

FILED

September 29, 2017

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009

**ORDER REGARDING PROPOSED AMENDMENTS
TO THE GENERAL RULES OF PRACTICE
FOR THE DISTRICT COURTS**

The Minnesota Supreme Court Alternative Dispute Resolution Ethics Board has recommended amendments to Rule 114 of the General Rules of Practice for the District Courts. The Committee's report and the proposed amendments to Rule 114 are attached to this order. The Committee's report and the proposed amendments can also be accessed on P-MACS, the public access site for the Minnesota appellate courts, under case number ADM09-8009, *Rules Petition filed on behalf of the Minnesota Supreme Court Alternative Dispute Resolution Ethics Board* (filed July 14, 2017). The court will consider the proposed amendments to Rule 114 of the General Rules of Practice for the District Courts after reviewing any comments on the recommended amendments.

IT IS HEREBY ORDERED THAT:

1. Any person or organization wishing to provide written comments in support of or in opposition to the proposed amendments to Rule 114 shall file one copy of those comments, electronically, using the appellate courts' e-filing application, E-MACS. All comments shall be filed so as to be received no later than November 28, 2017.

2. A hearing will be held before this court to consider the proposed amendments to Rule 114 of the General Rules of Practice. The hearing will take place in Courtroom

300, Minnesota Judicial Center, 25 Reverend Dr. Martin Luther King, Jr. Blvd., Saint Paul, Minnesota, on December 19, 2017, at 11 a.m. Any person or organization wishing to make an oral presentation at the hearing, in support of or in opposition to the proposed amendments shall file, electronically, a request to appear at the hearing, along with one copy of the material to be presented, on or before November 28, 2017.

Dated: September 29, 2017

BY THE COURT:

A handwritten signature in black ink, appearing to read "G. Barry Anderson". The signature is fluid and cursive, with a long horizontal stroke at the end.

G. Barry Anderson
Associate Justice

FILED

July 14, 2017

**OFFICE OF
APPELLATE COURTS**

**STATE OF MINNESOTA
IN SUPREME COURT
ADM09-8009**

In re:

**Supreme Court Alternative Dispute Resolution
Ethics Board**

**Recommendations of Minnesota Supreme Court
Alternative Dispute Resolution Ethics Board**

Report

July 14, 2017

**Karen Irvin, Minneapolis
Chair**

**Hon. Anne McKeig, Saint Paul
Supreme Court Liaison**

**Marna Anderson, Anoka, Minnesota
Michael Black, Saint Paul, Minnesota
James Dunn, Eagan, Minnesota
Gail Finley, Saint Peter, Minnesota
Hon. Timothy Looby, Gaylord, Minnesota
Kirsten Lysne, Golden Valley, Minnesota
Hon. Robyn A. Millenacker, Saint Paul, Minnesota
Dan O'Connell, Maplewood, Minnesota
Sharon Press, Saint Paul, Minnesota
Hon. Patrick D. Robben, Minneapolis, Minnesota
Hon. Richard Stebbins, Minneapolis, Minnesota
Hon. James J. Street, Saint Paul, Minnesota
Martin Swaden, Minneapolis, Minnesota
Hon. Edward T. Wahl, Minneapolis, Minnesota**

**Deanna J. Dohrmann, Staff Attorney
Renee Salmon, Legal Assistant for ADR Program
Aimee Gourlay, Consultant**

30 **Background**

31 In 1994, the Minnesota Supreme Court promulgated amendments to the General Rules of
32 Practice, creating rule 114 and establishing the Alternative Dispute Resolution Review Board.
33 Part of rule 114 included training requirements for neutrals and an application process for listing
34 neutrals on the Rule 114 Roster. Practicing neutrals prior to implementation of rule 114 were
35 permitted to be placed on the roster without meeting the training requirements and had one year
36 in which to submit an application. The ADR Review Board was appointed to serve one year and
37 charged with developing training criteria for granting applications submitted by neutrals.
38 Because rule 114 was mandatory for almost all civil cases, there were scores of questions
39 regarding the ADR process, and the Supreme Court extended the Board to assist with questions.
40 In 1997, the Supreme Court promulgated the Code of Ethics for neutrals providing ADR services
41 pursuant to rule 114, and in 2000 the Supreme Court promulgated a complaint procedure as an
42 appendix to rule 114.

43 In 2007, the Supreme Court changed the name of the Board to the ADR Ethics Board and
44 established the purpose of the Board, which included investigating complaints and
45 recommending sanctions for ethical violations; making recommendations to the court regarding
46 education and training needs for neutrals; serving on future committees or task forces relating to
47 ADR; reviewing and approving training waivers; and making recommendations for
48 improvements to the ethics enforcement process to the General Rules of Practice committee.
49 The order also provided that the supreme court may convene the ADR Ethics Board as a Rules
50 Committee to consider rule 114 changes and report to the General Rules of Practice committee.

51 Alternative Dispute Resolution (ADR) practice in the Minnesota Courts has expanded in
52 popularity and use since 1997 when the rule was last revised. ADR practices in family law have
53 changed significantly, there are more providers, greater access to Neutrals, specialty ADR
54 process options, and regional differences throughout the state of Minnesota. Complaints against
55 neutrals have also increased. Since 2008, there has been an average of 20 complaints submitted
56 per year over the last eight years.

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58

59 **Introduction**

60 Several years ago, members of the Board started discussing possible amendments to rule
61 114 and the enforcement process based on the changing world of ADR in the courts and the
62 increase in complaints against neutrals. Commencing in 2015, Board members started meeting
63 monthly for two hours prior to the monthly ADR Ethics Board meetings to discuss rule
64 amendments. Given the rule had not been reviewed since 1996, the review process has been
65 long and arduous over several years. The Board voted by consensus on the draft changes, and
66 even though the rule amendments were not in final form, the Board agreed it would be beneficial
67 to have feedback from members of the ADR community. The draft rule amendments were sent
68 to attorneys, neutrals, and other members of the ADR community (community dispute resolution
69 providers) for comments. The Board reviewed and considered all comments received and made
70 more revisions to the rule based on feedback from the ADR community.

71

72 **Summary of Recommendations**

73

74 This report recommends a number of substantive changes that expands the scope of Rule
75 114; broaden the definitions of ADR processes; enhances training requirements; clarifies and
76 expands requirements of neutrals; and changes the review process. Specific changes include:

- 77 • Require any neutral to be bound by Rule 114 processes and the code of ethics when
78 providing services to parties involved in a civil or family court proceeding;
- 79 • Expand the ADR processes and definitions;
- 80 • Provide better guidance for parties who use alternative dispute resolution processes and
81 for neutrals who provide these services;
- 82 • Removal of organizations from the Rule 114 Roster, with the exception of Community
83 Dispute Resolution Programs (CDRPs);
- 84 • Require a written agreement between the neutral and the parties so that fees, processes,
85 and expectations are clearly established;
- 86 • Require the neutral to provide the written agreement to the parties and to inform the court
87 of any conflicts between the court order and the written agreement with the parties;
- 88 • Adopt and incorporate certain best practices as required duties for neutrals;
- 89 • Require the court administrator to send the neutral a copy of the order appointing neutral;

- 90 • Create a more streamlined process for neutrals to request relief from the court for unpaid
91 fees;
- 92 • Enhance and clarifying the training requirements and continuing education for neutrals;
- 93 • Require the neutral to provide written qualifications to the parties;
- 94 • Clarify the neutral’s role and as scrivener;
- 95 • Remove the Rule 114 Appendix Code of Ethics and Rule 114 Appendix code of Ethics
96 and Enforcement Procedures; and
- 97 • Integrate the Code of Ethics and Enforcement Procedures into Rule 114 and enhancing
98 the code of ethics and enforcement procedures by modifying the complaint process and
99 creating a new appeal process.

100

101 The main format change includes incorporating the Rule 114 Appendix Code of Ethics
102 and the Rule 114 Code of Ethics Enforcement Procedure Appendix into the rule itself. The
103 technical changes include capitalizing titles, such as Neutral and Qualified Neutral.

104

105 Expansion of jurisdiction. Rule 114 currently applies only to neutrals who are on the roster or
106 court-appointed. The proposed rule expands the jurisdiction of the ADR Ethics Board to include
107 all neutrals providing ADR services in civil and family court cases, unless excluded by court
108 rule, and not just qualified neutrals or court-appointed neutrals. The Board believes this is more
109 appropriate to better monitor the provisions of ADR services and to better protect the consumer.
110 If the Board receives a complaint resulting from a neutral process and the neutral is not on the
111 roster or court appointed, the Board has no authority to review or take any action. By expanding
112 the jurisdiction to all neutrals conducting neutral processes as defined in Rule 114, the Board will
113 be able to hold all neutrals accountable for ethical practice as defined by the rule. The Board
114 believes that this amendment will provide for much broader protection of individuals and
115 families who are required or opt to use neutral processes.

116

117 Definitions of ADR Processes. The ADR Ethics Board currently spends a substantial amount of
118 time addressing complaints due to inconsistent expectations of the Neutral’s role in family ADR
119 processes. Commonly used ADR process roles in family cases include parenting consultant,
120 parenting time expeditor, and early neutral evaluator. The proposed amendments to the rule
121 distinguishes between civil and family ADR processes and provides a more detailed definition of
122 the individual processes available in order to create clearer expectations for the parties.

123

124 Elimination of Organizations on the Roster. Qualified neutrals providing ADR services under
125 Rule 114 are individually responsible for meeting training standards, applying for and
126 maintaining roster eligibility, and following the code of ethics. Allowing organizations to be
127 included on the Rule 114 did not provide enough assurances that the individuals of the
128 organizations were meeting training standards and roster eligibility. The amendment removes
129 organizations with the exception of Community Dispute Resolution Programs (CDRPs), which
130 are certified by the State Court Administrator’s Office, and may be on the Rule 114 Roster

131 provided they certify their neutrals are meeting the training and continuing education
132 requirements under Rule 114.13.

133
134 Expansion of Duties for Neutrals and Court Administrators. The amendment to Rule 114.05
135 creates a new requirement of written agreements for all ADR services in civil and family court
136 cases, not just for mediations and arbitrations. These written agreements will define the
137 contracted services including, but not limited to, service descriptions, fees to be charged, and
138 procedures to be followed.

139
140 When the court appoints a neutral, best practices set forth that a neutral should not
141 commence services until the parties provide the neutral with a copy of the appointment order.
142 The burden should be on the neutral to notify the parties or their attorneys of any problematic
143 language when the court order includes a provision the neutral believes will violate Rule 114, the
144 code of ethics, or any applicable statutes. However, the neutral is not a party to the case and does
145 not receive court notices when an order issues. Despite directives in the written agreement for
146 parties to provide copies of court orders to the neutral, parties may fail to provide the neutral
147 with a copy of a court order. To eliminate potential conflicts and ethical concerns, Rule 114.04
148 creates a new requirement for court administration to send a copy of the order appointing the
149 neutral to the neutral. The written agreement should continue to include a requirement that
150 parties provide copies of any additional orders that contain provisions regarding the neutral's
151 role, as Rule 114.05 requires an affirmative duty of the neutral to decline appointment or defer
152 services until parties obtain amendment of the court order or amendment of the written
153 agreement. The expanded use of ADR services and potential ethical concerns with court orders
154 that conflict with written agreements require these additional protections for providers and
155 consumers and will hopefully reduce the number of complaints to the ADR Ethics Board.

156
157 A number of complaints reviewed by the Board concern the parenting time expeditor's
158 scope of authority. In some instances, the court may order the PTE to take on a role that, in the
159 Board's opinion, is beyond the scope of the statute (see Minn. Stat. § 518.1751). The statute
160 allows the parties to broaden the PTE scope of authority, but it is the Board's understanding that
161 the scope is still limited to parenting time related matters. The Board's position and best
162 practices supports, that a "parenting time order" refers only to the parenting time provisions in
163 the order and does not include all issues within the order. Parties should not be able to agree, nor
164 should the court grant more authority to a PTE that requires a PTE to decide matters related to
165 custody or requiring a parent to attend therapy, or any other matter that is not a "parenting time
166 matter." If the court grants such authority to a neutral, the written agreement for a PTE should
167 be amended to reflect a different role that is in line with the court order. If parties or the court
168 desire a broader role of a neutral than the limited role of a PTE, then a different ADR process
169 should be used.

170
171 The amendment to Rule 114.15 also expands the ethical requirement for all neutrals, not
172 just mediators and arbitrators, to provide a summary of their qualifications. Consumers are
173 entitled to know the qualifications of their selected ADR neutrals before the ADR process is
174 contracted and commenced. It is important for consumers to be provided with a neutral's
175 qualifications so consumers may make an informed choice.

176

177 Simplification of Fee Dispute Process. The amendment to Rule 114.11 simplifies the process for
178 neutral fee disputes and does not require the filing of a formal motion to collect unpaid fees.
179 Because of the new requirement of a written agreement in all ADR civil and family matters, all
180 participants are aware of the services to be provided and the cost of said services before the
181 process is commenced. With this additional protection for all participants, a formal fee dispute
182 motion practice should be unnecessary and better protects the unpaid neutral.

183
184 Expansion of Training Requirements and Continuing Education. The current rule requires
185 detailed training requirements only for facilitative/hybrid neutrals. Over the past several years,
186 ADR practice has expanded to include regular use of such neutrals as Parenting Time Expeditors
187 (authorized by statute), Parenting Consultants, Consensual Special Magistrates, and Early
188 Neutral Evaluations, which include Social and Financial Early Neutral Evaluations. In order to
189 protect the public and provide for quality service, it is both important and necessary to define the
190 training and experience required for rostered neutrals in these other roles.

191
192 Incorporation of Code of Ethics and Enforcement Procedures into the Rule. The ethical code for
193 neutrals is a critical part of the rule and not an afterthought. Placing the code within the rule, and
194 not merely as an appendix, sends an important signal to neutrals and the public that adherence to
195 the code of ethics is expected under the rule. The Board considered creating a stand-alone ethics
196 document, similar to what exists for attorneys and court interpreters, but decided placing the
197 code within the text of the rule itself emphasizes that the ethical standards are integral to the
198 procedural rules.

199
200 Clarification of Neutral’s Role. The ADR Ethics Board believes many of the best practices listed
201 in the Advisory Task Force Comments from 1997 should be requirements and are now included
202 in the amendments. There was much discussion by the Board regarding the role of a neutral as
203 scrivener, and the amendment provides more guidance for memorializing agreements of the
204 parties and drawing the distinction between transcribing the parties’ agreement and drafting legal
205 documents.

206
207 Revisions to the Enforcement Procedures. The ADR Ethics Board has found that its most
208 valuable interventions have been rehabilitative rather than retributive. Often neutrals need
209 education, mentoring, or best practice guidance, rather than a traditional “sanction.” Once so
210 informed, these neutrals seldom repeat an ethical violation. However, the current process deems
211 any intervention a sanction. This is problematic because ADR neutrals commonly hold licenses
212 to practice in other professions (attorneys, psychologists, marriage and family therapists, etc.)
213 which require the maintenance of professional liability insurance, and these insurance carriers
214 require that they be informed of any action or sanctions taken by a board as part of the
215 professional’s practice. It is understood that such notification may result in higher malpractice
216 insurance premiums, which may result in more appeals being pursued by neutrals, given what is
217 at stake for the neutral. Therefore, the ADR Ethics Board is recommending the ability to act in a
218 way to provide rehabilitation for the neutral to get back on track without suffering professionally.
219 When there is a responsive neutral, it seems unjust that the neutral would be further penalized by
220 having professional liability dropped or premiums significantly increased as a result of a
221 complaint.

222

223 The current appeal process lacks clear directives with the administrative process, and the
224 amendments provide for a better defined complaint appeals process. The revisions to the
225 enforcement procedures now allow options other than the recommendation of formal sanctions
226 when the offending conduct is unintentional and minimal. This allows the Board to protect
227 consumers but minimizes the exposure for less offending conduct. For those ethical violations
228 that require sanctions, the amendments set forth a tiered approach for review, and may provide
229 for a more efficient process and better use of resources by appointing a referee rather than a
230 panel. The Board is hopeful that matters may be resolved informally through reconsideration or
231 at the review hearing stage.

232
233

234 **Effective Date**

235

236 The committee recommends an effective date of July 1, 2018. This would allow time for
237 a public hearing or notice-and-comment period, while providing sufficient advance notice to the
238 bench and bar and time to prepare training materials and training programs.

239

240 **Style of Report**

241

242 Recommendations as to existing rules are depicted in traditional legislative format,
243 underscoring to indicate new language and ~~lined through~~ to show deletions. Markings are
244 omitted for the new advisory committee comments, regardless of their derivation.

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Respectfully submitted,

MINNESOTA SUPREME COURT
ALTERNATIVE DISPUTE RESOLUTION
ETHICS BOARD

254
255
256 **Rule 114. Alternative Dispute Resolution**

257
258 **Rule 114.01 Applicability**

259
260 All parties in civil and family cases are required subject to participate in an Alternative
261 Dispute Resolution (ADR) processes, except for those in actions enumerated excluded in
262 Minnesota Statutes, section 484.76 and Rules 111.01 and 310.01 of these rules Rule 114.04(a)
263 below. In any civil and family court cases in which a Neutral provides ADR services, (except
264 those matters excluded in rule 114.04(a) below), the following rules shall apply.

265
266
267 *Comment- 2017 Amendment*

268 *The amendment to Rule 114.01 expands the scope of Rule 114 and makes it clear that*
269 *when Rule 114 applies, it applies to all neutrals providing ADR services in civil and family court*
270 *cases, unless excluded by court rule.*

271
272 **Rule 114.02 Definitions**

273
274 The following terms shall have the meanings set forth ~~in this rule~~ in construing these
275 rules and applying them to court-affiliated ADR programs.

276
277 **(a) ~~ADR Processes~~ Adjudicative Processes.**

278 (1) *Arbitration.* A process forum in which a ~~Neutral or panel~~ third
279 party renders an specific award after presiding over an adversarial hearing at which
280 consideration of the evidence and presentation by each party and its or counsel present
281 its position. If the parties stipulate in writing that the arbitration will be binding, then
282 the proceeding will be conducted pursuant to the Uniform Arbitration Act (Minn. Stat.
283 §§ 572.08-.30). If the parties do not stipulate that the arbitration will be binding, then
284 the award is non-binding and will be conducted pursuant to Rule 114.09. The award
285 may be binding or non-binding, pursuant to the agreement of the parties.

286
287 (2) *Consensual Special Magistrate.* A ~~forum~~ process in which a Neutral
288 decides issues after the parties have presented present their positions ~~to a neutral~~ in the
289 same manner as a civil lawsuit is presented to a judge. This process is binding and
290 parties have includes the right of appeal to the Minnesota Court of Appeals.

291
292 (3) *Summary Jury Trial.* A ~~forum~~ process in which ~~each party and their~~
293 counsel present a summary of their position before a panel of jurors a Neutral presides
294 over the parties' abbreviated presentation of their evidence and positions to a jury. The
295 jury issues a verdict which may be binding or non-binding, according to the agreement
296 of the parties. The number of jurors on the panel is six unless the parties agree
297 otherwise. The panel may issue a binding or non-binding advisory opinion regarding
298 liability, damages, or both.-

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(b) Evaluative Processes.

~~(14)~~ *Early Neutral Evaluation (ENE)*. A process forum in which ~~attorneys present~~ the core of the dispute to a neutral evaluator in the presence of the parties a Neutral or a team of Neutrals with experience in the subject matter of the dispute reviews information from the parties or their attorneys. This occurs after the case is filed but before formal discovery is conducted. The ~~Neutral(s) then gives~~ may give an assessment of the strengths and weaknesses of ~~the case~~ a claim, case, or defense; an opinion of settlement value; and, an opinion as to how the parties should expect the court to rule on the case or issue presented. The parties negotiate after hearing the Neutral's(s') evaluation. The Neutral(s) may facilitate settlement discussion after the assessment is presented. If settlement does not result, the ~~Neutral(s) may~~ helps narrow the dispute and suggests guidelines for managing discovery.

ENE may be utilized in civil and family law cases. In family law cases, there are two types of ENE processes, financial early neutral evaluation (FENE) and social early neutral evaluation (SENE). FENE involves financial issues. SENE involves custody and parenting time issues and is conducted by no fewer than a team of two Neutrals.

~~(25)~~ *Non-Binding Advisory Opinion*. A process forum in which the parties and their counsel present their positions before one or more ~~Neutral(s)~~. The ~~Neutral(s)~~ then issue(s) a non-binding advisory opinion regarding liability, damages or both.

Investigation and Report Process

~~(36)~~ *Neutral Fact Finding*. A process 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. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be included on the State Court Administrator's roster.

~~(4)~~ *Moderated Settlement Conference (MSC)*. A process in which an experienced attorney moderator offers evaluative impressions to parties to assist in the settlement process in the later stages of family court matters.

(c) Facilitative Processes.

~~(17)~~ *Mediation*. A forum process in which a ~~Neutral third party~~ facilitates communication and negotiation to promote voluntary decision making by the parties to the dispute between parties to promote settlement. A mediator may not impose or substitute his or her own judgment on the issues or the outcome for that of the parties.

(d) 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

345 both, to develop a basis for settlement negotiations. A neutral may issue an advisory
346 opinion regarding the merits of the case. The advisory opinion is not binding unless
347 the parties agree that it is binding and enter into a written settlement agreement.
348

349 (19) Mediation-Arbitration (Med-Arb). A hybrid of mediation and
350 arbitration in which the parties initially mediate their disputes; but if they reach
351 impasse, they arbitrate any deadlocked issues. A process in which a Neutral first
352 mediates the parties' dispute and then, in the event of impasse, serves as arbitrator of
353 the dispute. The decision may be binding or non-binding, pursuant to the agreement of
354 the parties.
355

356 (2) Arbitration-Mediation (Arb-Med). A process in which the Neutral
357 first serves as an arbitrator of the parties' dispute. Prior to issuing the decision, the
358 Neutral will mediate. In the event of impasse, the Neutral discloses the decision which
359 may be binding or non-binding, pursuant to the agreement of the parties.
360

361 (3) Parenting Time Expediting. A process in which a Neutral is
362 appointed by the court pursuant to Minn. Stat. § 518.1751. The Parenting Time
363 Expeditor (PTE) is limited to addressing parenting time disputes not addressed in court
364 orders, interpreting court orders, and determining if violations of court orders occurred.
365 The process is a hybrid of mediation/arbitration and begins with neutral facilitation of
366 parenting time disputes. If parties are unable to agree, the PTE will make a decision,
367 which is binding unless modified or vacated by the court.
368

369 (4) Parenting Consulting. A process in which the Parenting Consultant
370 (PC) incorporates neutral facilitation, coaching, and decision making. Terms of the
371 process are defined by the agreement of the parties and incorporated into a court order.
372

373 (540) Other. Parties may create or combine by agreement create an ADR
374 processes by means of a written agreement that defines the role of the Neutral. They
375 shall explain their process in the civil cover sheet.
376

377 **(eb) Neutral.** ~~A "Neutral" is an individual or organization who provides an ADR~~
378 ~~process. A "qualified" neutral is an individual or organization included on the State~~
379 ~~Court Administrator's roster as proved in Rule 114.12. An individual neutral must~~
380 ~~have completed the training and continuing education requirements provided in~~
381 ~~Rule 114.13. An organization on the roster must certify that an individual neutral~~
382 ~~provided by the organization has met the training and continuing education~~
383 ~~requirements of Rule 114.13. Neutral fact finders selected by the parties for their~~
384 ~~expertise need not undergo training nor be on the State Court Administrator's roster.~~
385

386 **(f) Qualified Neutral.** A "Qualified Neutral" is an individual or Community
387 Dispute Resolution Program (CDRP) listed on the State Court Administrator's roster as
388 provided in Rule 114.12. A Qualified Neutral must have completed the training and
389 continuing education requirements provided in Rule 114.13.
390

391 (g) **Community Dispute Resolution Programs (CDRPs).** A Community Dispute
392 Resolution Programs (CDRPs) is one certified by the State Court Administrator pursuant
393 to Minn. Stat. Ch. 494. Each CDRP may place its organization on the Rule 114 Roster as
394 a provider of services pursuant to these rules provided that the CDRP maintains records
395 and ensures that any Neutral providing services which are subject to these rules satisfies
396 the roster requirements for those services. These Neutrals are subject to the jurisdiction
397 of the ADR Ethics Board when providing services within the scope of these rules, and
398 shall follow the Rule 114 Code of Ethics.

399
400 *Comment - 2017 Amendment*

401 *The language requiring arbitrators to conduct arbitration pursuant to the Uniform*
402 *Arbitration Act is removed to allow parties, counsel and arbitrators more flexibility in how they*
403 *set up the arbitration process. If the agreement to arbitrate fails to state which rules govern,*
404 *then Minn. Stat. Ch. 527B applies.*

405
406 *These rules were last updated in 1997, when family ADR practice was incorporated.*
407 *Since that time, family ADR practice has changed significantly. The most frequent complaints to*
408 *the ADR Ethics Board include potential violations of the duty to provide a quality process due to*
409 *inconsistent expectations of the role of the Neutral in family ADR processes. The ADR Ethics*
410 *Board spends a substantial amount of time addressing complaints regarding the scope of PTE*
411 *authority. The PTE scope of authority is limited by statute to parenting time disputes, regardless*
412 *of whether the parties agree to broaden the scope of authority. Modification of the scope of*
413 *authority is limited to parenting time disputes (e.g. parenting time disputes do not include the*
414 *issues of school placement, custody, name changes, financial issues, or religious issues). In*
415 *addition, parties cannot alter the confidentiality provisions of the PTE statute. If parties wish to*
416 *address those types of issues they should consider a PC or other ADR process.*

417
418 *Commonly used roles: PC; PTE; financial ENE (FENE); social ENE (SENE); and, MSC,*
419 *have been added to the rosters. In addition, training requirements for these roles are added to*
420 *Rule 114.13. The rule distinguishes civil and family ENE because the models are very different.*

421
422 *Moderated Settlement Conference (MSC), commonly used in family ADR, was added.*
423 *Best practices are that the MSC occurs at the courthouse and agreements are read on the record*
424 *by counsel or the self-represented parties. When Rule 114 was originally adopted in 1993, it*
425 *included an adjudicative process identified as a Moderated Settlement Conference which, at the*
426 *time, was defined as follows:*

427
428 *A forum in which each party and their (sic) counsel present their (sic) position before a*
429 *panel of neutral third parties. The panel may issue a non-binding advisory opinion*
430 *regarding liability, damages, or both (Rule 114.02(a)(5)).*

431
432 *In 2007, when the rule was revised, Moderated Settlement Conference was deleted in favor of*
433 *“Non-binding Advisory Opinion,” an evaluative process which is currently defined as:*
434

435 *A forum in which the parties and their counsel present their position before one or more*
436 *neutral(s). The neutral(s) then issue(s) a Non-binding Advisory Opinion regarding*
437 *liability, damages, or both.*
438

439 *The change was made because attorneys did not seem to understand precisely what the*
440 *process was and also because it was not clear whether the process was truly adjudicative as*
441 *opposed to evaluative or facilitative in nature. The process was used, as the language*
442 *concerning liability and damages suggests, in civil cases, but not very frequently. The*
443 *nomenclature in the 2007 revision provided that the parties were allowed to choose the number*
444 *of neutrals and that the neutral would issue a Non-binding Advisory Opinion. This revision*
445 *clarified any uncertainty as to whether ADR neutrals were only given the option of issuing an*
446 *advisory opinion. The new definition of Moderated Settlement Conference which is being*
447 *reintroduced into the Rule because of its increased use, identifies the process, specifically, as an*
448 *evaluative process in the later stages of family court matters.*
449

450 *There is nothing preventing the parties and counsel from crafting any specific ADR*
451 *process in family or civil cases which they may choose under Rule 114.02(d)(5) as an “Other”*
452 *process which allows the parties to create or combine any of these by means of a written*
453 *agreement that clearly defines the role of the Neutral.*
454

455 *Mediation practice varies by subject matter area and mediator approach. The*
456 *definition of mediation is revised to encompass different mediation models. The definition*
457 *emphasizes the core tenets of self-determination, and voluntary discussion and decision making*
458 *by the parties, which are expected to be followed in any mediation model.*
459

460 *Some parties may request a hybrid process which is referred to as “evaluative*
461 *mediation”, where the neutral expresses an opinion of what the court might do as a method to*
462 *help parties reach an agreement. This is not mediation because the neutral inserts his or her*
463 *judgment; nor is this an ENE because the process is not designed to consider presentations by*
464 *the parties and, in custody cases, the neutral is not part of a team. The Board did not include*
465 *this as a separate process, but recognizes this is permitted as “other.”*
466

467 *The best practice is for the neutral to be clear to the parties when he or she changes roles*
468 *from a mediator to an evaluator. Neutrals should be cautioned that this switch in roles can be*
469 *problematic because parties can misunderstand that the evaluative component which can be*
470 *disempowering or even coercive. The ability to ask the neutral to switch roles can also mean*
471 *that parties move too quickly from the work of making voluntary decisions thereby undermining*
472 *mediation’s goal of self-determination. Once the neutral has expressed an evaluative opinion he*
473 *or she may lose the perception of being impartial. These risks are particularly high for self-*
474 *represented parties.*
475

476 *Mini-Trials were eliminated. They do not happen often and can still occur by agreement*
477 *of the parties under rule 114.02(d)(5) Other.*
478

479 *Qualified Neutrals providing ADR services under Rule 114 are individually responsible*
480 *for meeting training standards, applying for and maintaining roster eligibility, and following the*
481 *Rule 114 Code of Ethics. Therefore, references to organizations being listed on the Rule 114*

482 Roster have been eliminated with the exception of Community Dispute Resolution Programs
483 (CDRPs) which have been certified by the State Court Administrator pursuant to Minn. Stat. Ch.
484 494. In order to be listed on the Rule 114 Roster, CDRPs must maintain a list of their Neutrals
485 who provide civil and family ADR services as defined in Rule 114.01. These individuals must
486 meet the Rule 114 training and continuing education requirements, but are not permitted to refer
487 to themselves as “qualified neutrals” unless they have individually applied for and been placed
488 on a Rule 114 Roster.

489
490 The Board recognizes that some jurisdictions lack a sufficient number of Qualified
491 Neutrals for SENEs and expects to create a transition period during which jurisdictions could
492 use SENEs with one (1) Qualified Neutral. Rule 114.02(d)(5) permits the parties to create their
493 own process. Such a process would not be a SENE.

494
495 **Rule 114.03 ~~Notice of ADR Processes~~ Duty to Advise About ADR**

496
497 (a) **Notice.** Upon request, and in cases where alternative dispute resolution is
498 required under Rule 310.01, tThe court administrator shall provide, ~~on request,~~ information about
499 ADR processes ~~available to the county~~ and the availability of a list of Neutrals who provide
500 ADR services in that county.

501
502 (b) ~~——~~ **Duty to Advise Clients of ADR Processes.** Upon being retained, aAttorneys
503 shall provide clients with ~~the ADR~~information about available ADR processes.

504
505 *Comment- 2017 Amendment*

506 *ADR practice in the Minnesota Courts has expanded and grown since 1997. There are*
507 *more providers, greater access to Neutrals, specialty ADR process options, and regional*
508 *differences throughout the State of Minnesota. Information regarding ADR is available on the*
509 *Minnesota Judicial Branch (MJB) Court website. Pursuant to Minn. Stat. § 518.168, effective*
510 *August 1, 2016, the court must provide an information sheet to the parties that explains ADR*
511 *processes at the first hearing or at an initial appearance before the court in cases where*
512 *alternative dispute resolution is required under General Rules of Practice, rule 310.01. The*
513 *amendment simplifies the existing rule that Attorneys have the responsibility to inform their*
514 *clients about available ADR processes. Attorneys are in the best position to discuss these*
515 *options with their clients.*

516 **Rule 114.04 Selection of ADR Process and Appointment of Neutral**

517
518 (a) **ADR Required.** All parties are required to participate in ADR, with the
519 following exceptions:

- 520 1. As provided in Minn. Stat. § 604.11 and Family Court Rules 303 and 310;
521 2. In instances or allegations of domestic abuse described in Family Court
522 Rule 310.01(b);
523 3. Cases enumerated in Rule 111.01;
524 4. Cases excluded under Minn. Stat. § 484.76;
525 5. Under rare circumstances where the Court in its discretion finds ADR to
526 be inappropriate or to operate as a sanction; and

527 6. Where parties have proceeded in good faith to resolve the matter using
528 collaborative law, the court may excuse the parties from using further ADR processes.
529

530 ~~**Conference.** After the service of a complaint or petition, the parties shall~~
531 ~~promptly confer regarding case management issues, including the selection and timing of the~~
532 ~~ADR process. Following this conference ADR information shall be included in the civil cover~~
533 ~~sheet required by Rule 104 and in the initial case management statement required by Rule~~
534 ~~304.02.~~
535

536 ~~In family law matters, the parties need not meet and confer where one of the parties~~
537 ~~claims to be the victim of domestic abuse by the other party or where the court determines there~~
538 ~~is probable cause that one of the parties or a child of the parties has been physically abused or~~
539 ~~threatened with physical abuse by the other party. In such cases, both parties shall complete and~~
540 ~~submit form 9A or 9B, specifying the form(s) of ADR the parties individually prefer, not what is~~
541 ~~agreed upon.~~
542

543 (b) Selection and Appointment. The parties, after service of the complaint, petition,
544 or motion, shall promptly confer regarding selection and timing of the ADR process and
545 selection of a Qualified Neutral. The parties shall include information regarding the ADR
546 process in the submissions required by Rules 111.02 and 304.02.

547 If the parties cannot agree on an ADR process or the selection of a Qualified
548 Neutral, the court shall order the parties to use a non-binding ADR process. In the event that the
549 parties are unable to agree on a Qualified Neutral, the court shall make the selection of a
550 Qualified Neutral. If the parties decide on a process and cannot decide on a Neutral, the Court
551 should not substitute its judgment on process. The court shall, with the advice of the parties,
552 establish a deadline for completion of the ADR process.

553 Any individual providing ADR services under Rule 114 must be a Qualified
554 Neutral, except for:

- 555 1. Neutral Fact Finders as defined in Rule 114.02(b)(3);
- 556 2. After the date the case is filed with the district court, a Neutral who does
557 not qualify under Rule 114.13 of these rules may be selected by the parties for
558 appointment by the court for an adjudicative ADR process based on unique legal
559 or other professional training or experience; or
- 560 3. Where parties consent to an ADR process that is not required.

561
562 Any Neutral so selected shall be deemed to consent to the jurisdiction of the ADR
563 Ethics Board and shall comply with the Code of Ethics set forth in Rule 114.15.
564

565 ~~(b) **Court Involvement.** If the parties cannot agree on the appropriate ADR process, the~~
566 ~~timing of the process, or the selection of Neutral, or if the court does not approve the parties'~~
567 ~~agreement, the court shall, in cases subject to Rule 111, schedule a telephone or in court~~
568 ~~conference of the attorneys and any unrepresented parties within thirty days after the due date for~~
569 ~~filing initial case management statements pursuant to 304.02 or the filing of a civil cover sheet~~
570 ~~pursuant to Rule 104 to discuss ADR and other scheduling and case management issues.~~

571 ~~Except as otherwise provided in Minnesota Statutes, section 604.11 or Rule 310.01, the~~
572 ~~court, at its discretion, may order the parties to utilize one of the non-binding processes, provided~~

573 ~~that no ADR process shall be approved if the court finds that ADR is not appropriate or if it~~
574 ~~amounts to a sanction on a non-moving party. Where the parties have proceeded in good faith to~~
575 ~~attempt to resolve the matter using collaborative law, the court should not ordinarily order the~~
576 ~~parties to use further ADR processes.~~

577
578 (c) **Removal.** If the court selects the Qualified Neutral, any party may file a
579 notice to remove the Qualified Neutral. Such notice must be filed with the court and served on
580 the opposing party within 10 days of notice of the court's appointment. Upon receipt of the
581 notice to remove, the court shall select another Qualified Neutral. After a party has once
582 disqualified a Qualified Neutral as a matter of right, a substitute Qualified Neutral may be
583 disqualified by the party only by making an affirmative showing of prejudice to the chief judge
584 or his or her designee.

585
586 ~~(e) **Scheduling Order.** The court's Scheduling Order pursuant to Rule 111.03 or~~
587 ~~304.03 shall designate the ADR process selected, the deadline for completing the procedure, and~~
588 ~~the name of the Neutral selected or the deadline for the selection of the Neutral. If ADR is~~
589 ~~determined to be inappropriate, the Scheduling Order pursuant to Rule 111.03 or 304.03 shall so~~
590 ~~indicate.~~

591
592 ~~(d) **Post-Decree Family Law Matters.** Post-decree matters in family law are~~
593 ~~subject to ADR under this rule. ADR may be ordered following the conference required by~~
594 ~~Rule 303.03(e).~~

595 (d) **Notice.** The Court Administrator shall send to the Neutral(s) a copy of the
596 Order of Appointment.

597
598 (e) **Scheduling.** The Neutral shall schedule the ADR Session in accordance with
599 the Order of Appointment.

600
601 (f) **Availability of Child Custody Investigator.** A Neutral serving in a
602 confidential ADR process in a family law matter may not conduct a custody
603 investigation/evaluation unless (1) the parties after full disclosure by the Neutral of the nature of
604 the change in roles agree in writing executed after the termination of the ADR process, that the
605 Neutral shall conduct the investigation/evaluation; (2) the court finds there is no other person
606 reasonably available to conduct the investigation/evaluation and orders the custody
607 investigation/evaluation; and 3) the Neutral informs the parties in writing that disclosures will
608 not be kept confidential.

609
610 *Comment- 2017 Amendment*

611 *Rule 114.04 is amended by reorganizing and incorporating into one rule the selection*
612 *of the ADR process and appointment of the Neutral. Exceptions to the general requirement that*
613 *parties use ADR are enumerated in various statutes and court rules. When the court appoints a*
614 *Neutral, the Neutral must review the court order to ensure there are no conflicts between the*
615 *role of the Neutral as agreed upon with the parties and the Neutral's role as set forth in the court*
616 *order. A new provision is added to this rule that requires the court administrator to provide a*
617 *copy of the court order to the Neutral.*

618

619 **Rule 114.05. Selection of Neutral**

620
621 ~~(a) — Court Appointment. If the parties are unable to agree on either a neutral or~~
622 ~~the date upon which the neutral will be selected, the court shall, in those cases subject to Rule~~
623 ~~111, appoint a qualified neutral at the time of the issuance of the scheduling order required by~~
624 ~~Rule 111.03 or 304.03. In cases not subject to Rule 111, the court may appoint a qualified~~
625 ~~neutral at its discretion, after obtaining the views of the parties. In all cases, the order may~~
626 ~~establish a deadline for the completion of the ADR process.~~

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

633 ~~(c) — Removal. Any party or the party's attorney may file with the court~~
634 ~~administrator within 10 days of notice of the appointment of the neutral and serve on the~~
635 ~~opposing party a notice to remove. Upon receipt of the notice to remove the court administrator~~
636 ~~shall immediately assign another neutral. After a party has once disqualified a neutral as a~~
637 ~~matter of right, a substitute neutral may be disqualified by the party only by making an~~
638 ~~affirmative showing of prejudice to the chief judge or his or her designee.~~

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

649
650 **Rule 114.05. Requirement of Written Agreement for ADR Services**

651 In any civil or family court matter in which ADR is used, the Neutral shall enter into a
652 signed written agreement for services with the parties prior to commencement of the ADR
653 process. The written agreement shall be consistent with any court order appointing the Neutral.
654 If any court order requires the Neutral to do something that would violate these rules, the Rule
655 114 Code of Ethics, or any applicable statutes, the Neutral must decline appointment or defer
656 until parties obtain amendment of the appointment order or subsequent order. The written
657 agreement shall include, at a minimum, the following:

658
659 (a) A description of the role of the Neutral.

660 (b) If the Neutral's role includes decision making, whether the Neutral's decision is
661 binding or non-binding.

662 (c) An explanation of confidentiality and admissibility of evidence.

663 (d) If the Neutral is to be paid, the amount of compensation, how the compensation
664 will be paid, and include a notice that the Neutral could seek remedies from the court for non-
665 payment pursuant to Rule 114.11(b).

666 (e) If adjudicative, the agreement shall set forth the rules of the process.

667 (f) Neutrals for facilitative and evaluative processes shall include the following
668 language in the agreement signed at the commencement of the process:

669 (1) the Neutral has no duty to protect the interests of the parties or provide them
670 with information about their legal rights;

671 (2) no agreement reached in this process is binding unless it is put in writing,
672 states that it is binding, and is signed by the parties (and their legal counsel, if
673 they are represented) or put on the record and acknowledged under oath by the
674 parties;

675 (3) signing a settlement agreement may adversely affect the parties' legal rights;

676
677 (4) the parties should consult an attorney before signing a settlement agreement
678 if they are uncertain of their rights; and

679
680 (5) in a family court matter, any agreement is subject to the approval of the
681 court.

682

683 *Comment- 2017 Amendment*

684 *Requiring a written agreement for all ADR services is a change, and consistent with best*
685 *practices for Neutrals. This is intended to ensure that the consumer is fully informed and has*
686 *reasonable expectations. Every ADR process must have a written agreement so that fees,*
687 *process, and rules are clearly set out for the parties who are participating. The applicability of*
688 *this provision applies to any civil or family court matter in which ADR is utilized. The ADR*
689 *Ethics Board had a number of complaints submitted where the court order appointing the*
690 *Neutral was in conflict with the Parenting Time Expeditor statute (Minn. Stat. § 518.1751) or*
691 *where the order violated the Neutral's confidentiality obligation under the code of ethics. The*
692 *rule is amended to clarify that the Neutral has an affirmative duty to notify the parties or their*
693 *attorneys of the problematic language when the court order includes a provision the Neutral*
694 *believes will violate Rule 114 or the code of ethics or any applicable statutes. The written*
695 *agreement should include a requirement that parties must provide copies to the neutral of any*
696 *court orders that contain provisions regarding the neutral's role.*

697 *This rule extends the requirements of the Minnesota Civil Mediation Act to all facilitative*
698 *and evaluative ADR processes which, among other things, requires that an agreement be in*
699 *writing, state that it is binding, and signed by the parties. See Minn. Stat. § 572.35. Also see,*
700 *Haghighi v. Russian-American Broadcasting Co., 173 F.3d 1086 (8th Cir. 1999) (enforceable*
701 *settlement agreement must state it is binding); Shirk v. Shirk, 561 N.W.2d 519, 521 (Minn.*
702 *1997)(stipulations are accorded the sanctity of binding contracts); Toughill v. Toughill, 609*
703 *N.W.2d 634 (Minn. Ct. App. 2000) (litigant does not have a unilateral right to withdraw from a*
704 *Marital Termination Agreement absent consent from the other party or the court's permission).*
705 *The court reviews proposed stipulations for purposes of procedural fairness, to protect the best*
706 *interests of the child and for public policy. Minn. Stat. § 518.13 subd. 5 (identifying when the*
707 *court may approve stipulations without a hearing and authorizing hearings anytime the court*

708 *believes the proposed judgment and decree does not appear to be in the best interests of the*
709 *minor children or is contrary to the interests of justice). This rule establishes a bright line rule*
710 *that no verbal agreements in evaluative or facilitative processes are binding. This encourages*
711 *open and thorough discussion and the use of tentative verbal agreements during the ADR*
712 *process without the fear that something agreed upon verbally may be used as a binding*
713 *agreement. The parties will know that they have not committed to be bound to an agreement until*
714 *it is put in writing and signed by the parties (and their attorneys if they are represented). This is*
715 *the understanding used in most facilitative and evaluative matters. Audio recordings may serve*
716 *as an enforceable agreement in lieu of a written agreement as long as there is consent to submit*
717 *the agreement to the district court and the parties acknowledge their intent to form a binding*
718 *agreement. Tornstrom v. Tornstrom, 887 N.W. 2d 680 (Minn. Ct. App. 2016). The parties*
719 *should be sworn in so the acknowledgement is under oath.*

720

721 **Rule 114.06 Time and Place of Proceedings**

722

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

725 ~~———— (b) ——— Scheduling. Upon receipt of the court’s order, the neutral shall promptly~~
726 ~~schedule the ADR process in accordance with the scheduling order and inform the parties of the~~
727 ~~date. ADR processes shall be held at a time and place set by the neutral, unless otherwise~~
728 ~~ordered by the court.~~

729 ~~———— (c) ——— Final disposition. If the case is settled through an ADR process, the~~
730 ~~attorneys shall complete the appropriate court documents to bring the case to a final disposition.~~

731

732

733 **Rule 114.0706. Attendance at ADR Processes Proceedings**

734

735 (a) **Privacy.** ~~Non-binding~~ ADR processes are not open to the public except with
736 the consent of all parties and the Neutral.

737

738 (b) **Attorney Attendance.** The court may require that the attorneys who will try
739 the case attend the ADR process proceedings in a manner determined by the court.

740

741 (c) **Attendance at Adjudicative Processes Sessions.** Unless the court has
742 ordered otherwise, individuals with the authority to settle the case need not attend adjudicative
743 ADR processes aimed at reaching a decision in the case, such as arbitration, as long as such
744 individuals are reasonably accessible, unless otherwise directed by the court.

745

746 (d) **Attendance at Non-Adjudicative Sessions ADR Processes.** Unless the court
747 has ordered otherwise, individuals with the authority to settle the case shall attend all non-
748 adjudicative ADR processes aimed at settlement of the case, such as mediation, mini-trial, or
749 med-arb, unless otherwise directed by the court.

750

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

753

754 **Rule 114.0807. Confidentiality Use of ADR Evidence in Court**

755

756 (a) **Evidence.** Without the consent of all parties and an order of the court, or
757 except as provided in paragraph (c) ~~Rule 114.09(e)(4)~~, no evidence from an ADR process that
758 ~~there has been an ADR proceeding~~ or any fact concerning the ADR process proceeding may be
759 admitted in ~~a trial de novo or in any subsequent proceeding~~ involving any of the issues or parties
760 ~~to the proceeding.~~

761

762 (b) **Inadmissibility.** Subject to Minn. Stat. § 595.02 and except as provided in
763 paragraphs (a) and (d), no statements made nor documents produced in binding or non-binding
764 ADR processes which are not otherwise discoverable shall be subject to discovery or other
765 disclosure. Such evidence is inadmissible for any purpose at the trial, including impeachment.

766

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

771

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

774

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

780

781

Comment- 2017 Amendment

782

*Rule 114.08 was renumbered to 114.07 and reworded to clarify the application of the
783 Rule pertaining to the use of ADR evidence in court.*

784

785 **Rule 114.08. Neutral's Duty of Confidentiality**

786

787 (a) **Records of Neutral.** Notes, records, impressions, opinions and recollections
788 of the Neutral are confidential, and the Neutral shall not disclose them to the parties, the public,
789 or any third person, unless (1) all parties and the Neutral agree to such disclosure or (2) required
790 by law or other applicable professional codes. No record or recording may be made without the
791 agreement of all parties and the Neutral.

792

793 (b) **Disclosure to the Court.** The Neutral in any non-adjudicative ADR process
794 may only disclose to the court information permitted under these rules.

795

796 **Rule 114.09. Arbitration Proceedings**

797

798 (a) **General.**

799 Parties ~~may are free to~~ utilize binding or non-binding arbitration. ~~Whether they elect~~
800 ~~binding or non-binding arbitration, the parties and~~ may construct or select a set of rules to govern
801 the process. The ~~a~~Agreement to ~~a~~Arbitrate ~~should~~must state what rules govern ~~the process~~. If
802 the ~~parties elect binding arbitration, and their a~~Agreement to ~~a~~Arbitrate is otherwise silent ~~fails to~~
803 ~~state which rules govern~~, the arbitration will be deemed to shall be conducted pursuant to Minn.
804 Stat. Ch. 572B § 572.08 et seq. (“Uniform Arbitration Act”). If they elect non-binding
805 arbitration, and their agreement is otherwise silent, they shall conduct the arbitration pursuant to
806 Rule 114.09, subsections (b) (f). Parties are free, however, to contract to use provisions from
807 both processes or to modify the arbitration procedure as they deem appropriate to their case.
808

809 **(b) Evidence.**

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

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

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

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

840 (III) — Depositions. Subject to objections, the deposition of any witness
841 shall be received in evidence, even if the deponent is not unavailable as a witness
842 and if no exceptional circumstance exist, if: (1) the deposition was taken in the
843 manner provided for by law or by stipulation of the parties; and (2) not fewer than

844 10 days prior to the hearing, the proponent of the deposition serves on all other
845 parties notice of the intention to offer the deposition in evidence.

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

851 (3) — Attorneys must obtain subpoenas for attendance at hearings through the
852 court administrator, pursuant to Minn. R. Civ. P. 45. The party requesting the subpoena
853 shall modify the form of the subpoena to show that the appearance is before the arbitrator
854 and to give the time and place set for the arbitration hearing. At the discretion of the
855 arbitrator, nonappearance of a properly subpoenaed witness may be grounds for an
856 adjournment or continuance of the hearing. If any witness properly served with a
857 subpoena fails to appear or refuses to be sworn or answer, the court may conduct
858 proceedings to compel compliance.
859

860 **(e) Powers of Arbitrator**

861 The arbitrator has the following powers:

- 862 (1) — to administer oaths or affirmations to witnesses;
- 863 (2) — to take adjournments upon the request of a party or upon the
864 arbitrator’s initiative;
- 865 (3) — to permit testimony to be offered by deposition;
- 866 (4) — to permit evidence to be introduced as provided in these rules;
- 867 (5) — to rule upon admissibility and relevance of evidence offered;
- 868 (6) — to invite the parties, upon reasonable notice, to submit pre-hearing
869 or post-hearing briefs or pre-hearing statements of evidence;
- 870 (7) — to decide the law and facts of the case and make an award
871 accordingly;
- 872 (8) — to award costs, within statutory limits;
- 873 (9) — to view any site or object relevant to the case; and
- 874 (10) — any other powers agreed upon by the parties.

875 **(d) Record**

- 876 (1) — No record of the proceedings shall be made unless permitted by the
877 arbitrator and agreed to by the parties.
- 878 (2) — The arbitrator’s personal notes are not subject to discovery.

879 **(e) The Award**

- 880 (1) — No later than 10 days from the date of the arbitration hearing or the
881 arbitrator’s receipt of the final post-hearing memorandum,
882 whichever is later, the arbitrator shall file with the court the
883 decision, together with proof of service by first class mail on all
884 parties.
- 885 (2) — If no party has filed a request for a trial within 20 days after the
886 award is filed, the court administrator shall enter the decision as a
887 judgment and shall promptly mail notice of entry of judgment to the
888 parties. The judgment shall have the same force and effect as, and
889 is subject to all provisions of law relating to, a judgment in a civil

890 action or proceeding, except that it is not subject to appeal, and may
891 not be attacked or set aside. The judgment may be enforced as if it
892 had been rendered by the court in which it is entered.

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

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

899 **(f) ~~Trial after Arbitration~~**

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

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

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

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

911

912 *Comment - 2017 Amendment*

913 *The rule on arbitration proceedings is greatly simplified. Parties are free to make their*
914 *own rules regarding arbitration, or if no rules stated, then Minn. Stat. Ch. 572B governs. The*
915 *Board did not believe there was a need for all the details set forth in the prior rule. However, if*
916 *guidance is needed in structuring the arbitration process, the agreement may address*
917 *discovery, evidence, powers of arbitrator, record, award, and appeal process if any.*

918

919 **Rule 114.10. ~~Communication with Neutral~~ Communication with Parties and Court in**
920 **ADR Process**

921

922 (a) **Adjudicative Processes.** Neither the parties nor their representatives shall
923 communicate ex parte with the ~~n~~Neutral unless approved in advance by all parties and the
924 ~~n~~Neutral.

925

926 (b) **~~Non-Adjudicative~~ Evaluative, Facilitative, and Hybrid Processes.** Parties
927 and their counsel may communicate ex parte with the ~~n~~Neutral in ~~non-adjudicative~~ evaluative,
928 facilitative, and hybrid ADR processes with the consent of the ~~n~~Neutral, so long as the
929 communication encourages or facilitates settlement.

930

931 (c) **Communications to Court During ADR Process.** During an ADR process
932 the ~~Neutral may inform the court may be informed~~ only of the following:

933 (1) Without comment or recommendations, whether the case has
934 undergone an ADR process and whether it has or has not been resolved;

935 (12) The failure of a party or an attorney to comply with the order to attend
936 the process or pay the court ordered fees;

937 (23) Any request by the parties for additional time to complete the ADR
938 process;

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

941 (45) The nNeutral's assessment that the case is inappropriate for that ADR
942 process; and

943 (56) In a moderated settlement conference a Neutral may disclose
944 communications as authorized by parties in a separate written waiver or by written
945 court order.

946
947 (d) **Communications to Court After ADR Process.** When the ADR process
948 has ~~been~~ concluded, ~~the court may only be informed~~ the Neutral may inform the court of only of
949 the following:

950 (1) ~~If the parties do not reach an agreement on any matter, the neutral shall~~
951 ~~report the lack of an agreement to the court w~~Without comment or recommendations,
952 the case has not been settled;

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

956 (3) ~~With the written consent of the parties or their counsel, the nNeutral's~~
957 ~~report also may inform the court that the case has been settled and may also include a~~
958 ~~copy of any written agreement, and identify any pending motions or outstanding legal~~
959 ~~issues, discovery process, or other action by any party which, if resolved or completed,~~
960 ~~would facilitate the possibility of a settlement. resolution of the dispute; or~~

961 (3) That some or all of the fees have not been paid.

962
963 **Rule 114.11. Funding Fees**

964 (a) **Setting of Fee.** ~~The nNeutral and the parties will determine the fee shall be~~
965 ~~paid according to the terms of the agreement with the parties, their attorneys, or as ordered by the~~
966 ~~court. All fees of nNeutral(s) for ADR services shall be fair and reasonable.~~

967
968 (b) **Responsibility for Payment Remedies for Non-Payment.** ~~The parties shall~~
969 ~~pay for the Neutral. It is presumed that the parties shall split the costs of the ADR process on an~~
970 ~~equal basis. The parties may, however, agree on a different allocation. Where the parties cannot~~
971 ~~agree, the court retains the authority to determine a final and equitable allocation of the costs of~~
972 ~~the ADR process. If parties or attorneys fail to pay the Neutral, the court, upon submission of an~~
973 ~~affidavit from the Neutral, or a party, with notice to the parties and counsel, may issue an order~~
974 ~~granting such relief as the court deems just and proper. The Neutral, in seeking relief under this~~
975 ~~rule, shall maintain confidentiality as required by these rules. The Neutral has the right to~~
976 ~~suspend services if not paid in accordance with the court order or agreement with the parties~~
977 ~~and/or their attorneys.~~

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

982
983 (d) **Inability to Pay.** If a party qualifies for waiver of filing fees under Minn.
984 Stat. § 563.01 or if the court determines on other grounds that the party is unable to pay for ADR
985 services, and free or low-cost ADR services are not available, the court shall not order that party
986 to participate in ADR and shall proceed with the judicial handling of the case.
987

988 *Comment - 2017 Amendment*

989 *The amendments to Rule 114.11 are intended to simplify the process for a Neutral to seek*
990 *relief from the court for non-payment and conform to Rule 114.05 changes that require a written*
991 *contract for all ADR proceedings. The requirement to seek relief by motion was removed*
992 *because this created some procedural issues. This rule clarified that a Neutral can simply*
993 *submit an affidavit to the court asking the court for assistance without bringing a motion or*
994 *intervening as a party. This rule change makes it more user friendly for Neutral and gives the*
995 *court discretion to do what the court deems just and proper. A Neutral who seeks assistance*
996 *from the court for payment must still maintain confidentiality as required in the written*
997 *agreement and these rules. The Board also added a provision that gives the Neutral the right to*
998 *suspend services if not paid.*
999

1000 **Rule 114.12 Rosters of Neutrals**

1001
1002 (a) **Rosters.** The State Court Administrator shall establish ~~one roster of neutrals for~~
1003 ~~civil matters and one roster of neutrals for family law~~ civil and family rosters with the following
1004 categories:

- 1005 (1) Civil
1006 (A) Civil Facilitative/Hybrid
1007 (B) Civil Adjudicative/Evaluative
1008 (2) Family
1009 (A) Family Law Facilitative/Hybrid
1010 (B) Family Law Hybrid
1011 (i) Parenting Time Expeditor
1012 (ii) Parenting Consultant
1013 (C) Family Law Evaluative/Hybrid
1014 (i) Social Early Neutral Evaluation
1015 (ii) Financial Early Neutral Evaluation
1016 (iii) Moderated Settlement Conference
1017 (D) Family Law Adjudicative
1018

1019 The State Court Administrator shall review applications from individuals who wish to
1020 be listed on the roster of qQualified nNeutrals, which shall include those who meet the training
1021 requirements established in Rule 114.13, or who have received a waiver under Rule 114.14.
1022 Each roster shall be updated and published on a regular basis. The State Court Administrator
1023 shall not place on, and shall delete from, the rosters the name of any applicant or nNeutral whose
1024 professional license has been revoked. A qQualified nNeutral may not provide services during a

1025 period of suspension of a professional license unless a waiver is granted by the ADR Ethics
1026 Board. The State Court Administrator shall review applications from those who wish to be listed
1027 on the roster of qualified neutrals, which shall include those who meet the training requirements
1028 established in Rule 114.13, or who have received a waiver under Rule 114.14. A Qualified
1029 Neutral shall immediately notify The State Court Administrator if his or her professional license
1030 has been suspended or reinstated. The State Court Administrator shall note or remove any
1031 suspensions on the roster.

1032
1033 (b) **Fees.** The State Court Administrator shall establish reasonable fees for
1034 qualified individuals ~~and organizations~~ to be placed on either roster.
1035

1036 **Rule 114.13 Training, Standards and Qualifications for Neutral Rosters**

1037 1038 (a) **Civil Facilitative/Hybrid Neutrals Roster.**

1039 (1) Qualifications. All ~~Qualified~~ ~~Neutrals~~ providing facilitative or hybrid
1040 services, which include a mediation component in civil, non-family matters, must have
1041 received a minimum of 30 hours of classroom training, with an emphasis on
1042 experiential learning.

1043 (2) Training. The training outlined in this subdivision shall include a
1044 maximum of 15 hours of lectures and a minimum of 15 hours of experiential learning.
1045 The training must include the following topics:

1046 (1A) Conflict resolution and mediation theories, including: the
1047 principle of party self-determination, root causes of conflict, and interest-
1048 based versus positional bargaining, and models of conflict resolution,
1049 intercultural conflict, and mediator bias awareness and power balancing
1050 dynamics;

1051 (2B) Mediation skills and techniques, including information gathering
1052 skills, communication skills, problem solving skills, interaction skills, conflict
1053 management skills, negotiation techniques strategies, caucusing, cultural and
1054 gender issues, and power balancing;

1055 (3C) Components in the mediation process, including an introduction
1056 to the mediation process, fact gathering information sharing, interest
1057 identification, option building, problem solving, agreement building, decision
1058 making, closure, drafting agreements, and evaluation of the mediation
1059 process;

1060 (4D) Mediator conduct, including conflicts of interest, confidentiality
1061 and admissibility of evidence, neutrality, ethics, standards of practice, support
1062 of party self-determination, and mediator introduction pursuant to the Civil
1063 Mediation Act, Minnesota Statutes, section 572.31;

1064 (5E) Rules, statutes and practices governing mediation in the trial
1065 court system, including these rules, Special Rules of Court, and applicable
1066 statutes, including the Civil Mediation Act; and

1067 (F) The importance of parties understanding and selecting the
1068 mediation model in which they are participating.

1069 ~~The training outlined in this subdivision shall include a maximum of 15 hours of~~
1070 ~~lectures and a minimum of 15 hours of role playing.~~

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(b) Civil Adjudicative/Evaluative Neutrals Roster.

(1) Qualifications. All ~~q~~Qualified ~~n~~Neutrals ~~servicing~~ ~~in~~providing arbitration, summary jury trial, early neutral evaluation, moderated settlement conference, and adjudicative or evaluative ~~services~~~~processes~~ or serving as a consensual special magistrate must have received a minimum of 6 hours of classroom training, ~~on the following topics:~~

(2) Training. The training must include the following topics:

~~(1A)~~ Pre-hearing communications between parties and between parties and ~~n~~Neutral; ~~and~~

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

~~(3C)~~ Settlement techniques; ~~and~~

~~(4D)~~ 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

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

(c) Family Law Facilitative/Hybrid Neutrals Roster.

(1) Qualifications. All ~~q~~Qualified ~~n~~Neutrals ~~servicing~~ ~~in~~family law ~~facilitative~~ ~~processes~~ providing family law facilitative or family law hybrid services which include a mediation component must have received a minimum of 40 hours of classroom training, with an emphasis on experiential learning.

(2) Training. The certified training shall consist of at least 40 percent experiential learning. The training must include at least:

~~(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:

~~(aA)~~ 4 hours of conflict resolution theory, including intercultural conflict and mediator bias awareness;

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

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

~~(dD)~~ 6 hours of family law including custody and parenting time, visitation, child and spousal support, asset distribution and ~~evaluation~~ valuation, and taxation ~~as it relates to divorce;~~

~~(eE)~~ 5 hours of family budget and finances ~~economies~~; and

~~(fF)~~ 2 hours of ethics, including: self-determination of the parties; ~~(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 parties' rights to terminate the mediation process.

~~Certified training for mediation of custody issues only need not include 5 hours of family economies. The certified training shall consist of at least 40 percent role-playing and simulations.~~

1117 (2) ~~(G) Completed or taught a~~ minimum of 6 hours of certified training in
1118 domestic abuse issues, which ~~may~~ must be a part of the 40-hour training above, to
1119 include at least:

1120 (ai) 2 hours about domestic abuse in general, including ~~definition~~
1121 ~~of battery~~ legal definitions, dynamics of abusive relationships, and types of
1122 power imbalance;

1123 (bij) 3 hours of domestic abuse screening, including simulation or
1124 role-playing; and,

1125 (eiii) 1 hour of legal issues relative to domestic abuse cases.
1126

1127 **(d) Family Law Adjudicative Hybrid Neutrals Roster – Parenting Time Expeditor.**

1128 (1) Qualifications. All ~~qualified neutrals~~ Neutrals serving as a family law adjudicative
1129 providing parenting time expediting services must have had at least 5 years of
1130 professional experience: (1) be qualified family law facilitative Neutrals under Rule
1131 114.13(c); (2) demonstrate at least 5 years of experience working with high conflict
1132 couples in the area of family law; and, (3) be recognized as qualified practitioners in their
1133 field. Recognition may be demonstrated by submitting proof of professional licensure,
1134 professional certification, faculty membership of approved continuing education courses
1135 related to high conflict couples for family law, service as court appointed adjudicative
1136 neutral, including consensual special magistrates, service as referees or guardians ad
1137 litem; or acceptance by peers as experts in their field.
1138

1139 (2) Training. All qualified Parenting Time Expeditors (PTEs) ~~family law~~
1140 ~~adjudicative~~ shall have also completed ~~or taught~~ a minimum of 12 ~~6~~ hours of certified
1141 training, at least 40% experiential learning, on the following topics:

1142 (A) Overview of family law Neutral roles and distinguishing the PTE role;

1143 (B) Emotional and psychological dynamics of separation and divorce;

1144 (C) ADR Rule 114 Code of Ethics and the PTE statute;

1145 (D) Appointing orders;

1146 (E) Orientating parties to the process;

1147 (F) Managing the parenting time expediting process, including decision
1148 making;

1149 (G) Addressing domestic abuse in parenting time expediting;

1150 (H) Protocols and fees;

1151 (I) Standards and best practices;

1152 (J) Avoiding and handling complaints; and

1153 (K) Drafting summaries and decisions.
1154

1155 (1) ~~Pre hearing communications among parties and between the parties~~
1156 ~~and Neutral(s);~~

1157 (2) ~~Components of the family court hearing process including evidence,~~
1158 ~~presentation of the case, witnesses, exhibits, awards, dismissals, and vacation of~~
1159 ~~awards;~~

1160 (3) ~~Settlement techniques; and,~~

1161 (4) ~~Rules, statutes, and practices pertaining to arbitration in~~
1162 ~~the trial court system, including Minnesota Supreme Court ADR rules, special rules of~~
1163 ~~court, and applicable state and federal statutes.~~

1164
1165 ~~In addition to the 6-hour training required above, all qualified family law adjudicative~~
1166 ~~Neutrals must have completed or taught a minimum of 6 hours of certified training in domestic~~
1167 ~~abuse issues, to include at least:~~

1168 (1) ~~2 hours about domestic abuse in general, including definition of~~
1169 ~~battery and types of power imbalance;~~

1170 (2) ~~3 hours of domestic abuse screening, including simulation or role-~~
1171 ~~playing; and,~~

1172 (3) ~~1 hour of legal issues relative to domestic abuse cases.~~

1173
1174 **(e) Family Law Hybrid Evaluative Neutrals Roster-Parenting Consulting.**

1175 (1) Qualifications. ~~All qualified neutrals providing parenting consulting~~
1176 ~~services must: offering early neutral evaluations or non-binding advisory opinions (1) be~~
1177 ~~qualified family law facilitative Neutrals under Rule 114.13(c) shall have at least 5 years~~
1178 ~~of experience as family law attorneys, as accountants dealing with divorce-related~~
1179 ~~matters, as custody and visitation psychologists, or as other professionals working in the~~
1180 ~~area of family law who are recognized as qualified practitioners in their field; and (2)~~
1181 ~~demonstrate at least 5 years of experience working with high conflict couples in the area~~
1182 ~~of family law; and (3) be recognized as qualified practitioners in their field. Recognition~~
1183 ~~may be demonstrated by submitting proof of professional licensure, professional~~
1184 ~~certification, faculty membership of approved continuing education courses related to~~
1185 ~~high conflict couples, or acceptance by peers as experts in their field. shall have~~
1186 ~~completed or taught a minimum of 2 hours of certified training on management of~~
1187 ~~presentations made during evaluative processes. Evaluative neutrals shall have~~
1188 ~~knowledge on all issues on which they render opinions.~~

1189 ~~In addition to the 2-hour training required above, all qualified family law evaluative neutrals~~
1190 ~~must have completed or taught a minimum of 6 hours of certified training in domestic abuse~~
1191 ~~issues, to include at least:~~

1192 (1) ~~2 hours about domestic abuse in general, including definition of~~
1193 ~~battery and types of power imbalance;~~

1194 (2) ~~3 hours of domestic abuse screening, including simulation or role-~~
1195 ~~playing; and,~~

1196 (3) ~~1 hour of legal issues relative to domestic abuse cases.~~

1197
1198 (2) Training. ~~PCs shall have also completed a minimum of 18 hours of certified~~
1199 ~~training, at least 40% experiential learning, on the following topics:~~

1200 (A) Emotional and psychological dynamics of separation and divorce;

1201 (B) Developmental needs of children;

1202 (C) Addressing domestic abuse in the PC process;

1203 (D) Appointing Orders;

1204 (E) Fee agreements and billing;

1205 (F) Managing the PC process;

1206 (G) Standards and best practices;

- 1207 (H) Statutes and rules, including the Rule 114 Code of Ethics;
- 1208 (I) Issues and techniques;
- 1209 (J) Drafting summaries and decisions; and
- 1210 (K) Avoiding and handling complaints.

1211

1212 **(f) Exceptions to Roster Requirements. Family Law Evaluative/Hybrid Neutrals**
1213 **Roster - SENE.** ~~Neutral fact finders selected by the parties for their expertise need not~~
1214 ~~undergo training nor be included on the State Court Administrator’s roster.~~

1215 (1) Qualifications. All Qualified Neutrals providing Social Early Neutral
1216 Evaluations (“SENE”) must: (1) be qualified family law facilitative Neutrals under Rule
1217 114.13(c); (2) have at least 5 years of experience as family law attorneys, mental health
1218 professionals dealing with divorce-related matters, or as other professionals working in
1219 the area of family law; and, (3) be recognized as qualified practitioners in their field.
1220 Recognition may be demonstrated by submitting proof of professional licensure,
1221 professional certification, faculty membership of approved continuing education courses
1222 related to high conflict couples, or acceptance by peers as experts in their field.

1223

1224 (2) Training. Neutrals performing SENE must have observed two SENEs and
1225 completed 12 hours of certified training, at least 40% experiential learning, including:

- 1226 (A) Demonstration of a judicial officer’s Initial Case Management
1227 Conference orientation;
- 1228 (B) Pre-SENE considerations and staging the SENE;
- 1229 (C) Introduction to the process;
- 1230 (D) Information gathering;
- 1231 (E) SENE team consultation;
- 1232 (F) Feedback;
- 1233 (G) Attorney-client caucus;
- 1234 (H) Negotiation;
- 1235 (I) Completing the process;
- 1236 (J) Reporting to the court; and
- 1237 (K) Addressing domestic violence in SENE and FENE.

1238

1239 **(g) Family Law Evaluative/Hybrid Neutrals Roster – FENE.**

1240 (1) Qualifications. All Qualified Neutrals providing Financial Early Neutral
1241 Evaluations (“FENE”) must: (1) be qualified family law facilitative Neutrals under Rule
1242 114.13(c); (2) have at least 5 years of experience as family law attorneys, as accountants
1243 dealing with divorce-related matters, or as other professionals working in the area of
1244 family law; and, (3) be recognized as qualified practitioners in their field. Recognition
1245 may be demonstrated by submitting proof of professional licensure, professional
1246 certification, faculty membership of approved continuing education courses related to
1247 family law related finances, or acceptance by peers as experts in their field.

1248

1249 (2) Training. Neutrals performing FENE must have observed two FENEs, and
1250 completed 12 hours of certified SENE training and 5 hours of certified FENE training, at
1251 least 40% experiential learning, including:

- 1252 (A) Pre-FENE considerations;

- 1253 (B) the financial evaluative meeting;
- 1254 (C) making sure the parties are heard;
- 1255 (D) delivering the opinion;
- 1256 (E) concluding the FENE; and
- 1257 (F) finalizing the agreement.
- 1258

1259 **(h) Family Law Evaluative/Hybrid Neutrals Roster – MSC.**

1260 (1) Qualifications. All Qualified Neutrals providing Moderated Settlement
1261 Conference (“MSC”) must: (1) be on the family law facilitative/hybrid Neutral roster
1262 under Rule 114.13(c) and must have completed approved SENE and FENE training; (2)
1263 be a licensed Minnesota attorney with 10 years of experience in divorce and family law
1264 social and financial matters; and, (3) be recognized as qualified practitioners in their
1265 field. Recognition may be demonstrated by submitting proof of professional licensure,
1266 professional certification, faculty membership of approved continuing education courses
1267 related to family law, or acceptance by peers as experts in their field.

1268

1269 (2) Training. Neutrals performing MSCs must have observed one MSC and have
1270 completed 4 hours of approved MSC training, with at least 40% of the training
1271 experiential learning, with the training to include the following subject matter:

- 1272 (A) When MSC process is appropriate;
- 1273 (B) Logistics of MSC process;
- 1274 (C) Dealing with attorneys and parties in highly entrenched positions;
- 1275 (D) How to share opinion without alienating parties or attorneys;
- 1276 (E) Managing domestic abuse situations (e.g. OFP, DANCO, HRO);
- 1277 (F) Confidentiality and communication with judicial officers; and
- 1278 (G) MSC notes and records in discovery process.
- 1279

1280 **(i) Family Law Adjudicative Neutral Roster.**

1281 (1) Qualifications. All Qualified Neutrals providing family law adjudicative
1282 services must: (1) have at least 5 years of professional experience in the area of family
1283 law, and (2) be recognized as qualified practitioners in their field. Recognition may be
1284 demonstrated by submitting proof of professional licensure, professional certification,
1285 faculty membership of approved continuing education courses for family law, service as
1286 court-appointed adjudicative Neutral, including consensual special magistrates, service as
1287 referees or-guardians ad litem, or acceptance by peers as experts in their field.

1288

1289 (2) Training. All qualified family law adjudicative Neutrals shall have also
1290 completed or taught a minimum of 6 hours of certified training on the following topics:

- 1291 (A) Pre-hearing communications among parties and between the parties
1292 and Neutral(s);
- 1293 (B) Components of the family court hearing process including evidence,
1294 presentation of the case, witnesses, exhibits, awards, dismissals, and vacation of
1295 awards;
- 1296 (C) Settlement techniques; and,
- 1297 (D) Rules, statutes, and practices pertaining to arbitration in the trial court
1298 system, including this rule, Special Rules of Practice for the District Courts, and

1299 applicable state and federal statutes. In addition to the 6-hour training required
1300 above, all qualified family law adjudicative Neutrals must have completed or taught
1301 a minimum of 6 hours of certified training in domestic abuse issues, to include at
1302 least:

- 1303 (i) 2 hours about domestic abuse in general, including legal
1304 definitions, dynamics of abusive relationships, and types of power imbalance;
1305 (ii) 3 hours of domestic abuse screening, including simulation or
1306 role-playing; and,
1307 (iii) 1 hour of legal issues relative to domestic abuse cases.
1308

1309 **(g)(j) Continuing Training Education for Facilitative, Hybrid, and Evaluative**
1310 **Neutrals.** All ~~Qualified~~ ~~Neutral~~ providing facilitative, ~~or~~ hybrid, or evaluative
1311 services must attend 18 hours of continuing education about alternative dispute resolution
1312 subjects within the 3-year period in which the ~~Qualified~~ ~~Neutral~~ is required to
1313 complete the continuing education requirements. These hours may be attained through
1314 course work and attendance at state and national ADR conferences. All other qualified
1315 neutrals must attend Up to 9 hours of continuing education can be from participation in a
1316 facilitated consultation group with other Neutrals, about alternative dispute resolution
1317 subjects during the 3 year period in which the neutral is required to complete the
1318 continuing education requirements. These hours may be attained through course work
1319 and attendance at state and national ADR conferences. The Qualified Neutral is
1320 responsible for maintaining attendance records—and shall disclose the information to
1321 program administrators and the parties to any dispute. The ~~Qualified~~ ~~Neutral~~ shall
1322 submit continuing education credit information to the State Court Administrator’s office
1323 within sixty days after the close of the period during which his or her education
1324 requirements must be completed.
1325

1326 **(k). Continuing Education for Adjudicative Neutrals.** Qualified
1327 adjudicative Neutrals must attend 9 hours of continuing education about alternative
1328 dispute resolution subjects during the 3-year period in which the Neutral is required to
1329 complete the continuing education requirements. These hours may be attained through
1330 course work and attendance at state and national ADR conferences. The Qualified
1331 Neutral is responsible for maintaining attendance records. The Qualified Neutral shall
1332 submit continuing education credit information to the State Court Administrator’s Office
1333 within sixty days after the close of the period during which his or her education
1334 requirements must be completed.
1335

1336 **(h)(l). Certification of Training Programs and Trainers.** The State Court
1337 Administrator shall certify training programs which meet the training criteria of this rule.
1338 In order to qualify as a certified training program, one or more trainers must meet the
1339 following requirements:

- 1340 (1) Have taken a training as set forth in Rule 114.13 or equivalent training on
1341 the same topic before teaching it;
1342 (2) Be a Qualified Neutral if providing ADR services in Minnesota. If a
1343 trainer from out of state is not on the roster, the Minnesota ADR rules/law topics as

1344 required in this section, including the Rule 114 Code of Ethics, must be taught by a
1345 local expert who is on the roster;

1346 (3) Demonstrate 5 years of experience as a Neutral in the ADR process being
1347 taught; and

1348 (4) Demonstrate experience as a trainer using the role play / experiential
1349 earning format required by these rules.

1350

1351 **Rule 114.14 Waiver of Training Requirement**

1352

1353 ~~A neutral~~ An individual seeking to be included on the roster of ~~Qualified n~~Neutrals
1354 without having to complete training requirements under Rule 114.13 shall apply for a waiver to
1355 the Minnesota Supreme Court ADR Ethics Review Board. Waivers may be granted when an
1356 individual's training and experience clearly demonstrate exceptional competence to serve as a
1357 Neutral.

1358

1359 *Comment – 2017 Amendment*

1360 *The ADR Ethics Board will develop and implement additional criteria for granting*
1361 *training waivers where the new rules require additional training.*

1362

1363 **RULE 114 APPENDIX. CODE OF ETHICS**

1364 **Rule 114.15. ADR Code of Ethics**

1365

1366 **(a) Introduction.**

1367 (1) Application of Rule 114 Services. Rule 114 of the Minnesota General Rules
1368 of Practice provides that alternative dispute resolution (ADR) must be considered for
1369 nearly all civil cases filed in district court. The ADR Ethics Review Board, appointed by
1370 the Supreme Court, approves individuals and Community Dispute Resolution Programs
1371 ~~organizations who~~ that are qualified under Rule 114 to act as ~~n~~Neutrals in court-referred
1372 cases.

1373

1374 (2) Consent to Jurisdiction. Individuals, Rule 114 rostered CDRPs, and
1375 individuals who volunteer for rostered CDRPs, when providing ADR services in any
1376 civil or family court case except in actions excluded in Rule 114.04(a), and
1377 ~~organizations approved by the ADR Review Board~~ consent to the jurisdiction of the
1378 ADR Ethics Board and to compliance with this Code of Ethics. The purpose of this
1379 code is to provide standards of ethical conduct to guide ~~n~~Neutrals who provide ADR
1380 services, to inform and protect consumers of ADR services, and to ensure the integrity
1381 of the various ADR processes.

1382

1383 (3) Public Trust and Confidence. In order for ADR to be effective, there must
1384 be broad public confidence in the integrity and fairness of the process. Neutrals have a
1385 responsibility not only to the parties and to the court, but also to the continuing
1386 improvement of ADR processes. Neutrals must observe high standards of ethical
1387 conduct. The provisions of this Code should be construed to advance these objectives.

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(4) Non-discrimination Practices and Cultural Awareness. Neutrals should orient the parties to explain the ADR process to the parties 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.

(5) Failure to Comply. ~~The 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 the ADR Ethics Board to impose any of the remedies or sanctions set out in Rule 114.16(f) and/or for such other action as may be taken by the Minnesota Supreme Court.

(6) Violations. 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 a Neutral.

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

Rule II.(c) Conflicts of Interest.

(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. The Neutral must be committed to the parties and the ADR process and not allow pressures from outside of the ADR process to influence the Neutral's conduct. A Neutral shall disclose all actual and potential conflicts of interest reasonably known to the Neutral. After disclosure, the Neutral may serve if the parties agree shall decline to participate unless all parties choose to retain the neutral. Even with consent of all parties, the Neutral must exercise caution in circumstances which would raise legitimate questions about the integrity of the ADR process. If a conflict of interest clearly impairs a Neutral's impartiality, the Neutral shall withdraw regardless of the express agreement of the parties. 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

1432 under the particular circumstances, a Neutral who also practices in another profession
1433 shall not establish a professional relationship in that other profession with one of the
1434 parties, or any person or entity, in a substantially factually related matter.

1435
1436 (2) Neutral arbitrators shall disclose to the parties in writing at the time of
1437 selection, or at any time thereafter when it becomes known, any actual or potential
1438 conflict of interest known to the neutral arbitrators.

1439
1440 **Rule III.(d) Competence.** ~~A neutral shall serve as a neutral only when she/he has the~~
1441 ~~necessary qualifications to satisfy the reasonable expectations of the parties. A person shall~~
1442 ~~not serve as a Neutral unless she or he possesses the qualifications and the ability to fulfill the~~
1443 ~~role the parties have asked the Neutral to serve and must decline appointment, request~~
1444 ~~assistance, or withdraw when a dispute is beyond the Neutral’s competence. No individual~~
1445 ~~may act as a Neutral for compensation without providing the individuals to the conflict with a~~
1446 ~~written statement of qualifications prior to beginning services. The statement shall describe~~
1447 ~~educational background and relevant training and experience in the field.~~

1448
1449 **Rule IV.(e) Confidentiality.** The Neutral shall discuss issues of confidentiality with
1450 the parties before beginning an ADR process, including limitations on the scope of
1451 confidentiality and the extent of confidentiality provided in any private sessions that a Neutral
1452 holds with a party. The Neutral shall maintain confidentiality to the extent provided by Rules
1453 114.08 and 114.10 and any additional agreements made with or between the parties.

1454
1455 **Rule V.(f) Quality of the Process.** A Neutral shall work to ensure a quality process.
1456 A quality process requires a commitment by the Neutral to diligence and procedural fairness.
1457 A Neutral shall ensure the reasonable expectations of the parties concerning the timing of the
1458 process are satisfied and shall exert every reasonable effort to expedite the process, including
1459 prompt issuance of written reports, awards, or agreements. A Neutral shall withdraw from an
1460 ADR process or postpone a session if the process is being used to further illegal conduct, or if
1461 a party is unable to participate due to drug or alcohol abuse, or other physical or mental
1462 incapacity. A Neutral shall not knowingly make false statements of fact or law. ~~The~~
1463 ~~Neutral shall exert every reasonable effort to expedite the process including prompt issuance~~
1464 ~~of written reports, awards, or agreements.~~

1465
1466 **Rule VI.(g) Advertising and Solicitation.** A Neutral shall be truthful in advertising
1467 and solicitation for alternative dispute resolution. A Neutral shall make only accurate and
1468 truthful statements about any alternative dispute resolution process, its costs and benefits, the
1469 Neutral’s role and her or his skills or qualifications. A Neutral shall refrain from promising
1470 specific results. In an advertisement or other communication to the public, a Neutral who is
1471 on the Roster may use the phrase “Qualified Neutral under Rule 114 of the Minnesota
1472 General Rules of Practice.” It is not appropriate to identify oneself as a “certified” Neutral.

1473

1474 **Rule VII.(h) Fees.** A ~~ne~~Neutral shall fully disclose and explain the basis of
1475 compensation, fees and charges to the parties. The parties shall be provided sufficient
1476 information about fees at the outset to determine if they wish to retain the services of a ~~ne~~Neutral.
1477 A ~~ne~~Neutral shall not enter into a fee agreement which is contingent upon the outcome of the
1478 alternative dispute resolution process. The fee agreement shall be included in the written
1479 agreement and shall be consistent with a court order appointing the Neutral. A Neutral shall
1480 establish a protocol for regularly advising parties on the status of their account and requesting
1481 payment of fees. If one party does not pay the fee, and another party declines to cover the fee,
1482 the Neutral may suspend services for both parties until payment is made, withdraw, or proceed.
1483 If proceeding with services, the Neutral shall not refuse participation by any party based on
1484 payment status. A Neutral who withdraws from a case shall return any unearned fee to the
1485 parties. A ~~ne~~Neutral shall not give or receive any commission, rebate, or similar remuneration for
1486 referring a person for alternative dispute resolution services.

1487
1488 **(i) Facilitative and Evaluative Neutral’s Role: Limitations.** A Neutral in a
1489 facilitative or evaluative process shall not draft legal documents that are intended to be submitted
1490 to the court as an order to be signed by a judge or judicial officer. Regardless of a Neutral’s
1491 qualifications or licenses, a Neutral shall not provide therapy to either party nor provide legal
1492 representation to any party or engage in the unauthorized practice of law in any matter during an
1493 ADR process. A Neutral should make the parties aware of the option to consult other
1494 professionals to help them make informed choices. A Neutral may provide information to the
1495 parties, but shall not provide legal advice. A neutral who accepts responsibility for
1496 memorializing, as a scrivener, a summary of the parties’ agreement, shall inform the parties:

- 1497 (1) The Neutral has no duty to protect the interests of the parties or provide them
1498 with information about their legal rights;
- 1499 (2) No agreement reached in an ADR process is binding unless it is put in writing,
1500 states that it is binding, and signed by the parties (and their legal counsel, if they are
1501 represented);
- 1502 (3) Signing a settlement agreement may adversely affect the parties’ legal rights;
- 1503 (4) The parties should consult an attorney before signing a settlement agreement
1504 if they are uncertain of their rights; and
- 1505 (5) In a family court matter, any agreement is subject to the approval of the court.
1506
1507

1508 Including the above terms in the agreement to mediate or settlement agreement as
1509 defined in the Civil Mediation Act fulfills the above requirements. The primary responsibility
1510 for the resolution of a dispute and the shaping of a settlement agreement rests with the parties. A
1511 Neutral shall not require a party to stay in the ADR process or attempt to coerce an agreement
1512 between the parties.

1513
1514 **MEDIATION**
1515

1516 **Rule I.(j) Mediator’s Role: Self-Determination.** A mediator shall act in a manner
1517 which recognizes that mediation is based on the principle of self-determination by the parties
1518 throughout the mediation process. It requires that the mediation process rely upon the ability of
1519 the parties to reach a voluntary, uncoerced agreement. The primary responsibility for the

1520 ~~resolution of a dispute and the shaping of a settlement agreement rests with the parties. A~~
1521 ~~mediator shall not require a party to stay in the mediation against the party's will.~~

1522
1523

Comment - 2017 Amendment

1524 *Comments are intended as guides to interpretation but the text of each rule is*
1525 *authoritative. Rule 114 Appendix, Code of Ethics is extensively revamped to better address*
1526 *what constitutes unethical conduct and integrates Rule 114 Appendix, Code of Ethics into the*
1527 *rule itself. The overarching goal of the amendments to the Code of Ethics provisions is to*
1528 *provide more clarity and directives to all Neutrals who provide ADR services to parties in*
1529 *qualifying civil or family cases filed in district court. As set forth in the amendment to Rule*
1530 *114.01, the scope of Rule 114 applies to any Neutral who provides ADR services in a civil or*
1531 *family court case, unless excluded by this rule, and are subject to the ADR Code of Ethics and*
1532 *the complaint process. Rule 114 is no longer limited to court appointed neutrals or qualified*
1533 *neutrals.*

1534
1535 *The Advisory Task Force Comments from 1997 included many examples of best*
1536 *practices. The ADR Ethics Board believes many of these best practices should be elevated to*
1537 *requirements and are now incorporated into the rule. The Uniform Arbitration Act provides*
1538 *an arbitrator shall disclose to the parties any known facts a reasonable person would consider*
1539 *likely to affect the arbitrator's impartiality. The Minnesota Civil Mediation Act requires a*
1540 *mediator to provide the parties with a written statement of qualifications prior to beginning*
1541 *mediation. The Board believes these same standards should apply to all Neutrals who are*
1542 *subject to Rule 114. The failure to disclose or provide this information is a violation of Rule*
1543 *114.15 Code of Ethics. Arbitrators are still bound to all other disclosure requirements as set*
1544 *forth in Minnesota Statutes § 572B.12.*

1545
1546 *Rule 114.15(f) is indefinite in many ways, and listing some examples of conduct which*
1547 *have resulted in sanctions against Neutrals for violating Quality of the Process may help to*
1548 *prevent future complaints against Neutrals. Examples would be:*

- 1549
1550 a. *Failing to adequately identify and communicate the role to be served by the*
1551 *Neutral;*
1552 b. *Failure to adhere to the limits of the role to be served by the Neutral;*
1553 c. *Exercising authority not specifically granted by statute, rule, order, or*
1554 *stipulation;*
1555 d. *Failure to decline appointment or defer until parties obtain an amendment of the*
1556 *appointment order when the order requires the Neutral to violate Rule 114, or*
1557 *any applicable statutes;*
1558 e. *Failure to promptly reply to communications from the parties;*
1559 e. *Failure to make decisions required of the Neutral;*
1560 f. *Failure to clearly and promptly communicate decisions made by the Neutral; and*
1561 g. *Failure to bill for the Neutral's services in a timely manner.*

1562
1563 *Rule 114.15(g) provides it is not appropriate for a Neutral to represent that he/she is*
1564 *"certified" or licensed by the State of Minnesota or the court system. If the Neutral is in fact*
1565 *certified by some agency or organization, the name of the group or the organization must be*

1566 identified. Otherwise, the proper designation for a Rule 114 Roster Neutral is “Qualified
1567 Neutral.”

1568 *Rule 114.15(h) is expanded to provide more guidance to Neutrals and parties when fee*
1569 *disputes arise. While a Neutral may accept unequal fee payments from the parties, a Neutral*
1570 *should not allow such a fee arrangement to adversely impact the Neutral’s ability to conduct*
1571 *the ADR process in an impartial manner.*

1572
1573 *Rule 114.15(k) adds new language that gives mediators guidelines for memorializing*
1574 *agreements of the parties. As a scrivener, the mediator may transcribe the parties’ agreement*
1575 *but not draft legal documents. The ADR Ethics Board understands that there are certain court*
1576 *approved programs in conciliation court, housing court, and harassment proceedings where*
1577 *mediators do memorialize agreements that may be submitted to the court to be included in an*
1578 *order. Additionally, these court approved programs are generally in court proceedings*
1579 *excluded from Rule 114 under 114.04(a) and therefore, this rule does not apply to them.*
1580

1581 **~~RULE 114 APPENDIX. CODE OF ETHICS ENFORCEMENT PROCEDURE~~**
1582 **~~INTRODUCTION~~**
1583

1584 **Rule 114.16. Enforcement Procedure for Code of Ethics.**

1585 **(a) Application.** These enforcement procedures are to be applied in a manner that
1586 protects the public, instructs neutrals, and improves the quality of alternative dispute resolution
1587 practice in Minnesota. To the extent possible, these enforcement procedures are intended to be
1588 rehabilitative in nature.
1589

1590 **(b) Inclusion on Roster; Revocable Privilege.** Inclusion on the list of eQualified
1591 nNeutrals pursuant to Minnesota General Rules of Practice 114.12 is a conditional privilege,
1592 revocable for cause.
1593

1594 **Rule I(c). Scope.** This procedure applies to complaints against any individual subject to
1595 these rules or organization (neutral) placed on the roster of qualified neutrals pursuant to Rule
1596 114.12 or serving as a court appointed neutral pursuant to 114.05(b) of the Minnesota General
1597 Rules of Practice. CDRPs consent to the jurisdiction of the ADR Ethics Board when acting
1598 pursuant to Rule 114 and agree to ensure that their neutrals comply with Rule 114. Collaborative
1599 attorneys or other professionals as defined in Rule 111.05(a) are not subject to the Rules 114.15
1600 and 114.16 Code of Ethics and Enforcement Procedure while acting in a collaborative process
1601 under that rule.
1602

1603 **Rule II. Procedure(d) Complaint.**

1604 **A (1)** A complaint must be in writing, signed by the complainant, and submitted
1605 electronically or mailed or delivered to the ADR Ethics Review Board at 25 Rev. Dr.
1606 Martin Luther King Jr. Blvd., Suite 420145, Saint Paul, MN 55155-1500. The complaint
1607 shall identify the nNeutral and make a short and plain statement of the conduct forming
1608 the basis of the complaint.

1609 **B (2)** The State Court Administrator’s Office ADR Ethics Board, in conjunction
1610 with the State Court Administrator’s Office one ADR Review Board member shall

1611 review the complaint and determine whether the Board has a reasonable belief that
1612 ~~recommend whether~~ the allegation(s), if true, would constitute a violation of the Code of
1613 ~~Ethics, and whether to refer the complaint to mediation.~~ The State Court Administrator's
1614 ~~Office and ADR Ethics Review Board member~~ may also request additional information
1615 from the complainant if it is necessary prior to making a recommendation.

1616 ~~€~~ (3) If the allegation(s) of the complaint ~~do~~ would not constitute a violation of the
1617 Code of Ethics, the complaint shall be dismissed and the complainant and the ~~n~~Neutral
1618 shall be notified in writing. The ADR's Ethics Board's decision is final and no further
1619 review is permitted.

1620

1621 **D(e) Investigation.**

1622 (1) If the complaint is not dismissed, the Board will review, investigate and act
1623 as allegation(s) of the complaint, if true, constitute a violation of the Code of Ethics, the
1624 ~~Board will undertake such review, investigation, and action~~ it deems appropriate. In all
1625 such cases, the Board shall send to the ~~n~~Neutral, by electronic means, certified mail, a
1626 ~~copy~~ of the complaint, a list identifying the ethical rules which may have been violated,
1627 and a request for a written response to the allegations and to any specific questions
1628 posed by the Board. It shall not be considered a violation of ~~Rule 114.08(e) of the~~
1629 ~~Minnesota General Rules of Practice or of Rule IV of the Code of Ethics, Rule 114~~
1630 ~~Appendix, these rules~~ for the ~~n~~Neutral to disclose notes, records, impressions, opinions
1631 or recollections of the ADR process complained of as part of the complaint procedure.
1632 Except for good cause shown, if the ~~n~~Neutral fails to respond to the complaint in writing
1633 within ~~thirty (30)~~-days, the allegation(s) shall be deemed admitted.

1634

1635 ~~E. The complainant and neutral may agree to mediation or the State Court~~
1636 ~~Administrator's Office or Board may refer them to mediation conducted by a qualified neutral~~
1637 ~~to resolve the issues raised by the complainant. Mediation shall proceed only if both the~~
1638 ~~complainant and neutral consent. If the complaint is resolved through mediation, the complaint~~
1639 ~~shall be dismissed, unless the resolution includes sanctions to be imposed by the Board. If no~~
1640 ~~agreement is reached in mediation, the Board shall determine whether to proceed further.~~

1641 (2) Upon receipt of the Neutral's response, a member of the ADR Ethics Board
1642 shall lead the investigation and shall be responsible to write a report with findings and
1643 recommended actions to the Board. The Board shall determine whether ethical rules
1644 have been violated by clear and convincing evidence, and if so, recommend what
1645 remedies or sanctions would be appropriate.

1646 ~~F~~ 3. ~~After review and investigation, t~~The Board shall advise the complainant and
1647 ~~n~~Neutral of the Board's ~~action~~ recommendation in writing by electronic means or
1648 ~~certified U.S. mail~~ sent to their respective last known addresses. ~~If the Neutral does not~~
1649 ~~file a request for an appeal hearing as prescribed in section G, the Board's decision~~
1650 ~~becomes final.~~ If the ADR Ethics Board makes a finding that ethical violations have
1651 occurred and is recommending sanctions, the Neutral shall have the right to request
1652 reconsideration or to proceed directly to a formal hearing. If no ethical violations have

1653 been found or the complaint has been resolved informally, there is no right to a hearing.

1654 ~~G. The neutral shall be entitled to appeal the proposed sanctions and findings of the~~
1655 ~~Board to the ADR Ethics Panel by written request within fourteen days from receipt of the~~
1656 ~~Board's action on the complaint. The Panel shall be appointed by the Judicial Council and~~
1657 ~~shall be composed of two sitting or retired district court judges and one qualified neutral in~~
1658 ~~good standing on the Rule 114 roster. Members of the Panel shall serve for a period to be~~
1659 ~~determined by the Judicial Council. One member of the Panel shall be designated as the~~
1660 ~~presiding member.~~

1661 ~~(1) **Discovery.** Within 30 days after receipt of a request for an appeal hearing,~~
1662 ~~counsel for the Board and the neutral shall exchange the names and addresses of all~~
1663 ~~persons known to have knowledge of the relevant facts. The presiding member of~~
1664 ~~the Panel shall set a date for the exchange of the names and addresses of all~~
1665 ~~witnesses the parties intend to call at the hearing. The Panel may issue subpoenas for~~
1666 ~~the attendance of witnesses and production of documents or other evidentiary~~
1667 ~~material. Counsel for the Board and the neutral shall exchange non privileged~~
1668 ~~evidence relevant to the alleged ethical violation(s), documents to be presented at the~~
1669 ~~hearing, and witness statements and summaries of interviews with witnesses who~~
1670 ~~will be called at the hearing. Both the Board and the neutral have a continuing duty~~
1671 ~~to supplement information required to be exchanged under this rule. All discovery~~
1672 ~~must be completed within 10 days of the scheduled appeal hearing.~~

1673 ~~(2) **Procedure.** The neutral has the right to be represented by an attorney at all parts~~
1674 ~~of the proceedings. In the hearing, all testimony shall be under oath. The Panel shall~~
1675 ~~receive such evidence as the Panel deems necessary to understand and determine the~~
1676 ~~issues. The Minnesota Rules of Evidence shall apply, however, relevancy shall be~~
1677 ~~liberally construed in favor of admission. Counsel for the Board shall present the~~
1678 ~~matter to the Panel. The Board has the burden of proving the facts justifying action~~
1679 ~~by clear and convincing evidence. The neutral shall be permitted to adduce evidence~~
1680 ~~and produce and cross examine witnesses, subject to the Minnesota Rules of~~
1681 ~~Evidence. Every formal hearing conducted under this rule shall be recorded~~
1682 ~~electronically by staff for the Panel. The Panel shall deliberate upon the close of~~
1683 ~~evidence and shall present written Findings and Memorandum with regard to any~~
1684 ~~ethical violations and sanction resulting there from. The Panel shall serve and file~~
1685 ~~the written decision on the Board, neutral and complainant within 45 days of the~~
1686 ~~hearing. The decision of the Panel is final.~~

1687
1688 **Rule III-(f) Remedies and Sanctions.**

1689 ~~A. The Board may impose sanctions, including but not limited to:~~

1690 ~~(1) Issue a private reprimand.~~

1691 ~~(2) Designate the corrective action necessary for the nNeutral to remain on the~~
1692 ~~roster.~~

1693 ~~(3) Notify the appointing court and any professional licensing authority with~~
1694 ~~which the nNeutral is affiliated of the complaint and its disposition.~~

1695 ~~(4) Issue a public reprimand on the ADR webpage of the Minnesota Judicial~~

1696 Branch website, which shall include publishing ~~Publish~~ the Neutral's name, a
1697 summary of the violation, and any sanctions imposed. The public reprimand may also
1698 be published elsewhere.

1699 (5) Remove the Neutral from the roster of Qualified Neutrals, and set conditions
1700 for reinstatement if appropriate.
1701

1702 In situations where the conduct is unintentional and minimal, the Board may determine
1703 that an informal remedy, including discussions with the Neutral, which may include the
1704 complainant, is appropriate to resolve the complaint in lieu of a sanction.

1705 ~~B. Sanctions shall only be imposed if supported by clear and convincing evidence.~~
1706 ~~Conduct considered in previous or concurrent ethical complaints against the neutral is~~
1707 ~~inadmissible, except to show a pattern of related conduct the cumulative effect of which~~
1708 ~~constitutes an ethical violation.~~

1709 ~~C. Sanctions against an organization may be imposed for its ethical violation and its~~
1710 ~~member's violation if the member is acting within the rules and directives of the organization.~~
1711

1712 **(g) Request for Reconsideration.** If the ADR Ethics Board finds a violation, the
1713 Neutral may request in writing reconsideration of the proposed findings, recommendations and
1714 sanctions. The request shall be submitted within 15 days after the date the recommendations
1715 are sent to the Neutral. The request shall be no longer than 2 pages in length, a copy of which
1716 must be sent to the complainant. Complainants may file a response of no longer than 2 pages in
1717 length within 7 days of notification of Neutral's request. The Board shall address
1718 reconsideration requests in a timely manner. Requests for reconsideration will only be granted
1719 upon a showing of compelling circumstances.

1720 **(h) Review Hearing.**

1721 (1) Request for Hearing. The Neutral shall have 30 days from the date the
1722 ADR Ethics Board ethical violation recommendations are sent to the Neutral, or 30 days
1723 from the date of the final resolution of the Request For Reconsideration, whichever is
1724 later, to request a hearing on the recommendations. The request for a hearing shall be in
1725 writing and be submitted to the ADR Ethics Board. The hearing will be de novo and
1726 will only address those allegations where ethical violations have been found by the
1727 ADR Ethics Board.

1728
1729 (2) Appointment of the Referee. The State Court Administrator's Office shall
1730 notify the Supreme Court of the request for hearing. The court shall appoint a referee to
1731 conduct the hearing. Unless the court otherwise directs, the proceedings shall be
1732 conducted in accordance with the Minnesota Rules of Civil Procedure and Minnesota
1733 Rules of Evidence applicable to the district courts and the referee shall have all powers
1734 of a district court judge. All prehearing conferences and hearings shall be held at the
1735 Minnesota Judicial Center, shall be recorded electronically by staff of the State Court
1736 Administrator's Office, and shall not be accessible by the public.

1737
1738 (3) Timing of Prehearing Conference. The referee shall schedule a prehearing

1739 conference within 30 days of being appointed. Notice of this prehearing conference
1740 shall be sent to the Neutral and the ADR Ethics Board.

1741
1742 (4) *Right to Counsel.* An attorney designated by the State Court Administrator's
1743 Office shall represent the ADR Ethics Board at the hearing. The Neutral shall have the
1744 right to be represented by an attorney at the Neutral's own expense.

1745
1746 (5) *Settlement Efforts.* At the prehearing conference, the referee should
1747 encourage alternative dispute resolution between representatives of the ADR Ethics
1748 Board and the Neutral.

1749
1750 (6) *Discovery, Scheduling Order.* At the prehearing conference, discovery shall
1751 be discussed. The parties shall have the right to conduct discovery, which must be
1752 completed within the time limits as set by the referee. The referee will issue a
1753 scheduling order setting forth the extent and scope and time for discovery. The
1754 scheduling order will set the hearing date and deadlines for the exchange of witness and
1755 exhibit lists. The referee may issue subpoenas for the attendance of witnesses and
1756 production of documents or other evidentiary material.

1757
1758 (7) *Burden of Proof.* At the hearing, the ADR Ethics Board has the burden to
1759 prove by clear and convincing evidence that the Neutral committed an ethical violation
1760 under Rule 114.

1761
1762 (8) *Order.* Within 60 days of when the record is closed, the referee shall issue
1763 written findings and conclusions as to whether there was an ethical violation. Copies of
1764 the decision shall be sent to the complainant, the Neutral, and the ADR Ethics Board. If
1765 the referee determines that there is an ethical violation, the referee may:

1766 (A) Issue a private reprimand.

1767 (B) Designate the corrective action necessary for the Neutral to remain on
1768 the roster.

1769 (C) Notify the appointing court and any professional licensing authority with
1770 which the Neutral is affiliated of the complaint and its disposition.

1771 (D) Issue a public reprimand on the Minnesota Judicial Branch website,
1772 which shall include publishing the Neutral's name, a summary of the violation,
1773 and any sanctions imposed. The public reprimand may also be published
1774 elsewhere.

1775 (E) Remove the Neutral from the roster of Qualified Neutrals, and set
1776 conditions for reinstatement if appropriate.

1777 (F) Require the Neutral to pay costs and disbursements and reasonable
1778 attorney fees in those cases in which the Neutral acted in bad faith in these
1779 proceedings.

1780

1781 **(i) Petition for Review.**

1782 (1) Service; Filing. The Neutral and the ADR Ethics Board may petition the
1783 Supreme Court for review of the referee's decision. The filing of a petition for review
1784 shall not stay the decision of the referee. The petition for review, along with proof of
1785 service, shall be filed with the clerk of appellate courts within 30 days of the date that
1786 the referee's decision is mailed to the parties by first class mail. The number of copies
1787 of the petition and addendum shall be the same as in a petition for review under Minn.
1788 R. Civ. App. P. 117.

1789
1790 (2) Contents of Petition. The petition for review shall not exceed two thousand
1791 words, exclusive of addenda, and shall contain the following:

1792 (A) A copy of the original complaint filed with ADR Ethics Board shall be
1793 attached to the addendum.

1794 (B) A copy of the ADR Ethic's Board ethics violations recommendation
1795 shall be attached to the addendum.

1796 (C) A copy of the referee decision regarding ethics violations shall be
1797 attached to the addendum.

1798 (D) A statement of the case, setting forth those facts relevant to the review,
1799 and setting forth the reasons why the decision of the referee was in error.

1800 (E) A brief argument in support of the petition.

1801
1802 (3) Response. An opposing party may file with the clerk of appellate courts a
1803 response to the petition within 20 days of service. The response shall comply with the
1804 requirements for the petition and shall contain proof of service. Any responding party
1805 may conditionally seek review of additional designated issues not raise by the petition.
1806 In the event of such conditional request, the party filing the initial petition shall not be
1807 entitled to file a response unless the court requests on its own initiative.

1808
1809 (4) Discretionary Review. Review of any decision by the referee is
1810 discretionary with the Supreme Court. The following criteria may be considered:

1811 (A) The question is an important one upon which the Supreme Court should
1812 rule, or

1813 (B) The referee has so far departed from the accepted and usual course of
1814 justice as to call for an exercise of the Supreme Court's supervisory powers, or

1815 (C) A decision by the Supreme Court will help develop, clarify, or
1816 harmonize the law or rules.

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1818 **Rule IV.(j) Confidentiality-Public Access.**

1819 A. (1) Exceptions to Confidentiality. ~~Unless and until final sanctions are imposed,~~
1820 ~~all~~ All files, records, and proceedings of the Board that relate to or arise out of any
1821 complaint shall be confidential, except:

1865 *reprimand in order to protect the public from ADR providers who have engaged in unethical*
1866 *practices in civil and family cases. The amendments to the enforcement procedures are not only*
1867 *to punish but to provide rehabilitation to Neutrals without causing hardship to a Neutral with*
1868 *sanctions when a Neutral may simply need more guidance and truly desires to improve his/her*
1869 *services and the process overall.*

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