GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS
(Amended rules effective January 1, 2005)

Rule 114. Alternative Dispute Resolution

Rule 114.01 Applicability

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

(Amended effective July 1, 1997.)

Advisory Committee Comment--1996 Amendment

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

Rule 114.02 Definitions

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

(a) ADR Processes

Adjudicative Processes

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

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

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

Evaluative Processes

(4) *Early Neutral Evaluation (ENE):* A forum in which attorneys present the core of the dispute to a neutral evaluator in the presence of the parties. This occurs after the case is filed but before discovery is conducted. The neutral then gives an assessment of the strengths and weaknesses of the case. If settlement does not

result, the neutral helps narrow the dispute and suggests guidelines for managing discovery.

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

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

Facilitative Processes

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

Hybrid Processes

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

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

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

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

Advisory Committee Comment--1996 Amendment

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

truly novel process not otherwise defined or used. This rule specifically is necessary where the parties may agree to a binding process that the courts could not otherwise impose on the parties. For example, the parties can agree to "baseball arbitration" where each party makes a best offer which is submitted to an arbitrator who has authority to select one of the offers as fairest, but can make no other decision. Another example is the Divorce with Dignity Program established in the Fourth Judicial District, in which the parties and the judge agree to attempt to resolve disputed issues through negotiation and use of impartial experts, and the judge determines unresolved preliminary matters by telephone conference call and unresolved dispositive matters by written submissions.

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

Rule 114.03 Notice of ADR Processes

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

This rule is designed to provide attorneys and parties to a dispute with information on the efficacy and availability of ADR processes. Court personnel are in the best position to provide this information. A brochure has been developed, which can be used by court administrators to give information about ADR processes to attorneys and parties. The State Court Administrator's Office will maintain a master list of all qualified neutrals, and will update the list and distribute it annually to court administrators.

Advisory Committee Comment--1996 Amendment

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

Rule 114.04 Selection of ADR Process

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

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

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

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

(c) Scheduling Order. The court's Scheduling Order pursuant to Rule 111.03 or 304.03 shall designate the ADR process selected, the deadline for completing the procedure, and the name of the neutral selected or the deadline for the selection of the neutral. If ADR is determined to be inappropriate, the Scheduling Order pursuant to Rule 111.03 or 304.03 shall so indicate.

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

(Amended effective January 1, 2005.)

Implementation Committee Comments—1993

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

Advisory Committee Comments--1995 Amendments

Rule 114.04 is amended to make explicit what was implicit before. The rule mandates a telephone or in-court conference if the parties cannot agree on an ADR process.

The primary purpose of that conference is to resolve the disagreement on ADR, and the rule now expressly says that. The court can, and usually will, discuss other scheduling and case management issues at the same time. The court's action following the conference required by this rule may be embodied in a scheduling order entered pursuant to Rule 111.03 of these rules.

Advisory Committee Comment--1996 Amendment

The changes to this rule are made to incorporate Rule 114's expanded applicability to family law matters. The rule adopts the procedures heretofore followed for ADR in other civil cases. The beginning point of the process is the informational statement, used under either Rule 111.02 or 304.02. The rule encourages the parties to approach ADR in all matters by conferring and agreeing on an ADR method that best suits the need of the case. This procedure recognizes that ADR works best when the parties agree to its use and as many details about its use as possible. Subdivision (a) requires a conference regarding ADR in civil actions and after commencement of family law proceedings. In family cases seeking post-decree relief, ADR must be considered in the meeting required by Rule 303.03(c). Cases involving domestic abuse are expressly exempted from the ADR meet-and-confer requirement and courts should accommodate implementing ADR in these cases without requiring a meeting nor compromising a party's right to choose an ADR process and neutral. The rule is not intended to discourage settlement efforts in any action. In cases where any party has been, or claims to have been, a victim of domestic violence, however, courts need to be especially cautious. Facilitative processes, particularly mediation, are especially prone to abuse since they place the parties in direct contact and may encourage them to compromise their rights in situations where their independent decision-making capacity is limited. The rule accordingly prohibits their use where those concerns are present.

Rule 114.05 Selection of Neutral

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

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

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

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

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

Advisory Committee Comment--1996 Amendment

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

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

Rule 114.06 Time and Place of Proceedings

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

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

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

Advisory Committee Comment--1996 Amendment

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

Rule 114.07 Attendance at ADR Proceedings

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

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

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

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments—1993

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

Advisory Committee Comment--1996 Amendment

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

Rule 114.08 Confidentiality

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

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

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

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

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

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

Advisory Committee Comment--2004 Amendment

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

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

Rule 114.09 Arbitration Proceedings

(a) General.

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

(b) Evidence.

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

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

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

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

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

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

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

(c) Powers of Arbitrator

The arbitrator has the following powers:

(1) to administer oaths or affirmations to witnesses;

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

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

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

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

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

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

(8) to award costs, within statutory limits;

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

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

(d) Record

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

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

(e) The Award

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

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

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

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

(f) Trial after Arbitration

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

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

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

The Committee made a conscious decision not to formulate rules to govern other forms of ADR, such as mediation, early neutral evaluations, and summary jury trials. There is no consensus among those who conduct or participate in those forms of ADR as to whether any procedures or rules are necessary at all, let alone what those rules or procedures

should be. The Committee urges parties, judges and neutrals to be open and flexible in their conduct of ADR proceedings (other than arbitration), and to experiment as needed to suit the circumstances presented. The Committee recognized that it may be necessary, at some time in the future, to revisit the issues of rules, procedures or other limitations applicable to the various forms of court-annexed ADR.

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

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

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

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

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

Advisory Committee Comment--1996 Amendment

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

Rule 114.10 Communication with Neutral

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

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

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

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

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

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

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

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

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

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments—1993

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

Advisory Committee Comment--1996 Amendment

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

Rule 114.11 Funding

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

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

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

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

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

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

Advisory Committee Comment--1996 Amendment

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

Rule 114.12 Rosters of Neutrals

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

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

(Amended effective January 1, 2005.)

Advisory Committee Comment--1996 Amendment

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

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

Rule 114.13 Training, Standards and Qualifications for Neutral Rosters

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

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

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

(3) Components in the mediation process, including an introduction to the mediation process, fact gathering, interest identification, option building, problem solving, agreement building, decision making, closure, drafting agreements, and evaluation of the mediation process;

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

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

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

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

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

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

(3) Settlement techniques; and

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

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

(c) Family Law Facilitative Neutrals.

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

(1) Completed or taught a minimum of 40 hours of family mediation training which is certified by the Minnesota Supreme Court. The certified training shall include at least:

(a) 4 hours of conflict resolution theory;

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

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

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

(e) 5 hours of family economics; and,

(f) 2 hours of ethics, including: (i) the role of mediators and parties' attorneys in the facilitative process; (ii) the prohibition against mediators dispensing legal advice; and, (iii) a party's right of termination.

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

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

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

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

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

(d) Family Law Adjudicative Neutral Roster.

All qualified neutrals serving in a family law adjudicative capacity must have had at least 5 years of professional experience in the area of family law and be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses for family law, service as court-appointed adjudicative neutral, including consensual special magistrates, service as referees or guardians ad litem, or acceptance by peers as experts in their field. All qualified family law adjudicative neutrals shall have also completed or taught a minimum of 6 hours of certified training on the following topics:

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

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

(3) Settlement techniques; and,

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

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

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

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

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

(e) Family Law Evaluative Neutrals. All qualified neutrals offering early neutral evaluations or non-binding advisory opinions (1) shall have at least 5 years of experience as family law attorneys, as accountants dealing with divorce-related matters, as custody and visitation psychologists, or as other professionals working in the area of family law who are recognized as qualified practitioners in their field; and (2) shall have completed or taught a minimum of 2 hours of certified training on management of presentations made during evaluative processes. Evaluative neutrals shall have knowledge on all issues on which they render opinions.

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

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

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

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

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

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

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

(Amended effective January 1, 2005.)

Implementation Committee Comments—1993

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

Advisory Committee Comment--2000 Amendment

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

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

Rule 114.14 Waiver of Training Requirement

A neutral seeking to be included on the roster of qualified neutrals without having to complete training requirements under Rule 114.13 shall apply for a waiver to the Minnesota Supreme Court ADR Review Board. Waivers may be granted when an individual's training and experience clearly demonstrate exceptional competence to serve as a neutral.

(Amended effective January 1, 2005.)

Implementation Committee Comments--1993

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

Forms 114.01 and 114.02* attached to these Rules is to be used for application to the neutral and provider organization rosters. Advisory Committee Comment--1996 Amendment This rule is amended to allow "grandparenting" of family law neutrals. The*

rule is derived in form from the grandparenting provision included in initial adoption of this rule for civil neutrals.

- These forms were deleted effective January 1, 1998.

RULE 310. ALTERNATIVE DISPUTE RESOLUTION

Rule 310.01 Applicability

All family law matters in district court are subject to Alternative Dispute Resolution (ADR) processes as established in Rule 114, except for:

1. actions enumerated in Minnesota Statutes, chapter 518B (Domestic Abuse Act),
2. contempt actions, and
3. maintenance, support, and parentage actions when the public agency responsible for child support enforcement is a party or is providing services to a party with respect to the action.

The court shall not require parties to participate in any facilitative process where one of the parties claims to be the victim of domestic abuse by the other party or where the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party. In circumstances where the court is satisfied that the parties have been advised by counsel and have agreed to an ADR process that will not involve face-to-face meeting of the parties the court may direct that the ADR process be used.

The court shall not require parties to attempt ADR if they have made an unsuccessful effort to settle all issues with a qualified neutral before the filing of Informational Statement.

(Amended effective July 1, 1997.)

Advisory Committee Comment--1996 Amendment

This rule is changed from a limited rule dealing only with mediation to the main family law rule governing use of ADR. All of the provisions of the existing rule are deleted because their subject matter is now governed by either the amended rule or Minn. Gen. R. Pract. 114. The committee believes that there are significant and compelling reasons to have all court-annexed ADR governed by a single rule. This will streamline the process and make it more cost-effective for litigants, and will also make the process easier to understand for ADR providers and neutrals, many of whom are not lawyers.

The rule is not intended to discourage settlement efforts in any action. In cases where any party has been, or claims to have been, a victim of domestic violence, however, courts need to be especially cautious. Facilitative processes, particularly mediation, are especially prone to abuse since they place the parties in direct contact and may encourage them to compromise their rights in situations where their independent

decision-making capacity is limited. The rule accordingly prohibits their use where those concerns are present.

Rule 310.02 Post-Decree Matters

The court may order ADR under Rule 114 in matters involving post-decree relief. The parties shall discuss the use of ADR as part of the conference required by Rule 303.03(c).

(Amended effective July 1, 1997.)

Advisory Committee Comment--1996 Amendment

This rule expressly provides for use of ADR in post-decree matters. This is appropriate because such matters constitute a significant portion of the litigation in family law and because these matters are often quite susceptible to successful resolution in ADR.

The committee believes the existing mechanism requiring the parties to confer before filing any motion other than a motion for temporary relief provides a suitable mechanism for considering ADR and Rule 303.03(c) is amended to remind the parties of this obligation.