

STATE OF MINNESOTA  
IN SUPREME COURT  
CX-89-1863

PROMULGATION OF AMENDMENTS  
TO THE MINNESOTA GENERAL RULES OF PRACTICE  
FOR THE DISTRICT COURTS

ORDER

In its report filed October 28, 2004, the Supreme Court Advisory Committee on the General Rules of Practice for the District Courts recommended certain amendments to the General Rules of Practice for the District Courts. By order dated October 29, 2004, this Court established a December 3, 2004, deadline for submitting written comments on the proposal. The Supreme Court has reviewed the proposal and the submitted comments, and is fully advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Except as provided in paragraph 2 of this order, the attached amendments to the General Rules of Practice for the District Courts be, and the same hereby are, prescribed and promulgated to be effective January 1, 2005.
2. The attached amendments to Rule 702 shall be effective February 1, 2005.
3. The attached amendments shall apply to all actions pending on the effective date and to those filed thereafter.
4. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.
5. The Advisory Committee shall continue consideration of the issue of collaborative law, hold a public hearing on the matter, and report back to this Court within one year.

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Dated: December , 2004

BY THE COURT:

\_\_\_\_\_  
Kathleen A. Blatz  
Chief Justice

AMENDMENTS TO THE GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

RULE 114. ALTERNATIVE DISPUTE RESOLUTION

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 forum in which a neutral third party renders a specific award after presiding over an adversarial hearing at which each party and its counsel present its position before a neutral third party, who renders a specific award. 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.) ~~advance, the award is binding and is enforceable in the same manner as any contractual obligation.~~ If the parties do not stipulate that the award is arbitration will be binding, then the award is not non-binding and a request for trial de novo may be made will be conducted pursuant to Rule 114.09.

(2) *Consensual Special Magistrate.* A forum in which the parties present their positions a dispute is presented to a neutral third party in the same manner as a civil lawsuit is presented to a judge. This process is binding and includes the right of appeal to the Minnesota Court of Appeals.

~~(3) *Moderated Settlement Conference.* A forum in which each party and their counsel present their position before a panel of neutral third parties. The panel may issue a non-binding advisory opinion regarding liability, damages or both.~~

(3) ~~(4)~~ *Summary Jury Trial.* A forum in which each party and their counsel present a summary of their position before a panel of jurors. The number of jurors on the panel is six unless the parties agree otherwise. The panel may issue a non-binding advisory opinion regarding liability, damages, or both.

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28 **Evaluative Processes**

29 ~~(5)~~(4) *Early Neutral Evaluation (ENE)*. A forum in which attorneys  
30 present the core of the dispute to a neutral evaluator in the presence of the parties.  
31 This occurs after the case is filed but before discovery is conducted. The neutral  
32 then gives an a-candid assessment of the strengths and weaknesses of the case. If  
33 settlement does not result, the neutral helps narrow the dispute and suggests  
34 guidelines for managing discovery.

35 (5) *Non-Binding Advisory Opinion*. A forum in which the parties and  
36 their counsel present their position before one or more neutral(s). The neutral(s)  
37 then issue(s) a non-binding advisory opinion regarding liability, damages or both.

38 **Investigation and Report Process**

39 (6) *Neutral Fact Finding*. A forum in which a neutral investigates and  
40 analyzes a factual dispute, frequently one involving complex or technical issues,  
41 is investigated and analyzed by an agreed-upon neutral who and issues findings.  
42 The findings are non-binding unless the parties agree to be bound by them. and a  
43 non-binding report or recommendation, unless the parties stipulate.

44 **Facilitative Processes**

45 (7) *Mediation*. A forum in which a neutral third party facilitates  
46 communication between parties to promote settlement. A mediator may not  
47 impose his or her own judgment on the issues for that of the parties.

48 **Hybrid Processes**

49 (8) *Mini-Trial*. A forum in which each party and their counsel present  
50 its position their opinion, either before a selected representative for each party,  
51 before a neutral third party, or both, to define the issues and develop a basis for  
52 realistic settlement negotiations. A neutral third party may issue an advisory  
53 opinion regarding the merits of the case. The advisory opinion is not binding  
54 unless the parties agree that it is binding and enter into a written settlement  
55 agreement.

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56 (9) *Mediation-Arbitration (Med-Arb)*. A hybrid of mediation and  
57 arbitration in which the parties initially mediate their disputes; but if they reach  
58 impasse, they arbitrate any the deadlocked issues.

59 (10) *Other*. Parties may by agreement create an ADR process. They  
60 shall explain their process in the Informational Statement.

61 (b) **Neutral**. A “neutral” is an individual or organization who provides an  
62 ADR process. A “qualified neutral” is an individual or organization included on the  
63 State Court Administrator’s roster as provided in Rule 114.12. An individual neutral  
64 must have completed the training and continuing education requirements provided in  
65 Rule 114.13. An organization on the roster must certify that an individual neutral  
66 provided by ~~an~~ the organization ~~also must meet~~ has met the training and continuing  
67 education requirements of Rule 114.13. Neutral fact-finders selected by the parties for  
68 their expertise need not undergo training nor be on the State Court Administrator’s  
69 roster.

70  
71 **Rule 114.03 Notice of ADR Processes**

72 (a) **Notice**. Upon receipt of the completed Certificate of Representation and  
73 ~~Parties required by Rule 104 of these rules, t~~The court administrator shall provide, on  
74 request, to the attorneys of record and any unrepresented parties, with information about  
75 ADR processes available to the county and the availability of a list of neutrals who  
76 provide ADR services in that county.

77 (b) **Duty to Advise Clients of ADR Processes**. Attorneys shall provide  
78 clients with the ADR information.

79  
80 **Implementation Committee Comments—1993**

81 This rule is designed to provide attorneys and parties to a dispute with  
82 information on the efficacy and availability of ADR processes. Court personnel are  
83 in the best position to provide this information. A brochure has been developed  
84 which can be used by court administrators to give information about ADR processes  
85 to attorneys and parties. The State Court Administrator's Office will maintain a  
86 master list of all qualified neutrals and will update the list and distribute it annually  
87 to court administrators.

88  
89 **Advisory Committee Comment—1996 Amendment**

90 This change is made only to remove an ambiguity in the phrasing of the rule  
91 and to add titles to the subdivisions. Neither change is intended to affect the  
92 meaning or interpretation of the rule.  
93

94 **Rule 114.04 Selection of ADR Process**

95 (a) **Conference.** After the ~~filing~~ service of a complaint or petition, the parties  
96 shall promptly confer regarding case management issues, including the selection and  
97 timing of the ADR process. Following this conference ADR information shall be  
98 included in the informational statement required by Rule 111.02 and 304.02.

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

105 (b) **Court Involvement.** If the parties cannot agree on the appropriate ADR  
106 process, the timing of the process, or the selection of neutral, or if the court does not  
107 approve the parties' agreement, the court shall, in cases subject to Rule 111, schedule a  
108 telephone or in-court conference of the attorneys and any unrepresented parties within  
109 thirty days after the due date for filing informational statements pursuant to Rule 111.02  
110 or 304.02 to discuss ADR and other scheduling and case management issues.

111 Except as otherwise provided in Minn. Stat. § 604.11 or Rule 310.01, no  
112 ~~agreement on the ADR process is reached or if the court disagrees with the process~~  
113 ~~selected,~~ the court at its discretion may order the parties to utilize one of the non-binding  
114 processes; provided that ~~any~~ no ADR process shall ~~not~~ be approved if the court finds  
115 that ADR is not appropriate or if where it amounts to a sanction on a non-moving party.

116 (c) **Scheduling Order.** The court's Scheduling Order pursuant to Rule  
117 111.03 or 304.03 shall designate the ADR process selected, the deadline for completing  
118 the procedure, and the name of the neutral selected or the deadline for the selection of

119 the neutral. If ADR is determined to be inappropriate, the Scheduling Order pursuant to  
120 Rule 111.03 or 304.03 shall so indicate.

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

124 **(e) Other Court Order for ADR.** Except as otherwise provided in Minn.  
125 ~~Stat. § 604.11 or Rule 310.01, upon motion by any party, or on its own initiative, the~~  
126 ~~court may, at any time, issue an order for any non-binding ADR process.~~

127  
128 **Implementation Committee Comments-1993**

129 Early case evaluation and referral to an appropriate ADR process has proven to  
130 facilitate speedy resolution of disputes, and should be encouraged whenever  
131 possible. Mandatory referral to a non-binding ADR process may result if the judge  
132 makes an informed decision despite the preference of one or more parties to avoid  
133 ADR. The judge shall not order the parties to use more than one non-binding ADR  
134 process. Serial use of ADR processes, unless desired by the parties, is  
135 inappropriate. The judge's authority to order mandatory ADR processes should be  
136 exercised only after careful consideration of the likelihood that mandatory ADR in  
137 specific cases will result in voluntary settlement.  
138

139 **Advisory Committee Comment—1996 Amendment**

140 The changes to this rule are made to incorporate Rule 114's expanded  
141 applicability to family law matters. The rule adopts the procedures heretofore  
142 followed for ADR in other civil cases. The beginning point of the process is the  
143 informational statement, used under either Rule 111.02 or 304.02. The rule  
144 encourages the parties to approach ADR in all matters by conferring and agreeing on  
145 an ADR method that best suits the need of the case. This procedure recognizes that  
146 ADR works best when the parties agree to its use and as many details about its use  
147 as possible.

148 Subdivision (a) requires a conference regarding ADR in civil actions and after  
149 commencement of family law proceedings. In family cases seeking post-decree  
150 relief, ADR must be considered in the meeting required by Rule 303.03(c). Cases  
151 involving domestic abuse are expressly exempted from the ADR meet-and-confer  
152 requirement and courts should accommodate implementing ADR in these cases  
153 without requiring a meeting nor compromising a party's right to choose an ADR  
154 process and neutral.

155 The rule is not intended to discourage settlement efforts in any action. In cases  
156 where any party has been, or claims to have been, a victim of domestic violence,  
157 however, courts need to be especially cautious. Facilitative processes, particularly  
158 mediation, are especially prone to abuse since they place the parties in direct contact  
159 and may encourage them to compromise their rights in situations where their  
160 independent decision-making capacity is limited. The rule accordingly prohibits  
161 their use where those concerns are present.  
162

163 **Rule 114.05 Selection of Neutral**

164 (a) **Court Appointment.** If the parties are unable to agree on either a neutral  
165 or the date upon which the neutral will be selected, the court shall, in those cases subject  
166 to Rule 111, appoint the a qualified neutral at the time of the issuance of the scheduling  
167 order required by Rule 111.03 or 304.03. In cases not subject to Rule 111, the court may  
168 appoint a qualified neutral at its discretion, after obtaining the views of the parties. In all  
169 cases, ~~the~~ the order may establish a deadline for the completion of the ADR process.

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

178 (c) **Removal.** Any party or the party's attorney may file with the court  
179 administrator within 10 days of notice of the appointment of the ~~qualified~~ neutral and  
180 serve on the opposing party a notice to remove. Upon receipt of the notice to remove  
181 the court administrator shall immediately assign another neutral. After a party has once  
182 disqualified a neutral as a matter of right, a substitute neutral may be disqualified by the  
183 party only by making an affirmative showing of prejudice to the chief judge or his or her  
184 designee.

185 (d) **Availability of Child Custody Investigator.** A neutral serving in a  
186 family law matter ~~shall not~~ may conduct a custody investigation, or evaluation only (1)  
187 where ~~unless~~ the parties agree in writing executed after the termination of mediation,  
188 that the neutral shall conduct the investigation or evaluation; or (2) where ~~unless~~ there is  
189 no other person reasonably available to conduct the investigation or evaluation. Where  
190 the neutral is also the sole investigator for a county agency charged with making  
191 recommendations to the court regarding child custody and visitation, the neutral may  
192 make such recommendations, but only after the court administrator has made ~~shall make~~

193 all reasonable attempts to obtain reciprocal services from an adjacent county. Where  
194 such reciprocal services are obtainable, the custody evaluation must be conducted by a  
195 person from the adjacent county agency, and not by the neutral who served in the family  
196 law matter. reciprocity is possible, another person or agency is “reasonably available.”

197  
198 **Implementation Committee Comments-1993**

199 Parties should consult the statewide roster for information on the educational  
200 background and relevant training and experience of the proposed neutrals. It is  
201 important that the neutrals' qualifications can be provided to the parties so that the  
202 parties may make an informed choice. Unique aspects of a dispute and the  
203 preference of the parties may require special qualifications by the neutral.

204 Parties should have the ability, within reason, to choose a neutral with special  
205 expertise or experience in the subject matter of the dispute, even if they do not qualify  
206 under Rule 114.12, though it is anticipated that this will occur infrequently. Parties to  
207 mediation and med-arb processes must appoint an individual who qualifies under Rule  
208 114.12.  
209

210 **Advisory Committee Comment—1996 Amendment**

211 This rule is amended only to provide for the expanded applicability of Rule 114  
212 to family law matters. The rule also now explicitly permits the court to establish a  
213 deadline for completion of a court-annexed ADR process. This change is intended  
214 only to make explicit a power courts have had and have frequently exercised without  
215 an explicit rule.

216 Rule 114.05(d) is derived from existing Rule 310.08. Although it is clearly not  
217 generally desirable to have a neutral subsequently serve as child custody investigator,  
218 in some instances it is necessary. The circumstances where this occurs are, and should  
219 be, limited, and are defined in the rule. Where other alternatives exist in a county and  
220 for an individual case, a neutral should not serve as child custody investigator.  
221

222 **Rule 114.06 Time and Place of Proceedings**

223 (a) **Notice.** The court shall send to the neutral a copy of the Order of  
224 Appointment, a copy of its order appointing the neutral to the neutral.

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

229 (c) **Final Disposition.** If the case is settled through an ADR process, the  
230 attorneys shall complete the appropriate court documents to bring the case to a final  
231 disposition.  
232

233 **Implementation Committee Comments-1993**

234 The neutral will schedule the ADR process date unless, the parties agree on a  
235 date within the time frame contained in the scheduling order. If the neutral is

236 selected at the time of scheduling order, such order can serve as the court order  
237 appointing the neutral. In scheduling the ADR process the neutral will attempt to  
238 accommodate the parties' schedules.  
239

240 **Advisory Committee Comment—1996 Amendment**

241 The only changes to this rule are the inclusion of titles to the subparagraphs.  
242 This amendment is not intended to affect the meaning or interpretation of the rule,  
243 but is included to make the rule easier to use.  
244

245 **Rule 114.07 Attendance at ADR Proceedings.**

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

248 (b) **Attendance.** The court may require that the attorneys who will try the  
249 case ~~may be required to attend~~ ADR proceedings.

250 (c)~~(d)~~ **Attendance at Adjudicative Sessions.** Individuals with the authority to  
251 settle the case need not attend Adjudicative processes aimed at reaching a decision in  
252 the case, such as arbitration, need not be attended by individuals with authority to settle  
253 ~~the case~~, as long as such individuals are reasonably accessible, unless otherwise directed  
254 by the court.

255 (d)~~(e)~~ **Attendance at Non-Adjudicative Facilitative Sessions.** Individuals with  
256 the authority to settle the case shall attend ~~Facilitative~~ non-adjudicative processes aimed  
257 at settlement of the case, such as mediation, mini-trial, or med-arb, ~~shall be attended by~~  
258 ~~individuals with the authority to settle the case~~, unless otherwise directed by the court.

259 (e) **Sanctions.** The court may impose sanctions for failure to attend a  
260 scheduled ADR process only if this rule is violated.  
261

262 **Implementation Committee Comments-1993**

263 Effective and efficient use of an ADR process depends upon the participation  
264 of appropriate individuals in the process. Attendance by attorneys facilitates  
265 discussions with clients about their case. Attendance of individuals with authority to  
266 settle the case is essential where a settlement may be reached during the process. In  
267 processes where a decision is made by the neutral, individuals with authority to  
268 settle need only be readily accessible for review of the decision.  
269

270 **Advisory Committee Comment—1996 Amendment**

271 This rule is amended only to incorporate the collective definitions now  
272 incorporated in Rule 114.02. This change is not intended to create any significant  
273 difference in the requirements for attendance at ADR sessions.  
274

275 **Rule 114.08 Confidentiality**

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

280 (b) **Inadmissibility.** Subject to Minn. Stat. § 595.02 and except as provided in  
281 paragraphs (a) and (d), ~~Statements no statements made and nor~~ documents produced in  
282 non-binding ADR processes which are not otherwise discoverable shall be are not  
283 subject to discovery or other disclosure. ~~Such evidence is inadmissible and are not~~  
284 admissible into evidence for any purpose at the trial, including impeachment, ~~except as~~  
285 provided in paragraph (d).

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

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

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

299

300

**Implementation Committee Comments-1993**

301

If a candid discussion of the issues is to take place, parties need to be able to trust that discussions held and notes taken during an ADR proceeding will be held in confidence.

302

303

This proposed rule is important to establish the subsequent evidentiary use of statements made and documents produced during ADR proceedings. As a general rule, statements in ADR processes that are intended to result in the compromise and settlement of litigation would not be admissible under Minn. R. Evid. 408. This rule underscores and clarifies that the fact that ADR proceedings have occurred or what transpired in them. Evidence and sworn testimony offered in summary jury trials

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310 and other similar related proceedings is not excluded ~~from form~~ admissibility by this  
311 rule, but is explicitly treated as other evidence or as in the other sworn testimony or  
312 evidence under the rules of evidence. Former testimony is ~~excepted~~ accepted  
313 from the hearsay rule if the witness is unavailable by Minn. R. Evid. 804(b)(1). Prior  
314 testimony may also be admissible under Minn. R. Evid. 613 as a prior statement.  
315

316 **Advisory Committee Comment—1996-2004 Amendment**

317 The amendment of this rule in 1996 is intended to underscore the general need  
318 for confidentiality of ADR proceedings. It is important to the functioning of the  
319 ADR process that the participants know that the ADR proceedings will not be part  
320 of subsequent (or underlying) litigation. Rule 114.08(a) carries forward the basic  
321 rule that evidence in ADR proceedings is not to be used in other actions or  
322 proceedings. Mediators and lawyers for the parties, to the extent of their  
323 participation in the mediation process, cannot be called as witnesses in other  
324 proceedings. Minn. Laws 1996 ch. 388, § 1, *to be codified as* Minn. Stat. § 595.02,  
325 subd. 1a. This confidentiality should be extended to any subsequent proceedings.  
326

327 The last sentence of 114.08(e) is derived from existing Rule 310.05.

328 **Rule 114.09 Arbitration Proceedings**

329 **(a) General.**

330 Parties are free to opt for binding or non-binding arbitration. Whether they  
331 elect binding or non-binding arbitration, the parties may construct or select a set of  
332 rules to govern the process. The agreement to arbitrate must state what rules govern.  
333 If the parties elect binding arbitration, and their agreement to arbitrate is otherwise  
334 silent, the arbitration will be deemed to be conducted pursuant to Minn. Stat. § 572.08  
335 et seq. ("Uniform Arbitration Act"). If they elect non-binding arbitration, and their  
336 agreement is otherwise silent, they shall conduct the arbitration pursuant to Rule  
337 114.09, subsections (b)-(f). Parties are free, however, to contract to use provisions  
338 from both processes or to modify the arbitration procedure as they deem appropriate  
339 to their case.

340 **(a)(b) Evidence.**

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

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

347 (I) *Documents.* If copies have been delivered to all other  
348 parties at least 10 days prior to the hearing, the ~~The~~ arbitrator may  
349 consider written medical and hospital reports, records, and bills;  
350 documentary evidence of loss of income, property damage, repair bills or  
351 estimates; and police reports concerning an accident which gave rise to the  
352 ~~case, if copies have been delivered to all other parties at least ten days~~  
353 prior to the hearing. Any other party may subpoena as a witness the  
354 author of a report, bill, or estimate, and examine that person as if under  
355 cross-examination. Any repair estimate offered as an exhibit, as well as  
356 copies delivered to other parties, shall be accompanied by a statement  
357 indicating whether or not the property was repaired, ~~and if it was,~~ If the  
358 property was repaired, the statement must indicate whether the estimated  
359 repairs were made in full or in part; and must be accompanied by a copy  
360 of the receipted bill showing the items repaired and the amount paid. The  
361 arbitrator shall not consider any police report opinion as to ultimate fault.  
362 In family law matters, the arbitrator may consider property valuations,  
363 business valuations, custody reports and similar documents.

364 (II) *Other Reports.* The written statement of any other witness,  
365 including written reports of expert witnesses not enumerated above and  
366 statements of opinion which the witness would be qualified to express if  
367 testifying in person, shall be received in evidence if: (1) copies have been  
368 delivered to all other parties at least 10 days prior to the hearing; and (2)  
369 no other party has delivered to the proponent of the evidence a written  
370 demand at least 5 days before the hearing that the witness be produced in  
371 person to testify at the hearing. The arbitrator shall disregard any portion  
372 of a statement received pursuant to the rule that would be inadmissible if  
373 the witness were testifying in person, but the inclusion of inadmissible  
374 matter does not render the entire statement inadmissible.

375 (III) *Depositions.* Subject to objections, the deposition of any  
376 witness shall be received in evidence, even if the deponent is not  
377 unavailable as a witness and if no exceptional circumstances exist, if: (1)  
378 the deposition was taken in the manner provided for by law or by  
379 stipulation of the parties; and (2) not ~~less~~ fewer than 10 days prior to the  
380 hearing, the proponent of the deposition serves on all other parties notice  
381 of the intention to offer the deposition in evidence.

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

388 (3) Subpoenas shall issue for the attendance of witnesses at the  
389 ~~arbitration hearing, as provided in~~ Attorneys must obtain subpoenas for  
390 attendance at hearings through the court administrator, pursuant to Minn. R. Civ.  
391 P. 45. The party requesting the subpoena shall modify the form of the subpoena  
392 to show that the appearance is before the arbitrator and to give the time and place  
393 set for the arbitration hearing. At the discretion of the arbitrator, nonappearance  
394 of a properly subpoenaed witness may be grounds for an adjournment or  
395 continuance of the hearing. If any witness properly served with a subpoena fails  
396 to appear or refuses to be sworn or answer, the court may conduct proceedings to  
397 compel compliance.

398 **(b)(c) Powers of Arbitrator**

399 The arbitrator has the following powers:

- 400 (1) to administer oaths or affirmations to witnesses;
- 401 (2) to take adjournments upon the request of a party or upon the  
402 arbitrator's initiative;
- 403 (3) to permit testimony to be offered by deposition;

- 404 (4) to permit evidence to be introduced as provided in these rules;  
405 (5) to rule upon admissibility and relevance of evidence offered;  
406 (6) To invite the parties, upon reasonable notice, to submit pre-hearing  
407 or post-hearing briefs or pre-hearing statements of evidence;  
408 (7) to decide the law and facts of the case and make an award  
409 accordingly;  
410 (8) to award costs, within statutory limits;  
411 (9) to view any site or object relevant to the case; and  
412 (10) any other powers agreed upon by the parties.

413 **(c)(d) Record**

- 414 (1) No record of the proceedings shall be made unless permitted by the  
415 arbitrator and agreed to by the parties.  
416 (2) The arbitrator's personal notes are not subject to discovery.

417 **(d)(e) The Award**

- 418 (1) No later than 10 days from the date of the arbitration hearing or the  
419 arbitrator's receipt of the final post-hearing memorandum,  
420 whichever is later, the arbitrator shall file with the court the  
421 decision, together with proof of service by first class mail on all  
422 parties.  
423 (2) If no party has filed a request for a trial within 20 days after the  
424 award is filed, the court administrator shall enter the decision as a  
425 judgment and shall promptly mail notice of entry of judgment to  
426 the parties. The judgment shall have the same force and effect as,  
427 and is subject to all provisions of law relating to, a judgment in a  
428 civil action or proceeding, except that it is not subject to appeal,  
429 and ~~except as provided in section (d)~~ may not be attacked or set  
430 aside. The judgment may be enforced as if it had been rendered by  
431 the court in which it is entered.

- 432 (3) No findings of fact, conclusions of law, or opinions supporting an  
433 arbitrator's decision are required.
- 434 (4) Within 6 months 90 days after its entry, a party against whom a  
435 judgment is entered pursuant to an arbitration award may move to  
436 vacate the judgment on only those grounds set forth in Minnesota  
437 Statutes Chapter 572.

438 **(e)(f) Trial after Arbitration**

- 439 (1) Within 20 days after the arbitrator files the decision with the court,  
440 any party may request a trial by filing a request for trial with the  
441 court, along with proof of service upon all other parties. This 20-  
442 day period shall not be extended.
- 443 (2) The court may set the matter for trial on the first available date, or  
444 shall restore the case to the civil calendar in the same position as it  
445 would have had if there had been no ADR arbitration.
- 446 (3) Upon request for a trial, the decision of the arbitrator shall be  
447 sealed and placed in the court file.
- 448 (4) A trial de novo shall be conducted as if there had been no  
449 arbitration.

450  
451 **Implementation Committee Comments – 1993**

452 The Committee made a conscious decision not to formulate rules to govern  
453 other forms of ADR, such as mediation, early neutral evaluations, and summary jury  
454 trials. There is no consensus among those who conduct or participate in those forms  
455 of ADR as to whether any procedures or rules are necessary at all, let alone what  
456 those rules or procedures should be. The Committee urges parties, judges and  
457 neutrals to be open and flexible in their conduct of ADR proceedings (other than  
458 arbitration), and to experiment as necessary, at some time in the future, to revisit the  
459 issues of rules, procedures or other limitations applicable to the various forms of  
460 court-annexed ADR.

461 Hennepin County and Ramsey County both have had substantial experience  
462 with arbitrations, and have developed rules of procedure that have worked well. The  
463 Committee has considered those rules, and others, in developing its proposed rules.

464 Subd. (a) of this rule is modeled after rules presently in use by the Second and  
465 Fourth Judicial Districts and rules currently in use by the American Arbitration  
466 Association.

467 Subd. (b) of this Rule is modeled after rules presently in use in the Second and  
468 Fourth Judicial Districts. In non-binding arbitration, the arbitrator is limited to  
469 providing advisory awards, unless the parties do not request a trial.

470 Subd. (c) of this Rule is modeled after rules presently in use in the Second and  
471 Fourth Judicial Districts. Records of the proceeding include records made by a  
472 stenographer, court reporter, or recording device.

473 Subd. (d) of this Rule is modeled after Rule 25 VIII of the Special Rules of  
474 Practice for the Second Judicial District.

475  
476 **Advisory Committee Comment—1996 Amendment**

477 The changes to this rule in 1996 incorporate the collective labels for ADR  
478 processes now recognized in Rule 114.02. These changes should clarify the  
479 operation of the rule, but should not otherwise affect its interpretation.  
480

481 **Rule 114.10 Communication with Neutral**

482 **(a) Adjudicative Processes.** ~~The parties and their counsel shall not~~  
483 ~~communicate ex parte with an arbitrator or a consensual special master or other~~  
484 ~~adjudicative neutral. Neither the parties nor their representatives shall communicate ex~~  
485 ~~parte with the neutral unless approved in advance by all parties and the neutral.~~

486 **(b) Non-Adjudicative Processes.** Parties and their counsel may  
487 communicate ex parte with the neutral in non-adjudicative ADR processes with the  
488 consent of the neutral, so long as the communication encourages or facilitates  
489 settlement.

490 **(c) Communications to Court During ADR Process.** During an ADR  
491 process the court may be informed only of the following:

492 (1) The failure of a party or an attorney to comply with the order to  
493 attend the process;

494 (2) Any request by the parties for additional time to complete the ADR  
495 process;

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

498 (4) The neutral's assessment that the case is inappropriate for that  
499 ADR process.

500 **(d) Communications to Court After ADR Process.** When the ADR process  
501 has been concluded, the court may only be informed of the following:

502 (1) If the parties do not reach an agreement on any matter, the neutral  
503 ~~should~~ shall report the lack of an agreement to the court without comment or  
504 recommendations;

505 (2) If agreement is reached, any requirement that its terms be reported  
506 to the court should be consistent with the jurisdiction's policies governing  
507 settlements in general; and

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

512  
513 **Implementation Committee Comments-1993**

514 This Rule is modeled after Rule 25 VI of the special rules of Practice for the  
515 Second Judicial District.  
516

517 **Advisory Committee Comment—1996 Amendment**

518 The changes to this rule in 1996 incorporate the collective labels for ADR  
519 processes now recognized in Rule 114.02. These changes should clarify the  
520 operation of the rule, but should not otherwise affect its interpretation.  
521

522 **Rule 114.11 Funding**

523 (a) **Setting of Fee.** The neutral and the parties will determine the fee. All  
524 fees of neutral(s) for ADR services shall be fair and reasonable.

525 (b) **Responsibility for Payment.** The parties shall pay for the neutral. It is  
526 presumed that the parties shall split the costs of the ADR process on an equal basis. The  
527 parties may, however, agree on a different allocation. Where the parties cannot agree,  
528 the court retains the authority to determine a final and equitable allocation of the costs of  
529 the ADR process.

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

533 (d) **Inability to Pay.** If a party ~~in family law proceedings~~ qualifies for waiver  
534 of filing fees under Minn. Stat. § 563.01 or if the court determines on other grounds that

535 the party is unable to pay for ADR services, and free or low-cost ADR services are not  
536 available, the court shall not order that party to participate in ADR and shall proceed  
537 with the judicial handling of the case.

538

539

**Implementation Committee Comments-1993**

540

The marketplace in the parties' geographic area will determine the rates to be offered by neutrals for their services. The parties can then best determine the appropriate fee, after considering a number of factors, including availability, experience and expertise of the neutral and the financial abilities of the parties.

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543

544

ADR providers shall be encouraged to provide pro bono and volunteer services to parties unable to pay for ADR processes. Parties with limited financial resources should not be denied access to an ADR process because of an inability to pay for a neutral. Judges and ADR providers should consider the financial abilities of all parties and accommodate those who are not able to share equally in costs of the ADR process. The State Court Administrator shall monitor access to ADR processes by individuals with limited financial resources.

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**Advisory Committee Comment—1996 Amendment**

553

The payment of fees for neutrals is particularly troublesome in family law matters, where the expense may be particularly onerous. Subdivision (d) of this rule is intended to obviate some difficulties relating to inability to pay ADR fees. The advisory committee rejected any suggestion that these rules should create a separate duty on the part of neutrals to provide free neutral services. The committee hopes such services are available, and would encourage qualified neutrals who are attorneys to provide free services as a neutral as part of their obligation to provide pro bono services. See Minn. R. Prof. Cond. 6.1. If free or affordable ADR services are not available, however, the party should not be forced to participate in an ADR process and should suffer no ill-consequence of not being able to do so.

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**Rule 114.12 Rosters of Neutrals.**

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(a) **Rosters.** The State Court Administrator shall establish one roster of

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neutrals for civil matters and one roster for for neutrals for family law neutrals. Each

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roster shall be updated and published on ~~an annual~~ a regular basis. The State Court

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Administrator shall not place on, and shall delete from, the rosters the name of any

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applicant or neutral whose professional license has been revoked. A qualified neutral

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may not provide services during a period of suspension of a professional license. The

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State Court Administrator shall review applications from those who wish to be listed

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on ~~either~~ the roster of qualified neutrals, which ~~and~~ shall include those who meet the

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training requirements established in Rule 114.13, or who have received a waiver

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under Rule 114.14.

575

~~(b) — Civil Neutral Roster. The civil neutral roster shall include two separate~~

576

~~parts: one for facilitative and hybrid processes (mediators and providers of med-arb~~

577 ~~and mini-trial services); a second for adjudicative and evaluative processes~~  
578 ~~(arbitrators and providers of consensual special magistrate, moderated settlement~~  
579 ~~conference, summary jury trial, and early neutral evaluation services.~~

580 ~~(c) — **Family Law Neutral Roster.** The family law neutral roster shall~~  
581 ~~include three separate parts: one for facilitative and hybrid processes (mediators and~~  
582 ~~providers of med- arb and mini-trial services); a second for adjudicative processes~~  
583 ~~(arbitrators and providers of consensual special magistrate, moderated settlement~~  
584 ~~conference and summary jury trial services); and a third for evaluative processes~~  
585 ~~(neutral evaluators).~~

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

588

589 **Advisory Committee Comment—1996 Amendment**  
590 This rule is primarily new, though it incorporates the procedure now in place  
591 administratively under Rule 114.12(b) for placement of neutrals on the roster and  
592 the establishment of fees.

593 This rule expands the State Court Administrator’s neutral roster to create a new,  
594 separate roster for family law neutrals. It is intended that the new roster will function  
595 the same way the current roster for civil ADR under existing Rule 114 does.  
596 Subparagraph (b) is new, and provides greater detail of the specific sub-rosters for  
597 civil neutrals. It describes the roster as it is now created, and this new rule is not  
598 intended to change the existing practice for civil neutrals in any way. Subparagraph  
599 (c) creates a parallel definition for the new family law neutral roster, and it is intended  
600 that the new roster appear in form essentially the same as the existing roster for civil  
601 action neutrals.

602

### 603 **Rule 114.13 Training, Standards and Qualifications for Neutral Rosters**

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

608 (1) Conflict resolution and mediation theory, including causes of  
609 conflict and interest-based versus positional bargaining and models of conflict  
610 resolution;

611 (2) Mediation skills and techniques, including information gathering  
612 skills, communication skills, problem solving skills, interaction skills, conflict

613 management skills, negotiation techniques, caucusing, cultural and gender issues  
614 and power balancing;

615 (3) Components in the mediation process, including an introduction to  
616 the mediation process, fact gathering, interest identification, option building,  
617 problem solving, agreement building, decision making, closure, drafting  
618 agreements, and evaluation of the mediation process;

619 (4) Mediator conduct, including conflicts of interest, confidentiality,  
620 neutrality, ethics, standards of practice and mediator introduction pursuant to the  
621 Civil Mediation Act, Minn. Stat. § 572.31.

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

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

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

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

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

637 (3) Settlement techniques; and

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

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

643 **(c) Family Law Facilitative Neutrals Roster.**

644 ~~To qualify for the~~ All qualified neutrals serving in family law facilitative  
645 processes must have ~~roster neutrals shall:~~

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

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

650 (b) ~~four~~4 hours of psychological issues ~~relativerelated~~ to  
651 separation and divorce, and family dynamics;

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

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

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

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

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

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

666 (a) 2 hours about domestic abuse in general, including  
667 definition of battery and types of power imbalance;

668 (b) 3 hours of domestic abuse screening, including simulations  
669 or ~~roleplay~~role-playing; and,

670 (c) 1 hour of legal issues relative to domestic abuse cases; ~~and~~  
671 ~~(3) Certify on the roster application that they have not had a~~  
672 professional license revoked, been refused membership or practice rights in a  
673 profession, or been involuntarily banned, dropped or expelled from any  
674 profession.

675 **(d) Family Law Adjudicative Neutrals Roster.**

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

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

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

699 (1) 2 hours about domestic abuse in general, including definition of  
700 battery and types of power imbalance;

701 (2) 3 hours of domestic abuse screening, including simulations or  
702 ~~roleplay~~ role-playing; and,

703 (3) 1 hour of legal issues relative to domestic abuse cases.

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

712 In addition to the 2-hour training required above, all qualified family law  
713 evaluative neutrals ~~applying to the family law evaluative neutral roster shall~~ must have  
714 completed or ~~teach-taught~~ a minimum of 6 hours of certified training in domestic abuse  
715 issues, to include at least:

716 (1) 2 hours about domestic abuse in general, including definition of  
717 battery and types of power imbalance;

718 (2) 3 hours of domestic abuse screening, including simulations or  
719 ~~roleplay~~ role-playing; and,

720 (3) 1 hour of legal issues relative to domestic abuse cases.

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

724 **(g) Continuing Training.** All qualified neutrals providing facilitative or  
725 hybrid services must attend ~~eighteen~~ 18 hours of continuing education about  
726 alternative dispute resolution subjects within the three 3-year period in which the  
727 qualified neutral is required to complete the continuing education requirements. All

728 other qualified neutrals must attend ~~nine~~ 9 hours of continuing education about  
729 alternative dispute resolution subjects during the ~~three~~ 3-year period in which the  
730 qualified neutral is required to complete the continuing education requirements.  
731 These hours may be attained through course work and attendance at state and national  
732 ADR conferences. The qualified neutral is responsible for maintaining attendance  
733 records and shall disclose the information to program administrators and the parties to  
734 any dispute. The qualified neutral shall submit continuing education credit  
735 information to the State Court Administrator's office within sixty days after the close  
736 of the period during which his or her education requirements must be completed.

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

739  
740 **Implementation Committee Comments-1993**

741 The training requirements are designed to emphasize the value of learning  
742 through experience. Training requirements can protect the parties and the integrity  
743 of the ADR processes from neutrals with little or no dispute resolution skills who  
744 offer services to the public and training to neutrals. These rules shall serve as  
745 minimum standards; individual jurisdictions may make requirements more stringent.  
746

747 **Advisory Committee Comment—1996 Amendment**

748 The provisions for training and certification of training are expanded in these  
749 amendments to provide for the specialized training necessary for ADR neutrals. The  
750 committee recommends that six hours of domestic abuse training be required for all  
751 family law neutrals, other than those selected solely for technical expertise. The  
752 committee believes this is a reasonable requirement and one that should significantly  
753 facilitate the fair and appropriate consideration of the concerns of all parties in  
754 family law proceedings.  
755

756 **Advisory Committee Comment - 2000 Amendments**

757 Rule 114.13(g) is amended in 2000 to replace the current annual training  
758 requirement with a three-year reporting cycle. The existing requirements are simply  
759 tripled in size, but need only be accumulated over a three-year period. The rule is  
760 designed to require reporting of training for ADR on the same schedule required for  
761 CLE for neutrals who are lawyers. See generally Rule 3 of Rules of the Supreme  
762 Court for Continuing Legal Education of Members of the Bar and Rule 106 of Rules  
763 of the Board of Continuing Legal Education. Non-lawyer neutrals should be placed  
764 by the ADR Board on a similar three-year reporting schedule.  
765

766 **Rule 114.14 ~~Exceptions~~ Waiver of Training Requirement**

767 (a) **Existing Neutrals.** Practicing family law neutrals on October 10, 1996,  
768 ~~may be placed on the roster of qualified family law neutrals without meeting the training~~  
769 ~~requirements of these rules except the requirement for training in domestic abuse issues.~~

770 ~~Any person acting as a family law neutral as of the effective date of the 1996~~  
771 ~~amendments to these Rules shall have one year to apply. The Minnesota State Supreme~~  
772 ~~Court ADR Review Board shall develop criteria for granting applications, which shall~~  
773 ~~be based on education, training, and expertise of the applicants.~~

774 ~~(b) — A neutral seeking to be included on the roster of qualified neutrals without~~  
775 ~~having to complete training requirements under Rule 114.13 shall apply for a waiver to~~  
776 ~~the Minnesota Supreme Court ADR Review Board. Waivers may be granted when an~~  
777 ~~individual's training and experience clearly demonstrate exceptional competence to~~  
778 ~~serve as a neutral. Any neutral wishing to be placed on either of the roster of qualified~~  
779 ~~neutrals after the Board has disbanded shall comply with the training requirements.~~  
780 ~~However, application may be made to the Supreme Court for a waiver of the training~~  
781 ~~requirement.~~

782 **Implementation Committee Comment—1993**

783 Some neutrals may be permitted to continue providing ADR services without  
784 completing the training requirements. A Board, made up of dispute resolution  
785 professionals, court officials, judges and attorneys, shall determine who qualifies.  
786

787 **Advisory Committee Comment—1996 Amendment**

788 This rule is amended to allow "grandparenting" of family law neutrals. The rule  
789 is derived in form from the grandparenting provision included in initial adoption of  
790 this rule for civil neutrals.

791 **RULE 114**  
792 **CODE OF ETHICS**

793  
794 Adopted and effective August 27, 1997. The Minnesota  
795 Supreme Court order C5-87-843 dated August 27, 1997, promulgating  
796 the Code of Ethics for neutrals under Rule 114 of the Minnesota  
797 General Rules of Practice provides in part that “(t)he inclusion of  
798 Advisory Task Force Comments is made for convenience and does not  
799 reflect court approval of the comments made therein.”  
800

801 **INTRODUCTION**

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803 \* \* \*

804  
805 **RULE 114 APPENDIX. CODE OF ETHICS ENFORCEMENT PROCEDURE**

806  
807 **INTRODUCTION**

808 Inclusion on the list of qualified neutrals pursuant to Minnesota General Rules  
809 of Practice 114.12 is a conditional privilege, revocable for cause.  
810

811 **Rule I. SCOPE**

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813 This procedure applies to complaints against any individual or organization  
814 (neutral) placed on the roster of qualified neutrals pursuant to Rule 114.12 or serving  
815 as a court appointed neutral pursuant to 114.05(b) of the Minnesota General Rules of  
816 Practice.

817 **Advisory Comment**

818 A qualified neutral is subject to this complaint procedure when providing any  
819 ADR services. The complaint procedure applies whether the services are court  
820 ordered or not, and whether the services are or are not pursuant to Minnesota  
821 General Rules of Practice. The Board will consider the full context of the alleged

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misconduct, including whether the neutral was subject to other applicable codes of ethics, or representing a “qualified organization” at the time of the alleged misconduct

Minn. Gen. R. Prac. 114.02(b): “*Neutral*. A ‘neutral’ is an individual or organization that provides an ADR process. 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 individual neutral provided by an organization also must meet 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.”

Attorneys functioning as collaborative attorneys are subject to the Minnesota Rules on Lawyers Professional Responsibility. Complaints against collaborative attorneys should be directed to the Lawyers Professional Responsibility Board.

**Rule II. PROCEDURE**

**A.** A complaint must be in writing, signed by the complainant, and mailed or delivered to the ADR Review Board at 25 Constitution Avenue Rev. Dr. Martin Luther King Jr. Blvd., Suite 140120, St. 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.

\* \* \*

**F.** After review and investigation, the Board shall advise the complainant and neutral of the Board’s action in writing by certified mail sent to their respective last known addresses. of the Board’s proposed action on the complaint. Upon request within fourteen (14) days from receipt of the Board’s action on the complaint, the neutral shall be entitled to a hearing before a three-member panel of the Board to contest proposed sanctions or findings. The neutral shall have the right to defend against all charges, to be represented by an attorney, and to examine and cross-examine witnesses. The Board shall receive evidence that the Board deems necessary to understand and determine the dispute. Relevancy shall be liberally construed in favor of admission. The Board shall make an electronic recording of the proceedings. The Board at its own initiative, or by request of the neutral, may issue subpoenas for the attendance of witnesses and the production of documents and other

858 evidentiary matter. If the neutral does not file a request for hearing as prescribed, the  
859 Board's decision becomes final.

860

861 **G.** The neutral or the complainant may appeal the panel decision to the Board,  
862 which shall conduct a de novo review of the existing record. An appeal must be filed  
863 in writing with the ADR Review Board within fourteen (14) days from receipt of the  
864 panel's decision.forty-five (45) days from the date of decision. The party that appeals  
865 shall pay for the record to be transcribed. The decision of the Board shall be final.

866

**Advisory Comment**

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868 A complaint form is available from the ADR Review Board by calling 651-  
869 297-7590 or emailing adr@courts.state.mn.us.

870

871 The Board, at its discretion, may establish a complaint review panel comprised  
872 of members of the Board. Staff under the Board's direction and control may also  
873 conduct investigations.

874

875 **Rule III. SANCTIONS**

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877 \* \* \*

878

879 **B.** Sanctions shall only be imposed if supported by clear and convincing evidence.  
880 Conduct considered in previous or concurrent ethical complaints against the neutral is  
881 inadmissible, except to show a pattern of related conduct the cumulative effect of  
882 which constitutes an ethical violation.

883 \* \* \*

884 **RULE 119. APPLICATIONS FOR ATTORNEYS' FEES**

885 \* \* \*

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887 **Rule 119.05 Attorneys' Fees in Default Proceedings**

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889 (a) A party proceeding by default and seeking an award of attorneys' fees that  
890 has established a basis for the award under applicable law, including parties seeking  
891 to enforce a confession of judgment, may obtain approval of the fees administratively  
892 without a motion hearing, provided that:

893 (1) the fees requested do not exceed fifteen percent (15%) of the principal  
894 balance owing as requested in that party's pleadings, up to a maximum of  
895 \$3,000.00. Such a party may seek a minimum of \$250.00; and

896 (2) the requesting party's pleading includes a claim for attorneys' fees in  
897 an amount greater than or equal to the amount sought upon default; and

898 (3) the defaulting party, after default has occurred, has been provided  
899 notice of the right to request a hearing under section (c) of this rule, a form for  
900 making such a request substantially similar to Form 119.05, and the affidavit  
901 required under Rule 119.02.

902 \* \* \*

903 **Advisory Committee Comment—1997 Amendment**

904 This rule is intended to establish a standard procedure for supporting requests  
905 for attorneys' fees. The committee is aware that motions for attorney fees are either  
906 not supported by any factual information or are supported with conclusionary, non-  
907 specific information that is not sufficient to permit the court to make an appropriate  
908 determination of the appropriate amount of fees. This rule is intended to create a  
909 standard procedure only; it neither expands nor limits the entitlement to recovery of  
910 attorneys' fees in any case.

911 Where fees are to be determined under the "lodestar" method widely used in  
912 the federal courts and adopted in Minnesota in *Specialized Tours, Inc. v. Hagen*, 392  
913 N.W.2d 520, 542-43 (Minn. 1986), trial courts need to have information to support  
914 the reasonableness of the hours claimed to be expended as well as the reasonable  
915 hourly rate under the circumstances. This rule is intended to provide a standard set  
916 of documentation that allows the majority of fee applications to be considered by the  
917 court without requiring further information. The rule specifically acknowledges that  
918 cases involving complex issues or serious factual dispute over these issues may  
919 require additional documentation. The rule allows the court to require additional  
920 materials in any case where appropriate. This rule is not intended to limit the court's

921 discretion, but is intended to encourage streamlined handling of fee applications and  
922 to facilitate filing of appropriate support to permit consideration of the issues.

923 This rule also authorizes the court to review the documentation required  
924 by the rule in camera. This is often necessary given the sensitive nature of the  
925 required fee information and the need to protect the party entitled to attorneys' fees  
926 from having to compromise its attorney's thoughts, mental impressions, or other  
927 work product in order to support its fee application. As an alternative to permitting  
928 in camera review by the trial judge, the court can permit submission of redacted  
929 copies, with privileged material removed from all copies.

930 The amendment in 1997, adding the exceptions to the requirements of the rule  
931 for certain probate and trust proceedings, is designed to obviate procedures that  
932 serve no purpose for the courts and unduly burden the parties. Probate and trust  
933 matters have separate statutes and case law relating to attorney fees. See Minnesota  
934 Statutes, sections 524.3-721 and 525.515; In re Great Northern Iron Ore Properties,  
935 311 N.W.2d 488 (Minn. 1981) and In re Living Trust Created by Atwood, 227  
936 Minn. 495, 35 N.W.2d 736 (1949). In probate and trust matters, if no interested  
937 party objects to the attorney fees, there is ordinarily no reason for the court to  
938 require the detail specified in Rule 119. In contested matters, however, such detail  
939 may be appropriate to enable the court to resolve the matter under the standards of  
940 applicable probate and trust law. The court may protect the sensitive and  
941 confidential information that may be contained in attorney time records by entering  
942 an appropriate order in a particular case. Similarly, the exemption of these cases  
943 from the requirements of the rule does not prevent the court from requiring any of  
944 the fee application documentation in a particular matter.  
945

#### 946 **Advisory Committee Comment—2003 Adoption Amendment**

947 Rule 119.05 is a new rule to establish a streamlined procedure for considering  
948 attorneys' fees on matters that will be heard by default. The rule does not apply to  
949 situations other than default judgments, such as motions to compel discovery,  
950 motions to show cause, sanctions matters, or attorneys' fees in contested matters.  
951 This subsection is modeled on a rule adopted by the Fourth Judicial District and  
952 implemented as a local standing order. A simpler procedure for defaults is  
953 appropriate and will serve to conserve judicial resources, and it is appropriate to  
954 have a uniform rule throughout Minnesota.

955 New Form 119.05 is intended to provide useful information to the defaulting  
956 party and some care has gone into its drafting. Although use of the form is not  
957 required, the requirement that any notice conform "substantially" to the form should  
958 be heeded. The committee has attempted to use language that fairly advises the  
959 defaulting party of the procedure under Rule 119.05 without threatening  
960 consequences or confusing the defaulting party on the effect of either contesting or  
961 not contesting the fee award. The rule requires that notice be given after the  
962 defendant has defaulted. Notice given earlier is not effective to comply with the  
963 rule, as such notice is likely to confuse the recipient as to the differing procedures  
964 and timing for response to the Summons and responding to the request for fees. An  
965 affidavit detailing the basis for the award as required under Rule 119.02 must  
966 accompany the notice and the form.

967 The rule does not affect the amounts that may be recovered for attorneys' fees;  
968 it allows either side to obtain a hearing on the request for fees; the rule supplies an  
969 efficient mechanism for the numerous default matters where a full hearing is not  
970 required. Similarly, the rule does not remove the requirement that a party seeking  
971 fees file a motion; it simply provides a mechanism for resolution of some motions  
972 without formal hearings.

#### 973 **Advisory Committee Comment—2004 Adoption**

974 Rule 119.05 was amended in 2004 in a single way: to make it clear that the  
975 mechanism for streamlined approval of attorney fees in default matters is also  
976 available for matters proceeding pursuant to confession of judgment, even if not  
977 technically a default. Confessions of judgment are authorized and limited by Minn.  
978 Stat. § 548.22 (2002), but that statute does not address how attorney fee requests that  
979 accompany confessions of judgment should be heard. Because the rule both allows  
980 streamlined entry of a judgment for attorney fees and provides procedural protection  
981

982  
983

to the judgment debtor, the committee believes it is appropriate to apply this procedure to judgments pursuant to confession.

984 **RULE 521. REMOVAL (APPEAL)**

985 **TO DISTRICT COURT**

986  
987 \* \* \*

988 (d) Removal Perfected; Vacating Judgment; Transmitting File.

989 When all removal papers have been filed properly and all requisite fees paid as  
990 provided under Rule 521(b), the removal is perfected, and the court shall issue an  
991 order vacating the order for judgment in conciliation court as to the parties to the  
992 removal, and the ~~whole contents~~ pertinent portions of the conciliation court file of the  
993 cause shall be filed in district court.

994  
995 **1993 Committee Comment**

996 Rule 521(b) establishes a twenty-day time period for removing the case to  
997 district court. The twenty days is measured from the mailing of the notice of  
998 judgment, and the law requires that an additional three days be added to the time  
999 period when notice is served by mail. *Wilkins v. City of Glencoe*, 479 N.W.2d 430  
1000 (Minn.App.1992) (construing rule 6.05 of the Minnesota Rules of Civil Procedure).  
1001 Computing the deadline can be difficult and confusing for lay persons, and Rule 514  
1002 attempts to alleviate this problem by requiring the court administrator to perform the  
1003 computation and specify the resulting date in the notice of order for judgment,  
1004 taking into consideration applicable rules, including rule 503 of these rules and rule  
1005 6.05 of the Minnesota Rules of Civil Procedure.

1006 In district court, personal service may only be made by a sheriff or any other  
1007 person not less than 18 years of age who is not a party to the action. *Reichel v.*  
1008 *Hefner*, 472 N.W.2d 436 (Minn.App.1991). This applies to personal service under  
1009 this Rule 521. Service may not be made on Sunday, a legal holiday, or election day.  
1010 Minn.Stat. §§ 624.04, 645.44, subd. 5 (1990); Minn. Const. art. VII, § 4.

1011  
1012 **Advisory Committee Comment—2004 Amendments**

1013 Rule 521(d) is amended in 2004 to clarify its application in a situation where  
1014 one of several co-parties (either co-plaintiffs or co-defendants) removes (appeals) a  
1015 conciliation court decision while another co-party does not take that action. The  
1016 committee believes that the conciliation court judgment should become final against  
1017 any party who does not remove the case and in favor of any party against whom  
1018 removal is not sought.

1019 Rule 521 establishes an approved and effective means of service by mail to  
1020 accomplish removal of a conciliation court case to district court for trial de novo.  
1021 By decision in 2004, the Minnesota Supreme Court held that a party may also rely  
1022 on the different means of service by mail contained in Minn. R. Civ. P. 4.05. See  
1023 *Roehrdanz v. Brill*, 682 N.W.2d 626 (Minn. 2004). Because service under that rule  
1024 may require a signed receipt from the party being served, such service may not be  
1025 effective.

RULE 702. BAIL

1026  
1027  
1028 (a) **Approval of Bond Procurers Required.** No person shall engage in the  
1029 business of procuring bail bonds, either cash or surety, for persons under detention  
1030 until an application is approved by ~~a majority of the judges of the judicial district~~ the  
1031 State Court Administrator's Office. Approval shall permit the applicant to issue bail  
1032 bonds throughout the State of Minnesota. Nothing in this section shall infringe upon  
1033 a judge's discretion in approving a bond. The application form shall be obtained from  
1034 ~~the court administrator~~ State Court Administrator's Office. The completed  
1035 application shall then be filed with the ~~administrator~~ State Court Administrator's  
1036 Office stating the information requested and shall be accompanied by verification that  
1037 the applicant is licensed as an insurance agent by the Minnesota Department of  
1038 Commerce. The approval granted under this rule may be revoked or suspended by the  
1039 ~~chief judge of the judicial district or the chief judge's designee~~ State Court  
1040 Administrator's Office and such revocation or suspension shall apply throughout the  
1041 State of Minnesota. Approved applicants are required to apply for a renewal of  
1042 approval within a time period (not less than one year) established by the State Court  
1043 Administrator's Office.

1044 (b) **Corporate Sureties.** Any corporate surety on a bond submitted to the  
1045 judge shall be one approved by ~~a majority of the judges of the judicial district~~ the  
1046 State Court Administrator's Office and authorized to do business in the State of  
1047 Minnesota.

1048 (c) **Surety Insolvency.** Whenever a corporate surety becomes insolvent, the  
1049 local agent shall notify the State Court Administrator's Office and the court in every  
1050 county in which it has issued or applied to issue bonds, in writing immediately.  
1051 Within fourteen (14) days after such notice to the court, the agent shall file with the  
1052 trial court administrator a security bond to cover outstanding obligations of insolvent  
1053 surety, which may be reduced automatically as the obligations are reduced. In the

1054 absence of such surety or security bond, a summons shall be sent to all principals on  
1055 the bonds of the surety.

1056 \* \* \*

1057

1058 **Advisory Committee Comment—2004 Amendments**

1059 Rule 702 is amended in 2004 to allow it to operate appropriately under the  
1060 system of statewide approval of bond procurers. Under the revised rule, the State  
1061 Court Administrator's Office reviews and approves bond procurers, and that  
1062 approval is then applicable in all district courts. The changes in the rule are not  
1063 intended to change the rule other than to effect this centralization of the agent  
1064 approval process.

1065 **Part VIII. Rules Relating to Criminal and Extended Jurisdiction Juvenile Matters.**

1066  
1067 **RULE 701. APPLICABILITY OF RULES**

1068 These rules apply in all criminal actions, and supplement the Minnesota Rules of  
1069 Criminal Procedure. In addition, Rule 707 applies in extended jurisdiction juvenile  
1070 proceeding.

1071 \* \* \*

1072 **Rule 707 Transcription of Pleas, Sentences, and Revocation Hearings in**  
1073 **Felony, Gross Misdemeanor, and Extended Jurisdiction Juvenile**  
1074 **Proceedings.**

1075 The following provisions relate to all pleas, sentences, and revocation hearings  
1076 in all felony, gross misdemeanor, and extended jurisdiction juvenile proceedings.

1077  
1078 (a) Court reporters and operators of electronic recording equipment shall file  
1079 the stenographic notes or tape recordings of guilty plea or sentencing hearings with  
1080 the court administrator within 90 days of sentencing. The reporter or operator may  
1081 retrieve the notes or recordings if necessary. Minn. Stat. § 486.03 (2002) is  
1082 superseded to the extent that it conflicts with this procedure.

1083 (b) No charge may be assessed for preparation of a transcript for the district  
1084 court's own use; any other person may order a transcript at the expense of that person.

1085 (c) The maximum rate charged for the transcription of any proceeding shall be  
1086 established, until July 1, 2005, by the Conference of Chief Judges, and thereafter by  
1087 the Judicial Council. Minn. Stat. § 486.06 (2002) is superseded to the extent that it  
1088 conflicts with this procedure.

1089  
1090 **Advisory Committee Comment—2004 Amendment**

1091 Rule 707 is a new rule, designed to implement provisions of orders of the  
1092 Minnesota Supreme Court in 2003 relating to the transcription of plea proceedings.  
1093 See Order, *In re Promulgation of Amendments to the Rules of Criminal Procedure*,  
1094 No. CI-84-2137 (Minn., Oct. 31, 2003); Order, *In re Promulgation of Amendments*  
1095 *to the Rules of Juvenile Procedure*, No. CX-01-926 (Minn., Nov. 10, 2003). The  
1096 rule is not intended to expand or alter the practice under these orders; it merely  
1097 codifies the orders as part of the general rules.  
1098  
1099