

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

**AMENDMENT TO MINNESOTA
GENERAL RULES OF PRACTICE RULE 114**

ORDER

The Alternative Dispute Resolution Review Board has proposed amending Rule 114 of the Minnesota General Rules of Practice to include a Code of Ethics Enforcement Procedure for neutrals; and

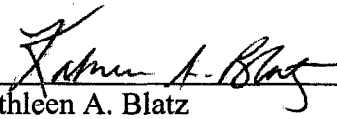
This court requested comments on the proposed code in an order dated April 17, 2000 and is fully advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Rule 114 of the Minnesota General Rules of Practice is amended to include the Code of Ethics Enforcement Procedure for neutrals. A copy of the code is annexed to this order.
2. The inclusion of advisory comments by the board is made for convenience and does not reflect court approval of the comments made therein.

Dated: August 31, 2000

BY THE COURT:


Kathleen A. Blatz
Chief Justice

**OFFICE OF
APPELLATE COURTS**

SEP 5 2000

FILED

Code of Ethics Enforcement Procedure

Rule 114 Appendix

INTRODUCTION

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

I. SCOPE

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

Advisory Comment

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

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

II. PROCEDURE

- A. A complaint must be in writing, signed by the complainant, and mailed or delivered to the ADR Review Board at 25 Constitution Avenue, Suite 140, St. Paul, MN 55155-1500. The complaint shall identify the neutral and make a short and plain statement of the conduct forming the basis of the complaint.
- B. The Board shall review the complaint to determine whether the allegation(s), if true, constitute a violation of the Code of Ethics.

- C. If the allegation(s) of the complaint do not constitute a violation of the Code of Ethics, the complaint shall be dismissed and the complainant and the neutral shall be notified in writing.
- D. If the Board concludes that the allegations of the complaint, if true, constitute a violation of the Code of Ethics, the Board will undertake such review, investigation, and action it deems appropriate. In all such cases, the Board shall send to the neutral, by certified mail, a copy of the complaint, a list identifying the ethical rules which may have been violated, and a request for a written response to the allegations and to any specific questions posed by the Board. It shall not be considered a violation of Rule 114.08(e) of the Minnesota General Rules of Practice or of Rule IV of the Code of Ethics, Rule 114 Appendix, for the neutral to disclose notes, records, or recollections of the ADR process complained of as part of the complaint procedure. Except for good cause shown, if the neutral fails to respond to the complaint in writing within thirty (30) days, the allegation(s) shall be deemed admitted.
- E. The Board, at its discretion, may refer the complainant and neutral to mediation conducted by a volunteer qualified neutral to resolve the issues raised by the complainant. Mediation shall proceed only if both the complainant and neutral consent. If the complaint is resolved through mediation, the Board shall dismiss the complaint, unless the resolution includes sanctions to be imposed by the Board. If no agreement is reached in mediation, the Board shall determine whether to proceed further.
- F. After review and investigation, the Board shall advise the complainant and neutral in writing of the Board's proposed action on the complaint. Upon request, the neutral shall be entitled to a hearing before a three-member panel of the Board to contest proposed sanctions or findings. The neutral shall have the right to defend against all charges, to be represented by an attorney, and to examine and cross-examine witnesses. The Board shall receive evidence that the Board deems necessary to understand and determine the dispute. Relevancy shall be liberally construed in favor of admission. The Board shall make an electronic recording of the proceedings. The Board at its own initiative, or by request of the neutral, may issue subpoenas for the attendance of witnesses and the production of documents and other evidentiary matter.
- G. The neutral or the complainant may appeal the panel decision to the Board, which shall conduct a de novo review of the existing record. An appeal must be filed forty-five (45) days from the date of decision. The party that appeals shall pay for the record to be transcribed. The decision of the Board shall be final.

Advisory Comment

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

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

III. SANCTIONS

- A. The Board may impose sanctions, including but not limited to:
 - (1) Issue a private reprimand.
 - (2) Designate the corrective action necessary for the neutral to remain on the roster.
 - (3) Notify the appointing court and any professional licensing authority with which the neutral is affiliated of the complaint and its disposition.
 - (4) Publish the neutral's name, a summary of the violation, and any sanctions imposed.
 - (5) Remove the neutral from the roster of qualified neutrals, and set conditions for reinstatement.
- B. Sanctions shall only be imposed if supported by clear and convincing evidence.
- C. Sanctions against an organization may be imposed for its ethical violation and its member's violation if the member is acting within the rules and directives of the organization.

IV. CONFIDENTIALITY

- A. Unless and until sanctions are imposed, all files, records, and proceedings of the Board that relate to or arise out of any complaint shall be confidential, except:
 - (1) As between Board members and staff;
 - (2) Upon request of the neutral, the file maintained by the Board, excluding its work product, shall be provided to the neutral;
 - (3) As otherwise required or permitted by rule or statute; and
 - (4) To the extent that the neutral waives confidentiality.
- B. If sanctions are imposed against any neutral pursuant to Section III A (2) – (5), the sanction shall be of public record, and the Board file shall remain confidential.

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

- V. **PRIVILEGE; IMMUNITY**

- A. **Privilege.** A statement made in these proceedings is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the statement.
- B. **Immunity.** Board members and staff shall be immune from suit for any conduct in the course of their official duties.