CX-89-1863

STATE OF MINNESOTA

IN SUPREME COURT

In re:

Supreme Court Advisory Committee
on General Rules of Practice

Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice

Report
October 28, 2004

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Chair

Hon. Sam Hanson
Liaison Justice

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Lawrence K. Dease, Saint Paul
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David F. Herr, Minneapolis
Reporter

Michael B. Johnson, Saint Paul
Staff Attorney

ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Summary of Committee Recommendations

The Court's Advisory Committee on General Rules of Practice met once in 2004 to consider various issues, some referred to it by other advisory committees or boards and others raised directly by judges and lawyers practicing in the trial courts. In addition, the committee addressed the specific issues relating the transcription of criminal and extended jurisdiction juvenile pleas, sentencings, and revocation proceedings pursuant to orders of this Court. *See* Order, *In re Promulgation of Amendments to the Rules of Criminal Procedure*, No. C1-84-2137 (Minn. Sup. Ct., Oct. 31, 2003); Order, *In re Promulgation of Amendments to the Rules of Juvenile Procedure*, No. CX-01-926 (Minn. Sup. Ct., Nov. 10, 2003).

The committee's recommendations are briefly summarized as follows:

1. The Court should adopt a broad rule to protect improper access to confidential information in court files. (Rules 11, 313, 361, 370, 371 and 372).

2. The Court should modify the rules on court-annexed arbitration to clarify ADR options. (Rule 114 & Appendix to Rule 114).

3. The Court should amend Rule 119 to clarify its application to fees under confessions of judgment.

4. The Court should amend Rule 521 to clarify two aspects of conciliation-court appeal practice.

5. The Court should amend Rule 702 to provide for statewide approval of bail bond procurers.

6. The Court should adopt a new Rule 707 to codify procedures relating to mandatory transcription of plea and sentencing hearings.

7. The Court should amend Rule 814 to provide for confidentiality of certain jury selection records.

Recommendation not to adopt certain amendments. The committee also considered portions of the ADR Review Board's report that recommended including collaborative law as a means of court-annexed ADR under Rule 114. Because of concerns about the inherent differences between the collaborative law process and ADR under the supervision of the court as present in the other Rule 114 processes, the advisory committee recommends that no action be taken on collaborative law at this time. The committee believes that exploration of formal certification of lawyers specializing in collaborative law would be one alternative mechanism to allow marketing of collaborative law services and to require training. Because collaborative lawyers are not "neutrals" and are subject to the Minnesota Rules of Professional Conduct (while Rule 114 neutrals need not be lawyers) the committee believes that the Court should consider having training, certification, and supervision of these collaborative lawyers performed through the Legal Certification Board and the Lawyers' Board.

If the Court does determine to include express provision for collaborative law in the rules, it should not be in Rule 114 but in Rule 111 relating to case scheduling. The committee drafted a rule and accompanying form that it believes would function in this regard, set forth in Appendix A to this Report. The advisory committee intends to reconsider the issue of collaborative law when it meets again in the fall of 2005 and invites comments from interested parties about the need for and effectiveness of a rule such as the one set forth in Appendix A to this report.

Other Matters

The committee did consider a recommendation that the conciliation court rules include more extensive provisions dealing with joinder of parties. After discussion, the committee concluded that the rules currently handle joinder appropriately, and that any remaining issues on this subject may best be handled by conciliation court judges and referees in the context of particular cases.

The committee has not reviewed any other subjects during the past year, and continues to believe that the general rules of practice are working well to provide explicit guidance to the parties on what procedures will apply in their cases. They continue to foster uniformity in practice throughout the state.

Effective Date

The committee believes these amendments can be adopted, after public hearing, in time to take effect on January 1, 2005.

Respectfully submitted,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE ON
GENERAL RULES OF PRACTICE

Recommendation 1: **The Court should adopt a broad rule to protect improper access to confidential information in court files.**

Introduction

This Court's Advisory Committee on Rules of Public Access to Records of the Judicial Branch recommended (*see* Report, No. C4-85-1848, June 28, 2004) that the general rules be modified to expand and clarify the protection given confidential numbers and tax returns. Presently, these matters are addressed in Rule 313, applicable in family law matters, and were similarly covered in Rule 355.05 (former rule for child support magistrate proceedings). The access committee recommended expanded coverage for confidential number and tax returns, and the general rules committee believes these recommendations should not only be adopted, but recommends that they be adopted as a new Rule 11, applicable in all court proceedings. The committee is unable to discern a reason that confidential information, such as social security numbers or copies of tax returns should be more readily available in civil or criminal actions than in family matters. The original placement of this rule regarding access to SSN and tax returns was in part dictated by a combination of federal and state laws that made the SSN and tax returns off limits to the public in dissolution and child support modification matters. The same issues are presented in other cases, however. A single rule that creates a uniform procedure for dealing with these data is appropriate.

Specific Recommendation

This recommendation comprises three parts. A new Rule 11 should be adopted as set forth below to replace Rule 313. A cross-reference to new Rule 11 should replace the existing Rule 313 and Rules 361, 370, 371, and 372 should be amended to cross-refer to the new Rule 11.

1. ADOPT A NEW RULE 11 AS FOLLOWS:

RULE 11. SUBMISSION OF CONFIDENTIAL INFORMATION

Rule 11.01. Definitions.

The following definitions apply for the purposes of this rule:

(a) "Restricted identifiers" shall mean the social security number, employer identification number, and financial account numbers of a party or party's child.

(b) "Financial source documents" means income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, check registers, and other financial information deemed financial source documents by court order.

Rule 11.02. Restricted Identifiers.

(a) Pleadings and Other Papers Submitted by a Party**.** No party shall submit restricted identifiers on any pleading or other paper that is to be filed with the court except:

(i) on a separate form entitled Confidential Information Form (see Form 11.1 appended to these rules) filed with the pleading or other paper; or

(ii) on Sealed Financial Source Documents under Rule 11.03.

The parties are solely responsible for ensuring that restricted identifiers do not otherwise appear on the pleading or other paper filed with the court. The court administrator will not review each pleading or document filed by a party for compliance with this rule. The Confidential Information Form shall not be accessible to the public.

(b) Records Generated by the Court. Restricted identifiers maintained by the court in its register of actions (i.e., activity summary or similar information that lists the title, origination, activities, proceedings and filings in each case), calendars, indexes, and judgment docket shall not be accessible to the public. Courts shall not

include restricted identifiers on their judgments, orders, decisions, and notices except on the Confidential Information Form (Form 11.1), which form shall not be accessible to the public.

Rule 11.03. Sealing Financial Source Documents.

Financial source documents shall be submitted to the court under a cover sheet designated "Sealed Financial Source Documents" and substantially in the form set forth as Form 11.2 appended to these rules. Financial source documents submitted with the required cover sheet are not accessible to the public except as provided in Rule 11.04 of these rules. The cover sheet or copy of it shall be accessible to the public. Financial source documents that are not submitted with the required cover sheet and that contain restricted identifiers are accessible to the public, but the court may, upon motion or on its own initiative, order that any such financial source documents be sealed.

Rule 11.04. Failure to comply.

If a party fails to comply with the requirements of this rule in regard to another individual's restricted identifiers or financial source documents, the court may upon motion or its own initiative impose appropriate sanctions, including costs necessary to prepare an appropriate document for filing.

Rule 11.05 Procedure for Requesting Access to Sealed Financial Source Documents.

(a) Motion. Any person may file a motion, supported by affidavit showing good cause, for access to Sealed Financial Source Documents or portions of the documents. Written notice of the motion shall be required.

(b) Waiver of Notice. If the person seeking access cannot locate a party to provide the notice required under this rule, after making good faith reasonable effort to provide such notice as required by applicable court rules, an affidavit may be filed

with the court setting forth the efforts to locate the party and requesting waiver of the notice provisions of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

(c) Balancing Test. The court shall allow access to Sealed Financial Source Documents, or relevant portions of the documents, if the court finds that the public interest in granting access or the personal interest of the person seeking access outweighs the privacy interests of the parties or dependent children. In granting access the court may impose conditions necessary to balance the interests consistent with this rule.

* * *

Advisory Committee Comment—2004 Adoption

Rule 11 is a new rule, but is derived in part from former Rule 313. It is also based on WASH. R. GEN. GR 22 (2003). Under this rule, applicable in all court proceedings, parties are now responsible for protecting the privacy of restricted identifiers (social security numbers or employer identification numbers and financial account numbers) and financial source documents by submitting them with the proper forms. Failure to do so would result in the public having access to the numbers and documents from the case file unless the party files a motion to seal them under Rule 11.03 or 11.04. The Confidential Information Form from Rule 313 is retained, modified, and renumbered, and a new Sealed Financial Source Document cover sheet has been added. The court also retains the authority to impose sanctions against parties who violate the rule in regard to another individual's restricted identifiers or financial source documents.

New in 2004 is the procedure for obtaining access to restricted identifiers and sealed financial source documents. This process requires the court to balance the competing interest involved. *See, e.g., Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986) (when party seeks to restrict access to settlement documents and transcripts of settlement hearings made part of civil court file by statute, court must balance interests favoring access, along with presumption in favor of access, against those asserted for restricting access).

2. AMEND RULE 313 AS FOLLOWS:

RULE 313 CONFIDENTIAL NUMBERS AND TAX RETURNS

~~**Rule 313.01. Social Security Number**~~

~~Whenever an individual's social security number is required on any pleading or other paper that is to be filed with the court, the social security number shall be submitted on a separate form entitled Confidential Information Form (see Form 11 appended to these rules) and shall not otherwise appear on the pleading or other paper. As an alternative, the filing party may prepare and file an original and one copy of the pleading or other paper if all social security numbers are completely removed or obliterated from the copy.~~

~~**Rule 313.02. Tax Returns**~~

~~Copies of tax returns required to be filed with the court shall be submitted in a separate envelope marked "CONFIDENTIAL TAX RETURN OF _____ for YEAR(S)_____."~~

~~**Rule 313.03. Failure to Comply**~~

~~A party who fails to comply with the requirements of this rule may be deemed to have waived their right to privacy in their social security number or tax return filed with the court and the court may impose appropriate sanctions, including costs necessary to prepare an appropriate redacted copy, for a party's failure to comply with this rule in regard to another individual's social security number or tax return.~~

The requirements of Rule 11 of these rules regarding submission of restricted identifiers (e.g., social security numbers, employer identification numbers, financial account number) and financial source documents (e.g., tax returns, wage stubs, credit card statements) apply to all family law matters.

3. AMEND RULES 361, 370, 371, AND 372 AS FOLLOWS:

RULE 361 DISCOVERY

* * *

Rule 361.02. Exchange of Documents

* * *

Subdivision 4. Redaction of Social Security Numbers. ~~Social security numbers must be blackened out from any documents provided under this rule.~~ To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account number) must be blackened out from any documents provided under this rule and may only be submitted on a separate, confidential information sheet as required in rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

* * *

Rule 361.05. Filing of Discovery Requests and Responses Precluded.

Copies of a party's request for discovery and any responses to those requests shall not be filed with the court unless:

(a) ordered by the child support magistrate;

(b) filed in support of any motion;

(c) introduced as evidence in a hearing; or

(d) relied upon by the magistrate when approving a stipulated or default order.

~~Social security numbers must be blackened out from any documents provided under this rule.~~ To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account number) must be blackened out

from any documents provided under this rule and may only be submitted on a separate, confidential information sheet as required in rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

* * *

RULE 370 ESTABLISHMENT OF SUPPORT PROCEEDINGS

* * *

Rule 370.04. Filing Requirements.

* * *

Subdivision 3. To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account number) must be blackened out from any documents provided under this rule and may only be submitted on a separate, confidential information sheet as required in rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

* * *

RULE 371 PARENTAGE ACTIONS

* * *

Rule 371.04. Filing Requirements.

* * *

Subdivision 3. To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account number) must be blackened out from any documents provided under this rule and may only be submitted on a separate, confidential information sheet as required in rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

* * *

RULE 372 MOTIONS TO MODIFY, MOTIONS TO SET SUPPORT, AND OTHER MATTERS

* * *

Rule 372.04. Filing Requirements.

* * *

Subdivision 3. To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account number) must be

blackened out from any documents provided under this rule and may only be submitted on a separate, confidential information sheet as required in rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

* * *

[Reporter's note to publishers: This Form 11.1 is intended to replace existing form 11 that appears in Title IV of the rules following rule 379.05. This new form 11.1 will be inserted in Title I following new rule 11]

FORM 11.1. CONFIDENTIAL INFORMATION FORM (Gen. R. Prac. 11.02)

State of Minnesota **District Court**

County of _____ **_____Judicial District**

Case Type:

Case No. _____

_____
Plaintiff/Petitioner

and **CONFIDENTIAL INFORMATION FORM**
(Provided Pursuant to Rule 11 of the Minnesota General Rules of Practice)

_____
Defendant/Respondent

The information on this form is confidential and shall not be placed in a publicly accessible portion of a file.

	NAME	SOCIAL SECURITY NUMBER [EMPLOYER IDENTIFICATION NUMBER] AND FINANCIAL ACCOUNT NUMBERS
Plaintiff/Petitioner	1. _____	_____
	2. _____	_____
	3. _____	_____
Defendant/ Respondent	1. _____	_____
	2. _____	_____
	3. _____	_____

Other Party (e.g., minor children) 1. _____ _____

2. _____ _____

_____

Information supplied by:

_____

(print or type name of party submitting this form to the court)

Signed: _____

Attorney Reg. #: _____

Firm: _____

Address: _____

_____

Date: _____

[Reporter's note to publishers: This Form 11.2 will be inserted in Title I following new rule 11 and Form 11.1]

FORM 11.2 SEALED FINANCIAL SOURCE DOCUMENTS (Gen. R. Prac. 11.02)

State of Minnesota **District Court**

County of _____ **_____Judicial District**

Case Type: _____

Case No. _____

_____
Plaintiff/Petitioner

and

_____
Defendant/Respondent

SEALED FINANCIAL SOURCE DOCUMENTS
(Provided Pursuant to Rule 11.02 of the Minnesota General Rules of Practice)

THIS LISTING OF SEALED FINANCIAL SOURCE DOCUMENTS IS ACCESSIBLE TO THE PUBLIC BUT THE SOURCE DOCUMENTS SHALL NOT BE ACCESSIBLE TO THE PUBLIC EXCEPT AS AUTHORIZED BY COURT RULE OR ORDER

□ Income tax records
Period covered:

□ Bank statements
Period covered:

□ Pay stubs
Period covered:

□ Credit Card statement
Period covered:

□ Other:

Information supplied by:

_____
(print or type name of party submitting this form to the court)

Signed: _____

Attorney Reg. #: _____

Firm: _____

Address: _____

_____

Date: _____

Recommendation 2: The Court should modify the rules on court-annexed arbitration to clarify ADR options

Introduction

The advisory committee recommends amending Rule 114, implementing some of the recommendations made by the ADR Review Board

Collaborative law is a process designed to be less adversarial than litigation that differs in significant ways from the litigation process. Its hallmark, however, is the use of an agreement between the parties and their chosen collaborative lawyers to attempt to resolve their disputes without resort to the courts, and providing that if the collaborative process does not result in a settlement, that the collaborative lawyer on both sides will be replaced by new counsel for litigation.

This Court's ADR Review Board proposed changes to Rule 114 that would attempt to deal with the needs of collaborative law within the confines of Rule 114, the rule dealing with ADR methods. Because of the unique features of collaborative law, however, including the requirement for replacement of chosen counsel, both the ADR Review Board and the general rules committee believe courts cannot properly order the parties into a collaborative law process. The advisory committee believes that a separate rule dealing with the separate needs of collaborative law, namely, relief from scheduling and case management requirements while collaborative solutions are explored and at least a presumption that after good faith collaborative efforts a case would not be ordered to another round of ADR, can best be handled by providing for collaborative law in a separate rule. The advisory committee concluded, however, that adoption of such a rule is premature. The advisory committee intends to reconsider the issue of collaborative law when it meets again in the fall of 2005 and invites comments from interested parties about the need for and effectiveness of a rule such as the one set forth in Appendix A to this report.

The ADR Review Board's report also proposed a number of less-sweeping or housekeeping amendments to Rule 114. As a general matter, the advisory committee accepts these changes as worth making. In some instances, however, the committee

believes that the existing rule is working well and that the language used has acquired an understood meaning, making further changes less desirable. The advisory committee also received a report from the MSBA ADR Section that had been submitted to the ADR Review Board. The advisory committee finds some of the views expressed in that position paper, especially as to unintended consequences of the proposed changes, to be practical and in some ways compelling and to warrant some restraint in amending Rule 114. The following table summarizes the ADR Review Board's more significant recommendations that the committee has not included and does not recommend to the Court.

Rule Number	**ADR Review Board Recommendation**	**Reason for Advisory Committee Recommendation Not to Adopt**
114.01 and 114.04(b)	Amend the rule to redefine when courts can order ADR.	The rule appears to work well and does not unduly curtail judicial discretion to encourage ADR or allow the parties to engage in ADR process upon agreement. Concerns have also been raised by lawyers, judges and court administrators about requiring or even permitting ADR in unlawful detainer, domestic abuse, child protection, conciliation court actions and conciliation court appeals. There is also a conflict with the statute, MINN. STAT. § 484.76, that must be considered.
114.02	Re-categorize ADR mechanisms	The existing categories are understood and work well. These changes would be disruptive yet not very significant in practice.
114.11	Remove trial court discretion to tax ADR expenses as costs at conclusion of action.	Trial courts currently can exercise discretion to tax ADR neutral fees as costs at the conclusion of a case, regardless of whether the costs were initially borne by the parties equally or by some other

		agreed allocation. *See, e.g., Aird v. Ford Motor Co.*, 86 F.3d 216 (D.C. Cir. 1996)(no abuse of discretion to tax plaintiffs with 100% of masters fees initially borne 50/50). The advisory committee does not believe a change is necessary, and that trial court discretion is appropriate.

Specific Recommendation

RULE 114 SHOULD BE AMENDED AS FOLLOWS:

RULE 114. ALTERNATIVE DISPUTE RESOLUTION

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 ~~before a neutral third party, who renders a specific award~~. 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 *et seq.*) ~~advance, the award is binding and is enforceable in the same manner as any contractual obligation~~. If the parties do not stipulate that the ~~award is~~ arbitration will be binding, then the award is ~~not~~ non-binding and ~~a request for trial de novo may be made~~ will be conducted pursuant to Rule 114.09.

(2) *Consensual Special Magistrate.* A forum in which the parties present their positions ~~a dispute is presented~~ to a neutral ~~third party~~ 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) Moderated Settlement Conference. A forum in which each party and their counsel present their position before a panel of neutral third parties. The panel may issue a non-binding advisory opinion regarding liability, damages or both.~~

(3) ~~(4)~~ *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

~~(5)~~(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 ~~a candid~~ 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 issues a non-binding advisory opinion regarding liability, damages or both.

Investigation and Report Process

(6) *Neutral Fact Finding.* A forum in which a neutral investigates and analyzes a factual dispute~~, frequently one involving complex or technical issues, is investigated and analyzed by an agreed-upon neutral who~~ and issues findings. The findings are non-binding unless the parties agree to be bound by them. ~~and a non-binding report or recommendation, unless the parties stipulate .~~

Facilitative Processes~~s~~

(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 ~~their opinion, either~~ before a selected representative for each party, ~~before~~ a neutral third party, or both, to ~~define the issues and~~ develop a basis for ~~realistic~~ settlement negotiations. A neutral ~~third party~~ 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 dispute~~s~~; but if they reach impasse, they arbitrate any ~~the~~ 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 ~~an~~ the organization ~~also must meet~~ 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.

Rule 114.03 Notice of ADR Processes

(a) Notice. ~~Upon receipt of the completed Certificate of Representation and Parties required by Rule 104 of these rules, t~~The court administrator shall provide, on request, ~~to the attorneys of record and any unrepresented parties, with~~ 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.

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 the ~~filing~~ 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 Minn. Stat. § 604.11 or Rule 310.01, ~~no agreement on the ADR process is reached or if the court disagrees with the process selected,~~ the court at its discretion may order the parties to utilize one of the non-binding processes; provided that ~~any~~ no ADR process shall ~~not~~ be approved if the court finds that ADR is not appropriate or if ~~where~~ 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).

~~**(e) Other Court Order for ADR.** Except as otherwise provided in Minn. Stat. § 604.11 or Rule 310.01, upon motion by any party, or on its own initiative, the court may, at any time, issue an order for any non-binding ADR process.~~

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 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 ~~the~~ 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, ~~T~~the order may establish a deadline for the completion of the ADR process.

(b) Exception from Qualification. ~~In appropriate circumstances,~~ Except when mediation or med-arb is chosen as a dispute resolution process, the court, in its discretion, or upon ~~agreement or~~ 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 to the jurisdiction of the ADR Review Board and compliance with the Code of Ethics set forth in the Appendix to Rule 114. ~~This selection does not apply when mediation or med-arb is chosen as the dispute resolution process.~~

(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 ~~qualified~~ 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 ~~shall not~~ may conduct a custody investigation, or evaluation only (1) where ~~unless~~ the parties agree in writing executed after the termination of mediation, that the neutral shall conduct the investigation or evaluation; or (2) where ~~unless~~ 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 ~~shall make~~ 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. ~~reciprocity is possible, another person or agency is "reasonably available."~~

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 can 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. ~~a copy of its order appointing the neutral to the neutral.~~

(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.

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 the attorneys who will try the case ~~may be required to~~ attend ADR proceedings.

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

(d)~~(c)~~ Attendance at Non-Adjudicative~~Facilitative~~ Sessions. Individuals with the authority to settle the case shall attend ~~F~~facilitative non-adjudicative processes aimed

at settlement of the case, such as mediation, mini-trial, or med-arb, ~~shall be attended by individuals with the authority to settle the case,~~ 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.

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

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

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

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

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 ~~form~~ 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 ~~accepted~~ 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—~~1996~~ 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. Laws 1996 ch. 388, § 1, *to be codified as*~~ Minn. Stat. § 595.02, subd. 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 they 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.

~~(a)~~(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*. 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, if copies have been delivered to all other parties at least 10 days prior to the hearing. 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, and if it was, whether the estimated repairs were made in full or in part, and 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 no exceptional circumstances exist, if: (1) the deposition was taken in the manner provided for by law or by stipulation of the parties; and (2) not ~~less~~ 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 as they are entitled to 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) ~~Subpoenas shall issue for the attendance of witnesses at the arbitration hearing, as provided in~~ Attorneys must obtain subpoenas for attendance at hearings through the court administrator, 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.

~~(b)~~(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.

~~(c)~~(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.

~~(d)~~(e) The Award

(1) No later than 10 days from the date of the arbitration hearing or receipt of the final post-hearing memorandum, 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 ~~except as provided in section (d)~~ 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 ~~6 months~~ 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.

~~(e)~~(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 ADR.

(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.

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 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 other, 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. ~~The parties and their counsel shall not communicate ex parte with an arbitrator or a consensual special master or other adjudicative neutral.~~ 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 ~~should~~ 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.

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, and in such event, the costs cannot be taxed by a prevailing party if the case proceeds to trial. 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 ~~in family law proceedings~~ qualifies for waiver of filing fees under Minn. Stat. § 563.01 or 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.

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 for family law neutrals. Each roster shall be updated and published on ~~an annual~~ 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 ~~either~~ the roster of qualified neutrals and shall include those who meet the training requirements established in Rules 114.13 or who have received a waiver under Rule 114.14.

~~**(b) Civil Neutral Roster**. The civil neutral roster shall include two separate parts: one for facilitative and hybrid processes (mediators and providers of med-arb and mini-trial services); a second for adjudicative and evaluative processes (arbitrators and providers of consensual special magistrate, moderated settlement conference, summary jury trial, and early neutral evaluation services.~~

~~**(c) Family Law Neutral Roster**. The family law neutral roster shall include three separate parts: one for facilitative and hybrid processes (mediators and providers of med-arb and mini-trial services); a second for adjudicative processes (arbitrators and providers of consensual special magistrate, moderated settlement conference and summary jury trial services); and a third for evaluative processes (neutral evaluators).~~

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

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 Neutrals ~~Roster~~. All qualified neutrals providing facilitative or hybrid services in civil, non-family matters, ~~shall~~ 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, Minn. Stat. § 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 Neutrals ~~Roster~~. All qualified neutrals serving in arbitration, summary jury trial, early neutral evaluation and ~~moderated settlement conference~~ adjudicative or evaluative processes or serving as a consensual special magistrate ~~shall~~ 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 ~~Roster~~.

~~To qualify for the~~ All qualified neutrals serving in family law facilitative processes must have ~~roster neutrals shall~~:

(1) Completed or ~~teach~~ 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) four hours of conflict resolution theory;

(b) four hours of psychological issues relative to separation and divorce, and family dynamics;

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

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

(e) five hours of family economics; and,

(f) two 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 five hours of family economics. The certified training shall consist of at least forty percent roleplay and simulations.

(2) Completed or ~~teach~~ 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 roleplay; and,

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

~~(3) Certify on the roster application that they have not had a professional license revoked, been refused membership or practice rights in a profession, or been involuntarily banned, dropped or expelled from any profession.~~

(d) Family Law Adjudicative Neutrals ~~Roster~~.

All qualified neutrals serving in a ~~To qualify for the~~ family law adjudicative capacity must have had ~~roster neutrals shall have~~ at least five 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 ~~All neutrals applying to the adjudicative neutral roster~~ shall have also completed or ~~teach~~ 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 ~~applying to the adjudicative neutral roster shall~~ must have completed or ~~teach~~ 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 roleplay; 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 shall have at least five 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 shall complete or teach a minimum of 2 hours of certified training on management of presentations made during evaluative processes. Evaluative neutrals shall have knowledge on all issues in which they render opinions.

In addition to the 2-hour training required above, all qualified family law evaluative neutrals ~~applying to the family law evaluative neutral roster shall~~ must have completed or ~~teach~~ 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 roleplay; 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 training nor be included on the State Court Administrator's roster.

(g) Continuing Training. All qualified neutrals providing facilitative or hybrid services must attend eighteen hours of continuing education about alternative dispute resolution subjects within the three-year period in which the qualified neutral is required to complete the continuing education requirements. All other qualified neutrals must attend nine hours of continuing education about alternative dispute resolution subjects during the three-year period in which the qualified 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.

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

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—1996 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.

Advisory Committee Comment - 2000 Amendments

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 ~~Exceptions~~ Waiver of Training Requirement

~~**(a) Existing Neutrals.** Practicing family law neutrals on October 10, 1996, may be placed on the roster of qualified family law neutrals without meeting the training requirements of these rules except the requirement for training in domestic abuse issues. Any person acting as a family law neutral as of the effective date of the 1996 amendments to these Rules shall have one year to apply. The Minnesota State Supreme Court ADR Review Board shall develop criteria for granting applications, which shall be based on education, training, and expertise of the applicants.~~

~~**(b)**~~ A neutral seeking to be included on the roster of qualified neutrals without having to complete training requirements under 114.13 shall apply for a waiver to the Minnesota Supreme Court ADR Review Board. Waivers may be granted on the basis that an individual's training and experience clearly demonstrate exceptional competence to serve as a neutral. ~~Any neutral wishing to be placed on either of the roster of qualified neutrals after the Board has disbanded shall comply with the training requirements. However, application may be made to the Supreme Court for a waiver of the training requirement.~~

Implementation Committee Comment-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.

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.

RULE 114
CODE OF ETHICS

Adopted and effective August 27, 1997. The Minnesota Supreme Court order C5-87-843 dated August 27, 1997, promulgating the Code of Ethics for neutrals under Rule 114 of the Minnesota General Rules of Practice provides in part that "(t)he inclusion of Advisory Task Force Comments is made for convenience and does not reflect court approval of the comments made therein."

INTRODUCTION

* * *

RULE 114 APPENDIX. CODE OF ETHICS ENFORCEMENT PROCEDURE

INTRODUCTION

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

Rule I. SCOPE

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

Advisory Comment

A qualified neutral is subject to this complaint procedure when providing any ADR services. The complaint procedure applies whether the services are court ordered or not, and whether the services are or are not pursuant to Minnesota General Rules of Practice. The Board will consider the full context of the alleged

misconduct, including whether the neutral was subject to other applicable codes of ethics, or representing a "qualified organization" at the time of the alleged misconduct

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

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

Rule II. PROCEDURE

A. A complaint must be in writing, signed by the complainant, and mailed or delivered to the ADR Review Board at 25 ~~Constitution Avenue~~Rev. Dr. Martin Luther King Jr. Blvd., Suite ~~140~~120, ~~St.~~ Saint Paul, MN 55155-1500. The complaint shall identify the neutral and make a short and plain statement of the conduct forming the basis of the complaint.

* * *

F. After review and investigation, the Board shall advise the complainant and neutral of the Board's action in writing by certified mail sent to their respective last known addresses. ~~of the Board's proposed action on the complaint.~~ Upon request within fourteen (14) days from receipt of the Board's action on the complaint, 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. If the neutral does not file a request for hearing as prescribed, the Board's decision becomes final.

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 in writing with the ADR Review Board within fourteen (14) days from receipt of the panel's decision.~~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.

Rule III. SANCTIONS

* * *

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

* * *

Recommendation 3: The Court should amend Rule 119 to clarify its application to fees under confessions of judgment.

Introduction

Rule 119 was amended in 2003, effective January 1, 2004, to add section 119.05, creating an explicit streamlined procedure for approval of attorneys' fees in default matters. Because of uncertainty about how this provision applies to requests for fees contained in a confession of judgment, the committee recommends that the rule be amended to bring confession of judgment proceedings under the procedures of the rule.

Specific Recommendation

RULE 119.05 SHOULD BE AMENDED AS SET FORTH BELOW. If this amendment is made, Rule 306.01 & .02 should also be amended to provide internal consistency in the rules.

RULE 119. APPLICATIONS FOR ATTORNEY' FEES

* * *

Rule 119.05 Attorneys' Fees in Default Proceedings

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

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

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

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

* * *

Advisory Committee Comment—1997 Amendment

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

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

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

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

Advisory Committee Comment—2003 ~~Adoption~~Amendment

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

New Form 119.05 is intended to provide useful information to the defaulting party and some care has gone into its drafting. Although use of the form is not required, the requirement that any notice conform "substantially" to the form should be heeded. The committee has attempted to use language that fairly advises the defaulting party of the procedure under Rule 119.05 without threatening consequences or confusing the defaulting party on the effect of either contesting or not contesting the fee award. The rule requires that notice be given after the defendant has defaulted. Notice given earlier is not effective to comply with the rule, as such notice is likely to confuse the recipient as to the differing procedures and timing for response to the Summons and responding to the request for fees. An affidavit detailing the basis for the award as required under Rule 119.02 must accompany the notice and the form.

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

Advisory Committee Comment—2004 Adoption

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

Recommendation 4: The Court should amend Rule 521 to clarify two aspects of conciliation-court appeal practice.

Introduction

The committee considered three issues relating to the operation of the conciliation court rules. Specifically, whether joinder of parties is permissible, whether judgment can be entered against a non-appealing party, and what is the appropriate procedure for removing a case to district court. After discussion the general rules committee concluded that the complexities of joinder were beyond the streamlined process of conciliation court, that the rules should be modified to clarify that judgment should be entered against non-appealing parties, and that the courts recent decision in *Roehrdanz v. Brill* clarified the appropriate procedures for removal and this decision should be noted in the comments to the rules.

Specific Recommendation

RULE 521(D) SHOULD BE AMENDED TO CLARIFY ITS OPERATION IN MULTI-PARTY CASES AS SET FORTH BELOW.

RULE 521. REMOVAL (APPEAL) TO DISTRICT COURT

* * *

(d) Removal Perfected; Vacating Judgment; Transmitting File. When all removal papers have been filed properly and all requisite fees paid as provided under Rule 521(b), the removal is perfected, and the court shall issue an order vacating the order for judgment in conciliation court as to the parties to the removal, and the ~~whole contents~~ pertinent portions of the conciliation court file of the cause shall be filed in district court.

1993 Committee Comment

Rule 521(b) establishes a twenty-day time period for removing the case to district court. The twenty days is measured from the mailing of the notice of judgment, and the law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minn.App.1992) (construing rule 6.05 of the Minnesota Rules of Civil Procedure). Computing the deadline can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including rule 503 of these rules and rule 6.05 of the Minnesota Rules of Civil Procedure.

In district court, personal service may only be made by a sheriff or any other person not less than 18 years of age who is not a party to the action. Reichel v. Hefner, 472 N.W.2d 436 (Minn.App.1991). This applies to personal service under this Rule 521. Service may not be made on Sunday, a legal holiday, or election day. Minn.Stat. §§624.04, 645.44, subd. 5 (1990); Minn. Const. art. VII, § 4.

Advisory Committee Comment—2004 Amendments

Rule 521(d) is amended in 2004 to clarify its application in a situation where one of several co-parties (either co-plaintiffs or co-defendants) removes (appeals) a conciliation court decision while another co-party does not take that action. The committee believes that the conciliation court judgment should become final against any party who does not remove the case and in favor of any party against whom removal is not sought.

Rule 521 establishes an approved and effective means of service by mail to accomplish removal of a conciliation court case to district court for trial de novo. By decision in 2004, the Minnesota Supreme Court held that a party may also rely on the different means of service by mail contained in Minn. R. Civ. P. 4.05. *See* Roehrdanz v. Brill, 682 N.W.2d 626 (Minn. 2004). Because service under that rule may require a signed receipt from the party being served, such service may not be effective

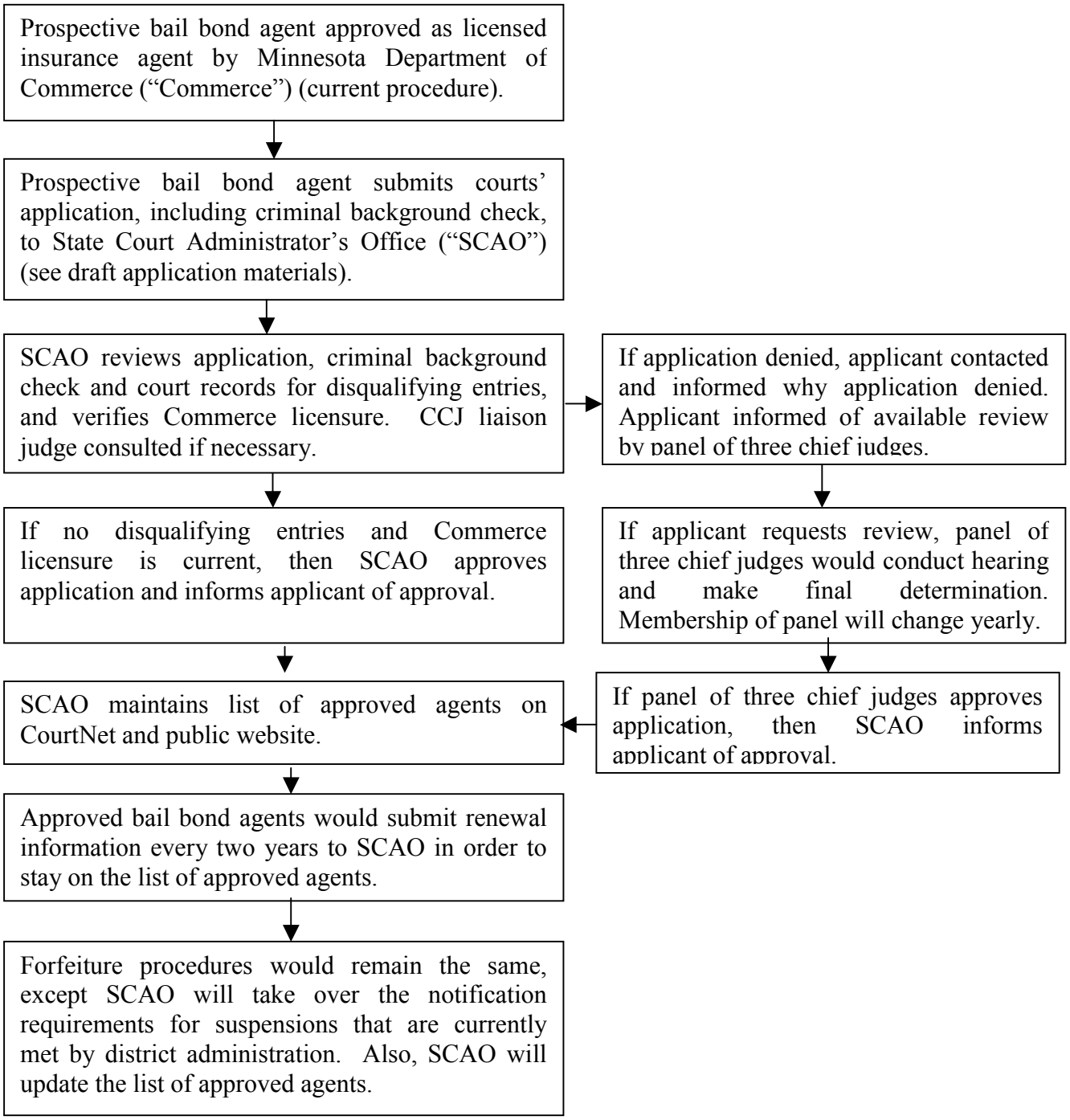
Recommendation 5: The Court should amend Rule 702 to provide for statewide approval of bail bonds.

Introduction

The committee considered a recommendation from the Conference of Chief Judges to amend Rule 702, dealing with approval of bail bond providers, to conform it to changes being made in the process of approval to create a single system of approving bond providers under the aegis of the State Court Administrator.

The procedure being implemented administratively and under the new rule is set forth in the chart set forth on the following page:

PROPOSED Bail Bond Application Process



Specific Recommendation

RULE 702 SHOULD BE AMENDED TO IMPLEMENT STATEWIDE SUPERVISION OF BAIL BOND PROCURERS, UNDER THE AEGIS OF THE STATE COURT ADMINISTRATOR.

RULE 702. BAIL

(a) Approval of Bond Procurers Required. No person shall engage in the business of procuring bail bonds, either cash or surety, for persons under detention until an application is approved by ~~a majority of the judges of the judicial district~~ the State Court Administrator's Office. Approval shall permit the applicant to issue bail bonds throughout the State of Minnesota. Nothing in this section shall infringe upon a judge's discretion in approving a bond. The application form shall be obtained from the ~~court administrator~~ State Court Administrator's Office. The completed application shall then be filed with the ~~administrator~~ State Court Administrator's Office stating the information requested and shall be accompanied by verification that the applicant is licensed as an insurance agent by the Minnesota Department of Commerce. The approval granted under this rule may be revoked or suspended by the ~~chief judge of the judicial district or the chief judge's designee~~ State Court Administrator's Office and such revocation or suspension shall apply throughout the State of Minnesota. Approved applicants are required to apply for a renewal of approval within a time period (not less than one year) established by the State Court Administrator's Office.

(b) Corporate Sureties. Any corporate surety on a bond submitted to the judge shall be one approved by ~~a majority of the judges of the judicial district~~ the State Court Administrator's Office and authorized to do business in the State of Minnesota.

(c) Surety Insolvency. Whenever a corporate surety becomes insolvent, the local agent shall notify the State Court Administrator's Office and the court in every

county in which it has issued or applied to issue bonds, in writing immediately. Within fourteen (14) days after such notice to the court, the agent shall file with the trial court administrator a security bond to cover outstanding obligations of insolvent surety, which may be reduced automatically as the obligations are reduced. In the absence of such surety or security bond, a summons shall be sent to all principals on the bonds of the surety.

* * *

Advisory Committee Comment—2004 Amendments

Rule 702 is amended in 2004 to allow it to operate appropriately under the system of statewide approval of bond procurers. Under the revised rule, the State Court Administrator's office reviews and approves bond procurers, and that approval is then applicable in all district courts. The changes in the rule are not intended to change the rule other that to effect this centralization of the agent approval process.

Recommendation 6: The Court should adopt a new rule 707 to codify procedures relating to mandatory transcription of plea and sentencing hearings

Introduction

The committee considered orders entered by this court that deal with the transcription of pleas, sentences, and revocation hearings. *See* Order, *In re Promulgation of Amendments to the Rules of Criminal Procedure*, No. C1-84-2137 (Minn. Sup. Ct., Oct. 31, 2003); Order, *In re Promulgation of Amendments to the Rules of Juvenile Procedure*, No. CX-01-926 (Minn. Sup. Ct., Nov. 10, 2003). Those orders directed this committee to draft rules to implement portions of the order and to consider making additional recommendations relating to making court reporters' transcription dictionaries available for future use in transcribing reporters' notes. *Id.* at 7. The committee believes the proposed rule 707, set forth below, will adequately implement the directions in the Court's orders.

The committee considered the Court's invitation to deal with "ensuring the availability and transcribability of the record, such as requiring that the court reporter file or make available his or her personal stenographic dictionary." *Id*. After discussion within the committee, we are not aware of other provisions that will enhance the ability to transcribe notes in the future that can be implemented by rule. The notes of any hearing would be easier to access in the future if the reporter's dictionary were also available; indeed, without the dictionary those notes may be nearly indecipherable. Regardless of that limitation on the usefulness of the notes, it appears to the committee that questions relating to the disposition of these dictionaries should be resolved in some system-wide process with the affected reporters. That process may be part of collective bargaining or other comparable process.

Specific Recommendation

1. A NEW RULE 707 SHOULD BE ADOPTED AS SET FORTH BELOW.

Rule 707 Transcription of Pleas, Sentences, and Revocation Hearings in Felony, Gross Misdemeanor, and Extended Jurisdiction Juvenile Proceedings.

The following provisions relate to all pleas, sentences, and revocation hearings in all felony, gross misdemeanor, and extended jurisdiction juvenile proceedings.

(a) Court reporters and operators of electronic recording equipment shall file the stenographic notes or tape recordings of guilty plea or sentencing hearings with the court administrator within 90 days of sentencing. The reporter or operator may retrieve the notes or recordings if necessary. Minn. Stat. § 486.03 (2004) is superseded to the extent that it conflicts with this procedure.

(b) No charge may be assessed for preparation of a transcript for the district court's own use; any other person may order a transcript at the expense of that person.

(c) The maximum rate charged for the transcription of any proceeding shall be established by the Conference of Chief Judges. Minn. Stat. § 486.06 (2002) is superseded to the extent that it conflicts with this procedure.

Advisory Committee Comment—2004 Amendment

Rule 707 is a new rule, designed to implement provisions of orders of the Minnesota Supreme Court in 2003 relating to the transcription of plea proceedings. *See* Order, *In re Promulgation of Amendments to the Rules of Criminal Procedure*, No. C1-84-2137 (Minn. Sup. Ct., Oct. 31, 2003); Order, *In re Promulgation of Amendments to the Rules of Juvenile Procedure*, No. CX-01-926 (Minn. Sup. Ct., Nov. 10, 2003). The rule is not intended to expand or alter the practice under these orders; it merely codifies the orders as part of the general rules

2. THE NAME OF THE SECTION OF PART VIII OF THE RULES SHOULD BE RENAMED AS FOLLOWS:

Part VIII. Rules Relating to Criminal and Extended Jurisdiction Juvenile Matters.

This change amends the title to reflect more accurately the scope of these rules. New Rule 707 specifically addresses extended juvenile proceedings as well as criminal proceedings, so this revised title is more accurate.

3. RULE 701 SHOULD BE AMENDED AS FOLLOWS:

RULE 701. APPLICABILITY OF RULES

These rules apply in all criminal actions, and supplement the Minnesota Rules of Criminal Procedure. In addition, Rule 707 applies in extended jurisdiction juvenile proceedings.

Recommendation 7: The Court should amend Rule 814 to provide for confidentiality of certain jury selection records.

Introduction

There are two separate issues to be addressed in this recommendation: confidentiality and record retention. Regarding confidentiality, Rule 814 currently delays unlimited public access to juror qualification information until one year has elapsed since preparation of the list of jurors selected to serve and all persons selected to serve have been discharged. Prior to the expiration of the one-year period, the public may obtain access by submitting a written request with a supporting affidavit setting forth reasons for the request, and the court must grant the request unless the court determines that access should be limited in the interests of justice. The criminal rules committee recommends that in criminal cases the "interests of justice" standard for closure of qualification questionnaire information during the one year period be replaced by a presumption of public access that can be overcome only after there has been a balancing of the juror's privacy interests, the defendant's right to a fair and public trial, and the public's interest in access to the courts. *See Supreme Court Advisory Committee on the Rules of Criminal Procedure, Report and Proposed Amendments to the Rules of Criminal Procedure Concerning the Supreme Court Jury Task Force's Recommendations,* September 29, 2003, No. C1-84-2137. There must also be a finding that there is a substantial likelihood that conducting the voir dire in public would interfere with an overriding interest, including the defendant's interest in a fair trial and the juror's legitimate privacy interests in not disclosing deeply personal matters to the public. *Id.* The access to records committee concurs with this recommendation. *See Recommendations of the Minnesota Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch, Final Report,* June 28, 2004, No. C4-85-1848.

The Advisory Committee on the Rules of Public Access to Records of the Judicial Branch also recommends that Rule 814 recognize the confidentiality of social security numbers required under a combination of federal and state laws. *Id.* After review, the general rules committee recommends that these amendments be made as recommended by the criminal rules and access to records committees.

Regarding retention of records, both the jury task force and the criminal rules committee have made recommendations about the appropriate retention period for juror qualification information. *See Jury Task Force Final Report,* December 20, 2001, No. C7-00-100, at 30 (recommending destruction "promptly after they are no longer needed for trial or appeal, unless otherwise ordered by the court"); *Supreme Court Advisory Committee on the Rules of Criminal Procedure, Report and Proposed Amendments to the Rules of Criminal Procedure Concerning the Supreme Court Jury Task Force's Recommendations,* September 29, 2003, No. C1-84-2137, at pp. 6 and 7 (recommending that in criminal cases such records and lists shall be preserved for at least ten years after judgment is entered); Letter from Hon. Robert H. Lynn, Chair of the criminal rules committee, to the access to records committee, undated (clarifying that only information supplied co counsel for *voir dire* must be retained for ten years). After review, the general rules committee recommends that these amendments be made as recommended by the criminal rules committee.

Specific Recommendation

RULE 814 SHOULD BE AMENDED AS SET FORTH BELOW:

RULE 814. RECORDS

The names of qualified prospective jurors drawn and the contents of juror qualification questionnaires shall not be disclosed except as provided by this rule or as required by Rule 813.

(a) **Qualified public access.** Prior to the expiration of the time period in part (d) of this rule, the names of qualified prospective jurors drawn and the contents of juror qualification questionnaires, except social security numbers, completed by those prospective jurors must be made available to the public upon specific request to the court, supported by affidavit setting forth the reasons for the request, unless the court determines:

(1) in a criminal case ~~any instance~~ that access to any such information should be restricted pursuant to Minn. R. Crim. P. 26.02, subd. 2(2)

(2) in all other cases that in the interest of justice this information should be kept confidential or its use limited in whole or in part.

(b) **Limits on Access by Parties.** The contents of completed juror qualification questionnaires except juror social security numbers must be made available to lawyers upon request in advance of voir dire. The court in a criminal case may restrict access to names, telephone numbers, addresses and other identifying information of the ~~prospective~~ jurors only as permitted by Minn. R. Crim. P. 26.02, subd. 2(2). In a civil case the court may restrict access to the names, addresses, telephone numbers and other identifying information of the jurors in the interests of justice.

(c). **Retention.** The jury commissioner shall make sure that all records and lists including any completed juror qualification questionnaires, are preserved for the length of time ordered by the court or set forth in the official retention schedule except that in criminal cases any information provided to counsel for voir dire pursuant to part (b) shall be preserved in the criminal file for at least ten years after judgment is entered.

(d) **Unqualified Public Access.** After ~~The contents of any records or lists not made public shall not be disclosed until~~ one year has elapsed since preparation of the list and all persons selected to serve have been discharged, the contents of any records or lists, except identifying information to which access is restricted by court order and

social security numbers, shall be accessible to the public. ~~unless a motion is brought under Rule 813.~~

Advisory Committee Comment—2004 Amendment

Rule 814 is amended in 2004 to ensure the privacy of juror social security numbers and to reflect the constitutional limits on closure of criminal case records. Juror qualification records on a particular juror will be subject to those constitutional limits only to the extent that the juror has participated in voir dire in a criminal case. Access to completed supplemental juror questionnaires used in specific cases is governed by separate rules. *See* MINN. R. CIV. P. 47.01; MINN. R. CRIM. P. 26.02, subd. 2(3).

APPENDIX A: Collaborative Law Provision Not Recommended for Adoption at This Time.

The following rule and form are included for the Court's information, but are not recommended for adoption at this time. If the Court determines to provide for collaborative law explicitly in the rules, however, the committee believes this rule mechanism is workable.

1. RULE 111.05 COULD BE ADOPTED TO PROVIDE FOR USE OF COLLABORATIVE LAW.

Rule 111. Scheduling of Cases.

* * *

Rule 111.05. Collaborative Law.

(a) Collaborative Law Defined. Collaborative law is a process in which parties and their respective trained collaborative lawyers contract in writing to resolve disputes without seeking court action other than approval of a stipulated settlement. The process may include the use of neutrals as defined in Rule 114.02(b), depending on the circumstances of the particular case. If the collaborative process ends without a stipulated agreement, the collaborative lawyers must withdraw from further representation.

(b) Where the parties to an action request deferral in a form substantially similar to Form 111.03 and the court has agreed to attempt to resolve the action using a collaborative law process, the court shall defer setting any deadlines for the period specified in the order approving deferral.

(c) When a case has been deferred pursuant to subdivision (b) of this rule and is reinstated on the calendar with new counsel, the court should not ordinarily order the parties to engage in further ADR proceedings without the agreement of the parties.

2. IF RULE 111.05 WERE ADOPTED, RULE 114.04 SHOULD BE AMENDED.

Rule 114.04 Selection of ADR Process

* * *

(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.

* * *

(2) *Other Court Order for ADR.* In all other civil case types subject to this rule, including conciliation court appeals, any party may move or the court at its discretion may order the parties to utilize one of the non-binding processes; provided that any 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. Where an action has previously been deferred on the calendar pursuant to Rule 111.05(b) and the parties have proceeded in good faith to attempt to resolve the matter using collaborative law, the court should not ordinarily order the parties to use further ADR processes.

[Reporter's Note: This change is made, showing language to the version of the rule recommended for adoption in the Report. It essentially assumes the committee's recommended amendment is made, and shows only this additional change that would be appropriate only if Rule 111.05 were adopted.]

3. IF RULE 111.05 WERE ADOPTED, RULE 114 APPENDIX (CODE OF ETHICS ENFORCEMENT PROCEDURE) SHOULD BE AMENDED.

RULE 114 APPENDIX. CODE OF ETHICS ENFORCEMENT PROCEDURE

Rule I. SCOPE

This procedure applies to complaints against any individual or organization (neutral) placed on the roster of qualified neutrals pursuant to Rule 114.12 or serving as a court appointed neutral pursuant to 114.05(b) of the Minnesota General Rules of Practice. **Collaborative attorneys as defined in Rule 111.05(a) are not subject to the Rule 114 Code of Ethics and Enforcement Procedure while acting as collaborative lawyers.]**

4. A NEW FORM 111.03 COULD BE ADOPTED AS FOLLOWS. This form is entirely new, but no underscoring is included in order to enhance legibility.

FORM 111.03 REQUEST FOR DEFERRAL OF SCHEDULING DEADLINES

STATE OF MINNESOTA DISTRICT COURT

_____ COUNTY _____ JUDICIAL DISTRICT

CASE NO. :

Case Type: _____

_____

Plaintiff

and REQUEST FOR DEFERRAL

_____

Defendant

The undersigned parties request, pursuant to Minn. Gen. R. Prac. 111.05, that this action be deferred and excused from normal scheduling deadlines until _____ ___, ____, to permit the parties to engage in a formal collaborative law process. In support of this request, the parties represent to the Court as true:

1. All parties have contractually agreed to enter into a collaborative law process in an attempt to resolve their differences.

2. The undersigned attorneys are each trained as collaborative lawyers.

3. The undersigned attorneys each agree that if the collaborative law process is not concluded by the complete settlement of all issues between the parties, each

attorney and his or her law firm will withdraw from further representation and will consent to the substitution of new counsel for the party.

4. The undersigned attorneys will diligently and in good faith pursue resolution of this action through the collaborative law process, and will promptly report to the Court when a settlement is reached or as soon as they determine that further collaborative law efforts will not be fruitful.

Signed: _____	Signed: _____
Collaborative Lawyer for (Plaintiff) (Defendant)	Collaborative Lawyer for (Plaintiff) (Defendant)
Attorney Reg. #: _____	Attorney Reg. #: _____
Firm: _____	Firm: _____
Address: _____	Address: _____
Telephone:_____	Telephone: _____
Date: _____	Date: _____

ORDER FOR DEFERRAL

The foregoing request is granted, and this action is deferred and placed on the inactive calendar until _____ ___, ___, or until further order of this Court.

Dated: _____.

_____

Judge of District Court