Appendix XVII

SENE Manual

**EARLY NEUTRAL EVALUATION**

**OF CHILD CUSTODY AND**

### **PARENTING TIME DISPUTES**

# **SPONSORED BY:**

# **HENNEPIN COUNTY**

# **DEPARTMENT OF COMMUNITY CORRECTIONS**

# **FAMILY COURT SERVICES**

# **pRESENTERS:**

# **MARYELLEN BAUMANN, Msw**

# **& James Goetz, msw, ma, jd**

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# **EARLY NEUTRAL EVALUATION TRAINING – BROOKLYN CENTER**

**JUNE 21 AND 22, 2010**

**DAY 1:**

I BRIEF HISTORY OF HENNEPIN COUNTY ENE MODEL

I. INTRODUCTION TO ENE

1. BY THE PRESIDING JUDICIAL OFFICER DURING ICMC
2. BY THE ENE TEAM

II. GROUP DISCUSSION

1V. STEP-BY-STEP DESCRIPTION OF THE ENE PROCESS

1. INTAKE
2. FIRST SESSION
3. INTRODUCTION
4. CASE PRESENTATION BY PARTIES, ATTORNEYS
5. QUESTIONING BY ENE TEAM
6. ENE TEAM CONSULTATION
7. FEEDBACK FROM ENE TEAM TO PARTIES, ATTORNEYS
8. ATTORNEY/CLIENT CAUCUS
9. FEEDBACK FROM CLIENTS/ATTORNEYS TO ENE TEAM
10. NEGOTIATION
11. WRAP UP

## GATHERING ADDITIONAL INFORMATION

1. CONDUCTING ADDITIONAL SESSIONS
2. REPORTING RESULTS TO BENCH

V. DEMONSTRATION OF INITIAL ENE SESSION

VI. ENE COMPARED TO OTHER DISPUTE RESOLUTION METHODS

VII. GROUP DISCUSSION, QUESTIONS

ADJOURN

#### BROOKLYN CENTER TRAINING

**DAY 2:**

I. ETHICS

II. EFFECTIVE USE OF INTRODUCTION

ROLE PLAY

III. EFFECTIVE USE OF QUESTIONING

ROLE PLAY

IV. EFFECTIVE USE OF CONSULTATION

ROLE PLAY

V. EFFECTIVE USE OF FEEDBACK

ROLE PLAY

VI. EFFECTIVE USE OF SETTLEMENT NEGOTIATIONS

ROLE PLAY

VII. CULTIVATING EFFECTIVE RELATIONSHIPS

1. WITH THE COURT

2. WITH LAWYERS

3. WITH YOUR ENE TEAM MEMBER

VIII. SPECIAL ISSUES - PROBLEMS AND SOLUTIONS

(E.G. DOMESTIC ABUSE, CHEMICAL DEPENDENCY, CHILD ABUSE, PROBLEM CLIENTS OR ATTORNEYS, MENTAL HEALTH)

1. DEVELOPING ENE IN YOUR DISTRICT

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**INITIAL SESSION**

1. Greeting
2. Room set up and seating
3. Introduction

1. Explain ENE Program

a. Goals and objectives

b. Background, role of ENE team

c. Mechanics of program, initial session

D. Gathering Information

1. Each party given 20 to 30 minutes to present its position

2. Each party given five to ten minutes to respond to issues brought up by other party

3. ENE team asks questions geared towards gleaning additional information and clarifying information presented by parties

E. ENE team takes fifteen minute consulting break to discuss case (Attorneys caucus with their clients during this time)

a. Team trades clinical impressions

b. Team decides if further information is required, including contacting collateral sources and whether additional sessions are warranted.

c. Team decides what feedback to give clients

1. Positives that each party is contributing to well-being of children

2. Dilemmas facing each party and the parties as a co-parenting team

3. Strength weaknesses of each party’s position relating to custody and parenting time.

4. Appropriate referrals (counseling, parenting time classes, etc)

5. Viable settlement options

F. Team provides feedback to parties and attorneys.

a. Additional information and/or additional sessions are required

1. configuration of additional sessions

2. what information is warranted

3. schedule final feedback session

or

b. Final feedback given re: custody, parenting time recommendations, recommendations for referrals, settlement options

G. Attorneys, clients caucus to consider ENE team’s recommendations.

H. Reconvene to engage in settlement negotiations

I. Wrap up

a. If full agreement, who will write it up and submit it to court?

b. If partial agreement, who will write it up and submit it to court? What process will be used to resolve remaining contested issues? (e.g.’s limited evaluation, mediation, etc.)

c. If no agreement, make recommendation to court about which process should be ordered to address contested custody and parenting time disputes.

**ADDITIONAL STEPS AND COMPLETION OF ENE**

1. Varieties of additional steps
   1. Supplemental information from families
      1. Adult parties
      2. Significant others
      3. Extended family
      4. Children
      5. Observation of parents and young children
   2. Collateral sources

1. Only as absolutely needed

2. Existing service providers

3. Expedited evaluations

II. Final ENE conference

1. Present additional feedback
2. Opportunity for additional settlement negotiations
3. Discuss next step with parties and attorneys

III. Report to judicial officer

1. Oral format, followed up with memo
2. Report to court limited to:
   1. Settlement or partial settlement reached and delineated
   2. No settlement reached
   3. Case management recommendations only; no content of information gathered, parties’ character, or ENE recommendations presented to Court

IV. Judge decides next step



|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | | |  | | DC# FA 27 78935 | | FCS# | 788956 | |
|  | | | |  |  | | |  |  | |
| \* Case Name: | **smith** | | ( P) Mother | | | | ( R) Father | | | |
| \* Name  Address | | Jolene Erin Smith  19 Colbert Dr.  Denver, CO 55499 | | | | | Greg Lawrence Smith  250 Stewart St Apt. 406  Aurora, CO 55499 | | |
| Phone | | (H) 822 356- 7821 (C) | | | | | (H) 822- 8765 (C) | | |
| E-mail Address | |  | | | | |  | | |
| \* Birthdate & Age | | Age 36 | | | | | Age 39 | | |
| \* Cultural Heritage | |  | | | | |  | | |
| \* Date of Marriage | | June 1994 | | | | |  | | |
| \* Date of Divorced/Separation | | Nov. 23,2007 | | | | |  | | |
| \* Previous Spouse | |  | | | | |  | | |
| \* Current Spouse/Companion | |  | | | | |  | | |
| \* Employer  \* Work Hours  \* Employer’s Phone # | | St Olaf’s Hospital  M-F 8:30-5  822 456-9080 | | | | | Tupac Electronics, Inc.  M-F 8:00 a.m. to 5:00 p.m.  922 876-3434 | | |
| \* Job Title | | Human Resources | | | | | Sales | | |
| \* Attorney and Attorney Address: | | Derek Hansen  44 IDS Center  Denver, Co 45344 | | | | | Elaine Keller  624 Perot Place  Aurora, Co 66788 | | |
| Attorney Phone & Fax: | | 933 456 - 8212 | | | | | 933 7654 | | |
| Attorney E-mail Address | |  | | | | |  | | |

CHILDREN (This Relationship)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| \*NAME | \*SEX | \* DOB | \* AGE | \* LIVE WITH | SCHOOL | GRADE |
| Mark David | M |  | 10 | Mother |  | 3rd |
| Meghan Catherine | F |  | 8 | Mother |  | 1st |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

OTHER CHILDREN

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
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OTHER AGENCY OR SERVICE ACTIVITY

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| \* AGENCY | \* ACT. | \* INACT. | \* REMARKS | \* FAM MBR. |
| BCA & SIP: |  |  |  |  |
| GAL: |  |  |  |  |
| Order for Protection: |  |  | Issued: |  |

FAMILY COURT SERVICES ACTIVITY

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| \* DATE | \* SOURCE OF REFERENCE | \* SERVICE REQUESTED | | \* DUE  DATE | \* COURT DATE | DATE CLOSED | \* COUNSELOR |
| 1/23/08 | Judge Allen | ENE - 1/30/09 – 1 pm | |  |  |  | Goetz/Baumann |
|  |  |  | |  |  |  |  |
|  |  |  | |  |  |  |  |
|  |  |  | |  |  |  |  |
| DATE FACE  SHEET COMPLETED 8/19/06 | | | BY: jsa  SA: | | | DATE ORDER  RECEIVED 8/19/06 | |

**Contrasting Early Neutral Evaluation with Custody Study and Mediation**

I. Comparing the options:

A. Early Neutral Evaluation vs. Custody Studies

1. It is similar because:

It is evaluative

Team listens to and considers the issues

There is the option to gather additional data

Recommendations are made

2. But it’s more:

Two people conduct it: a team of one male and one female

Both parties and both attorneys are present

Case issues are presented informally, without exaggeration

Critical issues assessed in a short time

Clients have the opportunity to back down from allegations

Attorneys get a more realistic view of their clients

The focus is on settlement

Partial settlements are possible thereby limiting the scope of this or further evaluations

There is no written record aside from the agreement or recommended next move

B. Early Neutral Evaluation vs. Mediation

1. It is similar because:

It occurs early in the process

Its focus is settlement

It empowers the parties – keeping them in the decision making role

It is a confidential process

2. But it’s more:

People are encouraged to tell their story/make their arguments/present their case

Attorneys are present

The Court is involved serving as adjunct support

Two, gender balanced, inputs are provided

Evaluative results are provided and available to negotiation

It can be used with Domestic Abuse cases including pro se

II. Early Neutral Evaluation’s Unique characteristics: This is a “Different Animal”

1. It occurs very early in the process in a joint decision of the Court, attorneys and clients

2. It offers highly conflicted cases an alternative to studies

3. It brings together all players: evaluators, attorneys, collaterals and clients allowing for

More input into creativity

A chance for the attorney to screen his case

A chance for the attorney to hear the other side

4 The focus is on informed cooperation and settlement

5. It uses both mediation and evaluation skills with components of each

6. It models a cooperative, collaborative relationship between: a male/female team; parts of the Court system

7. The team, attorneys and Court are cast in a helpful, supportive role

8. It is time limited with a clear process and clear goals

9. It is extremely flexible – possible to shape it to the needs of the family.

10 It allows triage for further Court actions

11. Decisions are made with all parties present and informed.

12. Settlements are more likely to hold up

13. Later custody studies, if done, show increased settlement.

**ENE ETHICAL ISSUES**

**1. AGREEMENT” ISSUES.**  Is the ENE team placing too much pressure on the parties to settle “on the spot”? Do parties need more time?

1. **BACKGROUND ISSUES**. What is proper background to conduct ENE’s? What education, job experience is needed? To what extent should practitioner have conducted custody mediations and evaluations.
2. **CONFIDENTIALITY/DATA PRIVACY ISSUES.** What are limits of confidentiality? Have they been explained to parties? What is the potential for ex parte contact with judicial officers, subsequent custody evaluators, etc.
3. **ENE TEAM ISSUES.** What if there is marked disagreement between team members as to findings/conclusions. Should these be conveyed to parties? If so, how? What is obligation of ENE team to evaluate its functioning/effectiveness? What is obligation of team to seek assistance if it becomes stagnant, partially dysfunctional?
4. **INFORMATION GATHERING AND CONVEYING FINDINGS TO ATTORNEYS/PARTIES ISSUES.** Is there a strong basis to support team findings? When is the team reaching conclusions and making findings that are based on inadequate information? Is team managing the scope of the information presented by and solicited from the parties in a way that brings forth the most salient information? What are costs/benefits of conducting additional ENE sessions with parties, including court, agency pressure to bring process to a quick conclusion.
5. **DOMESTIC ABUSE/POWER IMBALANCE ISSUES.** Screening for domestic abuse; altering/adjusting format of process when DA and power imbalances emerge.
6. **CASE STATUS CHANGE ISSUES.** Is it ethical for ENE team members to subsequently perform mediation with parties?

**EFFECTIVE USE OF THE ENE INTRODUCTION**

1. Goals for the introduction

A. Put clients at ease / be positive – enlist collaborative participation in a sense of problem

solving.

B. Normalize some of the experience, i.e., Early Neutral clients will be having their first

contact with the system and have no baseline for comparison. Normalize feelings

C. Set the tone for the next two hours including: clarification of the philosophy,

format/procedure and possible courses of action.

D. Set the rules

E. Set the parameters – 30 days

F. Clarify every ones role

G. Direct topics of mental health, chemical abuse, child abuse or domestic abuse to be

brought up.

H. Talk about and emphasize the settlement focus

I. Establish areas of agreement and disagreement

J. Set the focus on the children

1. The introduction should mention:

A. The philosophy of the process, i.e., intended to provide clients with feedback they would

likely encounter in an extended evaluation.

B. The clients will be provided with possible settlement options.

C. A Contrast Early Neutral Evaluation with lengthy evaluation

1. They are shorter and less time consuming.

2. Less expensive.

3. There is more immediacy between clients, counsel and evaluators.

4. More opportunity for settlement is provided.

5. All involved can participate in future planning.

6. The process is less intrusive.

7. It usually focuses several key factors and not a long list of mutual complaints.

8. It does not promote extensive system sanctioned conflict because there is less time

for conflicts to develop and/or take on a life of their own.

1. State clearly that the team will not go beyond its boundaries.
2. Describe the process to clients

A. Each party/attorney will be asked to discuss the relevant case issues and other pertinent information.

B. The petitioner will proceed first followed by the respondent.

C. Each side will be given an opportunity to “rebut” and/or add information.

D. After that the evaluators will ask questions of each side.

E. After the presentations the evaluators will confer and discuss impressions with each

other while participants take a break or confer with attorneys.

F. After the evaluators confer all will reconvene and evaluators will provide

a. feedback.

b. request and arrange for additional information; set another meeting and give

feedback

G. Attorneys and clients will have time to confer

H. Everyone will reconvene to discuss settlement options and how to proceed

I. The goal is to be done with the entire process within 30 days.

IV. Ask for pictures of the children and discuss these briefly, identifying them as “who we are

Working for”. Tell clients you want them to describe the children, “make them come alive”

in their presentations.

V. Ask the attorneys to identify areas of agreement and what needs to be focused on in the

ENE

**EFFECTIVE USE OF THE QUESTIONING PERIOD**

# I. Purpose

1. Clarify/amplify information presented by parties to gain better understanding of the nature of their disputes and impasses.
2. Broach new subjects that may be contributing to impasses.
3. Inquire about sensitive topics that clients may have glossed over or declined to mention, such as domestic abuse, chemical dependency and mental health.
4. Balance information on each side

1. Broker power imbalances

2. Allow for differing communication styles

3. Ensure that both parties have had ample opportunity to be heard, present their cases by end of questioning.

1. Bring and keep awareness of the children into the session

# II. Limits

A. ENE sessions are time limited. Make conscious decisions about which topics to pursue and how long to pursue them. Some areas of exploration may be interesting, but are not sufficiently related to understanding the parties’ impasses and how to resolve them.

# III. ENE Team Attitude

* 1. Respectful/Compassionate
  2. Attentive/Active listener
  3. Avoid interrogatory or judgmental style
  4. Avoid premature conclusions

# IV. Potential Topic Areas to Cover

1. Established or suspected domestic abuse
2. Established or suspected child abuse
3. Mental health issues
4. Drug or alcohol abuse
5. History of parties’ relationship
6. New significant others
   1. Involvement with children
   2. Impact on children
   3. Attitude of other parent
   4. Future plans
7. Parenting arrangements
   1. Parenting patterns before separation
   2. Parenting schedule since separation
   3. Work schedules
   4. Responsibilities for children
   5. Differences in expectations for children
8. Specific information on children
   * 1. School achievement, problems
     2. Relationships with peers
     3. Emotional strengths, problems
     4. Activities
     5. Physical health, problems
     6. Special needs
     7. Child’s temperament, adjustment to change
     8. Perceived relationship with each parent

I. Proposed plan for parenting

J. Home location

* + 1. Distance between homes
    2. Plans to move

**EFFECTIVE USE OF TEAM CONSULTATION DURING SESSION**

I. Consultation Break

A) Trade initial impressions of family, parties, attorneys, client/attorney relationships.

B) Identify/discuss salient factors that are driving disputes/impasses.

C) What are the strengths of the parties as individuals and as a parenting team?

D) How credible, consistent is each party in their presentation of the situation?

E) What are the key meanings and beliefs that each party attaches to the situation (e.g., around the label of custody?)

F) What themes emerged or can be created that will help to build consensus and resolve impasses?

G) What are the relevant statutory factors that merit consideration?

H) Does the team have enough information to give the parties reliable and valid findings and recommendations that would be consistent with the findings and recommendations associated with a full custody evaluation? If not what additional information is needed and how should the information be obtained?

I) What settlement options/proposals are viable, and what can be done to increase the chances that the clients and attorneys will accept the proffered proposals?

J) Are there areas of disagreement between the ENE team members about the situation? How should these be handled? Should the differences of opinions be shared with the family? If so, how?

K) How should the feedback to the family be orchestrated? What role should each team member implement in this regard?

**EFFECTIVE USE OF THE FEEDBACK PHASE**

I. Purpose of Feedback section

A. Convey respect and confidence in parents’ decision-making

B. Shift the focus toward settlement.

C. Provide solid information including the probability of predictions

D. Provides clear recommendations

II. Cautions for ENE team members

A. Acknowledge and respect the limits of the knowledge you obtain

B. Respect the limitations of your experience

C. Be aware of the cooperation/resistance of attorneys, clients and team members

D. Allow for the possibility that you may not be able to or should not make a recommendation, provide answers

# III. Process

A. Begin with something positive, even if you have to stretch

1. Strengths of the family

2. Strengths of each parent

3. Things that have worked well for children

B. Acknowledge the family pain

C. Describe the family system/process as you see it

1. Roles played

2. The disappointment or unique struggle each may have experienced

D. Recognize feelings each has particularly if they are affecting the process

1. Probably different for “leaver” and “leavee”

1. Normalize current pain, anger, awkwardness
2. Reframe anger as normal reaction to end of dream

E. Present observations of children’s needs

1. General needs for children this age in divorce

2. Specific needs of their kids from their information

3. Special needs of any one or more of their children

F. Deliver feedback on problems for each parent or for couple

1. Problems in couple parenting of children

2. Problems for each in parenting of children

3. Individual issues for each parent

G. Review the information clients gave you and the issues raised as an evaluator would view it

H. Provide recommendations and a proposal for settlement:

1. Parenting plan/schedule

2. Custodial labels

3. Interventions

4. Future dispute resolution methods

5. Next step(s) for parents

## EFFECTIVE USE OF THE SETTLEMENT PHASE

I. Consultation between the attorneys and their clients

1. Provide private space for this meeting

2. Check in to determine if they have questions or need assistance

3. Allow for shuttle diplomacy if this is useful

4. Allow for attorneys to consult with each other and with or without you if desired

## II. Settlement meeting

1. Determine if people feel ready to proceed. If not, set a date to reconvene

2. Clarify that you are now shifting roles in to a settlement phase

3. Check in with each side to determine what their thoughts are regarding the

proposal

4. Identify areas of agreement and disagreement

5. Do not allow posturing or positioning to develop. Redefine disagreement as

just that

6. If disagreements exist, identify them and begin approaching each

individually, asking for ideas, making proposals

7. Feel free to inject predictions about how evaluators or the Court might view

Proposals or add in child development information.

8. Offer creative solutions:

Trial periods

Mediation to resolve a specific issue

Court rulings on single issues

Time for attorneys to negotiate money issues

9. Verify and clarify agreements reached and any disagreements remaining.

10. Determine what to inform the Court and who will do this.

11. Congratulate the clients, if appropriate, for their hard work on behalf of their

children

**CULTIVATING EFFECTIVE RELATIONSHIPS WITH THE COURT**

1. Remember the program is a partnership with the Court. As such, the ENE Program and the Bench are in a relationship that must be cultivated.

a. Initially involve judges who understand the process, then educate judges who wish to join the process at a later date.

b. Know your Bench and the idiosyncrasies of each judge as it relates to ENE.

c. Consider an agency liaison whose role it is consult/interact with the Court on a regular basis.

2. Make sure that everyone is on the same page:

a. Clarify how the ENE process works; provide opportunities for training

b. Clarify if advocates can or cannot sit in

c. Emphasize Attorneys must be present

d. Clarify the time boundaries of the process and exceptions to this

e. Clarify any confusing orders

3. Communicate

a. Meet with the Bench at the outset of the program and at regular intervals thereafter

1. clear up ambiguities in orders, expectations, etc.

2. discuss how to deal with problem attorneys – report immediately?

b. Clear up any ambiguities with the Bench sooner rather than later

d. Give the Court immediate feedback about the results of the initial session

1. by e-mail

2. by memo

3. by phone

4. Schedule mutual training endeavors with the Bench. Educate one another.

5. Recognize/acknowledge the critical role judicial officers play in the team. Thank them.

**CULTIVATING EFFECTIVE RELATIONSHIPS WITH ATTORNEYS**

1. Keep in mind that this is a partnership; you each have your role. Embrace and utilize the attorney’s expertise, rather than compete with it.

2. Question your assumptions about attorneys. While they are advocates for their clients and sometimes adversarial with opposing counsel, they are not necessarily adversaries to the ENE process or the ENE team.

3. Acknowledge the useful roles the attorneys play during the introduction.

4. Make explicit how attorneys can be most helpful in process, and then reinforce their helpful behavior during and after the session. This includes:

a. preparing their clients for ENE

b. defining the areas of agreement/dispute for the team

c. helping their clients tell their stories vs. telling the stories for them

d. clarifying legal issues that impact custody and parenting time for their client or for the entire group

e. managing their client’s behavior and emotions

f. proposing settlement options

5. Establish a settlement-oriented atmosphere with the attorneys in the session.

a. State clearly up front that this is not Court and we do not want presentations to be made in this manner

b. Repeat this as necessary

c. Diffuse and/or cut off court-like debates between attorneys and any attempts they make to “one up” each other

d. Consider interrupting the ENE and meeting alone with the attorney or attorneys to discuss problems if they persist

6. Session rules such as not interrupting and being respectful apply to attorneys as well as clients. Enforce limits accordingly.

7. Be in charge of the session without usurping the attorneys’ role as client advocates. Avoid getting in power struggles with attorneys who feel obligated to “win.”

8. Remember Attorneys are also managing their relationship with their client.

9. Do not allow attorneys to turn the ENE session into a motion hearing, whereby they are presenting oral arguments to convince the judge (disguised as the ENE team) of the righteousness of their clients’ position. Encourage attorneys to supplement their clients’ presentations, rather than to deliver it themselves.

10. Allow attorneys sufficient time to caucus with their clients and have private rooms available for them to do so.

11. Accept that the roles of the attorneys and the ENE team members are qualitatively different. There is an inherent tension between the roles. A certain amount of conflict is to be expected. Don’t be defensive when your opinions are being questioned or even discredited. Such occasions provide another opportunity to provide additional feedback, reduce ambiguity and clarify information.

12. Be thoughtful and strategic about your interventions:

a. Should they be primarily directed towards the attorneys or to the clients?

b. How will the nature of the attorney shape how you present the information?

13. Negotiate who will write any agreement to the Court and on what time line.

14. Offer conference calls, as appropriate, to help with further settlement discussions.

15. Solicit feedback from attorneys regarding their level of satisfaction with the ENE process.

16. Make arrangements to discuss ENE at Family Bar functions.

**CULTIVATING AN EFFECTIVE RELATIONSHIP WITHIN THE ENE TEAM**

TWO HEADS ARE NOT AUTOMATICALLY BETTER THAN ONE, BUT THEY CAN BE IF:

1. The ENE team acknowledges that they are in a relationship that needs to be developed and cultivated.

A. Prior to working together the ENE team should take time to discuss:

* Educational backgrounds and work experience
* Experiences working directly with attorneys
* How comfortable each team member is with conflict
* Views on when joint custody
* How their working styles may clash or complement
* When additional ENE sessions are warranted

B. During the course of the ENE team’s working relationship, team members must be able to:

* Openly discuss concerns
* Openly discuss their own performance
* Constructively problem solve
* Discuss steps to make the team more effective
* Respect the sanctity of the team
* Recognize when outside consultation is needed
* Recognize that there are occasions when there is simply a lack of fit between team members

2. The ENE team adopts a systems approach as a conceptual framework to conduct ENE’s

Systems within systems, within systems.

a. Systems approach does not require that all members of the system be in the same room

b. Systems approach helps to ensure that interventions are not made in a vacuum

c. Assessing, diagnosing the parties and their family dynamics, it is most helpful to think of the parties and the family as a system separate from the ENE team.

d. When intervening and engaging in settlement, it is helpful for the team to consider themselves as part of a larger system that includes the parties and their attorneys.

###### Minnesota Supreme Court Rule 114.02

#### Evaluation Process

(5) *Early Neutral Evaluation (ENE).*

A forum in which attorneys present the core of the dispute to a neutral evaluator in the presence of the parties. This occurs after the case is filed but before discovery is conducted. The neutral then gives a candid assessment of the strengths and weaknesses of the case. If settlement does not result, the neutral helps narrow the dispute and suggests guidelines for managing discovery.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

FAMILY COURT DIVISION

Petitioner,

## ORDER

# and Court File No. DC XXXXXX

Respondent.

The above-entitled matter came duly on for hearing before the Court for an Initial Case Management Conference on , 2004. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq., appeared on behalf of Petitioner, who also appeared and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq., appeared on behalf of Respondent, who also appeared.

THE COURT FINDS:

The Court described the Early Neutral Evaluation program made available by Hennepin County Family Court Services and the parties read the attached Early Neutral Evaluation Program Description. Both understand the process and advised the Court that they wish to participate in the program.

IT IS ORDERED:

Hennepin County Family Court Services shall perform an Early Neutral Evaluation (ENE). Both parties and their attorneys shall participate in the ENE as directed by the evaluators.

Dated: , 2004 BY THE COURT:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Judge of District Court

**HENNEPIN COUNTY FAMILY COURT**

**AND FAMILY COURT SERVICES**

**EARLY NEUTRAL EVALUATION**

PROGRAM DESCRIPTION

Early Neutral Evaluation (ENE) is a short-term, confidential evaluative process designed to facilitate prompt dispute resolution in Family Court custody and parenting time (visitation) matters. The program offers the evaluative impressions of experienced Family Court Services (FCS) staff to parties engaged in custody and parenting time disputes. Feedback is provided to parties and their attorneys based on case presentations and a limited amount of information gathering. The ENE process is completed within one month.

1. At any point in the legal process, from the initial judicial management conference to a pretrial settlement conference, the judicial officer may refer parties and their attorneys to Family Court Services for an ENE.
2. A male/female ENE team of experienced FCS staff is assigned to the case.
3. Attorneys and parties meet with the ENE team within one week after the assignment. Each attorney or pro se party is asked to present the important issues in the case. Unless it is necessary to gather additional information, the ENE team provides immediate feedback about each party’s case. Settlement possibilities are discussed and areas needing further scrutiny are identified.
4. The ENE team may gather additional information as necessary and the team may interview parties, interview child(ren), or gather limited collateral data.
5. The attorneys and parties may meet a second time with the ENE team to hear the team’s assessment and recommendations. Settlement options for full and partial agreements are discussed. If the case does not settle, the team identifies critical issues that may need additional study.
6. If a full or partial settlement is reached, a copy of the agreement is sent to the judicial officer. If a full agreement is not reached, a report is made to the judicial officer by the ENE team regarding partial agreements that have been reached. The report may be written or oral. The ENE team members may not be called as a witness with respect to the information obtained or the recommendations made during the ENE process.

In addition to reporting full and partial settlements, the ENE team members may communicate with the judicial officer for the limited purpose of facilitating case management. For example, if one fact issue stands in the way of settlement, such as a chemical health issue, the ENE team may report the disputed issue to the judicial officer for case management purposes. Armed with such information, the judicial officer may opt for a chemical health assessment rather than a full-fledged custody evaluation.

7. If the case does not settle, the judicial officer consults with the parties and their attorneys to decide the next step, which may be mediation, an expedited evaluation of the remaining issues, or a full custody evaluation.

**EARLY NEUTRAL EVALUATION (ENE) CONFIDENTIALITY**

ENE is the most confidential service offered by Family Court Services. It is intended to provide you with a setting in which you may speak openly and not fear that your statements will be shared with the Court or any future evaluator. Your participation will not set a precedent for future Court proceedings or future work with Family Court Services. To accomplish this, information you provide will be handled in the following manner:

1. Any notes taken by the ENE team are locked in a file which only they may access.

2. Any notes taken during telephone conversations with doctors, teachers, therapists or other collaterals, are kept in the locked file with ENE team member’s notes. Only the team may access them.

3. The team members may not be deposed, subpoenaed, or give testimony regarding any information obtained during the ENE.

4. The team members will not share information from the ENE with anyone, even if you sign a release of information for them to do so.

5. Should you proceed with an evaluation, neither team member will conduct that evaluation and neither of them may talk to or share notes with that evaluator about your ENE.

6. There are exceptions in which information is released as follows:

a. Doctor’s, teacher’s, therapist’s, or other collateral’s case notes or letters to the team will be kept in the file and are available to any future evaluator or the Court.

b. If you have a chemical or child psychological evaluation during the ENE and you do not reach settlement during the ENE, this evaluation will be written and remain in your file available to any future evaluator or the Court. Should you reach settlement, no report is written or, in the case of the Child Psychologist, will remain sealed with the ENE team’s notes.

c. If you have an adult psychological evaluation, that is done by another department. It is always written and will remain in your file.

d. ENE team members are mandated reporters to Child Protection. Should information received by the team rise to the level of being reportable, it must be reported. The team has no discretion over the release of this information. However, you will be informed that the team made a report.

e. The Court is notified of the outcome of the ENE in one of the following ways:

(1) That you settled and what your agreement is.

(2) That you settled and the attorneys will report the agreement.

(3) That you did not settle. If you do not settle, the team advises the Court as to what services should be used next, typically an evaluation. In this case, the team may also recommend a chemical assessment or adult psychological assessment **BUT** may not say why this is being recommended.

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Signature Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

# **SAMPLE SCHEDULING LETTER**

DATE:

TO: (Client / Client)

(Attorney / Attorney)

FROM: (Evaluator / Evaluator)

RE: Early Neutral Evaluation Appointment

You have been scheduled to meet with us for an Early Neutral Evaluation on:

(Day, Month, Day Year, Time)

Both attorneys and clients must attend the session and be available to meet for at least two hours.

Please do not bring friends, children, or other family members as they will not be included in the session. Also, there is no supervision of children left in the Family Court Services playroom so you must make child care arrangements for young children. However, it would be helpful for you to bring a few pictures of your children for the ENE team members to see.

Attorneys and/or pro se parties should come prepared to describe and explain what each party wants regarding custody and/or parenting time and why their plan is in the best interest of the child(ren).

If you have any questions or concerns, please call one of the assigned staff members.

Evaluator’s name, phone number

Evaluator’s name, phone number

We are looking forward to assisting you resolve your issues regarding your child(ren).

**Minnesota Statute 518.17 – The Best Interest of the Child**

1. The wishes of the child(ren)'s parent or parents as to custody.

2. The reasonable preference of the child(ren) if the Court deems the child(ren) to be of sufficient age to express preference.

3. The child(ren)'s primary caretaker.

4. The intimacy of the relationship between each parent and the child(ren).

5. The interaction and inter-relationship of the child(ren) with a parent or parents, siblings and any other person who may significantly affect the child(ren)'s best interests.

6. The child(ren)'s adjustment to home, school and community.

7. The length of time the child(ren) lived in a stable satisfactory environment and the desirability of maintaining continuity.

8. The permanence as a family unit of the existing or proposed custodial home.

9. The mental and physical health of all individuals involved; except that a disability, as defined in section 363.01, of a proposed custodian or the child(ren) shall not be determinative of the custody of the child(ren), unless the proposed custodial arrangement is not in the best interest of the child(ren).

10. The capacity and disposition of the parties to give the child(ren) love, affection, and guidance, and to continue educating and raising the child(ren) in the child(ren)'s culture and religion, or creed, if any.

11. The child(ren)'s cultural background.

12. The effect on the child(ren) of the actions of an abuser, if related to domestic abuse as defined in Section 518B.01, that has occurred between the parents or between a parent and another individual, whether or not the individual alleged to have committed domestic abuse is or ever was a family or household member of the parent.

13. Except in case in which finding of domestic abuse as defined in Section 518B.01 has been made, the disposition of each parent to encourage and permit frequent and continuing contact by the parent with the child(ren).

JOINT PHYSICAL AND/OR JOINT LEGAL CUSTODY:

A. The ability of the parents to cooperate in the rearing of their child(ren).

B. Methods for resolving disputes regarding any major decision concerning the life of the child(ren), and the parents willingness to use those methods.

C. Whether it would be detrimental to the child(ren) if one parent were to have sole authority over the child(ren)'s upbringing.

D. Whether domestic abuse, as defined in Section 518B.01, has occurred between the parents.

EMAIL TO: [Tanja.Manrique@courts.state.mn.us](mailto:Tanja.Manrique@courts.state.mn.us),

CC: [ashante@hotmail.com](mailto:ashante@hotmail.com);, [jamalsanders@yahoo.com](mailto:jamalsanders@yahoo.com)

Subject: ENE report re: Ashante Ruth N’Kobi and Jamal Abdul Sanders

Judge Manrique:

RE: Ashante Ruth N’Kobi and Jamal Abdul Sanders

District Court File # : PA# 50355 & 50365

On August 18, 2004 the Hennepin County Family Court ordered Family Court Services to conduct an Early Neutral Evaluation with the parties. That Early Neutral Evaluation has been held.

The parties agree to the following:

1. The parties will share joint legal custody of Kareem and Angel.

2. Ms. N’Kobi will have sole physical custody of Kareem and Angel.

3. Mr. Sanders will have parenting time with Kareem every other weekend and two weekday evenings per month. He will have parenting time with Angel when he picks up and drops off Kareem. The parenting time with Angel will change as her medical condition allows.

4. Holiday access will be as negotiated between the parents.

5. Ms. N’Kobi will provide Mr. Sanders with names of all medical providers as well as the schedule of Angel’s care. Mr. Sanders will be responsible for getting information directly from these providers. Ms. N’Kobi agrees to teach Mr. Sanders how to care for Angel.

6. Both parents will contact the other as soon as possible in any emergency.

7. Both parents will notify the other of any scheduled medical appointments for the children and both parents may attend these appointments. Mr. Sanders agrees to assist in taking the children to medical appointments.

8. Both parents will leave their house phone lines activated during parenting time in the event of an emergency.

9. Mr. Sanders will not be responsible for any day care expenses until his income increases.

10. If the parties are unable to resolve parenting differences in the future, they may return to Hennepin County Family Court Services for mediation.

Thank you for the referral of this family.

Respectfully,

James Goetz and Jennifer Rojer