

**Rule 114. Alternative Dispute Resolution****Rule 114.01 Applicability**

**(a) Applicability to Actions.** This rule governs court-annexed Alternative Dispute Resolution (ADR). All civil and family cases are subject to this rule except:

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

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

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

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2023.)

***Advisory Committee Comment - 1996 Amendment***

*This change incorporates the limitations on use of ADR in family law matters contained in Minn. Gen. R. Prac. 310.01 as amended by these amendments. The committee believes it is desirable to have the limitations on use of ADR included within the series of rules dealing with family law, and it is necessary that it be included here as well.*

***Advisory Committee Comments - 2022 Amendments***

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

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

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

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

### **Rule 114.02 Definitions**

The following terms shall have the meanings set forth in construing these rules.

#### **(a) Adjudicative Processes.**

(1) *Arbitration*. A process in which a Neutral or panel renders an award after consideration of the evidence and presentation by each party or counsel. The award may be binding or non-binding, pursuant to the agreement of the parties.

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

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

#### **(b) Evaluative Processes**

(1) *Early Neutral Evaluation (ENE)*. A process in which one or more Neutrals with experience in the subject matter of the dispute reviews information from the parties or their attorneys after the case is filed but before formal discovery is conducted. The Neutral may give an assessment of the strengths and weaknesses a claim, case, or defense; an opinion of settlement value; and an opinion as to how the parties should expect the court to rule on the case or issue presented. The parties, with or without the assistance of the Neutrals, negotiate after hearing the Neutrals' evaluation. If settlement does not result, the Neutrals may help narrow the dispute and suggest guidelines for managing discovery.

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

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

#### **(c) Facilitative Processes**

(1) *Mediation*. A process in which a Neutral facilitates communication and negotiation to promote voluntary decision making by the parties to the dispute.

#### **(d) Hybrid Processes**

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

(2) *Mediation-Arbitration (Med-Arb)*. A process in which a Neutral first mediates the parties' dispute and then, in the event of an impasse, serves as arbitrator of the dispute. The decision may be binding or non-binding, pursuant to the agreement of the parties.

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

(4) *Other*. Parties may create other ADR processes by means of a written agreement that defines the role of the Neutral.

**(e) Neutral.** A "Neutral" is an individual who provides an ADR process under this rule.

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

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective August 31, 1998; amended effective January 1, 2005; amended effective July 1, 2013; amended effective January 1, 2023.)

#### ***Implementation Committee Comment - 1993***

*The definitions of ADR processes that were set forth in the 1990 report of the joint Task Force have been used. No special educational background or professional standing (e.g., licensed attorney) is required of neutrals.*

#### ***Advisory Committee Comment - 1996 Amendment***

*The amendments to this rule are limited, but important. In subdivision (a)(10) is new, and makes it explicit that parties may create an ADR process other than those enumerated in the rule. This can be either a "standard" process not defined in the rule, or a truly novel process not otherwise defined or used. This rule specifically is necessary where the parties may agree to a binding process that the courts could not otherwise impose on the parties. For example, the parties can agree to "baseball arbitration" where each party makes a best offer which is submitted to an arbitrator who has authority to select one of the offers as fairest, but can make no other decision. Another example is the Divorce with Dignity Program established in the Fourth Judicial District, in which the parties and the judge agree to attempt to resolve disputed issues through negotiation and use of impartial experts, and the judge determines unresolved preliminary matters by telephone conference call and unresolved dispositive matters by written submissions.*

*The individual ADR processes are grouped in the new definitions as "adjudicative," "evaluative," "facilitative," and "hybrid." These collective terms are important in the rule, as they are used in other parts of the rule. The group definitions are useful because many of the references elsewhere in the rules are intended to cover broad groups of ADR processes rather than a single process, and because the broader grouping avoids issues of precise definition. The distinction is particularly significant because of the different training requirements under Rule 114.13.*

#### ***Advisory Committee Comments - 2022 Amendments***

*Rule 114.02 is amended to clarify and update the specific processes available for use in court-annexed ADR. The mini-trial is retained as an available process, although it is rarely used. The definitions of "Neutral" and "Qualified Neutral" are important under the revisions made to Rule 114. Any person providing ADR services under Rule 114 is a Neutral and thereby is subject to Rule*

114 and is deemed under Rule 114.04(a) to have consented to the authority of the ADR Ethics Board.

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

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

### **Rule 114.03 Notice By Court and Advice by Attorneys About ADR Processes**

**(a) Notice.** Upon request, and in cases where ADR is required under these rules, the court administrator shall provide information about ADR processes and the availability of a list of Neutrals who provide ADR services in that county.

**(b) Duty to Advise Clients of ADR Processes.** Upon being retained to advise on any civil dispute potentially subject to Rule 114, attorneys shall provide clients with information about available ADR processes.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2023.)

#### ***Implementation Committee Comment - 1993***

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

#### ***Advisory Committee Comment - 1996 Amendment***

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

#### ***Advisory Committee Comment - 2022 Amendment***

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

### **Rule 114.04 Selection of ADR Process and Appointment of Neutral**

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

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

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

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

**(c) Removal.** If the court selects a Qualified Neutral without the consent of all parties, any party may file a notice to remove the Qualified Neutral. Such notice must be filed with the court and served on the opposing party within 7 days of notice of the court's appointment. Upon receipt of the notice to remove, the court shall select another Qualified Neutral. After a party has once disqualified a Neutral as a matter of right, a substitute Neutral may be disqualified by the party only by making an affirmative showing of prejudice to the chief judge or his or her designee by motion filed within 7 days of notice of the court's appointment.

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

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

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

(Added effective July 1, 1994; amended effective January 1, 1996; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2008; amended effective July 1, 2013; amended effective July 1, 2015; amended effective January 1, 2023.)

#### ***Implementation Committee Comment - 1993***

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

#### ***Advisory Committee Comment - 1995 Amendment***

*Rule 114.04 is amended to make explicit what was implicit before. The rule mandates a telephone or in-court conference if the parties cannot agree on an ADR process. The primary purpose of that conference is to resolve the disagreement on ADR, and the rule now expressly says that. The court can, and usually will, discuss other scheduling and case management issues at the same time. The*

*court's action following the conference required by this rule may be embodied in a scheduling order entered pursuant to Rule 111.03 of these rules.*

#### ***Advisory Committee Comment - 1996 Amendment***

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

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

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

#### ***Advisory Committee Comment - 2007 Amendment***

*Rule 114.04(b) is amended to provide a presumptive exemption from court-ordered ADR under Rule 114 where the parties have previously obtained a deferral on the court calendar of an action to permit use of a collaborative law process as defined in Rule 111.05(a).*

#### ***Advisory Committee Comments - 2022 Amendments***

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

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

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

**Rule 114.05 Notice to Court Upon Settlement** If a filed action is settled through an ADR process, the attorneys shall promptly notify the court and, whether filed or not, complete the appropriate documents to bring the case to a final disposition.

(Amended effective January 1, 2023.)

*Advisory Committee Comments - 2022 Amendments*

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

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

**Rule 114.06 Attendance at ADR Sessions**

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

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

**(c) Attendance at Adjudicative Sessions.** Unless the court has ordered otherwise, individuals with the authority to settle the case need not attend adjudicative ADR sessions as long as such individuals are reasonably accessible.

**(d) Attendance at Evaluative, Facilitative, and Hybrid ADR Sessions.** Unless the court has ordered otherwise, individuals with the authority to settle the case shall attend all evaluative, facilitative, and hybrid ADR sessions.

**(e) Sanctions.** The court may impose sanctions for violations of this rule.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2023.)

*Implementation Committee Comment - 1993*

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

*Advisory Committee Comment - 1996 Amendment*

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

*Advisory Committee Comments - 2022 Amendments*

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

**Rule 114.07 Use of ADR Evidence in Court**

**(a) Evidence.** Without the consent of all parties and an order of the court, except as provided in paragraph (c), no evidence from an ADR process or any fact concerning the ADR process may be admitted in any later proceeding involving any of the issues or parties.

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

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

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

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2023.)

***Implementation Committee Comment - 1993***

*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.*

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

***Advisory Committee Comment - 2004 Amendment***

*The amendment of this rule in 1996 is intended to underscore the general need for confidentiality of ADR proceedings. It is important to the functioning of the ADR process that the participants know that the ADR proceedings will not be part of subsequent (or underlying) litigation. Rule 114.08(a) carries forward the basic rule that evidence in ADR proceedings is not to be used in other actions or proceedings. Mediators and lawyers for the parties, to the extent of their participation in the mediation process, cannot be called as witnesses in other proceedings. Minnesota Statutes, section 595.02, subdivision 1a. This confidentiality should be extended to any subsequent proceedings.*

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



*Advisory Committee Comments - 2022 Amendments*

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

**Rule 114.08 Neutral's Duty of Confidentiality**

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

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

(Adopted effective January 1, 2023.)

*Advisory Committee Comments - 2022 Amendments*

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

**Rule 114.09 Arbitration Proceedings**

**(a) General.** Parties may use binding or non-binding arbitration.

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

(2) Binding Arbitration. Any binding arbitration shall be conducted pursuant to Minnesota Statutes, chapter 572B ("Uniform Arbitration Act"), subject to any agreed-upon modifications permitted under the Act.

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

**(b) Evidence.**

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

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

(i) *Documents.* If copies have been delivered to all other parties at least 14 days before the hearing, the arbitrator may consider written medical and hospital reports, records, and bills;

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

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

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

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

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

**(c) Powers of Arbitrator.** The arbitrator has the following powers:

- (1) to administer oaths or affirmations to witnesses;
- (2) to take adjournments upon the request of a party or upon the arbitrator's initiative;
- (3) to permit testimony to be offered by deposition;
- (4) to permit evidence to be introduced as provided in these rules;
- (5) to rule upon admissibility and relevance of evidence offered;
- (6) to invite the parties, upon reasonable notice, to submit pre-hearing or post-hearing briefs or pre-hearing statements of evidence;
- (7) to decide the law and facts of the case and make an award accordingly;

- (8) to award costs, within statutory limits;
- (9) to view any site or object relevant to the case; and
- (10) any other powers agreed upon by the parties.

**(d) Record.**

(1) No record of the proceedings shall be made unless permitted by the arbitrator and agreed to by the parties.

- (2) The arbitrator's personal notes are not subject to discovery.

**(e) The Award.**

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

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

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

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

**(f) Trial after Arbitration.**

(1) Within 21 days after the arbitrator files the decision with the court, any party may request a trial by filing a request for trial with the court, along with proof of service upon all other parties. This 21-day period shall not be extended.

(2) The court may set the matter for trial on the first available date, or shall restore the case to the civil calendar in the same position as it would have had if there had been no arbitration.

(3) Upon request for a trial, the decision of the arbitrator shall be sealed and placed in the court file.

- (4) A trial de novo shall be conducted as if there had been no arbitration.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective July 1, 2015; amended effective January 1, 2020; amended effective January 1, 2023.)

***Implementation Committee Comment - 1993***

*The Committee made a conscious decision not to formulate rules to govern other forms of ADR, such as mediation, early neutral evaluations, and summary jury trials. There is no consensus among those who conduct or participate in those forms of ADR as to whether any procedures or rules are*

*necessary at all, let alone what those rules or procedures should be. The Committee urges parties, judges and neutrals to be open and flexible in their conduct of ADR proceedings (other than arbitration), and to experiment as necessary, at some time in the future, to revisit the issues of rules, procedures or other limitations applicable to the various forms of court-annexed ADR.*

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

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

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

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

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

#### ***Advisory Committee Comment - 1996 Amendment***

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

#### ***Advisory Committee Comments - 2022 Amendments***

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

### **Rule 114.10 Communication with Parties and Court in ADR Process**

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

**(b) Evaluative, Facilitative, and Hybrid Processes.** Parties and their counsel may communicate ex parte with the Neutral in evaluative, facilitative, and hybrid processes with the consent of the Neutral, so long as the communication encourages or facilitates settlement.

**(c) Communications to Court during ADR Process.** During an ADR process the Neutral may inform the court of only the following:

- (1) Without comment or recommendations, whether the case has undergone an ADR process and whether it has or has not been resolved;
- (2) Whether a party or an attorney has failed to comply with the order to attend the process or pay the court-ordered fees;
- (3) Any request by the parties for additional time to complete the ADR process;
- (4) With the written consent of the parties, any procedural action by the court that would facilitate the ADR process;
- (5) The Neutral's assessment that the case is inappropriate for that ADR process; and

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

**(d) Communications to Court after ADR Process.** When the ADR process has been concluded, the Neutral may inform the court of only the following:

(1) That the case has been settled and may also include a copy of the written agreement;

(2) Without further comment, that the case has not been settled and, with the written consent of the parties or their counsel, that resolution of pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate resolution of the dispute;

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

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

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2023.)

***Implementation Committee Comment - 1993***

*This Rule is modeled after Rule 25 VI of the Special Rules of Practice for the Second Judicial District.*

***Advisory Committee Comment - 1996 Amendment***

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

***Advisory Committee Comments - 2022 Amendments***

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

**Rule 114.11 Fees**

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

**(b) Remedies for Non-Payment.** If parties or attorneys fail to pay the Neutral, the court, with notice to the parties and counsel and upon filing of an affidavit from the Neutral or a party, may issue an order granting such relief as the court deems just and proper. The Neutral, in seeking relief under this rule, shall maintain confidentiality as required by these rules. The Neutral has the right to suspend services if not paid in accordance with the court order or agreement with the parties and/or their attorneys.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2023.)

***Implementation Committee Comment - 1993***

*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.*

*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.*

#### ***Advisory Committee Comment - 1996 Amendment***

*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.*

#### ***Advisory Committee Comment - 2022 Amendments***

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

*Rules 114.12 to 114.14 are deleted and their subject matter moved to the separate Rules of the Minnesota Supreme Court for ADR Rosters and Training.*

### **Rule 114.12 ADR Rosters and Training**

#### **Subdivision 1. Applicability of Rules; Definitions.**

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

#### **(b) Definitions.**

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

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

(3) "Ride-along" means observation of a real-life ADR process, including observation by remote means, conducted by a Qualified Neutral. With consent of the parties and under the

supervision of the Qualified Neutral, the ride-along may also include participation in the ADR process.

**Subd. 2. Rosters of Neutrals; Fees.**

**(a) Rosters.** The State Court Administrator shall establish rosters of Qualified Neutrals in the following categories:

- (1) Civil
  - (A) Civil Facilitative/Hybrid
  - (B) Civil Adjudicative/Evaluative
- (2) Family
  - (A) Family Law Facilitative/Hybrid
  - (B) Family Law Hybrid
    - (i) Parenting Time Expeditor
    - (ii) Parenting Consultant
  - (C) Family Law Evaluative/Hybrid
    - (i) Social Early Neutral Evaluation
    - (ii) Financial Early Neutral Evaluation
    - (iii) Moderated Settlement Conference
  - (D) Family Law Adjudicative

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

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

**Subd. 3. Qualification of Neutrals.**

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

**(b) Community Dispute Resolution Programs (CDRPs).** A Community Dispute Resolution Program (CDRP) is one certified by the State Court Administrator pursuant to Minnesota Statutes, chapter 494. Each CDRP may place its organization on the appropriate roster of Qualified Neutrals as a provider of services pursuant to these rules provided that the CDRP maintains records and

ensures that any Neutral providing services that are subject to these rules satisfies the roster requirements for those services. These Neutrals are subject to the jurisdiction of the ADR Ethics Board when providing services within the scope of these rules, and shall follow the Code of Ethics set forth in this Rule.

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

**(a) Civil Facilitative/Hybrid Neutrals Roster.**

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

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

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

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

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

(D) Mediator conduct, including conflicts of interest, confidentiality and admissibility of evidence, neutrality, ethics, standards of practice, support of party self-determination, and mediator introduction pursuant to the Civil Mediation Act, Minnesota Statutes, sections 572.31-572.40;

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

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

**(b) Civil Adjudicative/Evaluative Neutrals Roster.**

(1) *Qualifications.* All Qualified Neutrals providing arbitration, summary jury trial, early neutral evaluation, and adjudicative or evaluative services or serving as a consensual special magistrate must have received a minimum of 6 hours of classroom training.

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

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

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

(C) Settlement techniques;



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

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

**(c) Family Law Facilitative/Hybrid Neutrals Roster.**

(1) *Qualifications.* All Qualified Neutrals providing family law facilitative or family law hybrid services that include a mediation component must have received a minimum of 40 hours of classroom training, with an emphasis on experiential learning.

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

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

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

(C) 4 hours of issues and needs of children in divorce;

(D) 6 hours of family law including custody and parenting time, visitation, child and spousal support, asset distribution and valuation, and taxation;

(E) 5 hours of family budget and finances;

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

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

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

(ii) 3 hours of domestic abuse screening, including simulation or roleplaying; and

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

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

(1) *Qualifications.* All Qualified Neutrals providing parenting time expediting services must: (1) be qualified family law facilitative Neutrals under subdivision 4(c); (2) demonstrate at least 5 years of experience working with high-conflict couples in the area of family law; and (3) be recognized as qualified practitioners. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses related to high-conflict couples or acceptance by peers as experts in their field.

(2) *Training.* All qualified Parenting Time Expeditors (PTEs) shall have also completed minimum of 12 hours of certified training, including at least 40 percent experiential learning, on the following topics:

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

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

(1) *Qualifications.* All Qualified Neutrals providing parenting consulting services must: (1) be qualified family law facilitative Neutrals under subdivision 4(c); (2) demonstrate at least 5 years of experience working with high-conflict couples in the area of family law; and (3) be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses related to high-conflict couples, or acceptance by peers as experts in their field.

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

- (A) Emotional and psychological dynamics of separation and divorce;
- (B) Developmental needs of children;
- (C) Addressing domestic abuse in the parenting consulting process;
- (D) Appointing orders;
- (E) Fee agreements and billing;
- (F) Managing the parenting consulting process;
- (G) Standards and best practices;
- (H) Statutes and rules, including the Code of Ethics for Court-Annexed ADR Neutrals;
- (I) Issues and techniques;
- (J) Drafting summaries and decisions; and
- (K) Avoiding and handling complaints.

**(f) Family Law Evaluative/Hybrid Neutrals Roster - SENE.**

(1) *Qualifications.* All Qualified Neutrals providing Social Early Neutral Evaluations (SENE) must: (1) be qualified family law facilitative Neutrals under subdivision 4(c); (2) have at

least 5 years of experience as family law attorneys, mental health professionals dealing with divorce-related matters, or as other professionals working in the area of family law; and (3) be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses related to high-conflict couples, or acceptance by peers as experts in their field.

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

- (A) Demonstration of a judicial officer's Initial Case Management Conference orientation;
- (B) Pre-SENE considerations and staging the SENE;
- (C) Introduction to the process;
- (D) Information gathering;
- (E) SENE team consultation;
- (F) Feedback;
- (G) Attorney-client caucus;
- (H) Negotiation;
- (I) Completing the process;
- (J) Reporting to the court; and
- (K) Addressing domestic violence in SENE and FENE.

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

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

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

- (A) Pre-FENE considerations;
- (B) The financial evaluative meeting;
- (C) Making sure the parties are heard;
- (D) Delivering the opinion;
- (E) Concluding the FENE; and
- (F) Finalizing the agreement.

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

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

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

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

A Neutral already listed on the Family Law Evaluative/Hybrid Neutrals Roster - SENE or on the Family Law Evaluative/Hybrid Neutrals Roster - FENE may alternatively satisfy the training requirements for the MSC Roster by either (1) observing one MSC, or (2) completing a one-hour classroom training covering the subject matters listed above.

**(i) Family Law Adjudicative Neutral Roster.**

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

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

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

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

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

**(j) Continuing Education for Facilitative, Hybrid, and Evaluative Neutrals.** All Qualified Neutrals providing facilitative, hybrid, or evaluative services must attend 18 hours of continuing education about alternative dispute resolution subjects within the 3-year period in which the Qualified Neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences. Up to 9 hours of continuing education can be from participation in a facilitated consultation group with other Neutrals. The Qualified Neutral is responsible for maintaining attendance records and shall disclose the information to program administrators and the parties to any dispute. The Qualified Neutral shall submit continuing education credit information to the State Court Administrator's office within 60 days after the close of the period during which his or her education requirements must be completed.

**(k) Continuing Education for Adjudicative Neutrals.** Qualified Neutrals providing adjudicative services must attend 9 hours of continuing education about alternative dispute resolution subjects during the 3-year period in which the Qualified Neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences. The Qualified Neutral is responsible for maintaining attendance records. The Qualified Neutral shall submit continuing education credit information to the State Court Administrator's Office within 60 days after the close of the period during which his or her education requirements must be completed.

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

- (1) Have taken training as set forth in this rule or equivalent training on the same topic before teaching it;
- (2) Be a Qualified Neutral if providing ADR services in Minnesota. If a trainer from out of state is not on the roster, the Minnesota ADR rules/law topics as required in this section, including the Code of Ethics for Court-Annexed ADR Neutrals, must be taught by a local expert who is on the roster;
- (3) Demonstrate 5 years of experience as a Neutral in the ADR process being taught; and
- (4) Demonstrate experience as a trainer using the role play/experiential learning format required by these rules.

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

(Added effective July 1, 1997; amended effective January 1, 2005; amended January 1, 2023.)

***Advisory Committee Comment - 1996 Amendment***

*This rule is primarily new, though it incorporates the procedure now in place administratively under Rule 114.12(b) for placement of neutrals on the roster and the establishment of fees.*

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

**Rule 114.13 Code of Ethics and Enforcement Procedures****(A) CODE OF ETHICS FOR COURT-ANNEXED ADR NEUTRALS.****Introduction**

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

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

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

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

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

Failure to comply with any provision in this Code of Ethics may be the basis for the ADR Ethics Board to impose any of the remedies or sanctions set out in these rules, or for other actions by the Minnesota Supreme Court.

Violation of a provision of this Code shall not create a claim for relief or presumption that a legal duty has been breached. Nothing in this Code should be deemed to establish or augment any substantive legal duty on the part of Neutrals.

**Subdivision 1. Impartiality.** A Neutral shall conduct the dispute resolution process in an impartial manner and shall serve only in those matters in which the Neutral can remain impartial. Impartiality means freedom from favoritism or bias either by word or action, and a commitment

to serve all parties as opposed to a single party. If at any time the Neutral is unable to conduct the process in an impartial manner, the Neutral shall withdraw.

**Subd. 2. Conflicts of Interest.**

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

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

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

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

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

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

In an advertisement or other communication to the public, a Neutral who is on the Roster of Qualified Neutrals may use the phrase "qualified neutral under the Rules of the Minnesota

Supreme Court for ADR Rosters and Training." It is not appropriate to identify oneself as a "certified" Neutral.

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

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

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

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



(D) the parties should consult an attorney before signing a settlement agreement if they are uncertain of their rights; and

(E) in a family court matter, the agreement is subject to the approval of the court.

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

(1) Draft legal documents that are intended to be submitted to the court as an order to be signed by a judge or judicial officer;

(2) Regardless of a Neutral's qualifications or licenses, provide therapy to either party nor provide legal representation or advice to any party or engage in the unauthorized practice of law in any matter during an ADR process; or

(3) Require a party to stay in the ADR process or attempt to coerce an agreement between the parties.

**Subd. 8. Self-Determination in Mediation.** A mediator shall act in a manner that recognizes that mediation is based on the principle of self-determination by the parties.

## **(B) RULES OF THE MINNESOTA ADR ETHICS BOARD.**

### **Introduction**

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

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

**Subdivision 1. Scope.** These rules apply to complaints against any individual or community dispute resolution program subject to Rule 114 or 310 of the General Rules of Practice for the District Courts, The Code of Ethics for Court-Annexed ADR Neutrals, or the Rules of the Minnesota Supreme Court for ADR Rosters and Training. Collaborative attorneys or other professionals as defined in Rule 111.05(a) of the Minnesota General Rules of Practice are not subject to the Rule 114 Code of Ethics for Court-Annexed ADR Neutrals and these rules while acting in a collaborative process under Rule 111.05, nor are court appointed special masters under Rule 53 of the Rules of Civil Procedure or court appointed experts appointed under Rule 706 of the Rules of Evidence.

### **Subd. 2. Procedure.**

#### **(a) Complaint.**

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

(2) The ADR Ethics Board, in conjunction with the State Court Administrator's Office, shall review the complaint and determine whether the Board has a reasonable belief that the allegation(s), if true, would constitute a violation of the Code of Ethics for Court-Annexed ADR

Neutrals. The ADR Ethics Board may request additional information from the complainant if it is necessary prior to making a recommendation.

(3) If the allegation(s) of the complaint, if true, would not constitute a violation of the Code of Ethics for Court-Annexed ADR Neutrals, the complaint shall be dismissed and the complainant and the Neutral shall be notified in writing. The ADR Ethics Board's decision is final and no further review is permitted.

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

**(c) Response and decision.**

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

(2) After review and investigation, the Board shall advise the complainant and Neutral of the Board's findings, conclusions, and sanctions in writing by electronic means or U.S. Mail. If the ADR Ethics Board makes a finding that ethical violations have occurred and is imposing sanctions, the Neutral shall have the right to request reconsideration or to proceed directly to a formal hearing. If no ethical violations have been found or the complaint has been resolved informally, there is no right to a hearing.

**Subd. 3. Remedies and Sanctions.**

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

(1) Issue a private reprimand.

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

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

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

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

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

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

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

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

**(d) Review Hearing.**

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

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

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

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

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

(6) *Discovery, Scheduling Order.* At the prehearing conference, discovery shall be discussed. The parties shall have the right to conduct discovery, which must be completed within the time limits as set by the referee. The referee will issue a scheduling order setting forth the extent and scope and time for discovery. The scheduling order will set the hearing date and deadlines for the exchange of witness and exhibit lists. The referee may issue subpoenas for the attendance of witnesses and production of documents or other evidentiary material.

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

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

(A) Issue a private reprimand.

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

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

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

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

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

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

#### **Subd. 4. Confidentiality.**

##### **(a) Public Access.**

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

(A) As between Board members and staff;

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

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

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

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

(2) *Public Sanctions.* If the Board designates a sanction as public, the sanction and the grounds for the sanction shall be of public record, and the Board file shall remain confidential.

**(b) Prohibited Disclosure.** The deliberations, mental processes, and communications of the Board and staff, shall not be disclosed.

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

#### **Subd. 5. Privilege; Immunity.**

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

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

(Added effective July 1, 1994; amended and renumbered effective July 1, 1997; amended effective March 1, 2001; amended effective January 1, 2005; amended effective January 1, 2023.)

***Implementation Committee Comment - 1993***

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

***Advisory Committee Comment - 1996 Amendment***

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

***Advisory Committee Comment - 2000 Amendment***

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

***Implementation Committee Comment - 1993***

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

***Advisory Committee Comment - 1996 Amendment***

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

***Advisory Committee Comment - 2015 Amendments***

*The amendment to Rule 114.04 is not substantive in nature or intended effect. The term "self-represented litigant" is being used uniformly throughout the judicial branch and is preferable to "non-represented party" and "pro se party," both to avoid a Latin phrase not used outside legal jargon and to facilitate the drafting of clearer rules.*

*Rule 114.09 is amended to delete the requirement that the arbitrator must serve a copy of the award by first-class mail. Service is required, but service by mail is permitted, as is any other method authorized by the rules or ordered by the court with respect to the arbitration.*