

Family Law ADR Dictionary

By Carl Arnold, last updated 1/22/2021

Admission of Service - As an alternative to having a party served by having a non-party hand the other party a Summons and Petition, it is often more efficient and less inflammatory to mail the other party the Summons and Petition along with an Admission of Service form that they can sign and return to prove to the court that the other party received the Summons and Petition.

Affidavit - A written factual statement signed under oath.

Affidavit of Service - A written statement asserting what documents were served and how and when they were served.

Agreement to Mediate - A written contract signed by the parties and the mediator that specifies the terms of mediation such as the role of the mediator, confidentiality, fee structure, etc.

Alternative Dispute Resolution (ADR) - A term used to describe out-of-court processes like mediation, arbitration and so on where parties attempt to resolve their legal disputes outside of a courtroom and without having a judge decide.

Appeal - When a party to a case does not agree with a court order at the District Court they may appeal to the Court of Appeals to review what the District Court has done and the Court of Appeals may affirm or overrule or send back to the trial court to do something else.

Arbitration - A process where a third-party who is a decision-maker for the case decides outside of court what will happen rather than after a trial in a courthouse with a judge.

Bias - "Bias is a disproportionate weight in favor of or against an idea or thing, usually in a way that is closed-minded, prejudicial, or unfair. Biases can be innate or learned. People may develop biases for or against an individual, a group, or a belief." (Wikipedia) Comment 1 to Rule I (Impartiality) of the Rule 114 Code of Ethics provides: "1. The concept of impartiality of the neutral is central to all alternative dispute resolution processes. 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." The Rule itself provides: "A neutral shall conduct the dispute resolution process in an impartial manner and shall serve only in those matters in which she or he can remain impartial and evenhanded. If at any time the neutral is unable to conduct the process in an impartial manner, the neutral shall withdraw." Comment 1 to Rule II (Conflicts of Interest) of the Rule 114 Code of Ethics provides: "1. A conflict of interest is any 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. If all parties agree to proceed after being informed of conflicts, the neutral may proceed with the case. If, however, the neutral believes that the conflict of interest would inhibit the neutral's impartiality, the neutral should decline to proceed."

Caucus - A term used by mediators and other ADR professionals to mean separating the parties into separate rooms and going back and forth so that the parties do not see or hear each other during the meeting, or at least while they are “in caucus” or “caucusing”.

Certificate of Representation (Cert of Rep; Certificate of Representation and Parties) - A court document identifying the attorney’s name and contact information for the party that they represent.

Child Support (Basic Support, Medical Support, Child Care Support) - The allocation of financial obligations for a child’s child care, medical insurance (and out of pocket) and Miscellaneous (food, clothing, shelter, etc.) needs between the parents.

Confidentiality in Mediation - Confidentiality in Mediation is defined in Rule 114 Code of Ethics Rule IV (Confidentiality). Generally, statements made and documents produced in mediation are not allowed as evidence in court and the mediator cannot be required to testify about the mediation and the mediator’s notes and records cannot be used as evidence.
https://www.revisor.mn.gov/court_rules/rule/gp-114~a0/

Court Administration - The office portion of the court system that receives documents, maintains court files and processes court orders.

Court File Number - The unique number assigned to each court case. For example:
66-FA-21-98765

Court Forms - The Minnesota Judicial Branch provides free online forms for various types of cases including Dissolution (Divorce), Paternity and Establishment of Custody and Parenting Time.

Decree - See Divorce Decree

Divorce Decree (AKA: Judgment and Decree; J&D; Stipulated J&D; Decree) - The formal title for the document ending a dissolution of marriage (divorce) case is: Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree for Dissolution of Marriage. As you can tell, this is a mouthful and people often shorten it for convenience in discussing this document to things like Judgment and Decree, J&D, Stipulated J&D and simply Decree.

Default (Default Hearing; Defaulted; Proceed by Default) - Default is a term used in a few different circumstances in court. A Default Hearing or Proceeding by Default typically means that a party did not respond or did not appear for a hearing and so the court will issue an order in their absence. This is often called being Defaulted. It can be a little confusing, because this seems like a different use of the word Default, but there is a form to submit along with a Stipulation signed by both parties to have the court accept a final agreement and that form is called a Default Scheduling Request.

Dissolution of Marriage - A type of court case that terminates a marriage and determines custody, parenting time, division of assets and debts, child support and other financial issues.

Divorce - See Dissolution of Marriage

District Court - The name used in Minnesota for the trial level of court where evidence is presented and witnesses testify before a judge (no juries in almost all types of Family Law cases in Minnesota).

Domestic Abuse No Contact Order (DANCO) - A domestic abuse no contact order is an order issued by a court against a defendant in a criminal case or a juvenile offender in a delinquency proceeding for domestic abuse, harassment, stalking and similar behavior.

Early Neutral Evaluation (ENE/SENE/FENE) - A process of evaluative mediation designed to be early in a divorce or never-married case timeline where a neutral or neutrals listen to each party, then provide evaluative feedback and then facilitate a settlement discussion. Parties can participate in Social Early Neutral Evaluation (SENE) to address custody and parenting time (non-financial) issues which are usually with a two-person (but some counties allow for a one-person SENE), male-female (and often attorney/non-attorney) SENE team. Parties may participate in SENE or FENE or both but they are separate sessions and, if the parties participate in both, then SENE is recommended to occur first. Financial Early Neutral Evaluation (FENE) is used to address financial issues such as division of assets and debts, spousal maintenance and child support. FENE almost always uses a one-person FENE provider model rather than two-person. ENE is defined in Rule 114.02(a)(4) (Definitions/Early Neutral Evaluation (ENE)) as "A forum in which attorneys present the core of the dispute to a neutral evaluator in the presence of the parties. This occurs after the case is filed but before discovery is conducted. The neutral then gives an assessment of the strengths and weaknesses of the case. If settlement does not result, the neutral helps narrow the dispute and suggests guidelines for managing discovery."

Evaluative Mediation - A type of mediation where a neutral third party provides feedback or recommendations. SENE and FENE are Evaluative Mediation.

Expedited Process - A special court (still in the District Courthouses) to hear only Child Support cases. No other issues other than Child Support can be decided in the Expedited Process (no custody or parenting time issues for example). The judges in the Expedited Process are not full judges and are called Magistrates (or Child Support Magistrates) instead of judges.

Facilitative Mediation - A type of mediation where a neutral third-party facilitates settlement discussions without providing feedback or recommendations and instead focuses on helping the parties in interest-based negotiations to try to reach a voluntary agreement. This is the most basic and common form of mediation.

Fee Waiver (In Forma Pauperis; IFP) - Court cases often have significant filing fees (approximately \$400 for filing for divorce per person and approximately \$100 to file a motion). There is a form to use where a party may provide their income/asset/debt information and request that the court waive (not require/set at \$0) their individual court filing fees.

Guardian Ad Litem (GAL) - A person appointed by the court to investigate and advocate for the best interests of a child or children in a court case.

Guide and File - An web-based system that helps users fill in court forms on the Judicial Branch website. <https://mncourts.gov/Help-Topics/Guide-and-File.aspx>

Harassment Restraining Order (HRO) - Regardless of the relationship of the parties, a Harassment Restraining Order is available when a person applies to court alleging harassment (generally defined here) which is when a person assaults or engages in harassing behavior (defined in the statute).

<https://www.revisor.mn.gov/statutes/cite/609.748>

Impartial - See Bias

Intake (for Mediation) - A form or the process involved in obtaining initial information about the participants in mediation (often includes financial information, contact information, whether there are any restraining orders and whether there are allegations of domestic abuse).

Interest-based Negotiation - A type of negotiation focused on addressing the needs, goals and concerns (“interests”) behind the positions of each party in order to more efficiently and effectively reach agreements that maximize the benefit to all parties than with traditional positional bargaining. (Also, but less commonly, referred to as Integrative Negotiation.) For example, a person’s position may be that they want a certain car at a certain price within a certain timeframe but their interests are likely to be satisfied by alternative options once we learn about why they want that particular car with those particular features on that timeline at that particular price.

Getting to Yes: Negotiating Agreement Without Giving In, by Roger Fisher and William Ury

Initial Case Management Conference (ICMC) - A court hearing early in the case where the judge addresses scheduling issues for the case and encourages the parties to select an ADR process (mediation/SENE/FENE).

Interpreter - A person to interpret for the parties (and the court, if in court). In court, interpreters are provided and paid for through the court system. In mediation, interpreters are hired by the parties. It is best to use a court-qualified interpreter for mediation. Interpreters include sign language interpreters.

Legal Separation - A type of court case that is exactly the same as Dissolution of Marriage (Divorce) but without legally divorcing. The parties would still be considered married but in all other aspects it would be the same as a divorce. Although available here in Minnesota, it is highly unusual to see a Legal Separation case.

Med-Arb - A hybrid process where a third-party first facilitates settlement discussions with the parties and then second, if they do not reach an agreement, the third-party makes a decision.

Mediated Agreement - An agreement reached by the parties during a mediation. It is usually in the form of a written document that is signed by the parties and their attorneys (if any). It can either be used as the basis for a more formal Stipulated Order that is submitted to the court for the judge's approval.

Mediation - "A forum in which a neutral third party facilitates communication between parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties." Rule 114.02(a)(7) https://www.revisor.mn.gov/court_rules/gp/id/114/

Motion (Responsive Motion, Temporary Motion, Ex-Parte Motion) - A formal written request to the court asking for a court order or orders. A motion is usually accompanied by one or more affidavits making factual assertions under oath related to the request being made to the court to support the motion. A response to a Motion is called a Counter-Motion or Responsive Motion. A Temporary Motion is a request for a court order that will be in place in the middle of the case until the final order deciding all issues. An Ex-Parte Motion is a motion made on an emergency basis (usually because of safety issues).

Neutral - See Rule 114 Neutral

Order for Protection (OFP) - An order available when a person applies to court alleging Domestic Abuse (generally defined here) which is when a family or household member has harmed or threatened harm to a person. An order for protection can limit where the other party may go (near work or residence) or do (not have contact with someone) and may also award temporary custody and child support and exclusive use of a residence, among other things. <https://www.revisor.mn.gov/statutes/cite/518B.01>

Parental Income for Child Support (PICS; PICS Percentage) - The total of the gross (before taxes or other deductions) income of both parents is Parental Income of Child Support. PICS Percentage is a term used to describe the relative percentage of the total income earned by each parent. For example, if one parent earns \$40,000 per year and the other earns \$60,000 per year, their Parental Income for Child Support would be \$100,00 and their PICS Percentages would be 40%/60%.

Parenting Consultant (PC) - A court-appointed third-party who works with parents to facilitate discussions about parenting disputes and, if they cannot agree, makes a decision. This is a med-arb process. The scope of authority of a PC is provided in the court order and is often

more broad than allowed by the PTE Statute including the ability to change what is in a court order related to co-parenting and parenting time. The PC process is usually not confidential, meaning that the PC may be called to testify as a witness and their records may be subpoenaed as evidence.

Parenting Time Expeditor (PTE) - A court-appointed third-party who works with parents to facilitate discussions about parenting disputes and, if they cannot agree, makes a decision. This is a med-arb process. The scope of authority of a PTE is provided in the court order but is limited by the PTE statute (see below). The PTE process is confidential, meaning that the PTE is not allowed to be called as a witness and their records are not allowed to be subpoenaed. The only thing allowed into court from the PTE process are any written PTE decisions.

<https://www.revisor.mn.gov/statutes/cite/518.1751>

Petition (Answer and Counter-Petition) - The beginning court document of a case (Ex: Petition for Dissolution of Marriage) that makes written allegations of facts and lists requested court orders. An Answer and Counter-Petition is a court document that responds to the petition and provides a responsive petition.

Petitioner/Respondent - Petition is the label the court system uses for the person who starts the case by having the other party served. The Respondent is the other party. The Petitioner is the initiating party and the Respondent is the responding party.

Positional Bargaining - A method of negotiation focused on positions (ex: "I won't go below \$X price") rather than interests (ex: "Tell me more about your needs for a quick turnaround so that we can try to address your concern.") Positional Bargaining can be described as an I-win-you-lose approach and Interest Based Negotiation can be described as a win-win approach to negotiation.

Qualified Neutral - An individual who has completed the training and continuing education requirements to be included on the State Court Administrator's Civil and/or Family Rosters as provided in Rule 114.

Reframing - The mediator takes in what the parties are saying and rephrases it in a new way that might look at it from a more positive perspective or with less emotionally charged language or categorizes it with other topics or asks whether a specific interest underlies their statement or otherwise gives the parties a way to think differently and more constructively about what has been said. For example: "Mediators explore and reframe the parties' interests in ways that help people move into problem-solving mode." Beer, Jennifer E.. *The Mediator's Handbook* (p. 5). New Society Publishers. Kindle Edition.

Restraining Order - A term commonly used to include any form of court order limiting contact between people.

Rule 114 - The Minnesota Court Rule chapter that addresses Alternative Dispute Resolution.

Rule 114 Roster - The list of qualified neutrals who have completed the training and continuing education requirements to be included on the State Court Administrator's Civil and/or Family Rosters.

Rule 114 Neutral - A person who has completed the training and continuing education requirements to be included on the State Court Administrator's Civil and/or Family Rosters. Often simply called a "Neutral".

Self-Determination - The concept that in mediation, the participants are in charge of whether they make agreements and what those agreements contain, and should be free of coercion between one participant and another or by a third party or by the mediator. This stands in contrast to a court decision, which means that the parties have given their decision making authority to the court by not having reached a voluntary agreement between the parties. Rule 1 of the Appendix to Rule 114 is titled "Self-Determination" and provides regarding Mediation: A mediator shall recognize 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.

Self-Represented/Pro Se - A party that is not represented by an attorney. Pro Se is latin and an more old-fashioned way to describe a party without an attorney.

Service of Process (Being Served) - A case starts when one party has another party served with a Summons (notice of case and timeline to respond) and Petition (describes what the case is about and what is being asked of the court). One party cannot serve another party. A third person must deliver the Summons and Petition to the other party and then fill out an Affidavit of Service saying what documents they delivered, to whom and the date of delivery.

Statute - When the state legislature passes laws that are then signed by the governor, they become statutes. We may often think of these as laws but in practice they are often instead called statutes.

Stipulation - Another word for agreement. Often used in the court system to title a document in order to indicate that the document (often signed by the parties and/or their attorneys) represents an agreement of the parties being submitted for the judge's approval. For example: "Stipulation and Order" or "Stipulated Order" are titles commonly used to indicate to the court that a proposed order is an agreement of the parties being submitted for the court's approval to resolve some or all issues of a case.

Transformative Mediation - A type of mediation where the mediator supports parties to transform the interaction between parties rather than focusing on resolving substantive issues. The goal is to improve the negative cycle of conflict between the parties.

[Robert A. Baruch Bush and Sally Ganong Pope, Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation, 3 Pepp. Disp. Resol. L.J. Iss. 1 \(2002\)](#)
The Promise of Mediation: The Transformative Approach to Conflict Revised Edition
by Robert A. Baruch Bush and Joseph P. Folger (2005)

Voluntary - See Self-Determination