Minnesota General Rules of Practice for the District Courts

Includes amendments effective July 1, 2007

TITLE II. RULES GOVERNING CIVIL ACTIONS

PART A. PLEADINGS, PARTIES, AND LAWYERS

Rule 101. **Scope of Rules**

Rule 102. **Form of Pleadings [Renumbered Rule 6.]**

Rule 103. **Proof of Service [Renumbered Rule 7.]**

Rule 104. **Certificate of Representation and Parties**

Rule 105. **Withdrawal of Counsel**

Rule 106. **Hearing on Motion to Remove Judge for Actual Prejudice or Bias**

Rule 107. **Procedure for Challenge for Having a Referee Hear a Matter**

Rule 108. **Guardian Ad Litem**

108.01 Role of Guardian

108.02 Guardian Not Lawyer for Any Party

Rule 109. **Application for Leave to Answer or Reply**

109.01 Requirement of Affidavit of Merits

109.02 Contents of Required Affidavits

Rule 110. **Self-Help Programs**

110.01 Authority for Self-Help Programs

110.02 Staffing

110.03 Definitions

110.04 Role of Self-Help Personnel

110.05 Disclosure

110.06 Unauthorized Practice of Law

110.07 No Attorney-Client Privilege or Confidentiality

110.08 Conflict

110.09 Access to Records

PART B. SCHEDULING

Rule 111. Scheduling of Cases

111.01 Scope

111.02 The Party's Informational Statement

111.03 Scheduling Order

111.04 Amendment

Rule 112. Joint Statement of the Case

112.01 When Required

112.02 Contents

112.03 Contents – Personal Injury Actions

112.04 Contents – Vehicle Accidents

112.05 Hearing

Rule 113. Assignment of Case(s) to a Single Judge

113.01 Request for Assignment of a Single Case to a Single Judge

113.02 Consolidation of Cases Within a Judicial District

113.03 Assignment of Cases in More Than One District to a Single Judge

Rule 114. **Alternative Dispute Resolution**

114.01 Applicability

114.02 Definitions

114.03 Notice of ADR Processes

114.04 Selection of ADR Process

114.05 Selection of Neutral

114.06 Time and Place of Proceedings

114.07 Attendance at ADR Proceedings

114.08 Confidentiality

114.09 Arbitration Proceedings

114.10 Communication with Neutral

114.11 Funding

114.12 Rosters of Neutrals

114.13 Training, Standards and Qualifications for Neutral Rosters

114.14 Waiver of Training Requirement

Rule 114 Appendix

Code of Ethics

Introduction

Rule I. Impartiality

Rule II. Conflicts of Interest

Rule III. Competence

Rule IV. Confidentiality

Rule V. Quality of the Process

Rule VI. Advertising and Solicitation

Rule VII. Fees

Mediation

Rule I. Self-Determination

Enforcement Procedure

Introduction

Rule I. Scope

Rule II. Procedure

Rule III. Sanctions

Rule IV. Confidentiality

Rule V. Privilege; immunity

PART C. MOTIONS

Rule 115. **Motion Practice**

115.01 Scope and Application

115.02 Obtaining Hearing Date; Notice to Parties

115.03 Dispositive Motions

115.04 Non-Dispositive Motions

115.05 Page Limits

115.06 Failure to Comply

115.07 Relaxation of Time Limits

115.08 Witnesses

115.09 Telephone Hearings

115.10 Settlement Efforts

115.11 Motions to Reconsider

PART D. MISCELLANEOUS MOTION PRACTICE

Rule 116. **Orders to Show Cause**

Rule 117. **Default Hearings**

117.01 Scheduling Hearings

117.02 Proof of Claim

Rule 118. **Injunctive Relief Against Municipalities**

Rule 119. **Applications for Attorney Fees**

119.01 Requirement for Motion

119.02 Required Papers

119.03 Additional Records; in Camera Review

119.04 Memorandum of Law

119.05 Attorneys' Fees in Default Proceedings

Form 119 **Notice and Request for Hearing to Determine Attorneys' Fees Award**

Rule 120. **(Reserved for Future Use.)**

PART E. TRIAL MANAGEMENT

Rule 121. **Notice of Settlement**

Rule 122. **Continuance**

Rule 123. **Voir Dire of Jurors in Cases in which Insurance Company Interested in Defense or Outcome of Action**

Rule 124. **Reporting of Opening Statement and Final Arguments**

Rule 125. **Automatic Stay**

Rule 126. **Judgment--Entry by Adverse Party**

Rule 127. **Expert Witness Fees**

Rule 128. **Retrieval or Destruction of Exhibits**

Rule 129. **Use of Administrator's Files**

Rule 130. **Exhibit Numbering**

Rule 131. **(Reserved for Future Use.)**

Rule 132. **(Reserved for Future Use.)**

Rule 133. **(Reserved for Future Use.)**

Rule 134. **(Reserved for Future Use.)**

PART F. SPECIAL PROCEDURES

Rule 135. **Restraining Order--Bond**

Rule 136. **Garnishments and Attachments--Bonds to Release—Entry of Judgment**

Against Garnishee

136.01 Bond

136.02 Requirement of Notice

Rule 137. **Receivers**

137.01 Venue

137.02 Appointment of Receivers

137.03 Bond

137.04 Claims

137.05 Annual Inventory and Report

137.06 Lawyer as Receiver

137.07 Employment of Counsel

137.08 Use of Funds

137.09 Allowance of Fees

137.10 Final Account

Rule 138. **Banks in Liquidation**

Rule 139. **Lawyers as Sureties**

Rule 140. **Supplemental Proceedings**

140.01 Previous Applications

140.02 Referee

140.03 Continuances

Rule 141. **Condemnation**

141.01 Objection to Commissioner

141.02 Notice of Appeal

Rule 142. **Trustees-Accounting-Petition For Appointment [Renumbered Rule 417.]**

Rule 143. **Actions by Representatives--Attorneys' Fees**

Rule 144. **Actions for Death by Wrongful Act**

144.01 Application for Appointment of Trustee

144.02 Notice and Hearing

144.03 Caption

144.04 Transfer of Action

144.05 Distribution of Proceeds

144.06 Validity and Timeliness of Action

Rule 145. Actions on Behalf of Minors and Incompetent Persons

145.01 When Petition and Order are Required

145.02 Contents and Filing of Petition

145.03 Representation

145.04 Hearing on the Petition

145.05 Terms of the Order

145.06 Structured Settlements

145.07 General Guardians

PART G. APPENDIX OF FORMS

Form 104. Certificate of Representation and Parties – Microsoft Word or PDF format

Form 111.02 Informational Statement (Civil Matters--Non-Family) – Microsoft Word or PDF format

Form 112.01 Joint Statement of the Case – Microsoft Word or PDF format

Form 114.01 Deleted

Form 114.02 Deleted

Form 142.02 Trustee's Accounting - Renumbered as Form 417.02

Form 145.01 Receipt of Minor Settlement Order and Funds – Microsoft Word or PDF format

Form 145.2 Combined Motion and Order for Release of Minor Settlement Funds – Microsoft Word or PDF format

PART H. MINNESOTA CIVIL TRIALBOOK

Section 1. Scope; Policy

Section 2. Deleted

Section 3. Deleted

Section 4. Deleted

Section 5. Pre-Trial Conferences

Section 6. Voir Dire of Jurors

Section 7. Preliminary Instructions

Section 8. Opening Statement and Final Arguments

Section 9. Availability of Witnesses

Section 10. Examination of Witnesses

Section 11. Interpreters

Section 12. Exhibits

Section 13. Custody of Exhibits

Section 14. Sealing and Handling of Confidential Exhibits

Section 15. Instructions

Section 16. Questions by Jurors

Section 17. Special Verdicts

Section 18. Polling and Discharge

PART A. PLEADINGS, PARTIES, AND LAWYERS TITLE II Part A

Rule 101. Scope of Rules

Rules 101 through 145 shall apply in all civil actions, except those governed by the Rules of Juvenile Procedure.

Rule 102. Renumbered Rule 6.

Rule 103. Renumbered Rule 7.

Rule 104. Certificate of Representation and Parties

Except as otherwise provided in these rules for specific types of cases and in cases where the action is commenced by filing by operation of statute, a party filing a civil case shall, at the time of filing, notify the court administrator in writing of the name, address, and telephone number of all counsel and unrepresented parties, if known (see Form 104 appended to these rules). If that information is not then known to the filing party, it shall be provided to the court administrator in writing by the filing party within seven days of learning it. Any party impleading additional parties shall provide the same information to the court administrator. The court administrator shall, upon receipt of the completed certificate, notify all parties or their lawyers, if represented by counsel, of the date of filing the action and the file number assigned.

(Amended effective January 1, 1996.)

Cross Reference: Minn. R. Civ. P. 5.04.

Advisory Committee Comments--1995 Amendments

This rule is derived from 7th Dist. R. 7 (eff. Jan. 1, 1990).

The final sentence is derived from 2d Dist. R. 2(b).

This rule formalizes the requirement to provide information about all parties when an action is filed. Its need derives from the commencement of actions by service and the fact that many pleadings are routinely not filed. The certificate of representation and parties serves a purpose of allowing the court to give notice of assignment of a judge to the case (in those districts making that assignment prior to trial), thereby triggering for all parties the 10-day period to remove an assigned judge under Minn. R. Civ. P. 63.

This requirement now exists in the Fourth and Seventh districts, and seems to be the type of requirement the Task Force seeks to make uniform statewide. The required information may be submitted in typed form or on forms available from the court administrator. A sample form is included in the Appendix of Forms as Form 104.

The first clause of the rule is intended to make it clear that where other rules provide specific requirements relating to initiation of an action for scheduling purposes, those rules govern. For example, Minn. Gen. R. Prac. 144.01, as amended in 1992, states that the Certificate of Representation required under this rule is not required in wrongful death actions following the mere filing of a petition for appointment of the trustee, but is required after the action itself is commenced by service of the summons and papers are filed with the court. Rule 141.02, as amended in 1992, similarly provides that filing of a notice of appeal from a commissioner's award triggers the assignment process requirements in condemnation proceedings. In addition to cases exempted by rule, this rule was amended in 1995 to exempt its application to actions that are commenced by filing. In those cases, it is unfair and inappropriate to place additional burdens on the filing process that are not required by statute, and which might result in the

rejection of a document for filing. The consequences of rejecting such a document can be dire. Minnesota Statutes, section 514.11. Cf. AAA Electric & Neon Service, Inc. v. R. Design Co., 364 N.W.2d 869 (Minn. App. 1985) (bar by not meeting filing requirement of action in a timely manner). The Advisory Committee believes it is not appropriate to reject such documents for filing in any event, but this rule now makes it clear that a certificate of representation and parties is not required in actions commenced by filing. For the convenience of the parties, frequently encountered examples of actions that are commenced by filing include mechanic's lien actions, quiet title actions, and actions to register title to real property (Torrens actions). This amendment is intended to remove the requirement that a certificate of representation and parties accompany the complaint for filing. It is not intended to prevent courts from obtaining this information, if still needed, after process has been served and the parties' representation known.

Rule 105. Withdrawal of Counsel

After a lawyer has appeared for a party in any action, withdrawal will be effective only if written notice of withdrawal is served on all parties who have appeared, or their lawyers if represented by counsel, and is filed with the court administrator if any other paper in the action has been filed. The notice of withdrawal shall include the address and phone number where the party can be served or notified of matters relating to the action.

Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing.

(Amended effective January 1, 1998.)

Advisory Committee Comment--1997 Amendment

The Task Force believes that uniformity in withdrawal practice and procedure would be desirable. Existing practice varies, in part due to differing rules and in part due to differing practices in the absence of a rule of statewide application. The primary concern upon withdrawal is the continuity of the litigation. Withdrawal should not impose additional burdens on opposing parties. The Task Force considered various rules that would make it more onerous for lawyers to withdraw, but determined those rules are not necessary nor desirable. Consistent with the right of parties to proceed pro se, they may continue to represent themselves where their lawyers have withdrawn. This rule establishes the procedure for withdrawal of counsel; it does not itself authorize withdrawal nor does it change the rules governing a lawyer's right or obligation to withdraw in any way. See Minn. R. Prof. Cond. 1.16. The rule does not affect or lessen a Lawyer's obligations to the client upon withdrawal. Those matters are governed by the Minnesota Rules of Professional Conduct. See Minn. R. Prof. Cond. 1.16. Enforcement of those rules is best left to the Lawyers Professional Responsibility Board.

The 1997 amendment removes any suggestion that the notice of withdrawal must be filed with the court if no other documents have been filed by any party. When other documents are filed by any party, however, it should be filed as required by Minn. R. Civ. P. 5.04.

The rule makes it clear that the withdrawal of counsel does not, in itself, justify continuance of any trial or hearing. Of course, withdrawal or substitution of counsel may be part of a set of circumstances justifying the exercise of the court's discretion to grant a continuance.

Rule 106. Hearing on Motion to Remove Judge for Actual Prejudice or Bias

All motions for removal of a judge, referee, or judicial officer, on the basis of actual prejudice or bias shall be heard in the first instance by the judge sought to be removed. If that judge denies the motion, it may subsequently be heard and reconsidered by the Chief Judge of the district or another judge designated by the Chief Judge.

Cross Reference: Minn. R. Civ. P. 63.02.

Task Force Comment--1991 Adoption

Minn. R. Civ. P. 63.02 does not currently specify the procedure to be followed when a motion is made to remove a judge from hearing a case on the grounds of actual bias or prejudice. This rule requires the motion to be heard initially by the judge sought to be removed, and allows the chief judge of the district to reconsider the motion if it is denied by the affected trial judge. The rule does not require the party seeking removal to bring the motion for reconsideration before the chief judge; it merely permits that reconsideration. Bringing the motion for consideration should not be construed as any condition precedent to appellate review, whether by appeal or extraordinary writ.

The rule intentionally allows a motion for reconsideration only if the trial court denies the motion for removal. If the motion is granted, it should only be addressed further on appeal.

The procedure for review by the chief judge of the district is not entirely satisfactory. Consideration should be given to facilitating appeal of these issues to the appellate courts, but the Task Force did not directly address this question because of the current limited jurisdiction of the appellate courts to hear appeals of decisions by judges declining to recuse themselves.

Rule 107. Procedure for Challenge for Having a Referee Hear a Matter

Any party objecting to having any referee hear a contested trial, hearing, motion or petition shall serve and file the objection within ten days of notice of the assignment of a referee to hear any aspect of the case, but not later than the commencement of any hearing before a referee.

Cross Reference: Minn. R. Civ. P. 63.

Task Force Comment--1991 Adoption

This rule serves to comply with the requirements of Minnesota Statutes 1990, section 484.70, subdivision 6, which provides:

No referee may hear a contested trial, hearing, motion or petition if a party or lawyer for a party objects in writing to the assignment of the referee to hear the matter. The court shall, by rule, specify the time within which an objection must be filed.

This rule is intended to specify the procedure for filing this notice. The procedure and time limits are derived from the requirements of Minn. R. Civ. P. 63.03 for removing a judge by notice to remove. The Task Force believes it is desirable to use the same procedures, time limits, and time calculation rules for these different types of removal.

This rule should apply to all referee assignments with the exception of referees assigned in Housing Court in Ramsey and Hennepin Counties. These courts are governed by Rule 602 of these rules.

Rule 108. Guardian Ad Litem

Rule 108.01 Role of Guardian

Whenever the court appoints a guardian ad litem, the guardian ad litem shall be furnished copies of all pleadings, documents and reports by the party or agency which served or submitted them. A party or agency submitting, providing or serving reports and documents to or on a party or the court, shall provide copies promptly thereafter to the guardian ad litem.

Upon motion, the court may extend the guardian ad litem's powers as it deems necessary. Except upon a showing of exigent circumstances, the guardian ad litem shall submit any recommendations, in writing, to the parties and to the court at least 10 days prior to any hearing at which such recommendations shall be made. For purposes of all oral communications between a guardian ad litem and the court, the guardian ad litem shall be treated as a party.

Rule 108.02 Guardian Not Lawyer for Any Party

The guardian ad litem shall not be a lawyer for any party to the action.

Cross Reference: Minn. R. Civ. P. 17.

Task Force Comment--1991 Adoption

This rule requires all discussions with a guardian ad litem regarding a case to be made as if the guardian ad litem were a party. It does not prohibit general discussions or briefing of guardians ad litem or potential guardians ad litem from taking place ex parte.

In personal injury actions, neither the lawyer nor any member of the lawyer's firm should be guardian. For the same reason, such a lawyer should not accept a referral fee with respect to the guardianship.

Rule 109. Application for Leave to Answer or Reply

Rule 109.01 Requirement of Affidavit of Merits

Any application for leave to answer or reply after the time limited by statute or rule, or to open a judgment and for leave to answer and defend, shall be accompanied by a copy of the answer or reply, and an affidavit of merits and be served on the opposite party.

Rule 109.02 Contents of Required Affidavits

In an affidavit of merits made by the party, the affiant shall state with particularity the facts relied upon as a defense or claim for relief, that the affiant has fully and fairly stated the facts in the case to counsel, and that the affiant has a good and substantial defense or claim for relief on the merits, as the affiant is advised by counsel after such statement and believes true, and the affiant shall also give the name and address of such counsel.

An affidavit shall also be made by a lawyer who shall state that from the showing of the facts made by the party to the lawyer believes that such party has a good and substantial defense or claim for relief on the merits.

Cross Reference: Minn. R. Civ. P. 4.043, 6.02, 59.03, 59.05, 60.02.

Task Force Comment--1991 Adoption

This rule is derived from Rule 22 of the Code of Rules for the District Courts.

Rule 110. Self-Help Programs

110.01 Authority for Self-Help Programs

A District Court for any county may establish a Self-Help Program to facilitate access to the courts. The purpose of a Self-Help Program is to assist Self-Represented Litigants, within the bounds of this rule, to achieve fair and efficient resolution of their cases, and to minimize the delays and inefficient use of court resources that result from misuse of the court system by litigants who are not represented by lawyers. There is a compelling state interest in resolving cases efficiently and fairly, regardless of the financial resources of the parties.

(Added effective January 1, 2004.)

110.02 Staffing

The Self-Help Program may be staffed by lawyer and non-lawyer personnel, and volunteers under the supervision of regular personnel. Self-Help Personnel act at the direction of the district court judges to further the business of the court.

(Added effective January 1, 2004.)

110.03 Definitions

(a) "Self-Represented Litigant" means any individual who seeks information to file, pursue, or respond to a case without the assistance of a lawyer authorized to practice before the court.

(b) "Self-Help Personnel" means lawyer and non-lawyer personnel and volunteers under the direction of paid staff in a Self-Help Program who are performing the limited role under this rule. "Self-Help Personnel" does not include lawyers who are providing legal services to only one party as part of a legal services program that may operate along side or in conjunction with a Self-Help Program.

(c) "Self-Help Program" means a program of any name established and operating under the authority of this rule.

(Added effective January 1, 2004.)

110.04 Role of Self-Help Personnel

(a) Required Acts. Self-Help Personnel shall

(1) Educate Self-Represented Litigants about available pro bono legal services, low cost legal services, legal aid programs, lawyer referral services and legal resources provided by state and local law libraries;

(2) Encourage Self-Represented Litigants to obtain legal advice;

(3) Provide information about mediation services;

(4) Provide services on the assumption that the information provided by the litigant is true; and

(5) Provide the same services and information to all parties to an action, if requested.

(b) Permitted, but Not Required, Acts. Self-Help Personnel may, but are not required to:

(1) provide forms and instructions;

(2) assist in the completion of forms;

(3) provide information about court process, practice and procedure;

(4) offer educational sessions and materials on all case types, such as sessions and materials on marriage dissolution;

(5) answer general questions about family law and other issues and how to proceed with such matters;

(6) explain options within and outside of the court system;

(7) assist in calculating guidelines child support based on information provided by the Self-Represented Litigant;

(8) assist with preparation of court orders under the direction of the court; and

(9) provide other services consistent with the intent of this rule and the direction of the court, including programs in partnership with other agencies and organizations.

(c) Prohibited Acts. Self-Help Personnel may not:

(1) represent litigants in court;

(2) perform legal research for litigants;

(3) deny a litigant's access to the court;

(4) lead litigants to believe that they are representing them as lawyers in any capacity or induce the public to rely on them for personal legal advice;

(5) recommend one option over another option;

(6) offer legal strategy or personalized legal advice;

(7) tell a litigant anything she or he would not repeat in the presence of the opposing party;

(8) investigate facts pertaining to a litigants case, except to help the litigant obtain public records; or

(9) disclose information in violation of statute, rule, or case law.

(Added effective January 1, 2004.)

110.05 Disclosure

Self-Help Programs shall provide conspicuous notice that:

(a) no attorney-client relationship exists between Self-Help Personnel and Self-Represented Litigants;

(b) communications with Self-Help Personnel are neither privileged nor confidential;

(c) Self-Help Personnel must remain neutral and may provide services to the other party; and

(d) Self-Help personnel are not responsible for the outcome of the case.

Program materials should advise litigants to consult with their own attorney if they desire personalized advice or strategy, confidential conversations with an attorney, or if they wish to be represented by an attorney in court.

(Added effective January 1, 2004.)

110.06 Unauthorized Practice of Law

The performance of services by Self-Help Personnel in accordance with this rule shall not constitute the unauthorized practice of law.

(Added effective January 1, 2004.)

110.07 No Attorney-Client Privilege or Confidentiality

Except as provided in Rule 110.09, information given by a Self-Represented Litigant to court administration staff or Self–Help Personnel is neither confidential nor privileged. No attorney-client relationship exists between Self-Help Personnel and a Self-Represented Litigant. Notwithstanding the foregoing, Self-Help Personnel who are also lawyers and are permitted to practice law outside the role of Self-Help Personnel under this rule must abide by all applicable Rules of Professional Conduct regarding confidentiality and conflicts of interest.

(Added effective January 1, 2004.)

110.08 Conflict

Notwithstanding ethics rules that govern attorneys, certified legal interns, and other persons working under the supervision of an attorney, there shall be no conflict of interest when Self-Help Personnel provide services to both parties, provided, however, that Self-Help Personnel who are also lawyers and are permitted to practice law outside the role of Self-Help Personnel under this rule, must abide by all applicable Rules of Professional Conduct regarding conflicts of interest.

(Added effective January 1, 2004.)

110.09 Access to Records

All records made or received in connection with the official business of a Self-Help Program relating to the address, telephone number or residence of a Self-Represented Litigant are not accessible to the public or the other party.

(Added effective January 1, 2004.)

Advisory Committee Comment—2003 Adoption

Rule 110 is a new rule adopted in 2003 on the recommendation of a pro se implementation committee to facilitate access to and use of the courts by pro se litigants. It is modeled after similar family law provisions in other jurisdictions. See, e.g., Ca. Fam. Code §§ 10000 –100015 (West 2003); Fla .Fam. L. R. P. 12.750 (West 2003); Or .Rev. Stat. § 3.428 (2003); Wash. Rev. Code § 26.12.240 (2003); Wash. R. Gen. GR 27 (West 2003).

The rule defines and communicates to interested parties the role of Self-Help Personnel. Definition of roles is important because of the potential for confusion. Rule 110.03(b) intentionally limits the definition of Self-Help Personnel to exclude lawyers who provide services to one party, as is commonly done by legal service program attorneys. Because of this definition, Rule 110.07 does not limit the creation of an attorney-client relationship in such attorney-client relationships. Rules 110.07-.08 recognize that Self-Help Personnel who are otherwise engaged in or authorized to engage in the practice of law may have obligations to clients outside the Self-Help Program that can affect their relationships to Self-Represented Litigants within the Self-Help Program.

PART B. SCHEDULING

Rule 111. Scheduling of Cases

Rule 111.01 Scope

The purpose of this rule is to provide a uniform system for scheduling matters for disposition and trial in civil cases, excluding only the following:

(a) Conciliation court actions and conciliation court appeals where no jury trial is demanded;

(b) Family court matters governed by Minn. Gen. R. Prac. 301 through 312;

(c) Public assistance appeals under Minnesota Statutes, section 256.045, subdivision 7;

(d) Unlawful detainer actions pursuant to Minnesota Statutes, sections 504B.281, et seq.;

(e) Implied consent proceedings pursuant to Minnesota Statutes, section 169.123;

(f) Juvenile court proceedings;

(g) Civil commitment proceedings subject to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment Act of 1982;

(h) Probate court proceedings;

(i) Periodic trust accountings pursuant to Minn. Gen. R. Prac. 417;

(j) Proceedings under Minnesota Statutes, section 609.748 relating to harassment restraining orders;

(k) Proceedings for registration of land titles pursuant to Minnesota Statutes, chapter 508;

(l) Election contests pursuant to Minnesota Statutes, chapter 209; and

(m) Applications to compel or stay arbitration under Minnesota Statutes, chapter 572.

The court may invoke the procedures of this rule in any action where not otherwise required.

(Amended effective January 1, 2000.)

Advisory Committee Comment--1999 Amendments

Rule 111.01(d) is amended in 1999 to reflect the fact that Minnesota Statutes, sections 566.01, et seq. were replaced by section 504B.281. This change is not intended to have any substantive effect other than to correct the statutory reference.

Rule 111.02 The Party's Informational Statement

Within 60 days after an action has been filed, each party shall submit, on a form to be available from the court (see Form 111.02 appended to these rules), the information needed by the court to manage and schedule the case. The information provided shall include:

(a) The status of service of the action;

(b) Whether the statement is jointly prepared;

(c) Description of case;

(d) Whether a jury trial is requested or waived;

(e) Discovery contemplated and estimated completion date;

(f) Whether assignment to an expedited, standard, or complex track is requested;

(g) The estimated trial time;

(h) Any proposals for adding additional parties;

(i) Other pertinent or unusual information that may affect the scheduling or completion of pretrial proceedings;

(j) Recommended alternative dispute resolution process, the timing of the process, the identity of the neutral selected by the parties or, if the neutral has not yet been selected, the deadline for selection of the neutral. If ADR is believed to be inappropriate, a description of the reasons supporting this conclusion; and

(k) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to Minn. Gen. R. Prac. 111.03.

(Amended effective July 1, 1994, and shall supersede Second Judicial District Local Rules 5 and 25 and Fourth Judicial District Local Rule 5 to the extent inconsistent therewith.)

Rule 111.03 Scheduling Order

(a) When issued. No sooner than 60 days and no longer than 90 days after an action has been filed, the court shall enter its scheduling order. The court may issue the order after either a telephone or in-court conference, or without a conference or hearing if none is needed.

(b) Contents. The scheduling order shall provide for alternative dispute resolution as required by Rule 114.04(c) and shall establish a date for the completion of discovery. The order may also establish any of the following:

(1) Deadlines for joining additional parties, whether by amendment or third-party practice;

(2) Deadlines for bringing nondispositive or dispositive motions;

(3) Deadlines or specific dates for submitting particular issues to the court for consideration;

(4) A deadline for completing any independent physical, mental or blood examination pursuant to Minn. R. Civ. P. 35;

(5) A date for a formal discovery conference pursuant to Minn. R. Civ. P. 26.06, a pretrial conference or conferences pursuant to Minn. R. Civ. P. 16, or a further scheduling conference.

(6) Deadlines for filing any pretrial submissions, including proposed instructions, verdicts, or findings of fact, witness lists, exhibits lists, statements of the case or any similar documents;

(7) Whether the case is a jury trial, or court trial if a jury has been waived by all parties;

(8) A date for submission of a Joint Statement of the Case pursuant to Minn. Gen. R. Prac. 112; or

(9) A trial date.

(Amended effective July 1, 1994, and shall supersede Second Judicial District Local Rules 5 and 25 and Fourth Judicial District Local Rule 5 to the extent inconsistent therewith.)

Rule 111.04 Amendment

A scheduling order pursuant to this rule may be amended at a pretrial conference or upon motion for good cause shown. Except in unusual circumstances, a motion to extend deadlines under a scheduling order shall be made before the expiration of the deadline. The court may issue more than one scheduling order.

Cross Reference: Minn. R. Civ. P. 16, 26.06, 35, 36, 38; Minn. Civ. Trialbook, section 5.

Advisory Committee Comment--1994 Amendments

This rule is new. This rule is intended to establish a uniform, mandatory practice of dealing with scheduling in every case by some court action. The rule does not establish, however, a single means of complying with the scheduling requirement nor does it set any rigid or uniform schedules. In certain instances, other rules establish the event giving rise

to the requirement that the scheduling procedures be followed. See, e.g., Rule 141 (condemnation scheduling triggered by appeal of commissioner's award); 144.01 (wrongful death scheduling triggered by filing paper in wrongful death action, not proceedings for appointment of trustee). Because applications to compel or stay arbitrations are, by statute, authorized to be handled by the District Court in a summary matter and without the commencement of a separate action, it is appropriate that they be exempted from the formal case scheduling requirements of Rule 111.

Although the rule allows parties to submit scheduling information separately, this information may also be submitted jointly and required to be submitted jointly. In many cases, the efficient handling of the case may be fostered by the parties meeting to discuss scheduling issues and submitting a joint statement.

The rule contemplates establishment of a separate deadline for completion of an independent medical examination because the Task Force believes that it is frequently desirable to allow such an examination to take place after the conclusion of other discovery. The rule does not create any specific schedule for independent medical examinations, but allows, and encourages, the court to consider this question separately. The timing of these examinations is best not handled by rigid schedule, but rather, by the exercise of judgment on the part of the trial judge based upon the views of the lawyers, any medical information bearing on timing and the status of other discovery, as well as the specific factors set forth in Minn. R. Civ. P. 35. The Task Force considered a new rule expressly to exempt the use of requests for admissions pursuant to Minn. R. Civ. P. 36 from discovery completion deadlines in the ordinary case. The Task Force determined that a separate rule exempting requests for admissions from discovery deadlines in all cases was not necessary, but encourages use of extended deadlines for requests for admissions in most cases. The primary function served by these requests is not discovery, but the narrowing of issues, and

their use is often most valuable at the close of discovery. See *R. Haydock & D. Herr,* Discovery Practice *section 7.2 (2d ed. 1988). Because requests for admissions serve an important purpose of narrowing the issues for trial and resolving evidentiary issues relating to trial, it is often desirable to allow use of these requests after the close of other discovery.*

Rule 112. Joint Statement of the Case

Rule 112.01 When Required

As a case progresses, the court may find it advisable to implement the scheduling order and procedures of Minn. Gen. R. Prac. 111 by requiring the parties to report on the status of the case. This report shall be made in the form entitled Joint Statement of the Case (see Form 112.01 appended to these rules). The court may also choose to direct the filing of separate statements of the case. If the parties are directed to file a joint statement of the case, the plaintiff shall initiate and schedule the meeting and shall be responsible for filing the Joint Statement of the Case within these time limits. If the plaintiff is unable to obtain the cooperation, after genuine efforts, of the other parties in preparing a Joint Statement of the Case, the plaintiff may file a separate statement together with an affidavit setting forth the efforts made and reasons why a joint statement could not be filed.

(Amended effective January 1, 1994.)

Rule 112.02 Contents

The Joint Statement of the Case shall contain the following information to the extent applicable:

(a) A statement that all parties have been served, that the case is at issue, and that all parties have joined in the filing of the Statement of the Case;

(b) An estimated trial time;

(c) Whether a jury trial has been requested, and if so, by which party;

(d) Counsels' opinion whether the case should be handled as an expedited, standard, or complex case (determination to be made by the court);

(e) A concise statement of the case indicating the facts that Plaintiff(s) intend to prove and the legal basis for all claims;

(f) A concise statement of the case indicating the facts that Defendant(s) intend to prove and the legal basis for all defenses and counterclaims; and

(g) Names and addresses of all witnesses known to the lawyer or client who may be called at the trial by each party, including expert witnesses and the particular area of expertise each expert will be addressing.

Rule 112.03 Contents--Personal Injury Actions

In cases involving personal injury, the Joint Statement of the Case shall also include a statement by each claimant, whether by complaint or counterclaim, setting forth the following:

(a) A detailed description of claimed injuries, including claims of permanent injury. If permanent injuries are claimed, the name of the doctor or doctors who will so testify;

(b) An itemized list of special damages to date including, but not limited to, auto vehicle damage and method of proof thereof; hospital bills, x-ray charges, and other doctor and medical bills to date; loss of earnings to date fully itemized; and

(c) Whether parties will exchange medical reports (See Minn. R. Civ. P. 35.04).

Rule 112.04 Contents--Vehicle Accidents

In cases involving vehicle accidents, the Joint Statement shall also include the following:

(a) A description of vehicles and other instrumentalities involved with information as to ownership or other relevant facts; and

(b) Name of insurance carriers involved, if any.

Rule 112.05 Hearing

If no Joint Statement has been timely filed, the court may set the matter for hearing.

Cross Reference: Minn. R. Civ. P. 16, 35.04; Minn. Civ. Trialbook, section 5.

Advisory Committee Comment--1994 Amendments

This rule is new. The procedures implemented by this rule supplement the procedures of Rule 111. The rule does not require that a Joint Statement of the Case be used. The court can direct the parties to file separate statements, although the same format should be followed for such

separate statements of the case.

The requirement that the parties confer to prepare a statement does not require a face-to-face meeting; the conference can be by telephone if that is suited to the needs of the particular case.

The final sentence of Rule 112.01 is added to provide a mechanism for the plaintiff ordered to file a Joint Statement of the Case but unable

to obtain cooperation of the opposing parties. Although the rule as originally drafted did not place an undue burden on the plaintiff, the trial courts have

occasionally done so when the plaintiff's opposing parties have thwarted the preparation of the Statement of the Case and prevented its filing. The amendment allows the plaintiff to proceed individually in that circumstance.

Rule 113. Assignment of Case(s) to Single Judge

113.01 Request for Assignment of a Single Case to a Single Judge

(a) In any case that the court or parties believe is likely to be complex, or where other reasons of efficiency or the interests of justice dictate, the chief judge of the district or the chief judge's designee may order that all pretrial and trial proceedings shall be heard before a single judge. The court may enter such an order at any time on its own initiative, in response to a suggestion in a party's informational statement filed under Rule 111, or on the motion of any party, and shall enter such an order when the requirements of Rule 113.01(b) have been met. The motion shall comply with these rules and shall be supported by affidavit(s). In any case assigned to a single judge pursuant to this Rule that judge shall actively use enhanced judicial management techniques, including, but not limited to, the setting of a firm trial date, establishment of a discovery cut off date, and periodic case conferences.

(b) Grounds. Unless the court finds that court management of the claims and/or issues involved has become routine or that the interests of justice require otherwise, the court shall order that all pretrial and trial proceedings shall be heard before a single judge upon a showing that the action is likely to involve one or more of the following:

(1) numerous pretrial motions raising difficult or novel legal issues that will be time consuming to resolve;

(2) management of a large number of witnesses or substantial amount of documentary evidence;

(3) management of a large number of separately represented parties;

(4) the opportunity to coordinate with related actions pending in another court;

(5) substantial post-judgment judicial supervision.

(Amended effective March 1, 2001.)

113.02 Consolidation of Cases Within a Judicial District

A motion for assignment of two or more cases pending within a single judicial district to a single judge shall be made to the chief judge of the district in which the cases are pending, or the chief judge's designee.

(Amended effective March 1, 2001.)

113.03 Assignment of Cases in More than One District to a Single Judge

(a) Assignment by Chief Justice. When two or more cases pending in more than one judicial district involve one or more common questions of fact or are otherwise related cases in which there is a special need for or desirability of central or coordinated judicial management, a motion by a party or a court's request for assignment of the cases to a single judge may be made to the chief justice of the supreme court.

(b) Procedure. The motion shall identify by court, case title, case number, and judge assigned, if any, each case for which assignment to a single judge is requested. The motion shall also indicate the extent to which the movant anticipates that additional related cases may be filed. An original and two copies of the motion shall be filed with the clerk of appellate courts. A copy of the motion shall be served on other counsel and any unrepresented parties in all cases for which assignment is requested and the chief judge of each district in which such an action is pending. Any party may file and serve a response within 5 days after service of the motion. Any reply shall be filed and served within 2 days of service of the response. Except as otherwise provided in this rule, the motion and any response shall comply with the requirements of Minn. R. Civ. App. P. 127 and 132.02.

(c) Mechanics and Effect of Transfer. When such a motion is made, the chief justice may, after consultation with the chief judges of the affected districts and the state

court administrator, assign the cases to a judge in one of the districts in which any of the cases is pending or in any other district. If the motion is to be granted, in selecting a judge the chief justice may consider, among other things, the scope of the cases and their possible impact on judicial resources, the availability of adequate judicial resources in the affected districts, and the ability, interests, training and experience of the available judges. As necessary, the chief justice may assign an alternate or back-up judge or judges to assist in the management and disposition of the cases. The assigned judge may refer any case to the chief judge of the district in which the case was pending for trial before a judge of that district selected by the chief judge.

(Amended effective January 1, 2006.)

Advisory Committee Comment – 2000 Amendments

Rule 113.01 applies to assignment of a single case within a judicial district or county that does not already use a so-called block assignment system whereby cases are routinely assigned to the same judge for all pretrial and trial proceedings. Although parties can request a single-judge assignment in the informational statement under Rule 111, this rule contemplates a formal motion with facts presented supporting the request in the form of sworn testimony. The grounds for the motion in Rule 113.01(b) were derived from rules 1800 -1811 of the California Special Rules for Trial Courts, Div. V, Complex Cases. If the court finds that management of the claims or issues has become routine, the matter would not rise to the level of requiring assignment to a single judge. A motion to certify a class, for example, might be routine in terms of court management. Once a class has been certified and the matter becomes a class action, however, the complexity may rise to the level that requires a single judge assignment. Under Rule 113.01(a), the motion is to be made to the chief judge (or his or her designee) of the district in which the case is pending.

Rule 113.02 recognizes that motions for consolidation of cases within a single judicial district may be heard by the chief judge of the district or his or her designee.

Rule 113.03 is new, and is intended merely to establish a formal procedure for requesting the chief justice to exercise the power to assign multiple cases in different districts to a single judge when the interests of justice dictate. The power to assign cases has been recognized by the supreme court in a few decisions over the past decade or so. See, e.g., In re Minnesota Vitamin Antitrust Litigation, 606 N.W.2d 446 (Minn. 2000); In re Minnesota Silicone Implant Litigation, 503 N.W.2d 472 (Minn. 1993); In re Minnesota L-tryptophan Litigation, No. C0-91-706 (Minn. Sup. Ct., Apr. 24, 1991); In re Minnesota Asbestos Litigation, No. C4-87-2406 (Minn. Sup. Ct., Dec. 15, 1987). The power is derived from the inherent power of the court and specific statutory recognition of that power in MINN. STAT. §§ 480.16 & 2.724 (1998). The rule is intended to establish a procedure for seeking consideration of transfer by the chief justice. The procedure contemplates notice to interested parties and consultation with the affected judges so that the sound administration of the cases is not compromised. Transfer of cases for

coordinated pretrial proceedings is an established practice in the federal court system under 28 U.S.C. § 1407. Although this rule is not as complex as its federal counterpart, its purpose is largely the same—to facilitate the efficient and fair handling of multiple cases. Practice under the federal statute has worked well, and is one of the most important tools of complex case management in the federal courts. See generally DAVID F. HERR, MULTIDISTRICT LITIGATION: HANDLING CASES BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION (1986 & Supp. 1996). A companion change is made to MINN. R. CIV. P. 63.03, making it clear that when a judge is assigned by order of the chief justice pursuant to this rule that the judge so appointed may not be removed peremptorily under Rule 63 or the statutory restatement of the removal power contained in MINN. STAT. § 542.16 (1998).

Advisory Committee Comment — 2006 Amendment

The amendments to Rule 113.03 are intended to provide more detailed guidance about the procedures to be followed in seeking transfer of cases under the rule. The rule clarifies the existing practice and specifically incorporates the normal procedures for handling motions in the appellate courts. Because the motion is made to the chief justice rather than the entire court, fewer copies are necessary, but other procedures of Minn. R. Civ. App. P. 127 and 132.02 apply to these motions.

Rule 114. Alternative Dispute Resolution

Rule 114.01 Applicability

All civil cases are subject to Alternative Dispute Resolution (ADR) processes, except for those actions enumerated in Minnesota Statutes, section 484.76 and Rules 111.01 and 310.01 of these rules.

(Amended effective July 1, 1997.)

Advisory Committee Comment--1996 Amendment

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

Rule 114.02 Definitions

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

(a) ADR Processes

Adjudicative Processes

(1) *Arbitration:* A forum in which a neutral third party renders a specific award after presiding over an adversarial hearing at which each party and its counsel present its position. If the parties stipulate in writing that the arbitration will be binding, then the proceeding will be conducted pursuant to the Uniform Arbitration Act (Minn. Stat. §§ 572.08-.30). If the parties do not stipulate that arbitration will be binding, then the award is non-binding and will be conducted pursuant to Rule 114.09.

(2) *Consensual Special Magistrate:* A forum in which the parties present their positions to a neutral in the same manner as a civil lawsuit is presented to a judge. This process is binding and includes the right of appeal to the Minnesota Court of Appeals.

(3) *Summary Jury Trial:* A forum in which each party and their counsel present a summary of their position before a panel of jurors. The number of jurors on the panel is six unless the parties agree otherwise. The panel may issue a non-binding advisory opinion regarding liability, damages, or both.

Evaluative Processes

(4) *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 an 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.

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

(6) *Neutral Fact Finding:* A forum in which a neutral investigates and analyzes a factual dispute and issues findings. The findings are non-binding unless the parties agree to be bound by them.

Facilitative Processes

(7) *Mediation:* A forum in which a neutral third party facilitates communication between parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties.

Hybrid Processes

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

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

(10) *Other:* Parties may by agreement create an ADR process. They shall explain their process in the Informational Statement.

(b) Neutral. A "neutral" is an individual or organization who provides an ADR process. A "qualified neutral" is an individual or organization included on the State Court Administrator's roster as provided in Rule 114.12. An individual neutral must have completed the training and continuing education requirements provided in Rule 114.13. An organization on the roster must certify that an individual neutral provided by the organization has met the training and continuing education requirements of Rule 114.13. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be on the State Court Administrator's roster.

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

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

Advisory Committee Comment--1996 Amendment

The amendments to this rule are limited, but important. In subdivision (a)(10) is new, and makes it explicit that parties may create an ADR process other than those enumerated in the rule. This can be either a "standard" process not defined in the rule, or a truly novel process not otherwise defined or used. This rule specifically is necessary where the parties may agree to a binding process that the courts could not otherwise

impose on the parties. For example, the parties can agree to "baseball arbitration" where each party makes a best offer which is submitted to an arbitrator who has authority to select one of the offers as fairest, but can make no other decision. Another example is the Divorce with Dignity Program established in the Fourth Judicial District, in which the parties and the judge agree to attempt to resolve disputed issues through negotiation and use of impartial experts, and the judge determines unresolved preliminary matters by telephone conference call and unresolved dispositive matters by written submissions.

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

Rule 114.03 Notice of ADR Processes

(a) Notice. The court administrator shall provide, on request, information about ADR processes available to the county and the availability of a list of neutrals who provide ADR services in that county.

(b) Duty to Advise Clients of ADR Processes. Attorneys shall provide clients with the ADR information.

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

This rule is designed to provide attorneys and parties to a dispute with information on the efficacy and availability of ADR processes. Court personnel are in the best position to provide this information. A brochure has been developed, which can be used by court administrators to give information about ADR processes to attorneys and parties. The State Court

Administrator's Office will maintain a master list of all qualified neutrals, and will update the list and distribute it annually to court administrators.

Advisory Committee Comment--1996 Amendment

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

Rule 114.04 Selection of ADR Process

(a) Conference. After service of a complaint or petition, the parties shall promptly confer regarding case management issues, including the selection and timing of the ADR process. Following this conference ADR information shall be included in the informational statement required by Rule 111.02 and 304.02.

In family law matters, the parties need not meet and confer where one of the parties claims to be the victim of domestic abuse by the other party or where the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party. In such cases, both parties shall complete and submit form 9A or 9B, specifying the form(s) of ADR the parties individually prefer, not what is agreed upon.

(b) Court Involvement. If the parties cannot agree on the appropriate ADR process, the timing of the process, or the selection of neutral, or if the court does not approve the parties' agreement, the court shall, in cases subject to Rule 111, 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 111.02 or 304.02 to discuss ADR and other scheduling and case management issues.

Except as otherwise provided in Minnesota Statutes, section 604.11 or Rule 310.01, the court, at its discretion, may order the parties to utilize one of the non-binding processes, or may find that ADR is not appropriate; provided that no ADR process shall be approved if the court finds that ADR is not appropriate or if it amounts to a sanction on a non-moving party.

(c) Scheduling Order. The court's Scheduling Order pursuant to Rule 111.03 or 304.03 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 Scheduling Order pursuant to Rule 111.03 or 304.03 shall so indicate.

(d) Post-Decree Family Law Matters. Post-decree matters in family law are subject to ADR under this rule. ADR may be ordered following the conference required by Rule 303.03(c).

(Amended effective January 1, 2005.)

Implementation Committee Comments—1993

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

Advisory Committee Comments--1995 Amendments

Rule 114.04 is amended to make explicit what was implicit before. The rule mandates a telephone or in-court conference if the parties cannot agree on an ADR process. The primary purpose of that conference is to resolve the disagreement on ADR, and the rule now expressly says that. The court can, and usually will, discuss other scheduling and case management issues at the same time. The court's action following the conference required by this rule may be embodied in a scheduling order entered pursuant to Rule 111.03 of these rules.

Advisory Committee Comment--1996 Amendment

The changes to this rule are made to incorporate Rule 114's expanded applicability to family law matters. The rule adopts the procedures heretofore followed for ADR in other civil cases. The beginning point of the process is the informational statement, used under either Rule 111.02 or 304.02. The rule encourages the parties to approach ADR in all matters by conferring and

agreeing on an ADR method that best suits the need of the case. This procedure recognizes that ADR works best when the parties agree to its use and as many details about its use as possible. Subdivision (a) requires a conference regarding ADR in civil actions and after commencement of family law proceedings. In family cases seeking post-decree relief, ADR must be considered in the meeting required by Rule 303.03(c). Cases involving domestic abuse are expressly exempted from the ADR meet-and-confer requirement and courts should accommodate implementing ADR in these cases without requiring a meeting nor compromising a party's right to choose an ADR process and neutral. The rule is not intended to discourage settlement efforts in any action. In cases where any party has been, or claims to have been, a victim of domestic violence, however, courts need to be especially cautious. Facilitative processes, particularly mediation, are especially prone to abuse since they place the parties in direct contact and may encourage them to compromise their rights in situations where their independent decision-making capacity is limited. The rule accordingly prohibits their use where those concerns are present.

Rule 114.05 Selection of Neutral

(a) Court Appointment. If the parties are unable to agree on either a neutral or the date upon which the neutral will be selected, the court shall, in those cases subject to Rule 111, appoint a qualified neutral at the time of the issuance of the scheduling order required by Rule 111.03 or 304.03. In cases not subject to Rule 111, the court may appoint a qualified neutral at its discretion, after obtaining the views of the parties. In all cases, the order may establish a deadline for the completion of the ADR process.

(b) Exception from Qualification. Except when mediation or med-arb is chosen as a dispute resolution process, the court, in its discretion, or upon recommendation of the parties, may appoint a neutral who does not qualify under Rule 114.12 of these Rules, if the appointment is based on legal or other professional training or experience. A neutral so selected shall be deemed to consent tot eh jurisdiction of the ADR Review Board and compliance with the Code of Ethics set forth in the Appendix to Rule 114.

(c) Removal. Any party or the party's attorney may file with the court administrator within 10 days of notice of the appointment of the neutral and serve on the opposing party a notice to remove. Upon receipt of the notice to remove the court administrator shall immediately assign another neutral. After a

party has once disqualified a neutral as a matter of right, a substitute neutral may be disqualified by the party only by making an affirmative showing of prejudice to the chief judge or his or her designee.

(d) Availability of Child Custody Investigator. A neutral serving in a family law matter may conduct a custody investigation, or evaluation only (1) where the parties agree in writing executed after the termination of mediation, that the neutral shall conduct the investigation or evaluation; or (2) where there is no other person reasonably available to conduct the investigation or evaluation. Where the neutral is also the sole investigator for a county agency charged with making recommendations to the court regarding child custody and visitation, the neutral may make such recommendations, but only after the court administrator has made all reasonable attempts to obtain reciprocal services from an adjacent county. Where such reciprocal services are obtainable, the custody evaluation must be conducted by a person from the adjacent county agency, and not by the neutral who served in the family law matter.

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

Parties should consult the statewide roster for information on the educational background and relevant training and experience of the proposed neutrals. It is important that the neutrals' qualifications be provided to the parties so that the parties may make an informed choice. Unique aspects of a dispute and the preference of the parties may require special qualifications by the neutral.

Parties should have the ability, within reason, to choose a neutral with special expertise or experience in the subject matter of the dispute, even if they do not qualify under Rule 114.12, though it is anticipated that this will occur infrequently. Parties to mediation and med-arb processes must appoint an individual who qualifies under Rule 114.12.

Advisory Committee Comment--1996 Amendment

This rule is amended only to provide for the expanded applicability of Rule 114 to family law matters. The rule also now explicitly permits the court to establish a deadline for completion of a court-annexed ADR process. This change is intended only to make explicit a power courts have had and have frequently exercised without an explicit rule.

Rule 114.05(d) is derived from existing Rule 310.08. Although it is clearly not generally desirable to have a neutral subsequently serve as child custody investigator, in some instances it is necessary. The circumstances where this occurs are, and should be, limited, and are defined in the rule. Where other alternatives exist in a county and for an individual case, a neutral should not serve as child custody investigator.

Rule 114.06 Time and Place of Proceedings

(a) Notice. The court shall send to the neutral a copy of the Order of Appointment.

(b) Scheduling. Upon receipt of the court's order, the 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) Final disposition. If the case is settled through an ADR process, the attorneys shall complete the appropriate court documents to bring the case to a final disposition.

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

The neutral will schedule the ADR process date unless, the parties agree on a date within the time frame contained in the scheduling order. If the neutral is selected at the time of scheduling order, such order can serve as the court order appointing the neutral. In scheduling the ADR process the neutral will attempt to accommodate the parties' schedules.

Advisory Committee Comment--1996 Amendment

The only changes to this rule are the inclusion of titles to the subparagraphs. This amendment is not intended to affect the meaning or interpretation of the rule, but is included to make the rule easier to use.

Rule 114.07 Attendance at ADR Proceedings

(a) Privacy. Non-binding ADR processes are not open to the public except with the consent of all parties.

(b) Attendance. The court may require that the attorneys who will try the case attend ADR proceedings.

(c) Attendance at Adjudicative Sessions. Individuals with the authority to settle the case need not attend adjudicative processes aimed at reaching a decision in the case, such as arbitration, as long as such individuals are reasonably accessible, unless otherwise directed by the court.

(d) Attendance at Facilitative Sessions. Individuals with the authority to settle the case shall attend non-adjudicative processes aimed at settlement of the case, such as mediation, mini-trial, or med-arb, unless otherwise directed by the court.

(e) Sanctions. The court may impose sanctions for failure to attend a scheduled ADR process only if this rule is violated.

(Amended effective January 1, 2005.)

Implementation Committee Comments—1993

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

Advisory Committee Comment--1996 Amendment

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

Rule 114.08 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), no evidence that there has been an ADR proceeding or any fact concerning the 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) Inadmissability. Subject to Minn. Stat. § 595.02 and except as provided in paragraphs (a) and (d), no statements made nor documents produced in non-binding ADR processes which are not otherwise discoverable shall be subject to discovery or other disclosure. Such evidence is inadmissible for any purpose at the trial, including impeachment.

(c) Adjudicative Evidence. Evidence in consensual special master proceedings, binding arbitration, or in non-binding arbitration after the

period for a demand for trial expires, may be used in subsequent proceedings for any purpose for which it is admissible under the rules of evidence.

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

(e) Records of Neutral. Notes, records, and recollections of the neutral are confidential, which means that they shall not be disclosed to the parties, the public, or anyone other than the neutral, unless (1) all parties and the neutral agree to such disclosure or (2) required by law or other applicable professional codes. No record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved.

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

If a candid discussion of the issues is to take place, parties need to be able to trust that discussions held and notes taken during an ADR proceeding will be held in confidence.

This proposed rule is important to establish the subsequent evidentiary use of statements made and documents produced during ADR proceedings. As a general rule, statements in ADR processes that are intended to result in the compromise and settlement of litigation would not be admissible under Minn. R. Evid. 408. This rule underscores and clarifies that the fact that ADR proceedings have occurred or what transpired in them. Evidence and sworn testimony offered in summary jury trials and other similar related proceedings is not excluded from admissibility by this rule, but is explicitly treated as other evidence or as in the other sworn testimony or evidence under the rules of evidence. Former testimony is excepted from the hearsay rule if the witness is unavailable by Minn R. Evid. 804(b)(1). Prior testimony may also be admissible under Minn R. Evid. 613 as a prior statement.

Advisory Committee Comment--2004 Amendment

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

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

Rule 114.09 Arbitration Proceedings

(a) General.

Parties are free to opt for binding or non-binding arbitration. Whether they elect binding or non-binding arbitration, the parties may construct or select a set of rules to govern the process. The agreement to arbitrate must state what rules govern. If the parties elect binding arbitration, and their agreement to arbitrate is otherwise silent, the arbitration will be deemed to be conducted pursuant to Minn. Stat. § 572.08 *et seq*. ("Uniform Arbitration Act"). If they elect non-binding arbitration, and their agreement is otherwise silent, they shall conduct the arbitration pursuant to Rule 114.09, subsections (b)-(f). Parties are free, however, to contract to use provisions from both processes or to modify the arbitration procedure as they deem appropriate to their case.

(b) Evidence.

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

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

(i) Documents. If copies have been delivered to all other parties at least 10 days prior to the hearing, the arbitrator may consider written medical and hospital reports, records, and bills; documentary evidence of loss of income, property damage, repair bills or estimates; and police reports concerning an accident which gave rise to the case. Any other party may subpoena as a witness the author of a report, bill, or estimate, and examine that person as if under cross-examination. Any repair estimate offered as an exhibit, as well as copies delivered to other parties, shall be accompanied by a statement indicating whether or not the property was repaired. If the property was repaired, the statement must indicate whether the estimated repairs were made in full or in part and must be accompanied by a copy of the receipted bill showing the items repaired and the amount paid. The arbitrator shall not consider any police report opinion as to ultimate fault. In family law matters, the arbitrator may consider property valuations, business valuations, custody reports and similar documents.

(ii) Other Reports. The written statement of any other witness, including written reports of expert witnesses not enumerated above and statements of opinion which the witness would be qualified to express if testifying in person, shall be received in evidence if: (1) copies have been delivered to all other parties at least 10 days prior to the hearing; and (2) no other party has delivered to the proponent of the evidence a written demand at least 5 days before the hearing that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to the rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(iii) Depositions. Subject to objections, the deposition of any witness shall be received in evidence, even if the deponent is not unavailable as a witness and if no exceptional circumstance exist, if: (1) the deposition was taken in the manner provided for by law or by stipulation of the parties; and (2) fewer than 10 days prior to the hearing, the proponent of the deposition serves on all other parties notice of the intention to offer the deposition in evidence.

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

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

(c) Powers of Arbitrator

The arbitrator has the following powers:

(1) to administer oaths or affirmations to witnesses;

(2) to take adjournments upon the request of a party or upon the arbitrator's initiative;

(3) to permit testimony to be offered by deposition;

(4) to permit evidence to be introduced as provided in these rules;

(5) to rule upon admissibility and relevance of evidence offered;

(6) to invite the parties, upon reasonable notice, to submit pre-hearing or post-hearing briefs or pre-hearing statements of evidence;

(7) to decide the law and facts of the case and make an award accordingly;

(8) to award costs, within statutory limits;

(9) to view any site or object relevant to the case; and

(10) any other powers agreed upon by the parties.

(d) Record

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

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

(e) The Award

(1) No later than 10 days from the date of the arbitration hearing or the arbitrator's receipt of the final post-hearing memorandum, whichever is later, the arbitrator shall file with the court the decision, together with proof of service by first class mail on all parties.

(2) If no party has filed a request for a trial within 20 days after the award is filed, the court administrator shall enter the decision as a judgment and shall promptly mail notice of entry of judgment to the parties. The judgment shall have the same force and effect as, and is subject to all provisions of law relating to, a judgment in a civil action or proceeding, except that it is not subject to appeal, and may not be attacked or set aside. The judgment may be enforced as if it had been rendered by the court in which it is entered.

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

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

(f) Trial after Arbitration

(1) Within 20 days after the arbitrator files the decision with the court, any party may request a trial by filing a request for trial with the court, along with proof of service upon all other parties. This 20-day period shall not be extended.

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

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

The Committee made a conscious decision not to formulate rules to govern other forms of ADR, such as mediation, early neutral evaluations, and summary jury trials. There is no consensus among those who conduct or participate in those forms of ADR as to whether any procedures or rules are necessary at all, let alone what those rules or procedures should be. The Committee urges parties, judges and neutrals to be open and flexible in their conduct of ADR proceedings (other than arbitration), and to experiment as needed to suit the circumstances presented. The Committee recognized that it may be necessary, at some time in the future, to revisit the issues of rules, procedures or other limitations applicable to the various forms of court-annexed ADR.

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

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

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

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

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

Advisory Committee Comment--1996 Amendment

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

Rule 114.10 Communication with Neutral

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

(b) Non-Adjudicative Processes. Parties and their counsel 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.

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

(1) The failure of a party or an attorney to comply with the order to attend the process;

(2) Any request by the parties for additional time to complete the ADR process;

(3) With the written consent of the parties, any procedural action by the court that would facilitate the ADR process; and

(4) The neutral's assessment that the case is inappropriate for that ADR process.

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

(1) If the parties do not reach an agreement on any matter, the neutral shall report the lack of an agreement to the court without comment or recommendations;

(2) If agreement is reached, any requirement that its terms be reported to the court should be consistent with the jurisdiction's policies governing settlements in general; and

(3) With the written consent of the parties, the neutral's report also may identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(Amended effective January 1, 2005.)

Implementation Committee Comments—1993

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

Advisory Committee Comment--1996 Amendment

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

Rule 114.11 Funding

(a) Setting of Fee. The neutral and the parties will determine the fee. All fees of neutral(s) for ADR services shall be fair and reasonable.

(b) Responsibility for Payment. The parties shall pay for the neutral. It is presumed that the parties shall split the costs of the ADR process on an equal basis. The parties may, however, agree on a different allocation. Where the parties cannot agree, the court retains the authority to determine a final and equitable allocation of the costs of the ADR process.

(c) Sanctions for Non-Payment. If a party fails to pay for the neutral, the court may, upon motion, issue an order for the payment of such costs and impose appropriate sanctions.

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

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

The marketplace in the parties' geographic area will determine the rates to be offered by neutrals for their services. The parties can then best determine the appropriate fee, after considering a number of factors, including availability, experience and expertise of the neutral and the

financial abilities of the parties.

ADR providers shall be encouraged to provide pro bono and volunteer services to parties unable to pay for ADR processes. Parties with limited financial resources should not be denied access to an ADR process because of an inability to pay for a neutral. Judges and ADR providers should consider the financial abilities of all parties and accommodate those who are not able to share equally in costs of the ADR process. The State Court

Administrator shall monitor access to ADR processes by individuals with limited financial resources.

Advisory Committee Comment--1996 Amendment

The payment of fees for neutrals is particularly troublesome in family law matters, where the expense may be particularly onerous. Subdivision (d) of this rule is intended to obviate some difficulties relating to inability to pay ADR fees. The advisory committee rejected any suggestion that these rules should create a separate duty on the part of neutrals to provide free neutral services. The committee hopes such services are available, and would encourage qualified neutrals who are attorneys to provide free services as a neutral as part of their obligation to provide pro bono services. See Minn. R. Prof. Cond. 6.1. If free or affordable ADR services are not available, however, the party should not be forced to participate in an ADR process and should suffer no ill-consequence of not being able to do so.

Rule 114.12 Rosters of Neutrals

(a) Rosters. The State Court Administrator shall establish one roster of neutrals for civil matters and one roster of neutrals for family law. Each roster shall be updated and published on a regular basis. The State Court Administrator shall not place on, and shall delete from, the rosters the name of any applicant or neutral whose professional license has been revoked. A qualified neutral may not provide services during a period of suspension of a professional license. The State Court Administrator shall review applications from those who wish to be listed on the roster of qualified neutrals, which shall include those who meet the training requirements established in Rule 114.13, or who have received a waiver under Rule 114.14.

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

(Amended effective January 1, 2005.)

Advisory Committee Comment--1996 Amendment

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

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

Rule 114.13 Training, Standards and Qualifications for Neutral Rosters

(a) Civil Facilitative/Hybrid Neutral Roster. All qualified neutrals providing facilitative or hybrid services in civil, non-family matters, must have received a minimum of 30 hours of classroom training, with an emphasis on experiential learning. The training must include the following topics:

(1) Conflict resolution and mediation theory, including causes of conflict and interest-based versus positional bargaining and models of conflict resolution;

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

(3) Components in the mediation process, including an introduction to the mediation process, fact gathering, interest identification, option

building, problem solving, agreement building, decision making, closure, drafting agreements, and evaluation of the mediation process;

(4) Mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, standards of practice and mediator introduction pursuant to the Civil Mediation Act, Minnesota Statutes, section 572.31.

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

The training outlined in this subdivision shall include a maximum of 15 hours of lectures and a minimum of 15 hours of role-playing.

(b) Civil Adjudicative/Evaluative Neutral Roster. All qualified neutrals serving in arbitration, summary jury trial, early neutral evaluation and adjudicative or evaluative processes or serving as a consensual special magistrate must have received a minimum of 6 hours of classroom training on the following topics:

(1) Pre-hearing communications between parties and between parties and neutral; and

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

(3) Settlement techniques; and

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

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

(c) Family Law Facilitative Neutrals.

All qualified neutrals serving in family law facilitative processes must have:

(1) Completed or taught 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) 4 hours of conflict resolution theory;

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

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

(d) 6 hours of family law including custody and visitation, support, asset distribution and evaluation, and taxation as it relates to divorce;

(e) 5 hours of family economics; and,

(f) 2 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 5 hours of family economics. The certified training shall consist of at least 40 percent role-playing and simulations.

(2) Completed or taught 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 role-playing; and,

(c) 1 hour of legal issues relative to domestic abuse cases; and

(d) Family Law Adjudicative Neutral Roster.

All qualified neutrals serving in a family law adjudicative capacity must have had at least 5 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 qualified family law adjudicative neutrals shall have also completed or taught 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.

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

(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(2) 3 hours of domestic abuse screening, including simulation or role-playing; and,

(3) 1 hour of legal issues relative to domestic abuse cases.

(e) Family Law Evaluative Neutrals. All qualified neutrals offering early neutral evaluations or non-binding advisory opinions (1) shall have at least 5 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 (2) shall have completed or taught a minimum of 2 hours of certified training on management of presentations made during evaluative processes. Evaluative neutrals shall have knowledge on all issues on which they render opinions.

In addition to the 2-hour training required above, all qualified family law evaluative neutrals must have completed or taught a minimum of 6 hours of certified training in domestic abuse issues, to include at least:

(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(2) 3 hours of domestic abuse screening, including simulation or role-playing; and,

(3) 1 hour of legal issues relative to domestic abuse cases.

(f) Exceptions to Roster Requirements. Neutral fact-finders selected by the parties for their expertise need not undergo raining nor be included on the State Court Administrator's roster.

(g) Continuing Training. All qualified neutrals providing facilitative or hybrid services must attend 18 hours of continuing education about alternative dispute resolution subjects within the 3-year period in which the qualified neutral is required to complete the continuing education requirements. All other qualified neutrals must attend 9 hours of continuing education about alternative dispute resolution subjects during the 3-year period in which the neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences. The qualified neutral is responsible for maintaining attendance records and shall disclose the information to program administrators and the parties to any dispute. The qualified neutral shall submit continuing education credit information to the State Court Administrator's office within sixty days after the close of the period during which his or her education requirements must be completed. [**Click here for February 2, 2001, order regarding reporting periods for qualified neutrals.]**

(h) Certification of Training Programs. The State Court Administrator shall certify training programs which meet the training criteria of this rule.

(Amended effective January 1, 2005.)

Implementation Committee Comments—1993

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

Advisory Committee Comment--2000 Amendment

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

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

Rule 114.14 Waiver of Training Requirement

A neutral seeking to be included on the roster of qualified neutrals without having to complete training requirements under Rule 114.13 shall apply for a waiver to the Minnesota Supreme Court ADR Review Board. Waivers may

be granted when an individual's training and experience clearly demonstrate exceptional competence to serve as a neutral.

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

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

Forms 114.01 and 114.02* attached to these Rules is to be used for application to the neutral and provider organization rosters. Advisory Committee Comment--1996 Amendment This rule is amended to allow "grandparenting" of family law neutrals. The rule is derived in form from the grandparenting provision included in initial adoption of this rule for civil neutrals.*

* These forms were deleted effective January 1, 1998.

RULE 114 – APPENDIX

CODE OF ETHICS

Introduction

Rule 114 of the Minnesota General Rules of Practice provides that alternative dispute resolution (ADR) must be considered for nearly all civil cases

filed in district court. The ADR Review Board, appointed by the Supreme Court, approves individuals and organizations who are qualified under Rule 114 to act as neutrals in court-referred cases.

Individuals and organizations approved by the ADR Review Board consent to the jurisdiction of the Board and to compliance with this Code of Ethics. The purpose of this code is to provide standards of ethical conduct to guide neutrals who provide ADR services, to inform and protect consumers of ADR services, and to ensure the integrity of the various ADR processes.

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

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

This introduction provides general orientation to the Code of Ethics. Comments accompanying any rule explain and illustrate the meaning and purpose of the rule. The Comments are intended as guides to interpretation but the text of each rule is authoritative. Failure to comply with any provision in this Code of Ethics may be the basis for removal from the roster of neutrals maintained by the Office of the State Court Administrator and/or for such other action as may be taken by the Minnesota Supreme Court.

Violation of a provision of this Code shall not create a cause of action nor shall it create any presumption that a legal duty has been breached. Nothing in this Code should be deemed to establish or augment any substantive legal duty on the part of neutrals.

Rule I. Impartiality

A neutral shall conduct the dispute resolution process in an impartial manner and shall serve only in those matters in which she or he can remain impartial and evenhanded. If at any time the neutral is unable to conduct the process in an impartial manner, the neutral shall withdraw.

(Added effective August 27, 1997.)

Advisory Task Force Comments—1997

1. The concept of impartiality of the neutral is central to all alternative dispute resolution processes. Impartiality means freedom from favoritism or bias either by word or action, and a commitment to serve all parties as opposed to a single party.

Rule II. Conflicts of Interest

A neutral shall disclose all actual and potential conflicts of interest reasonably known to the neutral. After disclosure, the neutral shall decline to participate unless all parties choose to retain the neutral. The need to protect against conflicts of interest shall govern conduct that occurs during and after the dispute resolution process. Without the consent of all parties, and for a reasonable time under the particular circumstances, a neutral who also practices in another profession shall not establish a professional relationship in that other profession with one of the parties, or any person or entity, in a substantially factually related matter.

(Added effective August 27, 1997.)

Advisory Task Force Comments--1997

1. A conflict of interest is any direct or indirect financial or personal interest in the outcome of the proceeding or any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or which might reasonably create an appearance of partiality or bias. If all parties agree to proceed after being informed of conflicts, the neutral may proceed with the case. If, however, the neutral believes that the conflict of interest would inhibit the neutral's impartiality, the neutral should decline to proceed.

2. Guidance on these conflict of interests issues may be found in the cases under statutes regarding challenges to arbitration awards or mediated settlement agreements on the grounds of fraud for nondisclosure of a conflict of interest or material relationship or for partiality of an arbitrator or mediator. (Minnesota Civil Mediation Act, Uniform Arbitration Act, Federal Arbitration Act.)

3. In deciding whether to establish a relationship with one of the parties in an unrelated matter, the neutral should exercise caution in circumstances which would raise legitimate questions about the integrity of the ADR process.

4. A neutral should avoid conflicts of interest in recommending the services of other professionals.

5. The neutral's commitment must be to the parties and the process. Pressures from outside of the process should never influence the neutral's conduct.

6. There is no intent that the prohibition established in this rule which applies to an individual neutral shall be imputed to an organization, panel or firm of which the neutral is a part. However, the individual neutral should be mindful of the confidentiality requirements in Rule IV of this Code and the organization, panel, or firm should exercise caution.

Rule III. Competence

A neutral shall serve as a neutral only when she/he has the necessary qualifications to satisfy the reasonable expectations of the parties.

(Added effective August 27, 1997.)

Advisory Task Force Comments--1997

1. Any person on the Minnesota Statewide ADR-Rule 114 Neutral Roster may be selected as a neutral, provided that the parties are satisfied with the neutral's qualifications. A person who offers neutral services gives parties and the public the expectations that she or he is competent to serve effectively as a neutral. A neutral should decline appointment, request technical assistance, or withdraw from a dispute which is beyond the neutral's competence.

2. Neutrals must provide information regarding their relevant training, education and experience to the parties (Minnesota Civil Mediation Act.)

Rule IV. Confidentiality

The neutral shall maintain confidentiality to the extent provided by Rule 114.08 and 114.10 and any additional agreements made with or between the parties.

(Added effective August 27, 1997.)

Advisory Task Force Comments—1997

1. A neutral should discuss issues of confidentiality with the parties before beginning an ADR process including limitations on the scope of confidentiality and the extent of confidentiality provided in any private sessions that a neutral holds with a party.

2. Rule 114.08 reads: 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), no evidence that there has been an ADR proceeding or any fact concerning the 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) 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).

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

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

(e) Records of Neutral. Notes, records, and recollections of the neutral are confidential, which means that they shall not be disclosed to the parties, the public, or anyone other than the neutral, unless (1) all parties and the neutral agree to such disclosure or (2) required by law or other applicable professional codes. No record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved.

3. Rule 114.10 reads: Communication with Neutral

(a) Adjudicative Processes. The parties and their counsel shall not communicate ex parte with an arbitrator or a consensual special master or other adjudicative neutral.

(b) Non-Adjudicative Processes. Parties and their counsel 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.

(c) Communications to Court During ADR Process. During an ADR process the court may be informed only of the following:

(1) The failure of a party or an attorney to comply with the order to attend the process;

(2) Any request by the parties for additional time to complete the ADR process;

(3) With the written consent of the parties, any procedural action by the court that would facilitate the ADR process; and

(4) The neutral's assessment that the case is inappropriate for that ADR process.

(d) Communications to Court After ADR Process. When the ADR process has been concluded, the court may only be informed of the following:

(1) If the parties do not reach an agreement on any matter, the neutral should report the lack of an agreement to the court without comment or recommendations;

(2) If agreement is reached, any requirement that its terms be reported to the court should be consistent with the jurisdiction's policies governing settlements in general; and

(3) With the written consent of the parties, the neutral's report also may identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

Rule V. Quality of the Process

A neutral shall work to ensure a quality process. A quality process requires a commitment by the neutral to diligence and procedural fairness. A neutral shall not knowingly make false statements of fact or law. The neutral shall exert every reasonable effort to expedite the process including prompt issuance of written reports, awards, or agreements.

(Added effective August 27, 1997.)

Advisory Task Force Comments--1997

1. A neutral should be prepared to commit the attention essential to the ADR process.

2. A neutral should satisfy the reasonable expectations of the parties concerning the timing of the process.

3. A neutral should not provide therapy to either party, nor should a neutral who is a lawyer represent either party in any matter during an ADR process.

4. A neutral should withdraw from an ADR process when incapable of serving or when unable to remain neutral.

5. A neutral should withdraw from an ADR process or postpone a session if the process is being used to further illegal conduct, or if a party is unable to participate due to drug or alcohol abuse, or other physical or mental incapacity.

Rule VI. Advertising and Solicitation

A neutral shall be truthful in advertising and solicitation for alternative dispute resolution. A neutral shall make only accurate and truthful statements

about any alternative dispute resolution process, its costs and benefits, the neutral's role and her or his skills or qualifications. A neutral shall refrain from promising specific results.

In an advertisement or other communication to the public, a neutral who is on the Roster may use the phrase "qualified neutral under Rule 114 of the Minnesota General Rules of Practice." It is not appropriate to identify oneself as a "certified" neutral.

(Added effective August 27, 1997.)

Rule VII. Fees

A neutral shall fully disclose and explain the basis of compensation, fees and charges to the parties. The parties shall be provided sufficient information about fees at the outset to determine if they wish to retain the services of a neutral. A neutral shall not enter into a fee agreement which is contingent upon the outcome of the alternative dispute resolution process. A neutral shall not give or receive any commission, rebate, or similar remuneration for referring a person for alternative dispute resolution services.

(Added effective August 27, 1997.)

Advisory Task Force Comments--1997

1. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

2. A neutral who withdraws from a case should return any unearned fee to the parties.

MEDIATION

Rule I. Self-Determination

A mediator shall recognize that mediation is based on the principle of self-determination by the parties. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. The primary responsibility for the resolution of a dispute and the shaping of a settlement agreement rests with the parties. A mediator shall not require a party to stay in the mediation against the party's will.

(Added effective August 27, 1997.)

Advisory Task Force Comments--1997

1. The mediator may provide information about the process, raise issues, offer opinions about the strengths and weaknesses of a case, draft proposals, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties should be given the opportunity to consider all proposed options. It is acceptable

for the mediator to suggest options in response to parties' requests, but not to coerce the parties to accept any particular option.

2. A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

CODE OF ETHICS ENFORCEMENT PROCEDURE

Introduction

Inclusion on the list of qualified neutrals pursuant to Minnesota General Rules of Practice 114.12 is a conditional privilege, revocable for cause.

Rule I. Scope

This procedure applies to complaints against any individual or organization (neutral) placed on the roster of qualified neutrals pursuant to Rule 114.12 or serving as a court appointed neutral pursuant to 114.05(b) of the Minnesota General Rules of Practice.

Advisory Comment

A qualified neutral is subject to this complaint procedure when providing any ADR services. The complaint procedure applies whether the services are court ordered or not, and whether the services are or are not pursuant to Minnesota General Rules of Practice. The Board will consider the full context of the alleged misconduct, including whether the neutral was subject to other applicable codes of ethics, or representing a "qualified organization" at the time of the alleged misconduct.

*Minn. Gen. R. Prac. 114.02(b): "**Neutral.** A 'neutral' is an individual or organization that provides an ADR process. A 'qualified neutral' is an individual or organization included on the State Court Administrator's roster as provided in Rule 114.12. An individual neutral must have completed the training and continuing education requirements provided in Rule 114.13. An individual neutral provided by an organization also must meet the training and continuing education requirements of Rule 114.13. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be on the State Court Administrator's roster."*

Attorneys functioning as collaborative attorneys are subject to the Minnesota Rules on Lawyers Professional Responsibility. Complaints against collaborative attorneys should be directed to the Lawyers Professional Responsibility Board.

Rule II. Procedure

A. A complaint must be in writing, signed by the complainant, and mailed or delivered to the ADR Review Board at 25 Rev. Dr. Martin Luther King Jr. Blvd., Suite 120, Saint Paul, MN 55155-1500. The complaint shall identify the neutral and make a short and plain statement of the conduct forming the basis of the complaint.

B. The Board shall review the complaint to determine whether the allegations(s), if true, constitute a violation of the Code of Ethics.

C. If the allegations(s) of the complaint do not constitute a violation of the Code of Ethics, the complaint shall be dismissed and the complainant and the neutral shall be notified in writing.

D. If the Board concludes that the allegations of the complaint, if true, constitute a violation of the Code of Ethics, the Board will undertake such review, investigation, and action it deems appropriate. In all such cases, the Board shall send to the neutral, by certified mail, a copy of the complaint, a list identifying the ethical rules which may have been violated, and a request for a written response to the allegations and to any specific questions posed by the Board. It shall not be considered a violation of Rule 114.08(e) of the Minnesota General Rules of Practice or of Rule IV of the Code of Ethics, Rule 114 Appendix, for the neutral to disclose notes, records, or recollections of the ADR process complained of as part of the complaint procedure. Except for good cause shown, if the neutral fails to respond to the complaint in writing within thirty (30) days, the allegations(s) shall be deemed admitted.

E. The Board, at its discretion, may refer the complainant and neutral to mediation conducted by a volunteer qualified neutral to resolve the issues raised by the complainant. Mediation shall proceed only if both the complainant and neutral consent. If the complaint is resolved through mediation, the Board shall dismiss the complaint, unless the resolution includes sanctions to be imposed by the Board. If no agreement is reached in mediation, the Board shall determine whether to proceed further.

F. After review and investigation, the Board shall advise the complainant and neutral of the Board's action in writing by certified mail sent to their respective last known addresses. If the neutral does not file a request for an appeal hearing as prescribed in section G, the Board's decision becomes final.

G. The neutral shall be entitled to appeal the proposed sanctions and findings of the Board to the ADR Ethics Panel by written request within fourteen days from receipt of the Board's action on the complaint. The Panel shall be appointed by the Judicial Council and shall be composed of two sitting or retired district court judges and one qualified neutral in good standing on the Rule 114 roster. Members of the Panel shall serve for a period to be determined by the Judicial Council. One member of the Panel shall be designated as the presiding member.

(1) Discovery. Within 30 days after receipt of a request for an appeal hearing, counsel for the Board and the neutral shall exchange the names and addresses of all persons known to have knowledge of the relevant facts. The presiding member of the Panel shall set a date for the exchange of the names and addresses of all witnesses the parties intend to call at the hearing. The Panel may issue subpoenas for the attendance of witnesses and production of documents or other evidentiary material. Counsel for the Board and the neutral shall exchange non-privileged evidence relevant to the alleged ethical violation(s), documents to be presented at the hearing, witness statements and summaries of interviews with witnesses who will be called at the hearing. Both the Board and the neutral have a continuing duty to supplement information required to be exchanged under this rule. All discovery must be completed within 10 days of the scheduled appeal hearing.

(2) Procedure. The neutral has the right to be represented by an attorney at all parts of the proceedings. In the hearing, all testimony shall be under oath. The Panel shall receive such evidence as the Panel deems necessary to understand and determine the issues. The Minnesota Rules of Evidence shall apply, however, relevancy shall be liberally construed in favor of admission. Counsel for the Board shall present the matter to the Panel. The Board has the burden of proving the facts justifying action by clear and convincing evidence. The neutral shall be permitted to adduce evidence and produce and cross-examine witnesses, subject to the Minnesota Rules of evidence. Every formal hearing conducted under this rule shall be recorded electronically by staff for the Panel. The Panel shall deliberate upon the close of evidence and shall present written Findings and Memorandum with regard to any ethical violations and sanction resulting there from. The panel shall serve and file the written decision on the

Board, neutral and complainant within forty-five days of the hearing. The decision of the Panel is final.

(Amended effective January 1, 2007.)

Advisory Comment

A complaint form is available from the ADR Review Board by calling 651-297-7590 or emailing adr@courts.state.mn.us.

The Board, at its discretion, may establish a complaint review panel comprised of members of the Board. Staff under the Board's direction and control may also conduct investigations.

Rule III. Sanctions

A. The Board may impose sanctions, including but not limited to:

(1) Issue a private reprimand.

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

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

(4) Publish the neutral's name, a summary of the violation, and any sanctions imposed.

(5) Remove the neutral from the roster of qualified neutrals, and set conditions for reinstatement if appropriate.

B. Sanctions shall only be imposed if supported by clear and convincing evidence. Conduct considered in previous or concurrent ethical complaints against the neutral is inadmissible, except to show a pattern of related conduct the cumulative effect of which constitutes an ethical violation.

C. Sanctions against an organization may be imposed for its ethical violation and its member's violation if the member is acting within the rules and directives of the organization.

(Amended effective January 1, 2007.)

Rule IV. Confidentiality

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

(1) As between Board members and staff;

(2) Upon request of the neutral, the file maintained by the Board, excluding its work product, shall be provided to the neutral;

(3) As otherwise required or permitted by rule or statute; and

(4) To the extent that the neutral waives confidentiality.

B. If final sanctions are imposed against any neutral pursuant to Section III A (2)-(5), the sanction and the grounds for the sanction shall be of public record, and the Board file shall remain confidential.

C. Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Board or staff.

D. Accessibility to records maintained by district court administrators relating to complaints or sanctions about parenting time expeditors shall be consistent with this rule.

(Amended effective July 1, 2007.)

Public Access Rules Advisory Committee Comment-2007

The 2007 addition of Rule IV.D. is designed to make the treatment of complaint and sanction information consistent in the hands of both the statewide ADR Review Board, which has jurisdiction over any

expeditor appointed by the court regardless of whether that expeditor is listed on the statewide ADR neutral rosters (Minn. Gen. R. Prac. 114.05(b)), and the local court administrator who is required by law to maintain a local roster of parenting time expeditors. Minn. Stat. § 518.1751, subds. 2b, 2c (2006). Although statutes address public access to records of the expeditors and their process, they do not address public access to complaints or sanctions about rostered expeditors.

Rule V. Privilege; immunity

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

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

PART C. MOTIONS

Rule 115. Motion Practice

Rule 115.01 Scope and Application.

This rule shall govern all civil motions, except those in family court matters governed by Minn. Gen. R. Prac. 301 through 312 and in commitment proceedings subject to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment Act of 1982.

(a) **Definitions.** Motions are either dispositive or nondispositive, and are defined as follows:

(1) Dispositive motions are motions which seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim, motions for summary judgment and motions under Minn. R. Civ. P. 12.02(a)-(f).

(2) Nondispositive motions are all other motions, including but not limited to discovery, third party practice, temporary relief, intervention or amendment of pleadings.

(b) **Time.** The time limits in this rule are to provide the court adequate opportunity to prepare for and promptly rule on matters, and the court may modify the time limits, provided, however, that in no event shall the time limited be less than the time established by Minn. R. Civ. P. 56.03. Whenever this rule requires documents to be filed with the court administrator within a prescribed period of time before a specific event, filing may be accomplished by mail, subject to the following: (1) 3 days shall be added to the prescribed period; and (2) filing shall not be considered timely unless the documents are deposited in the mail within the prescribed period. Service of documents on parties by mail is subject to the provisions of Minn. R. Civ. P. 5.02 and 6.05.

(c) **Post-Trial Motions.** The timing provisions of sections 115.03 and 115.04 of this rule do not apply to post-trial motions.

(Amended effective January 1, 1993.)

Rule 115.02 Obtaining Hearing Date; Notice to Parties.

A hearing date and time shall be obtained from the court administrator or a designated motion calendar deputy. A party obtaining a date and time for a hearing on a motion or for any other calendar setting, shall promptly give notice advising all other parties who have appeared in the action so that cross motions may, insofar as possible, be heard on a single hearing date.

(Amended effective January 1, 1993.)

Rule 115.03 Dispositive Motions.

(a) No motion shall be heard until the moving party pays any required motion filing fee, serves a copy of the following documents on opposing counsel and files the original with the court administrator at least 28 days prior to the hearing:

(1) Notice of motion and motion;

(2) Proposed order;

(3) Any affidavits and exhibits to be submitted in conjunction with the motion; and

(4) Memorandum of law.

(b) The party responding to the motion shall serve a copy of the following documents on opposing counsel and shall file the originals with the Court Administrator at least 9 days prior to the hearing:

(1) Memorandum of law; and

(2) Supplementary affidavits and exhibits.

(c) **Reply Memoranda.** The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing the original with the court administrator at least 3 days before the hearing.

(d) **Additional Requirement for Summary Judgment Motions.** For summary judgment motions, the memorandum of law shall include:

(1) A statement by the moving party of the issues involved which are the grounds for the motion for summary judgment;

(2) A statement identifying all documents (such as depositions or excerpts thereof, pleadings, exhibits, admissions, interrogatory answers, and affidavits) which comprise the record on which the motion is made. Opposing parties shall identify in their responding Memorandum of Law any additional documents on which they rely;

(3) A recital by the moving party of the material facts as to which there is no genuine dispute, with a specific citation to that part of the record supporting each fact, such as deposition page and line or page and paragraph of an exhibit. A party opposing the motion shall, in like manner, make a recital of any material facts claimed to be in dispute; and

(4) The party's argument and authorities. These additional requirements apply also to a motion under Minn. R. Civ. P. 12 if factually based. Part (3) is excluded from the page limitations of this rule.

(Amended effective January 1, 2004.)

Rule 115.04 Nondispositive Motions.

(a) No motion shall be heard until the moving party pays any required motion filing fee, serves a copy of the following documents on the other party or parties and files the original with the court administrator at least 14 days prior to the hearing:

(1) Notice of motion and motion;

(2) Proposed order;

(3) Any affidavits and exhibits to be submitted in conjunction with the motion; and

(4) Any memorandum of law the party intends to submit.

(b) The party responding to the motion shall serve a copy of the following documents on the moving party and other interested parties and shall file the original with the court administrator at least 7 days prior to the hearing:

(1) Any memorandum of law the party intends to submit; and

(2) Any relevant affidavits and exhibits.

(c) **Reply Memoranda.** The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing the original with the court administrator at least 3 days before the hearing.

(Amended effective January 1, 2004.)

Rule 115.05 Page Limits.

No memorandum of law submitted in connection with either a dispositive or nondispositive motion shall exceed 35 pages, exclusive of the recital of facts required by Minn. Gen. R. Prac. 115.03(d)(3), except with permission of the court. For motions involving discovery requests, the moving party's memorandum shall set forth only the particular discovery requests and the response or objection thereto which are the subject of the motion, and a concise recitation of why the response or objection is improper. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed 35 pages, except with permission of the court.

(Amended effective January 1, 1994.)

Cross Reference: Minn. R. Civ. P. 7, 56.

Rule 115.06 Failure to Comply.

If the moving papers are not properly served and filed, the hearing may be canceled by the court. If responsive papers are not properly served and filed in a nondispositive motion, the court may deem the motion unopposed and may grant the relief requested without a hearing. For a dispositive motion, the court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may allow reasonable attorney's fees, or may take other appropriate action.

Rule 115.07 Relaxation of Time Limits.

If irreparable harm will result absent immediate action by the court, or if the interests of justice otherwise require, the court may waive or modify the time limits established by this rule.

Rule 115.08 Witnesses.

No testimony will be taken at motion hearings except under unusual circumstances. Any party seeking to present witnesses at a motion hearing shall obtain prior consent of the court and shall notify the adverse party in the motion papers of the names and addresses of the witnesses which that party intends to call at the motion.

Rule 115.09 Telephone Hearings.

When a motion is authorized by the court to be heard by telephone conference call, the moving party shall be responsible either to initiate the conference call or to comply with the court's instructions on initiation of the conference call. If necessary, adequate provision shall be made by the court for a record of the telephone hearing. No recording shall be made of any telephone hearing except the recording made as the official court record.

(Amended effective January 1, 1996.)

Rule 115.10 Settlement Efforts.

No motion will be heard unless the parties have conferred either in person, or by telephone, or in writing in an attempt to resolve their differences prior to the hearing. The moving party shall initiate the conference. The moving

party shall certify to the court, before the time of the hearing, compliance with this rule or any reasons for not complying, including lack of availability or cooperation of opposing counsel. Whenever any pending motion is settled, the moving party shall promptly advise the court.

Cross Reference: Minn. R. Civ. P. 7, 56.

Rule 115.11 Motions to Reconsider

Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and any responses to such requests, shall be made only by letter to the court of no more than two pages in length, a copy of which must be sent to opposing counsel.

(Added effective January 1, 1998.)

Advisory Committee Comment - 1997 Amendments

This rule is derived primarily from Rule 15 of the Local Rules of the Seventh District. Provisions are also included from Rule 8 of the Local Rules of the Second District (2d Dist. R. 8(h)(1) & 8(j)(1)). This rule is intended to create uniform motion practice in all districts of the state. The existing practices diverge in many ways. The inconsistent requirements of having a motion heard impose significant burdens on litigants and their counsel. The Task Force is confident that this new rule will make civil practice more efficient and fairer, consistent with the goals of the rules of civil procedure set forth in Minn. R. Civ. P. 1.

The rule applies to all motions except the timing provisions do not apply to post-trial motions. These motions are excepted because they are governed by other, stringent timing requirements. See Minn. R. Civ. P. 59.03 (motions for a new trial), 52.02 (amendment of findings), 50.02(c) (time for j.n.o.v. motion same

as for new trial motion). Other post-trial motions excluded from this rule include those relating to entry of judgment, stays, taxation of costs, and approval of supersedeas bonds. See Minn. R. Civ. App. P. 108.01, subdivision 1. These matters are routinely and necessarily heard on shorter notice than that required by the rule.

The time limits set forth in this rule were arrived at after extensive discussion. The Task Force attempted to balance the needs of the courts to obtain information on motions sufficiently in advance of the hearing to permit judicial preparation and the needs of counsel and litigants to have prompt hearings after the submission of motions. The time limits for dispositive motions are admittedly longer than the 10-day requirement set forth in Minn. R. Civ. P. 56.03. The Task Force is of the view that these requirements are not necessarily inconsistent because the rules serve two different purposes. The civil procedure rule establishes a minimum notice period to the adversary, while this provision in the general rules of practice sets forth a standard to facilitate the court's consideration of the motions. The time requirements of this rule may be readily modified by the court, while the minimum notice requirements of Minn. R. Civ. P. 56.03 is mandatory unless waived by the parties themselves. See McAllister v. Independent School District No. 306, 276 Minn. 549, 149 N.W.2d 81 (1967). The time limits have been slightly modified from the Task Force's original to reflect the motion practice deadlines now established and followed in the federal court by Minnesota. The local rules of the United States District Court for the District of Minnesota were recently amended, effective Feb. 1, 1991. See Rule LR7.1 (b)(1) (D. Minn.) (moving papers for dispositive motions now due 28 days before hearing). The Task Force believes it is desirable to remove minor differences between state and federal court practice where no overriding purpose exists for the differences.

The amendment to this rule in 1992 added an express provision for reply briefs. Reply briefs are now allowed for all motions, with the total page limits remaining unchanged. This change is appropriate because of the number of situations where truly new factual or legal matters are raised in response to a motion. In many cases, however, a reply brief will be unnecessary or, where no new matters are raised, inappropriate. The requirement that reply briefs be served and filed three days before the hearing contemplates actual delivery three days before the hearing is scheduled. If service or filing will be accomplished by mail, the deadline is three days earlier by operation of Minn. R. Civ. P. 5.02 & 6.05 and Minn. Gen. R. Prac. 115.01(b).

The statements of facts required by this rule are made for the purpose of the then-pending motion only, and are not to be judicial admissions for other purposes. The Task Force modified the existing local rule in the seventh district to

remove any provision that might suggest that summary judgment motions would be treated as defaults if the required statements of fact were not submitted or that might be interpreted to reduce the factual record for summary judgment motions from that specified in Minn. R. Civ. P. 56.05. This will avoid the conflict dealt with by the Minnesota Court of Appeals in Bunkowske v. Briard, 461 N.W.2d 392 (Minn. Ct. App. 1990). Counsel seeking to have the court consider matters located elsewhere in the court file will need to identify those materials in the statements of facts required by the rule, but will not have to refile the documents.

Rule 115.10 is a new requirement in the statewide rules, but is a familiar one to most lawyers. Many state and federal courts require parties to meet and confer in an attempt to resolve discovery disputes. See Second Dist. Rule 8(h); Fourth Dist. Rule 2.02; R. Haydock & D. Herr, Discovery Practice section 8.2 & n.3 (2d ed. 1988) (federal court local rules collected). The Task Force believes that it is reasonable and worthwhile to require informal efforts to attempt to resolve all motion disputes, not just discovery disputes. The Task Force also believes, however, that a rule requiring a face-to-face meeting in all situations would be unwise. This rule requires that some appropriate efforts be made to resolve motion disputes before hearing with the court, but does not specify a specific mechanism. In some instances, a face-to-face meeting will be productive; in other cases a short phone call will suffice to exhaust any possibility of resolution of the matter. The Task Force considered exempting dispositive motions from the requirements of the rule in view of the likely futility of conferring with adversaries over matters that would be dispositive, but determined that the effort expended in conferring in these matters is justified by the likely resolution or narrowing of some disputes or focusing the dispute for judicial resolution.

Rule 115.02 is a new provision intended both to give parties notice of hearings in advance of the minimum required by other rules. It is intended primarily to prevent a party from obtaining a hearing date and time weeks in advance of a hearing but then delaying giving notice until shortly before the hearing. This practice appears to give an unnecessary tactical advantage to one side. Additionally, by requiring that more than the minimum notice be given in many cases, it will be possible for the responding parties to set on for hearing any additional motions they may have. This may result in the more efficient hearing of multiple motions on a single hearing date.

The definitions of "dispositive" and "nondispositive" motions should be fairly easy to follow in practice. The definitions are similar to those used in Minnesota federal court practice, see Local Rule 4 (D. Minn.), reprinted in Minn. Rules of Ct. 885-86 (West. 1990). Federal court practice treats motions for interlocutory injunctive relief as dispositive because these matters are heard with other dispositive motions before judges rather than magistrates, but there is no

reason to treat these motions as dispositive in state-court practice. Indeed, most such motions in state court are heard on expedited schedules set at the time of initial appearance.

The language of rule 115.06 permits the court, but does not require it, to strike a motion where the rule is not followed. The permissive language is included to make it clear the court retains the discretion to hear matters even if the rules have been ignored, but should not be viewed as suggesting that the court needs to provide a hearing on whether such a motion will be stricken. Courts may administratively provide that hearings on motions not served and filed in accordance with the rule will be automatically or routinely canceled.

The Task Force considered the adoption of the Seventh District's rule that called for the trial judge to "make every effort" to rule on nondispositive motions on the day of hearing and dispositive motions within 30 days of hearing. Seventh Dist. R. 15(8). That provision was adopted as part of the revision of motion practice in that district whereby earlier briefing was required with the expected result of earlier decision. Although the purpose of that rule is laudable, the Task Force decided it is not good practice to adopt rules that are purely hortatory in nature, and do not impose any specific requirements or standards. Nonetheless, the Task Force hopes that those benefits of early briefing will flow from the proposed changes on a statewide basis. The Task Force also noted that a statute governs the outer limits of the time for decision. See Minnesota Statutes, section 546.27, subd. 1 (1990) (establishing 90-day period for decision).

Rule 115.09 has been amended to make it clear that telephone hearings may not be recorded unofficially by one party. This rule is consistent with the broader mandate of Gen. R. Prac. 4 which prohibits pictures or voice recordings except if taken as the official record for matters that are heard in court rather than by phone.

Rule 115.11 is added to establish an explicit procedure for submitting motions for reconsideration. The rule permits such motions only with permission of the trial court. The request must be by letter, and should be directed to the judge who issued the decision for which reconsideration is sought. The rule is drawn from a similar provision in the Local Rules of the United States District Court for the District of Minnesota. The rule is intended to remove some of the uncertainty that surrounds use of these motions in Minnesota, especially after the Minnesota Court of Appeals decision in Carter v. Anderson, 554 N.W.2d 110 (Minn. Ct. App. 1996). See Eric J. Magnuson, Motions for Reconsideration, 54 Bench & Bar of Minn., July 1997, at 36.

Motions for reconsideration play a very limited role in civil practice, and should be approached cautiously and used sparingly. It is not appropriate to prohibit them, however, as they occasionally serve a helpful purpose for the courts. Counsel should understand that although the courts may have the power to reconsider decisions, they rarely will exercise it. They are likely to do so only where intervening legal developments have occurred (e.g., enactment of an applicable statute or issuance of a dispositive court decision) or where the earlier decision is palpably wrong in some respect. Motions for reconsideration are not opportunities for presentation of facts or arguments available when the prior motion was considered. Motions for reconsideration will not be allowed to "expand" or "supplement" the record on appeal. See, e.g., Sullivan v. Spot Weld, Inc., 560 N.W.2d 712 (Minn.App.1997); Progressive Cos. Ins. Co. v. Fiedler, 1997 WL 292332 (Minn.App.1997) (unpublished). Most importantly, counsel should remember that a motion for reconsideration does not toll any time periods or deadlines, including the time to appeal. See generally 3 Eric J. Magnuson & David F. Herr, Minnesota Practice: Appellate Rules Annotated, section 103.17 (3rd ed. 1996, Supp. 1997).

Advisory Committee Comment—2003 Amendments

The rule is amended in 2003 to include a reference to the requirement for paying a motion filing fee. A new statute in 2003 imposes a fee for "[f]iling a motion or response to a motion in civil, family, excluding child support, and guardianship case." See 2003 MINN. LAWS 1st Spec. Sess., ch. 2, art. 2, § 2, to be codified at MINN. STAT. § 357.021, subd. 2(4).

PART D. MISCELLANEOUS MOTION PRACTICE

Rule 116. Orders to Show Cause

An order to show cause will be issued only in a case where a statute or rule of civil procedure provides that such an order may be issued or where the court deems it necessary to require the party to appear in person at the hearing.

Cross Reference: Minn. R. Civ. P. 7.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 21 of the Code of Rules for the District Courts.

Rule 117. Default Hearings

Rule 117.01 Scheduling Hearings.

Default hearings are scheduled as motions, and a date and time for default hearings shall be obtained from the court administrator or a designated motion assignment deputy. None of the provisions of Rule 115 apply to default hearings.

(Amended effective January 1, 1993.)

Rule 117.02 Proof of Claim

A party entitled to judgment by default shall move the court for judgment in that party's favor, setting forth by affidavit the facts which entitle that party to relief. Either the party or the party's lawyer may make the affidavit, which may include reliable hearsay. This affidavit is not required in cases governed by Minn. R. Civ. P. 55.01(a).

(Amended effective January 1, 1993.)

Cross Reference: Minn. R. Civ. P. 54.03, 55.01.

Advisory Committee Comment--1992 Amendments

The procedure for scheduling a hearing on a default is the same as that under Rule 115.02 for scheduling motion hearings. This practice related only to the setting of a date for resolution. The other requirements of Rule 115.02 do not apply to default hearings and no additional service requirements are imposed beyond what is required by the Minnesota Rules of Civil Procedure. This rule has been amended explicitly to exempt defaults from all other requirements for motions contained in Rule 115.

Minn. R. Civ. P. 55.01(a) permits entry of judgment by the administrator in limited situations. In those cases, however, Rule 55.01 requires only an affidavit of the amount due, and not the more extensive affidavit required by Minn. Gen. R. Prac. 117.02.

Rule 118. Injunctive Relief Against Municipalities.

No applications for temporary restraining orders against any city, county, state or governmental agency will be granted without prior oral or written notice to the adverse party. The applications shall be accompanied by a written statement describing the manner of notice.

Cross Reference: Minn. R. Civ. P. 65.

Task Force Comment--1991 Adoption

This rule is derived from Second District Rule 8(j)(1).

Rule 119. Applications for Attorney Fees

Rule 119.01 Requirement for Motion

In any action or proceeding in which an attorney seeks the award, or approval, of attorneys' fees in the amount of $1,000.00 for the action, or more, application for award or approval of fees shall be made by motion. As to probate and trust matters, application of the rule is limited to contested formal court proceedings. Unless otherwise ordered by the court in a particular proceeding, it does not apply to:

(a) informal probates,

(b) formal probates closed on consents,

(c) uncontested trust proceedings; and

(d) routine guardianship or conservatorship proceedings, except where the Court determines necessary to protect the interests of the ward.

(Amended effective January 1, 1998.)

Rule 119.02 Required Papers

The motion shall be accompanied by an affidavit of any attorney of record which establishes the following:

1. A description of each item of work performed, the date upon which it was performed, the amount of time spent on each item of work, the

identity of the lawyer or legal assistant performing the work, and the hourly rate sought for the work performed;

2. The normal hourly rate for each person for whom compensation is sought, with an explanation of the basis for any difference between the amount sought and the normal hourly billing rate, if any;

3. A detailed itemization of all amounts sought for disbursements or expenses, including the rate for which any disbursements are charged and the verification that the amounts sought represent the actual cost to the lawyer or firm for the disbursements sought; and

4. That the affiant has reviewed the work in progress or original time records, the work was actually performed for the benefit of the client and was necessary for the proper representation of the client, and that charges for any unnecessary or duplicative work has been eliminated from the application or motion.

(Amended effective January 1, 1998.)

Rule 119.03 Additional Records; *In Camera* Review

The court may require production of copies of additional records, including any fee agreement relevant to the fee application, bills actually rendered to the client, work in progress reports, time sheets, invoices or statements for disbursements, or other relevant records. These documents may be ordered produced for review by all parties or for *in camera* review by the court.

(Amended effective January 1, 1998.)

Rule 119.04 Memorandum of Law

The motion should be accompanied by a memorandum of law that discusses the basis for recovery of attorney's fees and explains the calculation of the award of fees sought and the appropriateness of that calculation under applicable law.

(Amended effective January 1, 1998.)

Rule 119.05 Attorneys' Fees in Default Proceedings

(a) A party proceeding by default and seeking an award of attorney fees that has established a basis for the award under applicable law, including parties seeking to enforce a confession of judgment, may obtain approval of the fees administratively without a motion hearing, provided that:

(1) the fees requested do not exceed fifteen percent (15%) of the principal balance owing as requested in that party's pleadings, up to a maximum of $3,000.00. Such a party may seek a minimum of $250.00; and

(2) the requesting party's pleading includes a claim for attorneys' fees in an amount greater than or equal to the amount sought upon default; and

(3) the defaulting party, after default has occurred, has been provided notice of the right to request a hearing under section (c) of this rule, a form for making such a request substantially similar to Form 119.05, and the affidavit required under Rule 119.02.

(b) A party may request a formal hearing and seek fees in excess of the amount described herein if that party provides the court with evidence relevant to the amount of attorneys' fees requested as established by the factors a court considers when determining the reasonableness of the attorneys' fees.

(c) A defaulting party may request a hearing and further judicial review of the attorneys' fees requested by completing a "Request for Hearing" provided by the plaintiff substantially similar to Form 119.05. A party may serve the form, at any time after a default has occurred, provided that the defaulting party is given at least twenty (20) days notice before the request for judgment is made. A defaulting party must serve the Request for Hearing upon the requesting party or its counsel within twenty (20) days of its receipt. Upon timely receipt of a Request for Hearing the party seeking fees shall request a judicial assignment and have the hearing scheduled.

(d) Rule 119.05 does not apply to contested cases, ancillary proceedings (*e.g.*, motions to compel or show cause) or proceedings subsequent to the entry of judgment.

(Amended effective January 1, 2005.)

Advisory Committee Comment--1997 Amendment

This rule is intended to establish a standard procedure for supporting requests for attorneys' fees. The committee is aware that motions for attorney fees are either not supported by any factual information or are supported with conclusionary, non-specific information that is not sufficient to permit the court to make an appropriate determination of the appropriate amount of fees. This rule is intended to create a standard procedure only; it neither expands nor limits the entitlement to recovery of attorneys' fees in any case.

Where fees are to be determined under the "lodestar" method widely used in the federal courts and adopted in Minnesota in Specialized Tours, Inc. v. Hagen, 392 N.W.2d 520, 542-43 (Minn. 1986), trial courts need to have information to support the reasonableness of the hours claimed to be expended as well as the reasonable hourly rate under the circumstances. This rule is intended to provide a standard set of documentation that allows the majority of fee applications to be considered by the court without requiring further information. The rule specifically acknowledges that cases involving complex issues or serious factual dispute over these issues may require additional documentation. The rule allows the court to require additional materials in any case where appropriate. This rule is not intended to limit the court's discretion, but is intended to encourage streamlined handling of fee applications and to facilitate filing of appropriate support to permit consideration of the issues.

This rule also authorizes the court to review the documentation required by the rule in camera. This is often necessary given the sensitive nature of the required fee information and the need to protect the party entitled to attorneys' fees from having to compromise its attorney's thoughts, mental impressions, or other work product in order to support its fee application. As an alternative to permitting in camera review by the trial judge, the court can permit submission of redacted copies, with privileged material removed from all copies.

The amendment in 1997, adding the exceptions to the requirements of the rule for certain probate and trust proceedings, is designed to obviate procedures that serve no purpose for the courts and unduly burden the parties. Probate and trust matters have separate statutes and case law relating to attorney fees. See Minnesota Statutes, sections 524.3-721 and 525.515; In re Great Northern Iron Ore Properties, 311 N.W.2d 488 (Minn. 1981) and In re Living Trust Created by Atwood, 227 Minn. 495, 35 N.W.2d 736 (1949). In probate and trust matters, if no interested party objects to the attorney fees, there is ordinarily no reason for the court to require the detail specified in Rule 119. In contested matters, however, such detail may be appropriate to enable the court to resolve the matter under the standards of applicable probate and trust law. The court may protect the sensitive and confidential information that may be contained in attorney time records by entering an appropriate order in a particular case. Similarly, the exemption of these cases from the requirements of the rule does not prevent the court from requiring any of the fee application documentation in a particular matter.

Advisory Committee Comment—2003 Amendment

\

Rule 119.05 is a new rule to establish a streamlined procedure for considering attorneys' fees on matters that will be heard by default. The rule does not apply to situations other than default judgments, such as motions to compel discovery, motions to show cause, sanctions matters, or attorneys' fees in contested matters. This subsection is modeled on a rule adopted by the Fourth Judicial District and implemented as a local standing order. A simpler procedure for defaults is appropriate and will serve to conserve judicial resources, and it is appropriate to have a uniform rule throughout Minnesota.

New Form 119.05 is intended to provide useful information to the defaulting party and some care has gone into its drafting. Although use of the form is not required, the requirement that any notice conform "substantially" to the form should be heeded. The committee has attempted to use language that fairly advises the defaulting party of the procedure under Rule 119.05 without threatening consequences or confusing the defaulting party on the effect of either contesting or not contesting the fee award. The rule requires that notice be given after the defendant has defaulted. Notice given earlier is not effective to comply with the rule, as such notice is likely to confuse the recipient as to the differing procedures and timing for response to the Summons and responding to the request

for fees. An affidavit detailing the basis for the award as required under Rule 119.02 must accompany the notice and the form.

The rule does not affect the amounts that may be recovered for attorneys' fees; it allows either side to obtain a hearing on the request for fees; the rule supplies an efficient mechanism for the numerous default matters where a full hearing is not required. Similarly, the rule does not remove the requirement that a party seeking fees file a motion; it simply provides a mechanism for resolution of some motions without formal hearings.

Advisory Committee Comment – 2004 Adoption

Rule 119.05 was amended in 2004 in a single way: to make it clear that the mechanism for streamlined approval of attorney fees in default matters is also available for matters proceeding pursuant to confession of judgment, even if not technically a default. Confessions of judgment are authorized and limited by Minn. Stat. § 548.22 (2002), but that statute does not address how attorney fee requests that accompany confessions of judgment should be heard. Because the rule both allows streamlined entry of judgment for attorney fees and provides procedural protection to the judgment debtor, the committee believes it is appropriate to apply this procedure to judgments pursuant to confession.

Rule 120. (Reserved for Future Use.)

PART E. TRIAL MANAGEMENT

Rule 121. Notice of Settlement

When any action in which any pleading or other paper has been filed is settled, counsel shall immediately advise the appropriate assignment office, and shall also advise the office of the judge assigned to the case or then assigned to hear any matter relating to the case.

Cross Reference: Minn. R. Civ. P. 40, 41.

Task Force Comment--1991 Adoption

This rule is based on 2d Dist. R.9(a). Other districts have similar rules. This new rule, derived from current local rule provisions, makes explicit what courts now expect and which common courtesy requires.

Rule 122. Continuance

If a trial setting has been established by scheduling order after hearing the parties, the court shall decline to consider requests for continuance except those made by motion or when a judge determines that an emergency exists. A single request for a reasonable continuance of a trial setting set by notice without hearing should be granted by the court upon agreement of all parties, provided that the request is made within 20 days after notice of the setting to the parties. All other requests for continuance shall be made by motion with notice to all parties.

Cross Reference: Minn. R. Civ. P. 40.

Task Force Comment--1991 Adoption

This rule reflects the result of extensive discussions by the Task Force. This rule is intended to create a uniform continuance practice statewide, consistent with the widely differing assignment practices. The rule creates a presumptive right to one continuance only in cases where a trial setting is made mechanically and without consultation of the parties and their lawyers and then only if all parties agree. If the setting has been made after hearing parties, there would be no presumed continuance. In any case, the court can deny requests for continuance.

Rule 123. Voir Dire of Jurors in Cases in Which Insurance Company Interested in Defense or Outcome of Action

In all civil jury cases, in which an insurance company or companies are not parties, but are interested in the defense or outcome of the action, the presiding judge shall, upon the request of any party, be advised of the name of such company or companies, out of the hearing of the jury, as well as the name of the local agent of such companies. When so disclosed, no inquiry shall be permitted by counsel as to such names in the hearing of the jury, nor shall disclosure be made to the jury that such insurance company is interested in the action.

During examination of the jurors by the court, the jurors shall, upon request of any party, be asked collectively whether any of them have any interest as policyholders, stockholders, officers, agents or otherwise in the insurance company or companies interested in the defense or outcome of the action, but such question shall not be repeated to each individual juror. If none of the jurors indicate any such interest in the company or companies involved, then no further inquiry shall be permitted with reference thereto.

If any of the jurors manifest an interest in any of the companies involved, then the court shall further inquire of such juror or jurors as to any interest in such company, including any relationship or connection with the local agent of such interested company, to determine whether such interests or relationship disqualifies such juror.

Cross Reference: Minn. R. Civ. P. 47, Minn. Civ. Trialbook, section 6.

Task Force Comment--1991 Adoption

This rule is derived from Rule 31 of the Code of Rules for the District Courts. The rule is modified to specify that the court conducts the examination of potential jurors about their possible involvement with any interested insurers,

thereby allowing the subject to be covered without the potential for introducing prejudice, rather than revealing it. The court should exercise its discretion to make certain that any affirmative answers to the court's questions be fully explored. See Hunt v. Regents of Univ. of Minn., 460 N.W.2d 28, 33-34 (Minn. 1990).

Rule 124. Reporting of Opening Statement and Final Arguments.

Opening statements and final arguments shall be reported

Cross Reference: Minn. R. Civ. P. 39.04, Minn. Civ. Trialbook, section 8.

Task Force Comment--1991 Adoption

This rule is new. The practice of various courts in reporting opening statements and final arguments has not been uniform. The Task Force strongly recommends that the rules provide for reporting of all opening statements and final arguments so that these portions of the trial proceedings are available for transcription. Most judges now follow this practice. In some cases, parties exercising their right to make a record of these trial proceedings have been presented with bills from the official court reporter for this service. In the absence of an order for a transcript, the Task Force believes no extra charges should properly be made for the mere making of a record of what transpires in the trial court.

Rule 125. Automatic Stay

The court administrator shall stay entry of judgment for thirty days after the court orders judgment following a trial unless the court orders otherwise.

Upon expiration of the stay, the court administrator shall promptly enter judgment.

(Amended effective January 1, 1993.)

Cross Reference: Minn. R. Civ. P. 58.

Advisory Committee Comment--1992 Amendments

This rule is derived from 7th Dist. R. 11, and is similar to the local rules in other districts. This rule reflects a common practice in the trial courts, even in those districts that do not have a specific rule requiring a stay. The Task Force believes it is desirable to make this practice both uniform and explicit. The stay allows parties to file post-trial motions and to perfect an appeal without entry of judgment or formal collection efforts. At the end of the 30-day period, stay is governed by Minn. R. Civ. P. 62.03 and the supersedeas bond requirements of the Minnesota Rules of Civil Appellate Procedure. The stay anticipated by this rule applies only following a trial. Where judgment is ordered pursuant to pretrial motion or by default (e.g., temporary hearings in family law), or in situations governed by other rules, including marriage dissolutions by stipulation (Rule 307(b)) and housing court matters (Rules 609 and 611(b)), the stay is not necessary and not intended by the rule.

The rule only creates a standard, uniform procedure for staying entry of judgment. The court can enter such a stay in any case and can order immediate entry of judgment in any case.

Rule 126. Judgment--Entry by Adverse Party

When a party is entitled to have judgment entered in that party's favor upon the verdict of a jury, report of a referee, or decision or finding of the court, and neglects to enter the same for 10 days after the rendition of the verdict or

notice of the filing of the report, decision or finding; or after the expiration a stay, the opposite party may cause judgment to be entered on five days' notice to the party entitled thereto.

Cross Reference: Minn. R. Civ. P. 58.

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 17 of the Code of rules for the District Courts.

Rule 127. Expert Witness Fees

On affidavit showing that a fee equaling or exceeding $300 per day has been billed, the court administrator may tax $300 per day for an expert witness fee as a disbursement in a civil case, subject to increase or decrease by a judge. The amount allowed shall be in such amount as is deemed reasonable for such services in the community where the trial occurred and in the field of endeavor in which the witness has qualified as an expert. No allowance shall be made for preparation or in conducting of experiments outside the courtroom by an expert.

Cross Reference: Minn. R. Civ. P. 54.

Task Force Comment--1991 Adoption

This rule is derived from Rule 11 of the Code of Rules for the District Courts.

Rule 128. Retrieval or Destruction of Exhibits

It shall be the duty of the lawyer or party offering exhibits in evidence to remove all exhibits from the custody of the court upon final disposition of a case. Failure to do so within 15 days of being notified to do so will be deemed authorization to destroy such exhibits.

Cross Reference: Minn. R. Civ. P. 43, 77; Minn. Civ. Trialbook, sections 13, 14.

Task Force Comment--1991 Adoption

This rule is derived from 2d Dist. R. 11, with changes.

Rule 129. Use of Administrator's Files

No papers on file in a cause shall be taken from the custody of the court administrator except upon order of the court.

Cross Reference: Minn. R. Civ. P. 77; Minn. Civ. Trialbook, sections 13, 14.

Task Force Comment--1991 Adoption

This rule is derived from Rule 12(b) of the Code of Rules for the District Courts, without substantial change.

Rule 130. Exhibit Numbering

Exhibits proposed by any party shall be marked in a single series of arabic numbers, without designation of the party offering the exhibit. Exhibit numbers may be consecutive or may be preassigned in blocks to each party. If adhesive exhibit labels are used, they shall be white with black printing.

(Added effective January 1, 1994.)

Advisory Committee Comment--1994 Amendments

This new rule requires a uniform method of marking exhibits, without the cumbersome prefixes that are frequently now encountered. The committee believes that a uniform numbering system will benefit the courts and litigants. The new system will permit exhibits to be used without labeling to show "ownership" or "lineage" of the exhibit. This system will also facilitate numbering of exhibits in multi-party cases, where the current practice creates complicated numbers at trial and burdensome citations on appeal. Attorneys and judges with experience in using this system believe it works fairly, predictably, and efficiently. The rule permits flexibility in assignment of exhibit numbers, allowing them to be issued seriatim at trial or in blocks of numbers assigned to each party prior to trial. The rule requires uniform exhibit labels to prevent any uncertainty or wasted effort by parties attempting to obtain a perceived advantage in identifying "ownership" of exhibits through the color of labels.

Rule 131. (Reserved for Future Use.)

Rule 132. (Reserved for Future Use.)

Rule 133. (Reserved for Future Use.)

Rule 134. (Reserved for Future Use.)

PART F. SPECIAL PROCEDURES

Rule 135. Restraining Order-Bond

Before any restraining order shall be issued, except in aid of writs of execution or replevin, in harassment proceedings, in actions for dissolution of marriage or orders for protection in domestic abuse proceedings, or in any other case exempted by law, the applicant shall give a bond in the penal sum of at least $2,000, executed by the applicant or by some person for the applicant as a principal, approved by the court and conditioned for the payment to the party restrained of such damages as the restrained person shall sustain by reason of the order, if the court finally decides that the applicant was not entitled thereto.

Cross Reference: Minn. R. Civ. P. 65.

Task Force Comment--1991 Adoption

This rule is derived from Rule 24 of the Code of Rules for the District Courts.

By statute, governmental entities are not required to post bonds for temporary restraining orders. Minnesota Statutes, section 574.18 (1990). In addition, the court may waive the bond requirement when granting an order temporarily restraining an action on a contract for the conveyance of real estate. Minnesota Statutes, section 559.211 (1990). Accordingly, a specific provision allowing waiver of the bond requirement is included in the rule for cases provided by law.

Rule 136. Garnishments and Attachments-Bonds to Release-Entry of Judgment Against Garnishee

Rule 136.01 Bond.

Garnishments or attachments shall not be discharged through a personal bond under Minnesota Statutes, sections 571.931 and 571.932 without one day's written notice of the application therefor to the adverse party; but if a surety company's bond is given, notice shall not be required.

(Amended effective January 1, 1993.)

Rule 136.02 Requirement of Notice.

Judgment against a garnishee shall be entered only upon notice to the garnishee and the defendant, if known to be within the jurisdiction of the court, showing the date and amount of the judgment against the defendant, and the amount for which plaintiff proposes to enter judgment against the garnishee after deducting such fees and allowances as the garnishee is entitled to receive. If the garnishee appears and secures a reduction of the proposed judgment, the court may make an appropriate allowance for fees and expense incident to such appearance.

Cross Reference: Minn. R. Civ. P. 64.

Advisory Committee Comment--1992 Amendments

This rule is derived from Rule 15 of the Code of Rules for the District Courts. The statutes governing garnishment and attachment have been amended, and the statutory reference in the rule has been corrected to reflect this change.

Rule 137. Receivers

Rule 137.01 Venue.

All actions or proceedings for the sequestration of the property of corporations or for the appointment of receivers thereof, except actions or proceedings instituted by the Attorney General in behalf of the state, shall be instituted in the county in which the principal place of business of said corporation is situated; provided, that for the convenience of witnesses and to promote the ends of justice the venue may be changed by order of court.

Rule 137.02 Appointment of Receivers.

Receivers, trustees, guardians and others appointed by the court to aid in the administration of justice shall be wholly impartial and indifferent to all parties in interest, and selected with a view solely to their character and fitness. Except by consent of all parties interested, or where it clearly appears that prejudice will otherwise result, no person who is or has been during the preceding year a stockholder, director or officer of a corporation shall be appointed as receiver for such corporation. Receivers shall be appointed only upon notice to interested parties, such notice to be given in the manner ordered by the court; but if it shall be clearly shown that an emergency exists requiring the immediate appointment of a temporary receiver, such appointment may be made ex parte.

Rule 137.03 Bond.

Every receiver after appointment shall give a bond to be approved by the court in such sum and conditioned as the court shall direct, and shall make and file with the court administrator an inventory and estimated valuation of the assets of the estate in the receiver's custody; and, unless otherwise ordered, appraisers shall then be appointed and their compensation fixed by order of the court.

Rule 137.04 Claims.

Claims of creditors of corporations, the subject of sequestration or receivership proceedings, shall be duly verified and filed in the office of the court administrator. The court, by order, shall fix the time for presentation, examination and adjustment of claims and the time for objecting thereto, and notice of the order shall be given by such means, including publication if deemed desirable, as the court therein shall direct. Written objections to the allowance of any claim may be made by the party to the proceeding by serving a copy of such objection upon the claimant or the claimant's lawyer. Where no objection is made within the time fixed by said order, the claim may stand admitted and be allowed without proof. Issues of law and fact shall be tried as in other cases.

Rule 137.05 Annual Inventory and Report.

Every receiver shall file an annual inventory and report showing the condition of the estate and a summary of the proceedings to date. The clerk shall keep a list of receiverships and notify each receiver and the court when such reports are due.

Rule 137.06 Lawyer as Receiver.

When a lawyer has been appointed receiver, no lawyer for such receiver shall be employed except upon the order of the court, which shall be granted only upon the petition of the receiver, stating the name of counsel whom the receiver wishes to employ and showing the necessity for such employment.

Rule 137.07 Employment of Counsel.

No receiver shall employ more than one counsel, except under special circumstances requiring the employment of additional counsel; and in such cases only after an order of the court made on a petition showing such circumstances, and on notice to the party or person on whose behalf or application the receiver was appointed. No allowance shall be made to any receiver for expenses paid or incurred in violation of this rule.

Rule 137.08 Use of Funds.

No receiver or other trustee appointed by the court, nor any lawyer acting for such receiver or trustee, shall withdraw or use any trust funds to apply on the receiver's compensation for services except on written order of court, duly made after such notice as the court may direct, and filed in the proceeding.

Rule 137.09 Allowance of Fees.

All applications for the allowance of fees to receivers and their lawyers shall be accompanied by an itemized statement of the services performed and the amount charged for each item shown.

Compensation of receivers and their lawyers shall be allowed only upon the order of the court after such notice to creditors and others interested as the court shall direct, of the amounts claimed, as compensation and of the time and place of hearing the application for their allowance.

Rule 137.10 Final Account.

Every receiver shall take a receipt for all disbursements made by him in excess of one dollar, shall file the same with the final account, and shall recite such filing in a verified petition for the allowance of such account. Final accounts shall disclose the status of the property of the estate as to unpaid or delinquent taxes and the same shall be paid by the receiver to the extent that the funds in the receiver's custody permit, over and beyond costs and expenses of the receivership.

Cross Reference: Minn. R. Civ. P. 66.

Task Force Comment--1991 Adoption

This rule is derived from Rule 23 of the Code of Rules for the District Courts.

Rule 138. Banks in Liquidation

Petitions for orders approving the sale or compounding of doubtful debts, or the sale of real or personal property, or authorizing a final dividend, of any bank, state or national, in liquidation, shall be heard after notice to all interested persons given as herein provided.

Upon the filing of the petition, the court shall enter an order reciting the substance of the petition and the time and place for hearing thereon, and advising all interested parties of their right to be heard. A copy of the order shall be published once in a legal newspaper published near the location of the bank in liquidation, which publication shall be made at least ten days prior to the time fixed for the hearing; or the court may direct notice to be given by such other method as it shall deem proper. If it shall appear to the court that delay may prejudice the rights of those interested, the giving of notice may be dispensed with.

Cross Reference: Minn. R. Civ. P. 66.

Task Force Comment--1991 Adoption

This rule is derived from Rule 5 of the Code of Rules for the District Court.

Rule 139. Lawyers as Sureties

No practicing lawyer shall be accepted as surety on a bond or undertaking required by law.

Cross Reference: Minn. R. Civ. P. 67.

Task Force Comment--1991 Adoption

This rule is derived from Rule 4 of the Code of Rules for the District Courts.

Rule 140. Supplemental Proceedings

Rule 140.01 Previous Applications.

If an ex parte application is made, any previous applications for a supplemental proceeding order concerning the pending case shall be disclosed to the court in the form of an affidavit.

Rule 140.02 Referee.

Referees in supplementary proceedings and in garnishment disclosures shall be notaries public or lawyers and shall not be the creditor's lawyer or an employee or partner of the creditor or of the creditor's lawyer and said referees must take and subscribe the appropriate oath.

Rule 140.03 Continuances.

Orders in supplementary proceedings shall specify the name of the Referee and provide that in the examination of the judgment debtor the Referee shall not grant more than two continuances.

Cross Reference: Minn. R. Civ. P. 69.

Task Force Comment--1991 Adoption

This rule is derived from 4th Dist. R. 12.

Rule 142. Trustees--Accounting--Petition For Appointment --Renumbered Rule 417.

Rule 143. Actions by Representatives-Attorneys' Fees

In actions for personal injury or death by wrongful act, brought by persons acting in a representative capacity, contracts for attorney's fees shall not be regarded as determinative of fees to be allowed by the court.

Cross Reference: Minn. R. Civ. P. 17.

Task Force Comment--1991 Adoption

This rule is Rule 1 of the Code of Rules for the District Court, without change.

Rule 144. Actions for Death by Wrongful Act

Rule 144.01 Application for Appointment of Trustee.

Every application for the appointment of a trustee of a claim for death by wrongful act under Minnesota Statutes, section 573.02, shall be made by the verified petition of the surviving spouse or one of the next of kin of the decedent. The petition shall show the dates and places of the decedent's birth and death; the decedent's address at the time of death; the name, age and address of the decedent's surviving spouse, children, parents, grandparents, and siblings; and the name, age, occupation and address of the proposed trustee. The petition shall also show whether or not any previous application has been made, the facts with reference thereto and its disposition shall also be stated. The written consent of the proposed trustee to act as such shall be endorsed on or filed with such petition. The application for appointment shall not be considered filing of a paper in the case for the purpose of any requirement for filing a certificate of representation or informational statement.

(Amended effective January 1, 2000.)

Cross Reference: Minn. R. Civ. P. 17.

Rule 144.02 Notice and Hearing.

The petition for appointment of trustee will be heard upon such notice, given in such form and in such manner and upon such persons as may be determined by the court, unless waived by the next of kin listed in the petition or unless the court determines that such notice is not required.

(Amended effective January 1, 2000.)

Rule 144.03 Caption.

The petition, any order entered thereon, and the trustee's oath, will be entitled: "In the matter of the appointment of a trustee for the next of kin of _____, Decedent."

Rule 144.04 Transfer of Action.

If the trustee, after appointment and qualification, commences an action for death by wrongful act in a county other than that in which the trustee was appointed, a certified copy of the petition, the order entered thereon and the oath shall be filed in the court where such action be commenced, at the time the

summons and complaint are filed therein, and the court file and jurisdiction over the trust will thereupon be transferred to such court.

Rule 144.05 Distribution of Proceeds.

Application for the distribution of money recovered under Minnesota Statutes, section 573.02 shall be by verified petition of the trustee. Such petition shall show the amount which has been received upon action or settlement; a detailed statement of disbursements paid or incurred, if any; the amount, if any, claimed for services of the trustee and of the trustee's lawyer; the amount of the funeral expenses and of demands for the support of the decedent; the name, age and address of the surviving spouse and each next of kin required to be listed in the petition for appointment of trustee and all other next of kin who have notified the trustee in writing of a claim for pecuniary loss, and the share to which each is entitled.

If an action was commenced, such petition shall be heard by the court in which the action was tried, or in the case of a settlement, by the court in which the action was pending at the time of settlement. If an action was not commenced, the petition shall be heard by the court in which the trustee was appointed. The court hearing the petition shall approve, modify, or disapprove the proposed disposition and shall specify the persons to whom the proceeds are to be paid.

The petition for distribution will be heard upon notice, given in form and manner and upon such persons as may be determined by the court, unless waived by all next of kin listed in the petition for distribution or unless the court determines that such notice is not required. The court by order, or by decree of distribution, will direct distribution of the money to the persons entitled thereto by law. Upon the filing of a receipt from each distributee for the amount assigned to that distributee, the trustee shall be discharged.

The foregoing procedure will, so far as can be applicable, also govern the distribution of money recovered by personal representatives under the Federal

Employers' Liability Act (45 U.S.C. section 51) and under Minnesota Statutes, section 219.77.

(Amended effective January 1, 2000.)

Cross Reference: Minn. R. Civ. P. 17.

Rule 144.06 Validity and Timeliness of Action

The failure to name the next of kin in a petition required by Rule 144.01 or the failure to notify or obtain a waiver from the next of kin shall have no effect on the validity or timeliness of an action commenced by the trustee.

(Added effective January 1, 2000.)

Advisory Committee Comment--2007 Amendment

This rule is derived from Rule 2 of the Code of Rules for the District Courts. The Task Force has amended the rule to refer to "next of kin" rather than "heirs." Minnesota Statutes, section 573.02 makes no requirements as to who must receive notification of petitions for appointment of trustees or for orders for distribution. Amendments to Rule 144.01, 144.02, and 144.05 codify the longstanding practice of requiring petitioners to name and notify only the decedent's surviving spouse and close relatives, not "all next of kin," which under Wynkoop v. Carpenter, 574 N.W.2d 422 (Minn. 1998), and recent changes to Minnesota's intestacy statute would include distant relatives such as nieces, nephews, aunts, uncles, and cousins. These amendments address only the matter of notification and are not intended to reduce substantive rights of any next of kin.

The Task Force considered the advisability of amending Rule 144.05 to require the court to consider and either approve, modify, or disapprove the settlement itself, in addition to the disposition of proceeds as required under the

existing rule. Although it appears that good reasons exist to change the rule in this manner, the Minnesota Supreme Court has indicated that the trial court has no jurisdiction to approve or disapprove the settlement amounts agreed upon by the parties. The court can only approve the distribution of those funds among the heirs and next of kin. See Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197, 200 n. 1 (Minn. 1986).

The final sentence of Rule 144.01 was added in 1992 to make it clear that it is the filing of papers in the actual wrongful death action, and not papers relating to appointment of a trustee to bring the action, that triggers the scheduling requirements of the rules, including the requirement to file a certificate of representation and parties (Rule 104) and an informational statement (Rule 111.02). Some have interpreted this comment to mean that the advisory committee intended there to be two separate actions for purposes of computing filing fees. Although a filing fee must be paid when the petition for appointment of a trustee is filed, a second filing fee should not be required in the wrongful death action, even when that wrongful death action is commenced in a different county or district.

Rule 144.06 codifies existing law holding that failure to notify some next of kin does not void an appointment. See Stroud v. Hennepin County Medical Center, 544 N.W.2d 42, 48-49 (Minn. App. 1996) (failure to list and obtain signatures of all next of kin did not invalidate trustee's appointment and commencement of a wrongful death action), rev'd on other grounds, 556 N.W.2d 552, 553-55, nn. 3 & 5 (Minn. 1996) (trustee's original complaint effectively commenced wrongful death action despite her improper appointment).

Rule 145. Actions on Behalf of Minors and Incompetent Persons

Rule 145.01 When Petition and Order are Required.

No part of the proceeds of any action or claim for personal injuries on behalf of any minor or incompetent person shall be paid to any person except under written petition to the court and written order of the court as hereinafter provided. This rule governs a claim or action brought by a parent of a minor, by a guardian ad litem or general guardian of a minor or incompetent person, or by the guardian of a dependent, neglected or delinquent child, and applies whether the proceeds of the claim or action have become fixed in amount by a settlement

agreement, jury verdict or court findings, and even though the proceeds have been reduced to judgment.

Rule 145.02 Contents and Filing of Petition.

The petition shall be verified by the parent or guardian, shall be filed before the court makes its order, and shall include the following:

(a) The name and birth date of the minor or other incompetent person.

(b) A brief description of the nature of the claim if a complaint has not been filed.

(c) An attached affidavit, letter or records of a health care provider showing the nature of the injuries, the extent of recovery, and the prognosis if the court has not already heard testimony covering these matters.

(d) Whether the parent, or the minor or incompetent person, has collateral sources covering any part of the principal and derivative claims, including expenses and attorneys fees, and whether subrogation rights have been asserted by any collateral source.

(e) In cases involving proposed structured settlements, a statement from the parties disclosing the cost of the annuity or structured settlement to the tortfeasor.

(Amended effective January 1, 1994.)

Rule 145.03 Representation.

(a) If the lawyer who presents the petition has been retained by the tortfeasor or its insurer, the lawyer shall disclose to the court and to the petitioner the nature of the representation, how he or she is being paid, the

frequency with which the lawyer has been retained by the tortfeasor or insurer, and whether the lawyer is giving legal advice to the petitioner. The petition shall not be denied by the court solely because of the petitioner's representation.

(b) The court may, at its discretion, refer the petitioner to a lawyer selected by the petitioner (or by the court if petitioner requests or declines to select a lawyer), to evaluate the proposed settlement and advise the court whether the settlement is reasonable considering all relevant facts. The opinion shall be in writing, and the court shall provide a copy to the petitioner and all tortfeasors or their representative, regardless of whether a filing fee has been paid by the tortfeasor. This appointment shall be made pursuant to Minn. R. Evid. 706.

(c) The lawyer accepting the referral must agree not to represent the petitioner or the minor or accept a referral fee in the event that the petition is denied by the court.

(d) For the legal opinion thus rendered to the court, the tortfeasor or the insurer shall pay a reasonable sum ordered by the court; however, the insurer or tortfeasor may be reimbursed from settlement proceeds up to one half of the sum so ordered, also upon order of the court. An order for attorney's fees payment in excess of $300.00 can issue only upon a court hearing with notice to the insurer or tortfeasor and the petitioner.

(e) The opinion of the referred-to lawyer shall not be binding upon the court.

Rule 145.04 Hearing on the Petition.

The minor or incompetent person and the petitioner shall personally appear before the court at the hearing on the petition unless their appearance is specifically waived by the court because the action has been fully or partially tried or for other good cause. The reporter shall, when ordered by the court, keep a record of the hearing. The hearing shall be ex parte unless otherwise ordered.

Rule 145.05 Terms of the Order.

The court's order shall:

(a) Approve, modify or disapprove the proposed settlement or disposition and specify the persons to whom the proceeds are to be paid.

(b) State the reason or reasons why the proposed disposition is approved if the court is approving a settlement for an amount which it feels is less than what the injuries and expenses, might seem to call for, *e.g.*, limited insurance coverage, dubious liability, comparative fault or other similar considerations.

(c) Determine what expenses may be paid from the proceeds of any recovery by action or settlement, including the attorney's fee. Attorney's fees will not be allowed in any amount in excess of one-third of the recovery, except on a showing that: (1) an appeal to an appellate court has been perfected and a brief by the plaintiff's lawyer has been printed therein and (2) there has been an expenditure of time and effort throughout the proceeding which is substantially disproportionate to a one-third fee. No sum will be allowed, in addition to attorney fees, to reimburse any expense incurred in paying an investigator for services and mileage, except in those circumstances where the attorney's fee is not fully compensatory or where the investigation must be conducted in any area so distant from the principal offices of the lawyer so employed that expense of travel and related expense would be substantially equal to, or in excess of, usual investigating expenses.

(d) Specify what disposition shall be made of the balance of the proceeds of any recovery after payment of the expenses authorized by the court.

(1) The court may authorize investment of all or part of such balance of the proceeds in securities of the United States, or in an annuity or other form of structured settlement, including a medical assurance agreement, but otherwise shall order the balance of the proceeds deposited in one or more banks, savings and loan associations or trust companies where the deposits will be fully covered by Federal deposit insurance.

(2) In lieu of such disposition of the proceeds, the order may provide for the filing by the petitioner of a surety bond approved by the court conditioned for payment to the ward in a manner therein to be specified of such moneys as the ward is entitled to receive, including interest which would be earned if the proceeds were invested.

(e) If part or all of the balance of the proceeds is ordered deposited in one or more financial institutions, the court's order shall direct:

(1) that the defendant pay the sum to be deposited directly to the financial institution;

(2) that the account be opened in the name of the minor or incompetent person and that any deposit document be issued in the name of the minor or incompetent person;

(3) that the petitioner shall, at the time of depositing, supply the financial institution with a tax identification number or social security number for the minor and a copy of the order approving the settlement; and

(4) that the financial institution forthwith acknowledge to the court receipt of the order approving settlement and the sum and that no disbursement of the funds will occur unless the court so orders, using the form substantially equivalent to Form 145.1;

(5) that the financial institution shall not make any disbursement from the deposit except upon order of the court; and

(6) that a copy of the court's order shall be delivered to said financial institution by the petitioner with the remittance for deposit. The financial institution(s) and the type of investment therein shall be as specified Minnesota Statutes, section 540.08, as amended. Two or more institutions shall be used if necessary to have full Federal deposit insurance coverage of the proceeds plus future interest; and time deposits shall be established with a maturity date on or before the minor's age of majority. If automatically renewing instruments of deposit are used, the final renewal period shall be limited to the date of the age of majority.

(7) that the petitioner shall be ordered to file or cause to be filed timely state and federal income tax returns on behalf of the minor.

(f) Authorize or direct the investment of proceeds of the recovery in securities of the United States only if practicable means are devised comparable to the provisions of paragraphs (d) and (e) above, to insure that funds so invested will be preserved for the benefit of the minor or incompetent person, and the original security instrument be deposited with the court administrator consistent with paragraph (e) above.

(g) Provide that application for release of funds, either before or upon the age of majority may be made using the form substantially similar to Form 145.2.

(Amended effective December 17, 2002.)

Rule 145.06 Structured Settlements.

If the settlement involves the purchase of an annuity or other form of structured settlement, the court shall:

(a) Determine the cost of the annuity or structured settlement to the tortfeasor by examining the proposal of the annuity company or other generating entity;

(b) Require that the company issuing the annuity or structured settlement:

(1) Be licensed to do business in Minnesota;

(2) Have a financial rating equivalent to A. M. Best Co. A+, Class VIII or better,

(3) Has complied with the applicable provisions of Minn. Stat. § 549.30 to § 549.34;

or that a trust making periodic payments be funded by United States Government obligations; and

(4) If the company issuing the proposed annuity or structured settlement is related to either the settling party or its insurer, that the proposed annuity or structured settlement is at least as favorable to the minor or incompetent person as at least one other competitively-offered annuity obtained from an issuer qualified under this rule and not related to the party or its insurer. This additional proposal should be for an annuity with the same terms as to cost and due dates of payment.

(c) Order that the original annuity policy be deposited with the court administrator, without affecting ownership, and the policy be returned to the owner of the policy when:

(1) The minor reaches majority;

(2) The terms of the policy have been fully performed; or

(3) The minor dies, whichever occurs first.

(d) In its discretion, permit a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code;

(e) In its discretion, order the tortfeasor or its insurer, or both of them, to guarantee the payments contracted for in the annuity or other form of structured settlement; and

(f) Provide that:

(1) The person receiving periodic payments is entitled to each periodic payment only when the payment becomes due;

(2) That the person shall have no rights to the funding source; and

(3) That the person cannot designate the owner of the annuity nor have any right to control or designate the method of investment of the funding medium; and

(g) Direct that the appropriate party or parties will be entitled to receive appropriate receipts, releases or a satisfaction of judgment, pursuant to the agreement of the parties.

(Amended effective December 17, 2002.)

Cross Reference: Minn. R. Civ. P. 17.

Advisory Committee Comment—2002 Amendment

Rule 145.05 is revamped to create a new procedure for handling the deposit of funds resulting from minor settlements. The new rule removes provisions calling for deposit of funds in "passbook" savings accounts, largely because this form of account is no longer widely available from financial institutions. The revised rule allows use of statement accounts, but requires that the financial institution acknowledge receipt of the funds at

the inception of the account. A form for this purpose is included as Form 145.1. Additionally, the rule is redrafted to remove inconsistent provisions. Under the revised rule, release of funds is not automatic when the minor reaches majority; a separate order is required. A form to implement the final release of funds, as well as any permitted interim release of funds, is included as Form 145.2.

Rule 145.06(b)(4) is a new provision to require at least two competitive proposals for a structured settlement. This requirement applies only when one of the proposals is for an annuity issued by the settling party, its liability insurer, or by an insurer related to either of them. The rule requires that the competitive bids be issued by annuity companies that would be qualified to issue an annuity that complies with the requirements of Rule145.06. In order to permit the trial court to determine that the proposed settlement adequately provides for the interests of the minor, the competitive bids must be for annuities with comparable terms. The rule requires only a second proposal, but permits the court to require additional proposals or analysis of available proposals in its discretion. The rule, as revised, does not direct how the trial court should exercise its discretion in approving or disapproving the proposed structure settlement. It is intended, however, to provide the court some information upon which it can base the decision.

Rule 145.07 General Guardians.

When an action is brought by a general guardian appointed and bonded by a court of competent jurisdiction, the requirements of this rule may be modified as deemed desirable by the court because of bonding or other action taken by the appointing court, except that there must be compliance with the settlement approval requirements of Section 540.08 of the Minnesota Statutes or amendments thereof.

Cross Reference: Minn. R. Civ. P. 17.

Advisory Committee Comment - 2000 Amendments

This rule is derived from Minnesota Statutes, section 540.08 (1990) and Rule 3 of the Code of Rules for the District Courts.

The Task Force considered it a thoughtful recommendation that a minor's social security number be required to be included on all minor settlement petitions. Such a requirement would make it easier to locate a minor at the time of reaching majority. The Task Force ultimately concluded, however, the privacy interests dictate that the inclusion of this number should not be mandatory. The information may nonetheless be required by the financial institution with which the funds are deposited, and many lawyers will routinely include it in petitions in order to facilitate locating the minor should the need arise.

The 1994 amendment of Rule 145.02(c) allows the filing of medical records in lieu of a full report of each health care provider where those records provide the information necessary to evaluate the settlement. This may be especially appropriate where the injuries are not severe, or where the cost of obtaining reports would represent a substantial portion of the settlement proceeds. The court can, in any case, require any further information or reports deemed necessary to permit the court to discharge its duty to evaluate the overall fairness of the settlement to the minor.

Rule 145.02(d) is new. It is designed to advise the court of factors to take into consideration when approving or disapproving a settlement on behalf of the minor or incompetent person. Rule 145.02(e) is added in 1992 to provide the court in the petition the information necessary for the court to make the determination required by Rule 145.06(a). Although the parties are the obvious source of the cost information necessary to make the cost determination, the rule explicitly requires the petition to include this information. This information must be disclosed by the parties, and not only the party filing the petition, as often the tortfeasor will have the only accurate information on this subject.

Rule 145.03 is new. It addresses a situation where a tortfeasor or insurer has negotiated a settlement with a minor's family or guardian, and court approval of that settlement is necessary. Oftentimes the plaintiff does not wish to incur attorney's fees to obtain that approval, so as a part of the settlement, the tortfeasor or the insurer makes the arrangements to draft and present the petition. The court needs to be satisfied that the settlement is fair. The Task Force discussed at length whether or not a lawyer hired and paid by an insurer or tortfeasor should be permitted to represent the minor or incompetent person to obtain the approval of the court. It was decided that the petitioner should not be compelled to obtain counsel, and that "arranged counsel" may appear, provided

that there is full disclosure to the petitioner of the interests of the insurer or tortfeasor.

Rule 145.03(b) is new and is designed to provide a procedure for the court to obtain advice to evaluate the reasonableness of a settlement. The court may appoint a lawyer selected by the petitioner or the court may designate a lawyer of its own choice. In either case, where a referral is made under this section, the lawyer accepting the referral may not represent the petitioner to pursue the claim, should the petition be denied by the court. Rule 145.03(d) provides that the cost of the consultation provided for in Rule 145.03(b) shall be born equally by the petitioner and the tortfeasor or insurer.

Finally, Rule 145.03(d) provides that any opinions rendered by a selected lawyer on behalf of the minor or incompetent person are advisory only.

Rule 145.05(d) expands the types of investments that may be used in managing the settlement proceeds while retaining the requirements of security of investment. It incorporates Minnesota Statutes, section 540.08 (1990) regarding structured settlements, and it allows that settlements may include a medical assurance agreement. A medical assurance agreement is a contract whereby future medical expenses of an undetermined amount will be paid by a designated person or entity.

Rule 145.05(e)(5) requires that funds placed in certificates of deposit or other deposits with fixed maturities have those maturities adjusted so they do not mature after the age of majority. This rule places the burden on the financial institution by the notice to be included in the order for deposit.

Rule 145.06 is new. It establishes criteria for approval of structured settlements, and it requires the court to determine the cost of the annuity to insure that the periodic payments reflect a cost comparable to a reasonable settlement amount. Where a minor or incompetent receives a verdict representing future damages greater than $100,000 and the guardian determines that a structured settlement pursuant to Minnesota Statutes, section 549.25 (1990) would be in the best interests of the minor or incompetent person, this rule shall apply to the implementation of the election pursuant to the statute. The amendment of the rule in 1995 (effective January 1, 1996) is intended to make it clear that it is important that the original annuity policy be retained by the court administrator, and that this is for the purpose of security, not establishing any ownership interest which might affect the tax treatment of the settlement.

Rule 145.06(b) is modified by amendment in 2000. The amendment is intended to require the court approving a minor settlement that includes a

structured settlement provision to verify that the annuity issuer is licensed to do business and that Minnesota Statutes, sections 549.30-.34 (1998) is followed. The amendment is not intended to impose any additional substantive requirements, as compliance with statutes is assumed under the current rule. The rule will require the trial court to verify the fact of compliance, however, and will probably require submitting this information to the court.

PART G. APPENDIX OF FORMS

PART H. MINNESOTA CIVIL TRIALBOOK

Section 1. Scope; Policy

This Trialbook is a declaration of practical policies and procedures to be followed in the civil trials in all the trial courts of Minnesota. It has been written to standardize practices and procedures throughout the state with the hope, and expectation, that trial time and expense will be reduced and that justice to the litigants and public acceptance of trial procedures will be increased.

It is recommended that the policies and procedures be generally and uniformly used. However, it is recognized that situations will arise where their use would violate the purpose for which they were drafted. In such circumstances, the policies and procedures should be disregarded so that justice, not form, may prevail. The provisions of this Trialbook may be cited as Minn. Civ. Trialbook section _____.

Sections 2 to 4. (Deleted effective January 1, 1998)

Section 5. Pre-Trial Conferences

(a) Settlement procedures. Settlement conferences are encouraged and recommended for case disposition. However, because of the diversity of approaches to be used, specific procedures are not set forth.

Lawyers will be notified by the court of the procedures to be followed in any action where settlement conferences are to be held.

(b) Procedures to be followed. In those courts where a formal pre-trial conference is held prior to assignment for trial, a trial date shall be set and the conference shall cover those matters set forth in paragraphs (d) and (e) of this section.

(c) Settlement discussions with court. The court may request counsel to explore settlement between themselves further and may engage in settlement discussions.

(d) Pretrial chambers conferences. At an informal chambers conference before trial the trial court shall:

(1) determine whether settlement possibilities have been exhausted;

(2) determine whether all pleadings have been filed;

(3) ascertain the relevance to each party of each cause of action; and,

(4) with a view to ascertaining and reducing the issues to be tried, shall inquire:

(i) whether the issues in the case may be narrowed or modified by stipulations or motions;

(ii) whether dismissal of any of the causes of actions or parties will be requested;

(iii) whether stipulations may be reached as to those facts about which there is no substantial controversy;

(iv) whether stipulations may be reached for waiver of foundation and other objections regarding exhibits, tests, or experiments;

(v) whether there are any requests for producing evidence out of order;

(vi) whether motions <u>in limine</u> to exclude or admit specified evidence or bar reference thereto will be requested; and

(vii) whether there are any unusual or critical legal or evidentiary issues anticipated;

(5) direct the parties to disclose the number and names of witnesses they anticipate calling, and to make good faith estimates as to the length of testimony and arguments;

(6) inquire whether the number of experts or other witnesses may be reduced;

(7) ascertain whether there may be time problems in presentation of the case, *e.g.*, because of other commitments of counsel, witnesses, or the court and advise counsel of the hours and days for trial; and

(8) ascertain whether counsel have graphic devices they want to use during opening statements; and

(9) ascertain whether a jury, if previously demanded, will be waived. If a jury is requested, the judge shall make inquiries with a view to determining:

(i) the areas of proposed voir dire interrogation to be directed to prospective jurors, and whether there is any contention that the case is one of "unusual circumstances";

(ii) the substance of a brief statement to be made by the trial court to the prospective jurors outlining the case, the contentions of the parties, and the anticipated issues to be tried;

(iii) the number of alternate jurors (it is suggested that the identity of the alternates not be disclosed to the jury); and

(iv) in multiple party cases, whether there are issues as to the number of "sides" and allocation of peremptory challenges.

(e) Formal conference. After conclusion of the informal chambers conference and any review of the court file and preliminary research the court finds advisable, a formal record shall be made of:

(1) arguments and rulings upon motions, bifurcation, and order of proof;

(2) statement of stipulations, including whether graphic devices can be used during opening statement; and

(3) in a jury trial, specification of:

(i) the brief statement the trial court proposes to make to prospective jurors outlining the case, contentions of the parties, and anticipated issues to be tried;

(ii) the areas of proposed voir dire interrogation to be directed to the prospective jurors;

(iii) whether any of the defendants have adverse interests to warrant individual peremptory challenges and number of them;

(iv) the number of alternate jurors, if any, and the method by which the alternates shall be determined;

(v) the need for any preliminary jury instructions.

Cross Reference: Minn. R. Civ. P. 116; Minn. Gen. R. Prac. 111, 112.

Task Force Comment--1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 6. The deleted language is unnecessary as it merely repeats other requirements.

Subsection (b) is derived from existing Trialbook paragraph 7.

Subsection (c) is derived from existing Trialbook paragraph 8.

Subsection (d) is derived from existing Trialbook paragraph 9.

Subsection (e) is derived from existing Trialbook paragraph 10.

This section sets forth many of the matters which can, and often should, be discussed in pretrial proceedings. The section does not enumerate all the subjects that can be discussed or resolved in pretrial conferences or other pretrial proceedings. The pretrial conference is intended to be a flexible device and the trial judge has considerable discretion to tailor the pretrial conference to suit the needs of an individual case. Many matters that may be useful in pretrial

conferences are discussed in the Federal Judicial Center's *Manual for Complex Litigation* *(2d ed. 1985).*

The Task Force considered proposals and concerns expressed on the subject of the role of trial judges, both in jury trial matters and bench trial matters. The Task Force believes this is a difficult issue, and one on which trial judges and counsel should have guidance. The Task Force recommends that this problem area be given further study by the Minnesota Supreme Court and interested bar associations.

Section 6. Voir Dire of Jurors

(a) Swearing Jurors to Answer. The entire panel shall be sworn by the clerk to truthfully answer the voir dire questions put to them. The clerk shall then draw the names of the necessary persons who shall take their appropriate seats in the jury box.

(b) Statement of the Case To and Examination of Prospective Jurors. The court shall make a brief statement to the prospective jurors introducing the counsel and parties and outlining the case, contentions of the parties, and anticipated issues to be tried and may then permit the parties or their lawyers to conduct voir dire or may itself do so. In the latter event, the court shall permit the parties or their lawyers to supplement the voir dire by such further nonrepetitive inquiry as it deems proper.

(c) Challenges for Cause. A challenge for cause may be made at any time during voir dire by any party or at the close of voir dire by all parties.

(d) Peremptory Challenges. Each adverse party shall be entitled to two peremptory challenges, which shall be made alternately beginning with the defendant. The parties to the action shall be deemed two, plaintiffs being one party, defendants the other. If the court finds that two or more defendants have adverse interests, the court shall allow each adverse defendant additional peremptory challenges. When their are multiple adverse parties, the court shall determine the order of exercising peremptory challenges.

(e) Voir Dire of Replacements. When a prospective juror is excused, the replacement shall be asked by the court:

(1) whether he or she heard and understood the brief statement of the case previously made by the judge;

(2) whether he or she heard and understood the questions;

(3) whether, other than to personal matters such as prior jury service, area of residence, employment, and family, the replacement's answers would be different from the previous answers in any substantial respect.

If the replacement answers in the affirmative to (3) above, the court shall inquire further as to those differing answers and counsel may make such supplemental examination as the court deems proper.

(f) Alternates. (Deleted effective January 1, 2000.)

Cross Reference: Minn. R. Civ. P. 47; Minn. Gen. R. Prac. 123.

Advisory Committee Comment--1999 Amendments

Subsections (a), (b), (d), and (f) are derived from existing Trialbook paragraphs 11-15.

Subsection (c) is derived from the analogous provision of the rules of criminal procedure, Minn. R. Crim. P. 26.02(3)(a)(4). The present provisions relating to jury selection are spread among numerous different sets of rules. The civil rules have not heretofore specified a time for exercise of peremptory challenges. Some judges ask a party conducting voir dire examination before the conclusion of the jury selection process

to "pass the jury for cause." This section will make it clear that challenges for cause can be made at any time, even after voir dire by other parties.

Although the section provides for administration of oaths to jurors, an affirmation should be used as to any juror or panel

member preferring it.

Section 6(f) dealing with alternates is deleted in 1999 to conform this rule to the abolition of alternates under the Rules of Civil Procedure. Minn. R. Civ. P. 47.02 was abrogated by the 1998 amendments to the Rules of Civil Procedure, effective January 1, 1999.

Section 7 Preliminary Instructions

After the jury is sworn, but before opening statements, the judge shall instruct the jurors generally as follows:

(1) to refrain from communicating in writing or by other means about the case, to use the jury room rather than remaining in the courtroom or hallway, and to avoid approaching, or conversations with counsel, litigants, or witnesses, and that they must not discuss the case, or any aspect of it among themselves or with other persons;

(2) that if a juror has a question or communication for the court (*e.g.*, as regards time scheduling), it should be taken up with, or transmitted through, the appropriate court personnel who is in charge of the jurors as to their physical facilities and supplies;

(3) that the jurors will be supplied with note pads and pencils, on request, and that they may only take notes on the subject of the case for their personal use, though they may bring such notes with them into the jury room once they commence deliberations in the case. The jury should receive a cautionary instruction that they are to rely primarily on their collective recollection of what they saw and heard in the courtroom and that extensive note taking may distract them from properly fulfilling this function;

(4) as to law which the judge determines to be appropriate; and

(5) that, as with other statements of counsel, the opening statement is not evidence but only an outline of what counsel expect to prove.

Upon submission of the case to the jury, the judge shall instruct the jury that they shall converse among themselves about the case only in the jury room and only after the entire jury has assembled.

Cross Reference: Minn. R. Civ. P. 39.03.

Task Force Comment--1991 Adoption

This section was derived from existing Trialbook paragraph 16, without significant change.

Section 8 Opening Statement and Final Arguments

(a) Scope of Opening. Counsel on each side, in opening the case to the jury, shall only state the facts proposed to be proven. During opening statement counsel may use a blackboard or paper for illustration only. There shall be no display to the jury of, nor reference to, any chart, graph, map, picture, model or any other graphic device unless, outside the presence of the jurors:

(1) it has been admitted into evidence; or

(2) such display or reference has been stipulated to; or

(3) leave of court for such reference or display has been obtained.

(b) Final Arguments. Final arguments to the jury shall not misstate the evidence. During final argument counsel may use a blackboard or paper for illustration only. A graphic device, such as a chart, summary or model, which is to be used for illustration only in argument shall be prepared and shown to opposing counsel before commencement of the argument. Upon request by opposing counsel, it shall remain available for reference and be marked for identification.

(c) Objections. Objections to remarks by counsel either in the opening statement to the jury or in the closing argument shall be made while such statement or argument is in progress or at the close of the statement or argument. Any objection shall be argued outside the juror's hearing. If the court is uncertain whether there has been a misstatement of the evidence in final argument, the jurors shall be instructed to rely on their own recollections.

Cross Reference: Minn. R. Civ. P. 39.04; Minn. Gen. R. Prac. 124.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Rule 27(a) of the Code of Rules for the District Court and existing Trialbook paragraph 17.

Subsection (b) is derived from existing Trialbook paragraphs 30 and 44.

Subsection (c) is derived from Rule 27(f) of the Code of Rules and existing Trialbook paragraph 31.

Section 9 Availability of Witnesses

(a) Exchange of Information as to Future Scheduling. In order to facilitate efficient scheduling of future witnesses and court time, all parties shall communicate with one another and exchange good faith estimates as to the length of witness examinations together with any other information pertinent to trial scheduling.

(b) "On-Call" Witnesses. It is the responsibility of an "on-call" witness proponent to have the witness present in court when needed.

(c) Completion of Witness' Testimony. Except with the court's approval, a witness' testimony shall be pursued to its conclusion and not interrupted by the taking of other evidence**.**

Upon the conclusion of a witness's testimony the court should inquire of all counsel whether the witness may be excused from further attendance and if affirmative responses are given, the court may then excuse the witness.

(d) Excluding Witnesses. Exclusion of witnesses shall be in accordance with Minn. R. Evid. 615.

(e) Issuance of Warrants. A warrant for arrest or body attachment for failure of a witness to attend shall not be released for service unless it is shown by the applicant party, in a hearing outside the presence of jurors, that (1) service of the process compelling attendance was made at a time providing the witness with reasonable notice and opportunity to respond, and (2) no reasonable excuse exists for the failure to attend or, if the reason for the failure to attend is unknown to the applicant party, due diligence was used in attempting to communicate with such witness to ascertain the reason for the failure to attend.

Cross Reference: Minn. R. Civ. P. 43.

Task Force Comment--1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 54.

Subsection (b) is derived from existing Trialbook paragraph 55.

Subsection (c) is derived from existing Trialbook paragraph 56.

Subsection (d) is derived from existing Trialbook paragraph 57, with significant change.

Subsection (e) is derived from existing Trialbook paragraph 61.

Subsection (d) now simply makes it clear that Minn. R. Evid. 615 governs the sequestration of witnesses. The existing provision of existing Trialbook paragraph 57 appears to be inconsistent with the Rules of Evidence, and should be superseded.

Section 10 Examination of Witnesses

(a) Objections. Lawyers shall state objections succinctly, stating only the specific legal grounds for the objection without argument.

Argument, if allowed by the court, and any offer of proof shall be made outside of the hearing of the jury and on the record.

(b) Caution to Witnesses. Before taking the stand and outside of the hearing of the jury, a witness called by counsel shall be cautioned by such counsel to be responsive to the questions and to wait in answering until a question is completed and a ruling made on any objection. Lawyers should advise their clients and witnesses of the formalities of court appearances.

Counsel may request the court to caution a witness while on the stand as to the manner of answering questions.

(c) Questions Not to be Interrupted. A question shall not be interrupted by objection unless then patently objectionable.

(d) Effect of Asking Another Question. An examiner shall not repeat the witness' answer to the prior question before asking another question.

An examiner shall wait until the witness has completed answering before asking another question. If a question is asked before the preceding question of the same examiner is answered or any objection is ruled upon, it shall be deemed a withdrawal of the earlier question.

(e) Number of Examinations. On the trial of actions only one counsel on each side shall examine or cross-examine a witness, and one counsel only on each side shall sum up the case to the jury, unless the judge otherwise orders.

(f) Counsel's Use of Graphic Devices. Counsel may use a graphic device to diagram, calculate, or outline chronology from witnesses' testimony.

(g) Familiarity with witnesses, jurors and opposing counsel. Lawyers and judges shall not exhibit undue familiarity with adult witnesses, parties, jurors or opposing counsel, or each other and the use of first names shall be avoided. In arguments to the jury, no juror shall be singled out and addressed individually. When addressing the jury, the lawyers shall first address the court, who shall recognize the lawyer.

(h) Matters to be Out of Jury's Hearing. The following matters shall be held outside the hearing of jurors. Counsel wishing to argue such matters shall request leave from the court. The first time this request is granted in a trial, the judge shall advise the jurors that matters of law are for the court rather

than the jury and that discussions as to law outside the jurors' hearing are necessary and proper for counsel to request.

(1) Arguments: Evidentiary arguments and offers of proof as provided for in section 10(a) of this Trialbook;

(2) Offers to Stipulate: Counsel shall not confer about stipulations within possible jury hearing, nor without leave of the court when such conference would impede trial progress;

(3) Requests for Objects: Other than requests to a witness during testimony, requests by a party to opposing counsel for objects or information purportedly in the possession of the opposing counsel or party shall be made outside the hearing of jurors;

(4) Motions: Motions for judgments on the pleadings, to exclude evidence, directed verdict, and mistrial shall be made and argued outside the hearing of the jurors. If the ruling affects the issues to be tried by the jury, the court, after consulting with counsel, shall advise the jurors. Immediately upon granting a motion to strike any evidence or arguments to the jury, the court shall instruct the jury to disregard the matter stricken; and

(5) Sensitive Areas of Inquiry: Areas of inquiry reasonably anticipated to be inflammatory, highly prejudicial, or inadmissible, shall be brought to the attention of opposing counsel and the court outside the hearing of jurors before inquiry. A question of a witness shall be framed to avoid the suggestion of any inadmissible matter.

(i) Questioning by Judge. The judge shall not examine a witness until the parties have completed their questions of such witness and then only for the purpose of clarifying the evidence. When the judge finishes questioning, all parties shall have the opportunity to examine the matters touched upon by the judge. If a lawyer wants to object to a question posed by the court, he or she shall make an objection on the record outside the presence of the jury. The lawyer shall make a "motion to strike" and ask for a curative instruction.

(j) Advice of Court as Self-Incrimination. Whenever there is a likelihood of self-incrimination by a witness, the court shall advise the witness outside the hearing of the jurors of the privilege against self-incrimination.

(k) Policy Against Indication as to Testimony. Persons in the courtroom shall not indicate by facial expression, shaking of the head, gesturing, shouts or other conduct disagreement or approval of testimony or other evidence

being given, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

(l) Policy on Approaching the Bench. Except with approval of the court, persons in the courtroom shall not traverse the area between the bench and counsel table, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

(m) Use of Depositions and Interrogatories. A party, before reading into evidence from depositions or interrogatories, shall cite page and line numbers to be read, and pause briefly for review by opposing counsel and the court and for any objections. The court may require designation of portions of depositions to be used at trial in a pretrial order.

Cross Reference: Minn. R. Civ. P. 43.

Task Force Comment--1991 Adoption

Subsections (a)-(d) are derived from paragraphs 48-53 of the existing Trialbook, in order.

Subsection (e) is derived from Rule 27(d) of the Code of Rules.

Subsection (f) is derived from paragraph 59 of the existing Trialbook.

Subsection (g) is derived from paragraph 58 of the existing Trialbook.

Subsection (h) is derived from paragraph 18 of the existing Trialbook.

Subsections (i)-(l) are derived from paragraphs 62-65 of the existing Trialbook, in order.

Subsection (m) is derived from existing Trialbook, paragraph 22.

Section 11 Interpreters

The party calling a witness for whom an interpreter is required shall advise the court in advance of the need for an interpreter. Parties shall not use a relative or friend as an interpreter in a contested proceeding, except as approved by the court.

Cross Reference: Minn. R. Civ. P. 43.

Task Force Comment--1991 Adoption

This section is derived from existing Trialbook paragraph 60.

Section 12 Exhibits

(a) Pre-Trial Exchange of Lists of Exhibits. Each party shall prepare a list of exhibits to be offered in evidence, and exchange copies of such lists with other counsel prior to the pre-trial conference. Such lists shall briefly describe each exhibit anticipated to be offered in evidence. Prior to the commencement of trial, copies of all documents on the list of exhibits shall be made available by the proponent for examination and copying by any other party.

(b) Counsel to Organize Numerous Exhibits. If it can reasonably be anticipated that numerous exhibits will be offered in a trial, all counsel shall meet with designated court personnel shortly prior to or during a recess of the trial for the purpose of organizing and marking the exhibits.

All exhibits shall be marked for identification before any reference by counsel or by a witness.

(c) Marking of Exhibits First Disclosed During Trial. When an exhibit is first disclosed, the proponent shall have it marked for identification before referring to it.

(d) Collections of Similar and Related or Integrated Documents. Each collection of similar and related or integrated documents shall be marked with a single designation. If reference is made to a specific document or page in such collection, it shall be marked with a letter the arabic exhibit number assigned to the collection, *e.g.*, "1-a," "21-b," "2-g," etc.

(e) Oral Identification of Exhibits at First Reference. Upon first reference to an exhibit the proponent shall briefly refer to its general nature, without describing the contents.

(f) When Exhibits to be Given to Jurors. Exhibits admitted into evidence, subject to cursory examination, such as photographs and some other demonstrative evidence, may be handed to jurors only after leave is obtained from the court.

Other exhibits admitted into evidence, not subject to cursory examination, such as writings, shall not be handed to jurors until they retire to the jury room upon the cause being submitted to them. If a party contends that an exhibit not subject to cursory examination is critical and should be handed to jurors in the jury box during the course of the trial, counsel shall request leave from the court. Such party shall be prepared to furnish sufficient copies of the exhibit, if reasonably practicable, for all jurors in the event such leave is granted; and upon concluding their examination, the jurors should return the copies to the bailiff. In lieu of copies, and if reasonably practicable, enlargements or projections of such exhibits may be utilized. The court may permit counsel to read short exhibits or portions of exhibits to the jury.

(g) Exhibits Admitted in Part. If an exhibit admitted into evidence contains some inadmissible matter, *e.g.*, a reference to insurance, excluded hearsay, opinion or other evidence lacking foundation, the court, outside the hearing of the jury, shall specify the excluded matter and withhold delivery of such exhibit to the jurors unless and until the inadmissible matter is physically deleted.

Such redaction may be accomplished by photocopying or other copying which deletes the inadmissible portions, and in such event, the proponent of such exhibit shall prepare and furnish a copy.

If redaction by such copying is not accomplished, the parties shall seek to reach a stipulation as to other means; and failing so to do, the admissible matter may be read into evidence with leave of the court.

(h) Evidence Admitted for a Limited Purpose. When evidence is received for a limited purpose or against less than all other parties, the court shall so instruct the jury at the time of admission and, if requested by counsel, during final instructions.

(Amended effective January 1, 1994.)

Cross Reference: Minn. R. Civ. P. 43.

Advisory Committee Comment--1994 Amendment

Subsection (a) is derived from existing Trialbook paragraph 37.

Subsection (b) is derived from existing Trialbook paragraph 38.

Subsection (c) is derived from existing Trialbook paragraph 39.

Subsection (d) is derived from existing Trialbook paragraph 41.

Subsection (e) is derived from existing Trialbook paragraph 42.

Subsection (f) is derived from existing Trialbook paragraph 19.

Subsection (g) is derived from existing Trialbook paragraph 20.

Subsection (h) is derived from existing Trialbook paragraph 21.

Former subsection (d) is deleted because uniform exhibit marking is now covered by Minn. Gen. R. Prac. 130, a new rule effective on the same date. The remaining sections are renumbered for convenience.

The provisions of subsection (f) are not intended to limit in any way the discretion of the trial court as to what evidence is allowed to go to the jury room. Any evidence that is fragile, perishable, or hazardous may properly not be allowed into the jury deliberation room.

Section 13 Custody of Exhibits

(a) Return of Exhibits to Court Personnel. Immediately after conclusion of the examination of a witness regarding an exhibit shown to a witness, counsel shall return it to the court personnel.

(b) Exhibits after Trial. Upon the completion of trial, the administrator shall index and retain all exhibits until the case is finally disposed of and all times for appeal have expired and they are either retrieved by the party offering them or destroyed pursuant to Minn. Gen.R. Prac. 128. In the event an appeal is taken, the court administrator shall deliver the exhibits to the Clerk of Appellate Courts in accordance with the procedures of the appellate courts.

(c) Bulky Exhibits. Any time after trial and upon the agreement of all parties, the court administrator may arrange the return of bulky exhibits to the party offering them at trial.

Cross Reference: Minn. R. Civ. P. 43, 77; Minn. Gen. R. Prac. 128, 129.

Task Force Comment--1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 43.

Subsection (b) is new, although the subject is covered in a number of current rules.

Section 14 Sealing and Handling of Confidential Exhibits

When briefs, depositions, and other documents or an exhibit such as a trade secret, formula or model are to be treated as confidential, if size permits, such an exhibit shall be placed in a sealed envelope clearly labeled as follows:

"This envelope contains Exhibits _____ which are confidential and sealed by order of the court. This envelope shall not be opened, nor the contents hereof revealed, except by order of the court."

Such an envelope and other confidential exhibits shall be kept in a locked container such as a file cabinet or some other secure location under the supervision of the administration until released by order of the court.

If testimony is taken which would reveal the substance of confidential exhibits, the courtroom shall be cleared of all persons other than parties, their lawyers, and court personnel. Those present, including jurors, shall be directed by the court to refrain from disclosing the substance of the confidential exhibits.

The pertinent portions of the reporter's notes or transcript shall be kept in a locked container after being placed in a sealed envelope clearly labeled as follows:

"This envelope contains confidential references sealed by order of the court. This envelope shall not be opened, nor the contents hereof revealed, except by order of the court."

Briefs and other papers submitted in or after trial ordinarily should not describe the substance of confidential exhibits but should refer to them only by number or letter designation pursuant to the uniform method of marking exhibits.

Cross Reference: Minn. R. Civ. P. 26.03, 43, 77; Minn. Gen. R. Prac. 128, 129.

Task Force Comment--1991 Adoption

This section is derived from existing Trialbook paragraph 47. For a discussion of balancing tests applicable to requests to seal documents, see Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197, 202-206 (Minn. 1986).

Section 15 Instructions

(a) When Jury Instructions to be Submitted. Jury instructions shall be submitted in accordance with Minn. R. Civ. P. 51. Written requests for instructions shall list authorities.

(b) Conference Regarding Instructions and Verdicts. Before final argument and after submission to the court of all proposed jury instructions and verdict forms, a conference shall be held outside the presence of jurors.

A reporter is not required at the beginning of the conference while the court reviews with counsel any proposed instructions or verdict forms and discusses:

(1) whether any proposed instructions or verdict forms are inappropriate and will be voluntarily withdrawn;

(2) whether there is any omission of instructions or verdict forms which are appropriate and shall be offered and given without objection; and

(3) whether there is any other modification of instructions or verdict forms to which the parties will stipulate.

Thereafter, the conference shall be reported and the court shall:

(1) specify those instructions and verdict forms the court proposes to give, refuse, or modify, whether at the request of a party or on its own initiative;

(2) hear formal argument, and rule upon any objections to, and offers of, the proposed instruction and verdict forms.

(c) Specifying Disposition of Instructions. Upon determining the instructions to be given, refused, or modified, the court shall indicate the disposition and sign or initial them.

(d) Stipulations Regarding Further Procedure. At a conference prior to the submission of the case to the jury, the court may request that the parties consider stipulating:

(1) that in the absence of any counsel the court may, upon request of the jury, read to the jury any and all instructions previously given;

(2) that in the absence of the court after the original submission of the case to the jury, any judge of the court may act in the court's place up to and including the time of dismissal of the jury;

(3) that a stay of entry of judgment for an agreed upon number of days shall be granted after a verdict;

(4) that a sealed verdict may be returned; and

(5) that the presence of the clerk and reporter, the right to poll the jury, and the right to have the verdict immediately recorded and filed in open court are waived.

(e) Changing Jury Instructions. If, after the chambers conference and at any time before giving the instructions and verdict form to the jurors, the court determines to make any substantive change the court shall so advise all parties outside the hearing of jurors. If the court determines to make a substantive change after final argument, the court shall permit additional final argument. The court shall also make a statement on the record regarding any changes.

(f) Use of Jury Instructions in Jury Room. Jury instructions may be sent to the jury room for use by the jurors if the court so directs. The number, title, citation of authority, and history shall be removed from each

instruction. Stricken portions shall be totally obliterated and any additions shall be completely legible.

Cross Reference: Minn. R. Civ. P. 51.

Task Force Comment--1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 24.

Subsection (b) is derived from existing Trialbook paragraph 25.

Subsection (c) is derived from existing Trialbook paragraph 26.

Subsection (d) is derived from existing Trialbook paragraph 27.

Subsection (e) is derived from existing Trialbook paragraph 28.

Subsection (f) is derived from existing Trialbook paragraph 32.

Section 16 Questions by Jurors

If the jury has a question regarding the case during deliberations, the court shall instruct the foreperson to reduce it to writing and submit it through appropriate court personnel. Upon receipt of such a written question, the court shall review the propriety of an answer with counsel, unless counsel have waived the right to participate or cannot be found after reasonable and diligent search documented by the court. Such review may be in person or by telephone, and shall be on the record outside the hearing of the jury. The written question and answer shall be made a part of the record. The answer shall be given in open court, absent a stipulation to the contrary.

Cross Reference: Minn. R. Civ. P. 47, 49.

Task Force Comment--1991 Adoption

This section is derived from existing Trialbook paragraph 34.

Section 17 Special Verdicts

(a) Special Verdict Forms. A party requesting a special verdict form should prepare the proposed form and submit it to the court and serve it upon the other counsel prior to the chambers conference referred to in section 15 of this Trialbook.

(b) Filing. Proposed special verdict forms shall be filed and made part of the record in the case.

(c) Copies of Verdict. The court may provide copies of the verdict form to the jury or to each juror for use during arguments or instruction.

Cross Reference: Minn. R. Civ. P. 49.

Task Force Comment--1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 33.

Subsection (b) is new.

Subsection (c) is new. The Task Force believes that it may be useful in some cases to allow the jury to have a copy or copies to be used during arguments of counsel or instructions by the court. It is not wise to permit multiple copies of the verdict form to be taken into the jury room, however.

Section 18 Polling and Discharge

(a) Polling the Jury. Upon the return of any verdict and at the request of a party the jury shall be polled. Polling shall be conducted by the trial court or by the clerk at the trial court's direction by asking each juror: "Is the verdict read your verdict?"

(b) Discharge of the Jury. In discharging the jury, the court shall:

(1) Thank the jury for its service;

(2) Not comment on the propriety of any verdict or failure to reach same;

(3) Advise the jurors that they may, but need not, speak with anyone about the case; and

(4) Specify where and when any jurors are to return for further service.

Cross Reference: Minn. R. Civ. P. 47-49.

Task Force Comment--1991 Adoption

Subsection (a) is derived from existing Trialbook paragraph 35.

Subsection (b) is derived from existing Trialbook paragraph 36.