and its member's violation if the member is acting within the rules and directives of the organization.~~

(c) Request for Reconsideration. If the ADR Ethics Board finds a violation, the Neutral may request in writing reconsideration of the findings, conclusions, and sanctions. The request shall be submitted within 14 days after the date the findings, conclusions, and sanctions are sent to the Neutral. The request shall be no longer than 2 pages in length, a copy of which must be sent to the complainant. Complainants may file a response of no longer than 2 pages in length within 7 days of notification of the Neutral's request. The Board shall address reconsideration requests in a timely manner. Requests for reconsideration will only be granted upon a showing of compelling circumstances.

(d) Review Hearing.

(1) Request for Hearing. The Neutral shall have 28 days from the date the ADR Ethics Board's findings, conclusions, and sanctions are sent to the Neutral, or 28 days from the date of the final resolution of a Request for Reconsideration, whichever is later, to request a hearing. The request for a hearing shall be in writing and be submitted to the ADR Ethics Board. The hearing will be de novo and will be limited to the ethical violations as found by the ADR Ethics Board.

(2) Appointment of the Referee. The State Court Administrator's Office shall notify the Supreme Court of the request for hearing. The court shall appoint a referee to conduct the hearing. Unless the court otherwise directs, the proceedings shall be conducted in accordance with the Minnesota Rules of Civil Procedure and Minnesota Rules of Evidence and the referee shall have all powers of a district court judge. All prehearing conferences and hearings shall be held at the Minnesota Judicial Center, shall be recorded electronically by staff of the State Court Administrator's Office, and shall not be accessible by the public.

(3) Timing of Prehearing Conference. The referee shall schedule a prehearing conference within 28 days of being appointed. Notice of this prehearing conference shall be sent to the Neutral and the ADR Ethics Board.

(4) Right to Counsel. An attorney designated by the State Court Administrator's Office shall represent the ADR Ethics Board at the hearing. The Neutral shall have the right to be represented by an attorney at the Neutral's expense.

(5) Settlement Efforts. At the prehearing conference, the referee should encourage alternative dispute resolution between representatives of the ADR Ethics Board and the Neutral.

(6) Discovery, Scheduling Order. At the prehearing conference, discovery shall be discussed. The parties shall have the right to conduct discovery, which must be completed within the time limits as set by the referee. The referee will issue a scheduling order setting forth the extent and scope and time for discovery. The scheduling order will set the hearing date and

deadlines for the exchange of witness and exhibit lists. The referee may issue subpoenas for the attendance of witnesses and production of documents or other evidentiary material.

(7) Burden of Proof. At the hearing, the ADR Ethics Board has the burden to prove by clear and convincing evidence that the Neutral committed a violation of the Code of Ethics for Court-Annexed ADR Neutrals.

(8) Order. Within 60 days of the closing of the record, the referee shall issue written findings and conclusions as to whether there was a violation of the Code of Ethics for Court-Annexed ADR Neutrals. Copies of the decision shall be sent to the complainant, the Neutral, and the ADR Ethics Board. If the referee determines that there is an ethical violation, the referee may:

(A) Issue a private reprimand.

(B) Designate the corrective action necessary for the Neutral to remain on the roster.

(C) Notify the appointing court and any professional licensing authority with which the Neutral is affiliated of the complaint and its disposition.

(D) Issue a public reprimand on the Minnesota Judicial Branch website, which shall include publishing the Neutral's name, a summary of the violation, and any sanctions imposed. The public reprimand may also be published elsewhere.

(E) Remove the Neutral from the roster of Qualified Neutrals, and set conditions for reinstatement if appropriate.

(F) Require the Neutral to pay costs and disbursements and reasonable attorney fees in those cases in which it is determined that the Neutral acted in bad faith in these proceedings.

(e) Final Decision. The decision of the referee is final.

Subd. 4. Confidentiality.

(a) Public Access.

(1) Exceptions to Confidentiality. Unless and until final sanctions are imposed, all files, records, and proceedings of the Board that relate to or arise out of any complaint shall be confidential, except:

(A) As between Board members and staff;

(B) After final sanctions are imposed, upon request of the Neutral, copies of the documents contained in the file maintained by the Board, excluding its work product, shall be provided to the Neutral;

(C) As otherwise required or permitted by rule or statute; and

(D) To the extent that the neutral waives confidentiality; and

(E) At the discretion of the Board, any findings, conclusions, and sanctions by the ADR Ethics Board may be provided to the complainant.

~~(2)B. Public Sanctions. If the Board designates a sanction as public final sanctions are imposed against any neutral pursuant to Section III A (2) – (5), the sanction and the grounds for the sanction shall be of public record, and the Board file shall remain confidential.~~

~~(b)C. Prohibited Disclosure. Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Board or staff. The deliberations, mental processes, and communications of the Board and staff, shall not be disclosed.~~

~~(c) Access to District Court Records. Accessibility to records maintained by district court administrators relating to complaints or sanctions about Neutrals shall be consistent with this rule.~~

Subd. 5. Privilege; immunity.

(a) Privilege. A statement made in these proceedings is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the statement.

(b) Immunity. Board members and staff shall be immune from suit for any conduct in the course of their official duties.