

Rule 310. Alternative Dispute Resolution**Rule 310.01 Applicability**

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

1. actions enumerated in Minnesota Statutes, section 518B.01 (Domestic Abuse Act);
2. contempt actions;
3. maintenance, support, and parentage actions when the public agency responsible for child support enforcement is a party or is providing services to a party with respect to the action; and
4. proceedings conducted by a special master appointed under Rule 53 of the Rules of Civil Procedure.

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

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

(Amended effective July 1, 1997; amended effective May 1, 2012; amended effective January 1, 2023.)

Advisory Committee Comment - 1996 Amendment

This rule is changed from a limited rule dealing only with mediation to the main family law rule governing use of ADR. All of the provisions of the existing rule are deleted because their subject matter is now governed by either the amended rule or Minn. Gen. R. Prac. 114.

The committee believes that there are significant and compelling reasons to have all court-annexed ADR governed by a single rule. This will streamline the process and make it more cost-effective for litigants, and will also make the process easier to understand for ADR providers and neutrals, many of whom are not lawyers.

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.

Rule 310.02 Post-Decree Matters

The court may order ADR under Rule 114 in matters involving post-decree relief. The parties shall discuss the use of ADR as part of the conference required by Rule 303.03(c).

(Amended effective July 1, 1997.)

Advisory Committee Comment - 1996 Amendment

This rule expressly provides for use of ADR in post-decree matters. This is appropriate because such matters constitute a significant portion of the litigation in family law and because these matters are often quite susceptible to successful resolution in ADR.

The committee believes the existing mechanism requiring the parties to confer before filing any motion other than a motion for temporary relief provides a suitable mechanism for considering ADR and Rule 303.03(c) is amended to remind the parties of this obligation.

Rule 310.03 Family-Law Specific ADR Procedures

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

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

(c) Parenting Time Expediting and Parenting Consulting.

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

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

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

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

(Amended effective January 1, 2023.)

Advisory Committee Comments - 2022 Amendments

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

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