

1363 Excerpt from 2005 GRP Report

1364 \* \* \*

1365 The committee was directed by the Court to consider and gather additional  
1366 information on collaborative law. The committee gave notice to interested parties of its  
1367 August 19, 2005, public hearing by posting on the Minnesota state courts' website, and by  
1368 notice sent to the ADR Review Board via its staff because the ADR Review Board made last  
1369 year's collaborative law proposal. Notice was also sent to the ADR section of the state bar,  
1370 which had opposed the ADR Review Board proposal last year. The committee heard from a  
1371 number of speakers on the role of collaborative law under the rules.

1372 Ultimately, the collaborative law proponents requested additional time to submit a  
1373 proposal to the committee, and have advised the committee that they do not intend to have a  
1374 specific proposal to the committee until February 2006. The committee believes that  
1375 interested bar associations or bar committees may want to respond to that submission. As a  
1376 result, the committee is not in a position to make definitive recommendation to the Court at  
1377 this time. It will be able to do so not later than December 31, 2006, and possibly by June 30,  
1378 2006. The committee believes it is desirable to defer action until it can consider the  
1379 promised submission from the Collaborative Law Institute or others. If the Court believes  
1380 action on collaborative law is appropriate at this time, however, the committee would renew  
1381 the recommendation made in its Report and Recommendations dated October 28, 2004, with  
1382 one exception: the recommendation made then should be modified to include a specific  
1383 provision in Rule 304 to provide in family cases (the primary current arena for the use of  
1384 collaborative law) relief from scheduling pressures as recommended by the committee in its  
1385 recommended Rule 111.05.

1386  
1387 Excerpt from 2004 GRP report:

1388 \* \* \*

1391 The committee also considered portions of the ADR Review Board's report that  
1392 recommended including collaborative law as a means of court-annexed ADR under Rule

1393 114. Because of concerns about the inherent differences between the collaborative law  
1394 process and ADR under the supervision of the court as present in the other Rule 114  
1395 processes, the advisory committee recommends that no action be taken on collaborative law  
1396 at this time. The committee believes that exploration of formal certification of lawyers  
1397 specializing in collaborative law would be one alternative mechanism to allow marketing of  
1398 collaborative law services and to require training. Because collaborative lawyers are not  
1399 “neutrals” and are subject to the Minnesota Rules of Professional Conduct (while Rule 114  
1400 neutrals need not be lawyers) the committee believes that the Court should consider having  
1401 training, certification, and supervision of these collaborative lawyers performed through the  
1402 Lawyers’ Board.

1403 If the Court does determine to include express provision for collaborative law in the  
1404 rules, it should not be in Rule 114 but in Rule 111 relating to case scheduling. The  
1405 committee drafted a rule and accompanying form that it believes would function in this  
1406 regard, set forth in Appendix A to this Report.

**APPENDIX A: Collaborative Law Provision Not Recommended for Adoption at This Time.**

The following rule and form are included for the Court’s information, but are not recommended for adoption at this time. If the Court determines to provide for collaborative law explicitly in the rules, however, the committee believes this rule mechanism is workable.

**1. RULE 111.05 COULD BE ADOPTED TO PROVIDE FOR USE OF COLLABORATIVE LAW.**

1401 **Rule 111. Scheduling of Cases.**

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1403 **Rule 111.05. Collaborative Law.**

1404 (a) Collaborative Law Defined. Collaborative law is a process in which parties and  
1405 their respective trained collaborative lawyers contract in writing to resolve disputes without  
1406 seeking court action other than approval of a stipulated settlement. The process may include  
1407 the use of neutrals as defined in Rule 114.02(b), depending on the circumstances of the  
1408 particular case. If the collaborative process ends without a stipulated agreement, the  
1409 collaborative lawyers must withdraw from further representation.

1410 (b) Where the parties to an action request deferral in a form substantially similar to  
1411 Form 111.03 and the court has agreed to attempt to resolve the action using a collaborative  
1412 law process, the court shall defer setting any deadlines for the period specified in the order  
1413 approving deferral.

1414 (c) When a case has been deferred pursuant to subdivision (b) of this rule and is  
1415 reinstated on the calendar with new counsel, the court should not ordinarily order the parties  
1416 to engage in further ADR proceedings without the agreement of the parties.

**2. IF RULE 111.05 WERE ADOPTED, RULE 114.04 SHOULD BE AMENDED.**

1417 **Rule 114.04 Selection of ADR Process**

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1419 **(b) Court Involvement.** If the parties cannot agree on the appropriate ADR  
1420 process, the timing of the process, or the selection of neutral, or if the court does not approve  
1421 the parties' agreement, the court shall, in cases subject to Rule 111, schedule a telephone or in-  
1422 court conference of the attorneys and any unrepresented parties within thirty days after the due  
1423 date for filing informational statements pursuant to Rule 111.02 or 304.02 to discuss ADR and  
1424 other scheduling and case management issues.

1425 \* \* \*

1426 (2) *Other Court Order for ADR.* In all other civil case types subject to this rule,  
1427 including conciliation court appeals, any party may move or the court at its discretion  
1428 may order the parties to utilize one of the non-binding processes; provided that any no  
1429 ADR process shall be approved if the court finds that ADR is not appropriate or if it  
1430 amounts to a sanction on a non-moving party. Where an action has previously been  
1431 deferred on the calendar pursuant to Rule 111.05(b) and the parties have proceeded in  
1432 good faith to attempt to resolve the matter using collaborative law, the court should not  
1433 ordinarily order the parties to use further ADR processes.

1434 *[Reporter's Note: This change is made, showing language to the version of the rule*  
1435 *recommended for adoption in the Report. It essentially assumes the committee's*  
1436 *recommended amendment is made, and shows only this additional change that would be*  
1437 *appropriate only if Rule 111.05 were adopted.]*

**3. IF RULE 111.05 WERE ADOPTED, RULE 114 APPENDIX (CODE OF ETHICS ENFORCEMENT PROCEDURE) SHOULD BE AMENDED.**

1438 **RULE 114 APPENDIX. CODE OF ETHICS ENFORCEMENT PROCEDURE**

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1440 **Rule I. SCOPE**

1441 This procedure applies to complaints against any individual or organization (neutral)

1442 placed on the roster of qualified neutrals pursuant to Rule 114.12 or serving as a court

1443 appointed neutral pursuant to 114.05(b) of the Minnesota General Rules of Practice.

1444 **Collaborative attorneys as defined in Rule 111.05(a) are not subject to the Rule 114**

1445 **Code of Ethics and Enforcement Procedure while acting as collaborative lawyers.]**

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**4. A NEW FORM 111.03 COULD BE ADOPTED AS FOLLOWS.** This form is entirely new, but no underscoring is included in order to enhance legibility.

1447 **FORM 111.03      REQUEST FOR DEFERRAL OF SCHEDULING DEADLINES**

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1451 STATE OF MINNESOTA

DISTRICT COURT

1452 \_\_\_\_\_ COUNTY

\_\_\_\_\_ JUDICIAL DISTRICT

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CASE NO. :

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Case Type: \_\_\_\_\_

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\_\_\_\_\_

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Plaintiff

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1461

and

REQUEST FOR DEFERRAL

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\_\_\_\_\_

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Defendant

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The undersigned parties request, pursuant to Minn. Gen. R. Prac. 111.05, that this

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action be deferred and excused from normal scheduling deadlines until \_\_\_\_\_,

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\_\_\_\_\_, to permit the parties to engage in a formal collaborative law process. In support of

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this request, the parties represent to the Court as true:

- 1471 1. All parties have contractually agreed to enter into a collaborative law process in  
1472 an attempt to resolve their differences.
- 1473 2. The undersigned attorneys are each trained as collaborative lawyers.
- 1474 3. The undersigned attorneys each agree that if the collaborative law process is not  
1475 concluded by the complete settlement of all issues between the parties, each attorney and his  
1476 or her law firm will withdraw from further representation and will consent to the substitution  
1477 of new counsel for the party.
- 1478 4. The undersigned attorneys will diligently and in good faith pursue resolution of  
1479 this action through the collaborative law process, and will promptly report to the Court when  
1480 a settlement is reached or as soon as they determine that further collaborative law efforts will  
1481 not be fruitful.

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1483	Signed: _____	Signed: _____
1484	Collaborative Lawyer for (Plaintiff)	Collaborative Lawyer for (Plaintiff)
1485	(Defendant)	(Defendant)
1486		
1487	Attorney Reg. #: _____	Attorney Reg. #: _____
1488	Firm: _____	Firm: _____
1489	Address: _____	Address: _____
1490	Telephone: _____	Telephone: _____
1491	Date: _____	Date: _____

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**ORDER FOR DEFERRAL**

1494           The foregoing request is granted, and this action is deferred and placed on the  
1495 inactive calendar until \_\_\_\_\_, \_\_\_\_, or until further order of this Court.

1496           Dated: \_\_\_\_\_.

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Judge of District Court



