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CS-87-843

MEMORANDUM

Date: February 9, 1996
From: Mike Johnson
To: Bev Dease
Subject: Publication of Hearing Notice

Please have the following notice and attachment sent out to the usual places (Finance & Commerce, MSBA, West Publishing, Legal Ledger, etc.). Please ask that they print the notice ASAP, and the attachment too, if possible.

If I can help you speed this up by providing additional copies, please call me. Please call me when you have mailed the requests. Thanks, Bev.

FEB 12 1996

FILED

**ADVISORY COMMITTEE SEEKS
COMMENTS ON
FAMILY LAW ADR PROPOSAL**

[St. Paul, MN February 9, 1996]

The Minnesota Supreme Court Advisory Committee on the General Rules of Practice will hold a public hearing on Friday, March 8, 1996, beginning at 2:00 p.m. in room 230 of the Minnesota Judicial Center, to receive comments on Alternative Dispute Resolution in family law cases, including comments relating to the proposed Rule 313 prepared by the Committee on Dispute Resolution Alternatives in Family Law chaired by Mr. Daniel Ventres.

A copy of the proposed Rule 313 has been attached to this notice for publication. If not otherwise available, a copy may be obtained by contacting Advisory Committee Reporter David Herr (Maslon, Edelman, Borman & Brand, 3300 Norwest Center, Minneapolis, MN 55402-4140) or Advisory Committee staff Mike Johnson (612-297-7584; 120 Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, MN 55155).

Persons wishing to testify at the hearing should contact Advisory Committee staff Mike Johnson to register. Written comments should be submitted to the Advisory Committee staff at or before the hearing.

Prepared by Committee on Dispute Resolution
Alternatives in Family Law: "Divorce with Dignity"
Judicial Case Management. Mr. Daniel Ventres, Mpls., chair

Draft #13

RULE 313:

Alternative Dispute Resolution in Family Court Matters

Rule 313.01 Purpose and Applicability

(a) **Purpose.** The purpose of this rule is to encourage and facilitate settlement of family law disputes without resorting to trial.

(b) **Applicability.** All family court matters in district court are subject to Alternative Dispute Resolution (ADR) processes, except for actions enumerated in Minn. Stat. § 518B (Domestic Abuse Act), and contempt actions. Absent agreement of the parties after the opportunity to consult with an attorney, the Court shall not require parties to participate in mediation or med-arb where one of the parties claims s/he has been 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 by the other party.

The Court shall not require parties to attempt ADR under this rule if they have made an unsuccessful effort to settle all issues with a qualified neutral before the filing of Form 9C, the ADR Informational Statement.

Rule 313.02 Definitions. The following terms shall have the meanings set forth in construing this rule and applying them to court-affiliated ADR programs.

(a) ADR Processes.

Adjudicative Processes

(1) *Arbitration.* A Forum in which the parties and their attorneys present their positions on the issues in dispute before a neutral third party, who renders a specific award. If the parties stipulate in advance, the award will be binding and will be enforceable in the same manner as any contractual obligation. If the parties do not stipulate that the award is binding, the award is not binding, and any party may request a trial de novo.

(2) *Consensual Special Magistrate (CSM).* A forum in which issues of a dispute are presented to a neutral third party in the same manner as a family lawsuit is presented to a judge. This process is binding but includes the right of appeal directly to the Court of Appeals.

(3) *Judicial Case Management.* A case management process by which a judicial officer closely manages the case. The issues in dispute are resolved through negotiations and by using third party neutrals to settle parenting, valuation, and other conflicts. The judicial officer decides non-dispositive matters by telephone conferences, instead of by motions, and decides unresolved dispositive issues based on written submissions rather than through evidentiary hearings.

Facilitative Processes

(4) *Collaborative Law.* A process by which the parties and attorneys agree to resolve the issues in dispute using cooperative strategies rather than adversarial techniques. They consent, in advance, not to litigate any disputes as long as they participate in the process.

(5) *Mediation.* A forum in which a neutral third party facilitates communication between or among parties to promote settlement. Mediators may not impose their own judgment on the issues in dispute.

Evaluative Processes

(6) *Early Neutral Evaluation (ENE).* A forum in which attorneys or *pro se* parties present the issues in dispute to a neutral evaluator in the presence of the parties. This generally 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.

(7) *Non-binding Advisory Opinion.* A forum in which attorneys or *pro se* parties present the issues of the dispute, frequently complex or technical issues, to a neutral advisor in the presence of the parties. The neutral then issues findings and a non-binding report or recommendation.

Hybrid Processes

(8) *Mediation-Arbitration (Med-arb).* A hybrid of mediation and arbitration in which the parties initially mediate the issues in dispute; but if they reach impasse, they arbitrate the deadlocked issues.

(9) *Other.* Parties may by agreement create an ADR process. They shall explain their process in the Informational Statement pursuant to Rule 313.04.

(b) Neutral. A "neutral" is an individual or entity who or which provides one or more ADR processes.

(c) **Qualified Neutral.** A "qualified neutral" is an individual or entity included on the State Court Administrator's rosters as provided in Rule 313.13. An individual must have completed the certified training and met the standards and qualifications, continuing practice requirements and continuing education requirements provided in this rule to be a qualified neutral. An individual neutral provided by an entity also must meet the certified training, standards and qualifications, continuing practice requirements and continuing education requirements of this rule.

(d) **Impartial Expert.** An "impartial expert" is an individual or organization selected by the parties to render an opinion as to the value of an asset, the needs of the parties' children or other matters. The impartial expert shall be selected for his/her special expertise, such as knowledge, training, background or experience in a substantive area of concern to the parties. Impartial experts need not undergo certified training nor be on the State Court Administrator's rosters.

Comments

Parties may use more than one neutral or process. Due to regional differences, all forms of ADR listed in Rule 313.02 may not be available in every district.

313.025 Collaborative Law.

Those who opt for Collaborative Law must abide by the following restrictions:

- (a) **Motion Practice:** Neither party may bring any motions;
- (b) **Discovery:** Parties will exchange relevant information informally, but neither party will serve interrogatories or requests for admissions ; nor will any party take depositions;
- (c) **Experts:** If there are disputed matters which require experts to resolve, the parties will jointly hire neutrals to provide that information;
- (d) **Impasse:** If parties to a collaborative law process reach impasse, they may use an evaluative or facilitative process to assist in breaking the deadlock, but they shall not utilize an adjudicative process;
- (e) **Termination:** Either party in collaborative law may terminate that process any time by serving notice on the adverse party;
- (f) **Withdrawal:** If, despite good faith efforts to settle the matter, one or both of the parties choose to litigate the contested matters, both attorneys shall withdraw as counsel; neither they nor any members of their firm shall represent the parties in court.

Rule 313.03 Notice of ADR Processes

(a) Upon receipt of the completed Certificate of Representation and Parties required by General Rule of Practice for District Courts ("GRPDC") 104, the court administrator shall provide the attorneys of record and any unrepresented parties with information about ADR processes available in that county and the availability of the list of neutrals who provide ADR services to parties in that county.

(b) Attorneys shall provide their family law clients with the ADR information.

(c) The Notice to Parties which a public authority mails pursuant to Minn. Stat. § 518.5511 subd. (2)(b) shall contain information about the availability of ADR processes. Additionally, the administrator conducting the administrative conference pursuant to Minn. Stat. § 518.5511 subd. (3) shall describe the availability of ADR processes to resolve disputes about both support and parenting.

Comments

Each county should train and make available staff members who can explain this rule, ADR processes, and how to utilize the system to *pro se* parties.

Rule 313.04 Selection of ADR Processes

(a) **Conference.** After the filing of any action, except cases where an Affidavit of Default is filed with the Petition, the attorneys or *pro se* parties shall promptly confer regarding case management issues, including the selection and timing of the ADR process(es). Following this conference, the parties and their attorneys shall include ADR information in Form 9C. Form 9C shall also be filed in post-decretal motions.

Any party who claims to have been the victim of domestic abuse by the other party, and who is not represented by an attorney, need not meet and confer. In such cases, both parties shall complete and submit form 9C, stating the form(s) of ADR the parties individually prefer, not what is agreed upon.

(b) **Informational Statement.** The Family Law Informational Statement required by Rule 304.02(b) shall include a separate form for ADR processes (see Form 9C, the ADR Informational Statement, appended to this rule) which shall be submitted 60 days after the date of filing. In post-decretal motions Form 9C shall be submitted within two weeks of the scheduling of the post-decretal motion.

(c) **Court Involvement.** If the parties cannot agree on the appropriate ADR process(es), the timing of the process(es), or the selection of neutral(s), the Court shall schedule a telephone or in-court conference of the attorneys and any unrepresented parties within thirty days after the due date for filing informational statements pursuant to Rule 304.02 to discuss scheduling and case management issues. If no agreement on the ADR process is reached, the Court may order the parties to utilize any of the non-binding processes for each issue. The Court shall not order the parties to use more than one non-binding process for each issue. In Title IV actions, if the parties do not agree to an ADR process a contested hearing may be scheduled immediately.

(d) Scheduling Order. Within 60 days of the filing of the action (within two weeks of the submission of Form 9C in the case of post-decretal actions), the Court's Rule 304.03 Scheduling Order shall designate the ADR process selected, the deadline for completing the procedure, and the name of the neutral selected or the deadline for the selection of the neutral. If ADR is determined to be inappropriate, the Rule 304.03 Scheduling Order may so indicate.

Rule 313.05 Selection of Neutral

(a) Court Appointment. If the parties are unable to agree on a neutral, or on the date when the selection process is to be completed, the Court shall appoint a qualified neutral at the time of the issuance of the scheduling order required by Rule 304.03 and shall fix a deadline for the completion of the ADR process(es).

(b) Exception from Qualification. In appropriate circumstances, the Court, upon agreement of the parties, may appoint a neutral who does not qualify under Rule 313.12 or 313.125 of this rule, if the appointment is based on legal or other professional training or experience. This provision shall not apply when the dispute resolution process is either mediation or med-arb.

(c) Removal. Within 10 days of notice of the Court's appointment of the qualified neutral or neutral entity, any party, or the party's attorney, may file a notice to remove with the court administrator and serve it on the opposing party. Upon receipt of the notice to remove, the Court or court administrator shall immediately assign another neutral. After a party has once disqualified a neutral as a matter of right, the party may disqualify a substitute neutral only by making an affirmative showing of prejudice to the chief judge or his or her designee.

Rule 313.06. Time and Place of Proceedings

(a) Notice. The Court shall send the appointed neutral a copy of its Scheduling Order. The qualified neutral shall be bound by the Scheduling Order, except that deadlines may be extended by leave of the Court.

(b) Scheduling. Upon receipt of the scheduling order, the qualified neutral shall promptly schedule the ADR process in accordance with the scheduling order and inform the parties of the date. ADR processes shall be held at a time and place set by the neutral, unless otherwise ordered by the Court.

(c) Work Product. The neutral shall provide a summary (facilitative process), opinion (evaluative process) or decision (adjudicative process) in writing to the parties. The nature of any hybrid process will determine the type of work product. A facilitative neutral's report to the Court shall consist only of a verification that a facilitative process occurred and that the parties reached agreement on whatever matters they settled. A decision from a binding adjudicative process, including arbitration and Consensual Special Magistrate, shall be filed with the Court. An opinion from an evaluative process may not be submitted to the Court unless all parties consent, in writing, before or after the rendering of the opinion.

(d) Stipulation. A facilitative neutral's summary of agreements is not enforceable until or unless it is reduced to a stipulation (or, in the case of divorce, a Marital Termination Agreement), and is signed by the parties.

(e) Final Disposition. If the case is settled through an ADR process, the attorneys or *pro se* parties shall complete the appropriate court documents to bring the case to a final disposition.

Comments:

Appropriate court documents could be, but are not limited to, Marital Termination Agreements, stipulations, modification, amendment of a Judgment and Decree, or an order.

The processes for arbitration (GRPDC § 114.09) and for Mediation (GRPDC § 310.07) are incorporated by reference at § 313.09.

Rule 313.07 Logistics

(a) Privacy. ADR proceedings are not open to the public except with the consent of all parties and of the neutral(s). Judicial Case Management court hearings remain open to the public.

(b) Sanctions.

(1) The Court shall impose sanctions if it finds a party has not acted in good faith in respect to any part of the ADR process.

(2) Once agreed upon in writing or ordered by the Court, the parties shall attend the ADR proceedings; and the Court shall impose sanctions for failure to attend upon a finding of lack of good faith.

(c) Valuation Date. Unless otherwise stipulated by the parties, the date of an Early Neutral Evaluation report shall be the valuation date for the issues submitted for valuation.

Comments

The Committee notes that attorneys usually do not attend mediation. Attorneys, advocates, or representatives may be invited to attend a mediation by any party or the mediator. Attorneys usually attend adjudicative or evaluative forms of ADR.

If mediation is the selected ADR process, then either party may terminate at any time. However, completion of a mediation orientation and then terminating does not satisfy the requirement of participation in an ADR process.

Rule 313.08 Confidentiality

(a) **Evidence.** Without the consent of all parties and an order of the Court, or except as provided in Rule 114.09(e)(4) (incorporated at 313.09 by reference), no evidence that there has been an ADR proceeding may be admitted in a trial *de novo* or in any subsequent proceeding involving any of the issues or parties to the proceeding.

(b) **Privilege.** Confidentiality of mediation proceedings is governed by Rule 310.05 (incorporated at 313.09 by reference), except that the neutral must consent to the waiver as set forth in (e) below.

(c) **Inadmissibility.** Statements made and documents produced in non-binding ADR processes which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose at the trial, including impeachment, except as provided in paragraph (d).

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

(e) **Non Disclosure.** Without the agreement of all parties, the notes and recollections of the neutral shall not be disclosed to the parties, the public, the Court, or any third party, except as required by abuse reporting statutes. By agreement, the parties and neutral(s) providing mediation may waive confidentiality concerning mediation, mediation components (e.g., med-arb), or opinions as part of mediation.

Rule 313.09 Arbitration and Mediation Proceedings

(a) **Arbitration.** GRPDC 114.09 is incorporated by reference with the following modifications:

(i) "Documents" as defined in GRPDC § 114.09 (a)(2)(i) shall, in family law matters, also include property valuations, business valuations, and custody reports.

(ii) The fee for trial *de novo* from civil arbitration, as required by Minn. Stat. § 484.13 subd. 4, shall not be required in family law matters.

(b) **Mediation.** This rule supersedes Rule 310, GRPDC, except for Rule 310.05 (as modified by 313.08 (e) above), 310.07 and 310.08.

(c) **Presentation of Mediator to Public.** Mediators acting under this rule must comply with the requirements of § 572.37 of the Civil Mediation Act relating to the presentation of the mediator to the public. Section 572.40 of the Civil Mediation Act, which excludes proceedings brought under chapters 518, 518A, 518B, and 518C, shall not apply to mediators on the family mediation and med-arb neutral rosters created by this rule.

Rule 313.10 Communication with Neutral

(a) **Binding processes.** The parties and their attorneys shall not communicate *ex parte* with a neutral or judge in an adjudicative process.

(b) **Non-binding processes.** Parties and their attorneys may communicate *ex parte* with the neutral in non-adjudicative ADR processes with the consent of the neutral, so long as the communication encourages or facilitates settlement.

Rule 313.11 Funding

(a) **Amount.** All fees of neutral(s) for ADR services shall be fair, reasonable and equitable.

(b) **Determination of Fees.** Fees, if any, may be determined by:

- (1) The county, for county sponsored ADR processes;
- (2) The neutral and the parties, for private ADR processes; or,
- (3) The Court, if the parties cannot agree.

(c) **Apportionment.** Unless otherwise determined by a county or by a Court, the parties shall pay for all neutral's fees, if there are fees. If the parties cannot agree on the allocation of the fees, the Court retains the authority and jurisdiction to determine a final, fair and equitable allocation of the costs between the parties to the ADR process(es). The Court shall have authority under Minn. Stat. § 563.01 to order payment for ADR services.

(d) **Failure to Pay.** If fees are agreed upon by the parties or ordered by the Court, and a party fails to pay his or her share of the neutral's fees, the Court may, upon motion, issue an order for the payment of such fees and impose appropriate sanctions pursuant to § 313.01 (b).

(e) **Circuit Breaker.** A party who qualifies for waiver of filing fees under Minn. Stat. 563.01 shall not be required to pay for the services of a neutral. If no neutral's services are available to that party free of charge, the party shall have his or her case restored to the court calendar without penalty or sanctions.

Comments

The parties, by selection of a neutral, indicate their acceptance of the fees.

The definition of "neutral" embraces individuals and entities, including county sponsored ADR programs. Counties may offer subsidized ADR processes, in which case the county determines both the amount and apportionment of fees.

Apportionment of fees may be determined by any of the following methods, or another method, so long as they are fair and equitable:

- a. Court order;
- b. County determination;
- c. Sliding fee schedule based on income of the parties;
- d. Based on ability to pay;
- e. Pursuant to Minn. Stat. § 563.01;
- f. Availability of marital assets; and,
- g. Fees set by private ADR providers.

The committee envisioned that sanctions would not impact parental access to children or other substantial legal rights involving the children.

Rule 313.12 Certified Training, Standards and Qualifications for the Facilitative Neutral Roster

To qualify for the facilitative roster neutrals shall:

- (1) Complete or teach a minimum of 40 hours of family mediation training which is certified by the Minnesota Supreme Court. The certified training shall include at least:
 - (a) four hours of conflict resolution theory;
 - (b) four hours of psychological issues relative to separation and divorce, and family dynamics;
 - (c) four hours of the issues and needs of children in divorce;
 - (d) six hours of family law including custody and visitation, support, asset distribution and evaluation, and taxation as it relates to divorce;
 - (e) five hours of family economics; and,
 - (f) two hours of ethics, including: (i) the role of mediators and parties' attorneys in the facilitative process; (ii) the prohibition against mediators dispensing legal advice; and, (iii) a party's right of termination.

Certified training for mediation of custody issues only need not include five hours of family economics. The certified training shall consist of at least forty percent roleplay and simulations.
- (2) Complete or teach a minimum of 6 hours of certified training in domestic abuse issues, which may be a part of the 40 hour training above, to include at least:
 - (a) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;
 - (b) 3 hours of domestic abuse screening, including simulation or roleplay; and,
 - (c) 1 hour of legal issues relative to domestic abuse cases.
- (3) Certify on the roster application that they have mediated or co-mediated at least 5 cases in a family law setting for a total of at least 25 hours within the past five years; and,
- (4) Certify on the roster application that they have not had a professional license revoked, been refused membership or practice rights in a profession, or been banned, dropped or expelled from any profession.

Comments:

The committee recommends that Rule 313.12 (1) supersede Administrative Policy No. 18 Rule No.2 (1987) (regarding requirements for certified family mediation training).

Some counties may require more stringent qualifications for county sponsored ADR programs.

Parties requesting legal advice from a mediator must either be referred to their own attorney or instructed to seek legal counsel.

Mediators applying to be on the roster should have the ability to:

- Communicate clearly, orally and in writing;
- Facilitate problem solving;
- Prevent one party from dominating another;
- Respect the boundaries of the mediator/party relationship;
- Remain impartial; and,
- Maintain confidentiality. :

Facilitative neutrals should be knowledgeable about the issues enumerated in 313.125 (a)(4).

Rule 313.125 Certified Training, Standards and Qualifications for Adjudicative Neutral and Evaluative Neutral Rosters

(a) Adjudicative Neutrals. To qualify for this roster neutrals shall demonstrate at least five years of professional experience in the area of family law and 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. All neutrals applying to the adjudicative neutral roster shall also complete or teach a minimum of 6 hours of certified training on the following topics:

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

Additionally, to qualify for the adjudicative roster, neutrals must verify on the roster application that they have knowledge, experience and background in some of the following subject matters as they relate to family law:

- a. Custody Issues
- b. Visitation Issues
- c. Domestic Abuse
- d. Income and Compensation (Employment and Self-employment)
- e. Pension and Retirement (e.g., Profit Sharing, Pensions, 401(k)s, IRA's)
- f. Real Estate (e.g., Homestead, Non-Homestead, Farm)

- g. Business Associations (e.g., Corporate, Partnerships, Joint Ventures)
- h. Bankruptcy
- i. Marital and Non-Marital Property
- j. Income and Compensation
- k. Insurance (e.g., Life, Medical, Collateral)
- l. Child Support (e.g., Income, Wage Withholding, Child Care, Medical Expenses)
- m. Spousal Maintenance
- n. Wage Withholding
- o. Federal and State Taxation
- p. Public Benefits

Other categories may exist that are not on the above list. Adjudicative neutrals who are placed on the roster must possess substantial subject matter knowledge on issues, whether or not listed above, in which they render decisions. Adjudicative neutrals who are placed on the roster must also possess knowledge of the elements of marriage and family court process.

(b) Evaluative Neutrals. All neutrals offering early neutral evaluations or non-binding advisory opinions shall have at least five years of experience as family law attorneys, as accountants dealing with divorce-related matters, as custody and visitation psychologists, or as other professionals working in the area of family law who are recognized as qualified practitioners in their field, and shall complete or teach a minimum of 2 hours of certified training on management of presentations made during evaluative processes. Evaluative neutrals shall have knowledge on all issues in which they render opinions.

(c) Exception. Impartial experts selected by the parties or appointed by the Court for use in any ADR process because of their technical expertise need not undergo certified training, nor be included on the State Court Administrator's roster.

Comments

Some counties may require more stringent qualifications for county sponsored ADR programs.

Rule 313.128 Continuing Education and Certification for Qualified Neutrals

(a) Continuing education. Neutrals on the facilitative roster must attend or teach 6 hours of continuing education on family ADR subjects annually to remain on that roster. Neutrals on the adjudicative roster and on the evaluative roster must attend or teach 3 hours of continuing education about ADR subjects annually to remain on those rosters. Continuing education hours may be applied to more than one roster to satisfy its requirements (e.g., one 6 hour class will satisfy both the facilitative and the evaluative rosters' requirements). These hours may be attained through course work and attendance at state and national conferences. Neutrals are responsible for maintaining attendance records and shall disclose the information to program administrators and parties to any dispute. Neutrals shall submit continuing education credit information to the State Court Administrator's office annually. Neutrals completing more than the required continuing education hours in a single calendar year may apply excess hours toward continuing education requirements in the following calendar year.

(b) Approval. The State Court Administrator shall approve training programs which meet the criteria of this rule.

Rule 313.129 Mandatory Continuing Practice Requirement

(a) Experience Requirement. All qualified neutrals listed on the rosters must act as the facilitative, adjudicative or evaluative neutral in a minimum of one case and five hours annually for each roster upon which they wish to retain their designation as a qualified neutral.

(b) Reporting. Qualified neutrals must certify to the State Court Administrator compliance with the mandatory practice requirement annually. If qualified neutrals fail to comply with this requirement in any given year, they shall be allowed to remain on the qualified neutral roster provided they comply with the above requirements before the next annual reporting period by handling a minimum of two cases and ten hours.

(c) Removal. Failure to comply by the end of the second reporting period shall result in removal from the appropriate roster(s).

(d) Reapplication. Those dropped from the roster because of failure to meet the continuing practice requirement may reapply and be reinstated by completing at least one family case and five hours for each year that the applicant has not complied with the mandatory practice requirement. Facilitative neutrals must mediate or co-mediate, adjudicative neutrals must observe or adjudicate in an adjudicative process, and evaluative neutrals must observe or evaluate in an evaluative process.

Rule 313.13 Rosters and Applications

(a) Rosters. The State Court Administrator shall establish three discrete rosters for family law neutrals: one for facilitative processes (mediators and providers of med-arb); a second for adjudicative processes (arbitrators and consensual special magistrates); and a third for evaluative processes (neutral evaluators). The State Court Administrator shall review applications from individuals and entities who wish to be listed on the rosters of qualified family law neutrals and shall include those who meet the requirements established in Rules 313.12 and 313.125. A qualified neutral entity shall certify that every individual who acts as a neutral for that entity in a matter pursuant to this rule would qualify individually. The rosters shall be updated and published on an annual 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 was revoked. A qualified neutral may not provide services during a period of suspension of a professional license.

(b) Placement on Roster. Any individual wishing to be placed on the roster of qualified neutrals one year after the effective date of this rule shall comply with the certified training and experience requirements. Any entity wishing to be placed on the roster of qualified neutrals one year after the effective date of this rule shall certify the individuals functioning as neutrals under its aegis have complied with the certified training and experience requirements.

(c) Fees. The State Court Administrator may establish reasonable fees for qualified individuals and entities to be placed on the roster.

(d) Pro Bono. An aspirational goal of qualified neutrals will be to provide ten percent of their neutral engagements in the family law field on a pro bono or reduced fee basis.

Rule 313.14 Exceptions and ADR Review Board

(a) Domestic Abuse Training Exception. Practicing facilitative neutrals who have completed the requirements of 313.12 (1), (3) and (4) may apply to the State Court Administrator during the first year after the effective date of this rule to be placed on the facilitative neutral roster without completing the qualifications of 313.12 (2). The six hours of certified domestic abuse training required in 313.12 (2) must be completed and reported to the State Court Administrator by December 31, 1996 to remain on the facilitative roster. The six hours of domestic abuse training may also be applied to meet the continuing education requirements of 313.128.

(b) Board Expansion. The Minnesota State Supreme Court ADR Review Board shall add and maintain at least two individuals experienced in the area of family dispute resolution to its permanent membership. At least one of the additional Board members shall have experience in social sciences or mental health.

(c) Advisory Committee. The ADR Review Board shall establish a standing advisory committee experienced in the area of family law matters to review and advise the Board on family law neutral roster applications, ethics, and other matters related to Rule 313.

Rule 313.15 Divorce Education

Any judicial districts that establish a divorce educational program may require parties to attend the program before granting access to a temporary hearing, except that any such local requirement shall provide for emergency temporary hearings.

Comments

If such an educational program is undertaken, the committee suggests:

If a party claims s/he has been a victim of domestic abuse, the parties should be precluded from attending the same sessions.

Possible exceptions from attendance include: those who live more than 50 miles from the program location; those who have resolved all issues and submit a Marital Termination Agreement within 60 days of the first filing; and those whom the Court exempts for other good cause shown.

Timing: Parties must complete the program before whichever occurs first: (1) 90 days after filing, or (2) before finalizing the Judgment and Decree, or (3) before the temporary hearing.

Each district should design the program to suit its regional needs. Possible topics include: (1) the legal process; (2) ADR alternatives; (3) psychodynamics of divorce, (4) the impact of divorce on children, and (5) domestic violence.

Rule 313.16 Quasi-Judicial Immunity

A qualified neutral, either appointed by the Court or agreed upon by the parties, shall be immune from civil liability for acts or omissions in connection with his or her role as a qualified neutral other than for acts of fraud or corruption.

**APPLICATION FOR CERTIFICATION TO BE A
"QUALIFIED NEUTRAL" IN FAMILY LAW
UNDER RULE 313**

Please read entire application carefully before answering.
Complete all questions. Use additional pages if necessary.

1. Name (Last, First, MI) _____

2. Office Street Address/Suite Number _____

3. City _____

4. State/Zip _____

5. Area Code/Telephone Numbers _____

6. Birth Date _____

7. University/Year/Degree _____

8. Additional Universities Attended/Years/Degrees _____

9. Profession _____

10. Additional Professional Schools Attended/Years/Degrees _____

11. State/Year Admitted to Practice in your profession _____

12. Career History. Please detail by name or association, dates
and addresses of professional offices; last ten years only.

13. What percentage of your practice, and/or experience, in each of the last five years has been in family law and/or Family Court matters?

Year _____ - _____ %
Year _____ - _____ %
Year _____ - _____ %
Year _____ - _____ %
Year _____ - _____ %

14. What percentage of your professional occupation, and/or experience, in each of the last five years has been in family law and/or Family Court matters:

Year _____ - _____ %
Year _____ - _____ %
Year _____ - _____ %
Year _____ - _____ %
Year _____ - _____ %

15. During the past five years, in approximately how many family law matters have you used a facilitative process, including, but not limited to mediation, or have you been a facilitator?

16. During the past five years, in approximately how many family law matters have you used an adjudicative process, including, but not limited to arbitration, or have you been an adjudicator?

17. During the past five years, in approximately how many family law matters have you used an evaluative process, including, but not limited to evaluation, or have you been an evaluator?

18. During the past five years, approximately how many family law matters have you settled by agreement resulting in a stipulation/agreement, or aided in settlement, as a facilitator?

19. During the past five years, approximately how many family law matters have you settled by agreement resulting in a stipulation/agreement, or aided in settlement, as an adjudicator?

20. During the past five years, approximately how many family law matters have you settled by agreement resulting in a stipulation/agreement, or aided in settlement, as an evaluator?

21. Explain what you have done during each of the past five years to expand your knowledge and competence in the field of family law and family law matters. Include a list of educational courses you have attended, or taught, by title, date, location, sponsoring authority and the number of hours designated for CE credit.

22. List the facilitative, mediation courses you have attended, or taught, by title, date, location, sponsoring authority, and the number of hours designated for CE credit.

23. List the adjudicative, arbitration courses you have attended, or taught, by title, date, location, sponsoring authority, and the number of hours designated for CE credit.

24. List any other A.D.R. courses you have attended, or taught, by title, date, location, sponsoring authority, and the number of hours designated for CE credit.

25. List, in your opinion, your level of knowledge on the items set forth on the following chart (Exhibit A).

26. Do you believe you are recognized in the jurisdiction, city, or county, in which you practice, or at the state level, as a knowledgeable practitioner in the family law area or in family matters?

_____ Yes _____ No _____ Unknown

27. Identify the areas you are recognized in, including, each category of your practice: i.e. attorney, Court administrator, child or adult psychiatrist, child or adult psychologist, mediator, accountant, evaluator, adjudicator, facilitator, or other (identify the area).

_____ **Date**

_____ **Name**

Exhibit A

RULE 313.13

Roster Application Form

| | Yes | No |
|-----------------------|-----|----|
| 1. Trial Skills | | |
| 2. Mediation Skills | | |
| 3. Negotiating Skills | | |
| 4. Judicial Skills | | |

| | | |
|--|--|--|
| 5. General Knowledge of Family Law | | |
| 6. Subject matter knowledge related to Family Law: | | |

| | Level of Knowledge | | | |
|---|--------------------|-----|--------|------|
| | None | Low | Medium | High |
| a. Custody/Visitation | | | | |
| b. Federal Taxation | | | | |
| (1) Income | | | | |
| (2) Capital Gain | | | | |
| c. Employment: | | | | |
| (1) Employee | | | | |
| (2) Self-Employment | | | | |
| d. Pension and Retirement | | | | |
| (1) Profit Sharing | | | | |
| (2) Pensions | | | | |
| (3) 401(k)s | | | | |
| (4) IRA's | | | | |
| e. Real Estate: | | | | |
| (1) Homestead | | | | |
| (2) Other | | | | |
| (3) Farm | | | | |
| f. Corporate | | | | |
| g. Partnership and Joint Ventures | | | | |
| h. Bankruptcy | | | | |
| i. Marital and Nonmarital Property | | | | |
| j. Income and Compensation | | | | |
| k. Insurance | | | | |
| (1) Life | | | | |
| (2) Medical | | | | |
| (3) Collateral | | | | |
| l. Support | | | | |
| (1) Income | | | | |
| (2) Child Support | | | | |
| (3) Spousal Maintenance | | | | |
| (4) Wage Withholding | | | | |
| (5) Child Care | | | | |
| (6) Medical Expenses | | | | |
| 7. Overall knowledge of Court System and Procedures | | | | |
| 8. Administrative Process | | | | |

Level of Knowledge
None Low Medium High

9. **Non-majority Cultural Systems Skills**

- a. Culture: _____
(specify)
- b. Reading _____
- c. Writing _____
- d. Speaking _____

10. **Domestic Abuse**

11. **Other**

- a. _____
- b. _____

12. **Additional comments, if any, regarding your background, education, experience or qualifications.**

Dated this ____ day of _____, 19__.

Name

Signature

Rule 313
Family Law Neutral
Applicant Evaluation

Date: _____

Name of Applicant: _____

City: _____

State: _____

Return By: _____

Please assist with the evaluation being considered and determine whether the applicant meets the training requirements, the background requirements, the educational requirements, the experience requirements, and the qualification requirements as stated under Rule 313 to be a "Qualified Neutral in Family Law Matters". The evaluation and rating of the applicant should be based upon the application of the applicant, your knowledge and experience of what is required to be a "Qualified Neutral" in the family law field, your personal knowledge, if any, of the applicant in the family law community, and, if appropriate, your personal knowledge of the applicant to discussions with applicant's references and/or your interview with the applicant.

THE INFORMATION CONTAINED IN THIS APPLICATION EVALUATION SHALL BE CONFIDENTIAL.

Your name and signature are required.

Date: _____ Signature: _____

1. How many years have you known the applicant?

Professionally _____

Socially _____

2. How well do you know the applicant?

Professionally _____

Socially _____

3. What is your opinion or knowledge of the professional knowledge of the applicant in the family law field?

4. Are you aware of any adverse professional, or non-professional, information about the applicant?

Yes _____ No _____

5. To your knowledge, was the applicant ever refused membership, disciplined, dropped or expelled from any professional organization?

Yes _____ No _____

6. Do you have any reservations about recommending the applicant as a "Qualified Neutral"? If so, please explain.

7. What is, in your opinion, the level of knowledge of the applicant on the items set forth on the following chart (Exhibit A):

8. Do you believe the applicant is recognized in the jurisdiction, city or county, in which the applicant practices, or is recognized at the state level, as a knowledgeable practitioner in the family law area or in family law matters.

Yes _____ No _____

If your answer is no, please explain why not.

9. If the applicant is an attorney, and if the applicant is recognized by the bench and the bar in the jurisdiction in which the applicant practices, is the applicant considered an expert practitioner in the family law area?

Yes _____ No _____ Unknown _____

10. If the applicant is an attorney, do you believe that the bench and the bar in the jurisdiction where the applicant practices recognizes that the applicant practices with honesty, integrity and professionalism?

Yes _____ No _____ Unknown _____

If your answer is no, please explain why not.

11. Based upon the applicant's application for the ADR processes, should the applicant be certified as a "Qualified Neutral" on the roster as a:

Facilitative Neutral _____;

Adjudicative Neutral _____;

Evaluative Neutral _____

12. Is additional information or data needed for the applicant before you can complete your evaluation?

Yes No

If so, what additional data is needed?

If so, should the applicant be personally interviewed?

Yes No

13. Based upon the applicant's application, do you believe the applicant could handle a complex family law case as a facilitator?

Yes _____ No _____ Unknown _____

If your answer is no, please explain why not.

14. Based upon the application, at what level of case, in the roster classification, you have recommended for the applicant, would the applicant be considered qualified to handle?

___ Average; ___ Above Average; ___ Complex

15. Based upon the applicant's application, do you believe the applicant could handle a complex family law case as an adjudicator?

Yes _____ No _____ Unknown _____

If your answer is no, please explain why not.

16. Based upon the applicant's application, do you believe the applicant could handle a complex family law case as an evaluator?

Yes _____ No _____ Unknown _____

If your answer is no, please explain why not.

17. Based upon the application, at what level of case, in the roster classification you have recommended, would the applicant be considered qualified to handle:

Simple _____

Average _____

Above Average _____

Complex _____

18. If you would like to provide any additional written information or documents to the Court Administrators Office to consider in its final evaluation of the applicant to become a "Qualified Neutral", please attach that information and data to this applicant evaluation.

Name of Party

Name of Party

Attorney Name (not firm name)

Attorney Name (not firm name)

Address

Address

Telephone Number

Telephone Number

Minnesota Attorney I.D. No.

Minnesota Attorney I.D. No.

A. ISSUES: The issues in this case include:

- (1) _____ Custody Issues
- (2) _____ Visitation Issues
- (3) _____ Child Support Issues
- (4) _____ Spousal Maintenance Issues
- (5) _____ Income and Compensation/Employment and
Self-Employment Issues
- (6) _____ Pension and Retirement Issues
- (7) _____ Real Estate Issues
- (8) _____ Business Issues
- (9) _____ Non-Marital Property Issues
- (10) _____ Marital Property Issues
- (11) _____ Insurance Issues
- (12) _____ Tax Issues
- (13) _____ Public Benefits Issues, others
- (14) _____ Other Issues (identify)
- (15) _____
- (16) _____
- (17) _____
- (18) _____
- (19) _____
- (20) _____

B. ADR PROCESS (Check as many as are appropriate):

— Counsel and/or the parties agree to, and have selected, the following process(es):

| PROCESS |
|---|
| ADJUDICATIVE |
| 1. Arbitration |
| a. Non-Binding (Trial de novo available) |
| b. Binding (No appeal) |
| 2. Consensual Special Magistrate (Appealable to Court of Appeals) |
| 3. Judicial Case Management |
| FACILITATIVE |
| 4. Collaborative Law |
| 5. Mediation |
| EVALUATIVE |
| 6. Early Neutral Evaluation (ENE) |
| 7. Non-Binding Advisory Opinion |
| Hybrid |
| 8. Mediation-Arbitration |
| 9. Other |

C. ISSUES TO BE RESOLVED OR IN DISPUTE

| Issues | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|---|
| All Issues | | | | | | | | | |
| Parenting | | | | | | | | | |
| Custody, Legal | | | | | | | | | |
| Custody, Physical | | | | | | | | | |
| Visitation | | | | | | | | | |
| Financial | | | | | | | | | |
| Child Support | | | | | | | | | |
| Child Care | | | | | | | | | |
| Medical Expenses | | | | | | | | | |
| Spousal Maintenance | | | | | | | | | |
| Property | | | | | | | | | |
| Division | | | | | | | | | |
| Marital | | | | | | | | | |
| Non-Marital | | | | | | | | | |
| Real Property | | | | | | | | | |
| Personal Property | | | | | | | | | |
| Subject | | | | | | | | | |
| Capital Gains | | | | | | | | | |
| Employment | | | | | | | | | |
| Retirement Benefits | | | | | | | | | |
| Employee Benefits | | | | | | | | | |
| Medical Insurance | | | | | | | | | |
| Life Insurance | | | | | | | | | |
| Corporate/Partnership/Sole Proprietorship | | | | | | | | | |
| Federal and State Taxation | | | | | | | | | |
| Income | | | | | | | | | |
| Compensation (Other than income) | | | | | | | | | |
| Bankruptcy | | | | | | | | | |
| Other | | | | | | | | | |

___ OTHER PROCESS, 9: The "other" process will be as follows:

___ The parties cannot agree on an ADR process for the following issues:

and requests the Court choose the appropriate non-binding process for the issues to be resolved.

D. ___ DOMESTIC ABUSE: One of both parties claims to have been a victim of domestic abuse by the other party.

___ A Court has determined that there is probably cause that one of the parties or a child of the parties has been physically abused by the other party.
County _____ Court File No. _____

___ The party completing this form is claiming abuse and does not have an attorney, and is electing to complete this form based on individual preference, without consulting with the opposing counsel or the other party.

E. ___ NEUTRAL: The parties have selected the following ADR neutral(s) for the following issues to be resolved.

to be completed by

| | | | |
|-------|-----|-------|-------|
| _____ | for | _____ | _____ |
| _____ | for | _____ | _____ |
| _____ | for | _____ | _____ |
| _____ | for | _____ | _____ |

___ The parties cannot agree on an ADR neutral for the following issues:

| | | | |
|-------|-----|-------|-------|
| _____ | for | _____ | _____ |
| _____ | for | _____ | _____ |
| _____ | for | _____ | _____ |
| _____ | for | _____ | _____ |

and request the Court appoint a neutral(s) for the issues to be resolved.

___ The parties agree to select ADR neutrals on or before the ___ day of _____, 19__.