

STATE OF MINNESOTA
COUNTY OF OLMSTED

DISTRICT COURT
FAMILY DIVISION
THIRD JUDICIAL DISTRICT

**ORDER REQUIRING COMPLIANCE WITH
ALTERNATIVE DISPUTE RESOLUTION (ADR) CONFIDENTIALITY**

WHEREAS, pursuant to Rule 114.08(a) of the General Rules of Practice for the District Courts, absent agreement of the parties or order of the court, evidence that there have been ADR proceedings or any facts concerning the proceedings may be not be admitted in a trial or in any subsequent proceeding; and,

WHEREAS, pursuant to Rule 114.08(e) of the General Rules of Practice for the District Courts, notes, records, and recollections of the neutral are confidential, and cannot be disclosed to the parties, the public, or anyone other than the neutral, unless (1) all parties and the neutral agree to the disclosure, or (2) disclosure is required by law or other applicable professional codes. Furthermore, no record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved; and,

WHEREAS, pursuant to Rule 408 of the Minnesota Rules of Evidence, evidence of conduct or statements made in compromise negotiations intended to result in the compromise and settlement of litigation are not admissible; and,

WHEREAS, pursuant to Minnesota Statutes Section 595.02, no person presiding at an alternative dispute resolution proceeding established by law, court rule, or agreement to mediate, shall be competent to testify as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the alternative dispute resolution proceeding, with exception as to any statement or conduct that could: (1) constitute a crime; (2) give rise to disqualification proceedings under the Rules of Professional Conduct for attorneys; or (3) constitute professional misconduct; and,

WHEREAS, pursuant to Minnesota Statutes Section 518.619, subdivision 5, all records of mediation proceedings shall be private and may not be used as evidence in a marriage dissolution action or related proceedings. Subdivision 7 of this section further provides that any agreement reached by the parties as a result of mediation may not be presented to the court, or made enforceable, unless the parties and their attorneys consent to submission to the court and the court adopts the same; and,

WHEREAS, pursuant to Minnesota Statutes Section 518.1751, subdivision 4a., parenting time expeditors and the attorneys for the parties to the extent of their participation in the expediting process, must not be subpoenaed or called as witnesses in court proceedings. Additionally, notes, records and recollections of the expeditor are confidential and must not be disclosed to the parties, public or anyone other than the expeditor unless: (1) the parties and the expeditor agree to the disclosure in writing; or (2) disclosure is required by law or other applicable professional codes; and,

WHEREAS, consistent with Rule 114.10 of the General Rules of Practice for the District Courts, the Olmsted County District Court Early Case Management-Early Neutral Evaluation (ECM-ENE) program requires that evaluators communicate with the Court for the limited purpose of advising: (1) the failure of a party or an attorney to comply with the order to attend ENE; (2) the lack of an agreement without comment or recommendations; and, (3) that an agreement was reached and the next course of action, without detail as to the specifics of the agreement; and,

WHEREAS, as provided in the committee comments to Rule 114.08, the general need for confidentiality for ADR proceedings is of great import. If a candid discussion of the issues is to take place, participants must be able to trust that notes taken and discussion had will be held in confidence. Participants must be assured that the ADR process will not be part of the underlying or subsequent litigation.

THE COURT HEREBY ORDERS:

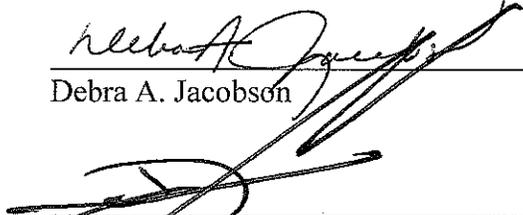
1. Alternative Dispute Resolution processes for purposes of this order are those processes recognized under Rule 114 of the General Rules of Practice of the District Courts including, but not limited to, Early Neutral Evaluation, Mediation and Parenting Time Expediting.
2. Absent written agreement of the parties, no notes, records, or recollections of a neutral shall be submitted to the court in the underlying or any related proceeding. This includes, but is not limited to: oral statements on the record; written submissions of a party, witness or attorney; correspondence with the court; or informal chambers discussions.
3. Early Neutral Evaluators may communicate with the Court consistent with Rule 114.10 of the General Rules of Practice for the District Courts and the Olmsted County ECM-ENE communication policy.
4. No neutral, attorney or participant may be subpoenaed or otherwise called as a witness to testify about what transpired in an ADR proceeding.

5. Any attorney who violates, or participates in the violation of, this order, whether directly or indirectly, shall be sanctioned in accordance with Rule 11.03 of the Minnesota Rules of Civil Procedure.

Dated this 24th day of August, 2011.

BY THE COURT:


Debra A. Jacobson


Joseph F. Chase


Kevin A. Lund


Robert Birnbaum


Jodi L. Williamson


Christina K. Stevens