



## Minnesota Judicial Branch Policy

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### Early Case Management and Early Neutral Evaluation Statewide Best Practices for Family Court

#### **I. POLICY STATEMENT**

It is the policy of the Minnesota Judicial Branch to support and encourage statewide best practices for Early Case Management (ECM) and Early Neutral Evaluation (ENE) processes used by all district courts in family court cases. The best practices shall incorporate court rule requirements and Supreme Court orders regarding alternative dispute resolution.

#### **II. IMPLEMENTATION AUTHORITY**

Implementation of this policy shall be the responsibility of the State Court Administrator and the chief judges.

#### **III. EXECUTIVE LIMITATIONS**

None.

#### **IV. HISTORY**

Providing early resolution of family law cases has been a strategic goal of the Judicial Branch. In April 2004, then-Chief Justice Kathleen Blatz issued a Supreme Court Order authorizing judicial districts to implement ECM and ENE on a voluntary and discretionary basis in accordance with Best Practices Guidelines developed at the time and attached to

that order.<sup>1</sup> The State Court Administrator previously convened the State Family Early Case Management/Early Neutral Evaluation Committee. The Committee was comprised of judicial officers, attorneys, and evaluators who pioneered ENE in Minnesota. The Committee's charge was to develop ECM and create ENE capacity in all judicial districts.

State Court Administration maintains a roster of Qualified ADR Neutrals that meet the training requirements set forth in Minnesota General Rule of Practice 114 (Rule 114 ADR Roster). The Rule 114 ADR Roster includes at least one Qualified Neutral for Social ENE (SENE) and Financial ENE (FENE) processes in all Minnesota counties.

## **V. EARLY CASE MANAGEMENT AND EARLY NEUTRAL EVALUATION**

The concept of ECM is to assist parties in reaching resolution of family court cases before significant financial and emotional resources are expended on litigation. Ideally, parties can resolve matters before financial and emotional resources are spent and cause them to become entrenched in a lengthy and expensive court battle.

In counties where ECM has been implemented, an Initial Case Management Conference (ICMC) is scheduled after the first pleading is filed and, in some counties, after proof of personal service is filed. ICMCs are informal, off-the-record court appearances scheduled early in the case. At the ICMC, the judicial officer explains ADR options to the parties, including the option to participate in ENE and other ADR processes, and the benefits the processes offer. ENEs and other ADR processes typically follow from an ICMC.

ENE is a voluntary and confidential alternative dispute resolution process, with the goal of moving families through family court as quickly, fairly, and inexpensively as possible. SENEs address custody and parenting time issues. A SENE involves a two-person-team that meets with the parties and their attorneys, if represented. Ultimately, the SENE evaluators provide feedback to the parties about the likely recommendations they would receive if they participated in a full custody and parenting time evaluation, as well as their opinions about viable settlement options and how the court may rule on the case or issues.<sup>2</sup> FENEs address financial, support, and property division issues and follow the same process as SENEs. An FENE involves only one evaluator who provides feedback about the financial, support, and property division issues with their opinion about viable settlement options and how the court may rule on the case or issues.

ENE processes are designed to be completed early in the case, as soon as possible following the ICMC, and prior to the next scheduled court appearance. While parties are participating

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<sup>1</sup> Order In Re Family Court Early Case Management and ADR Best Practice Guidelines and Volunteer Pilot Projects in First, Second, Fourth, Cass County in the Ninth and the Tenth Judicial Districts, filed April 23, 2004, Supreme Court file ADM-04-8002.

<sup>2</sup> See Minn. Gen. R. Prac. 114.02(b)(1).

in these processes, judicial time is made more available to handle emergency, enforcement, and post-decree matters, as well as matters that are not suited for ENE.

The best practices that follow serve to ensure consistent and quality ECM and ENE processes statewide, while providing flexibility for individual counties and districts to tailor ECM and ENE processes to their unique needs and individual cases.

**VI. BEST PRACTICES FOR EARLY CASE MANAGEMENT AND INITIAL CASE MANAGEMENT CONFERENCES**

**A. BEST PRACTICE ONE: Family Court Training for Judicial Officers Should Include Training on Family Case Management.**

Management of family court cases is notably different than criminal, civil, and other types of cases. With the development and expansion of ENE and other ADR processes, the resources available to judicial officers in family court continue to evolve. Training specific to the management of family court cases, including ECM, is essential to the effective handling of those cases.

**B. BEST PRACTICE TWO: Family Court Cases Should be Scheduled for an ICMC as Soon as Possible and No Later Than 45 Days after the First Filing or the Case is Transferred to District Court.**

The judicial officer's involvement soon after the first filing in district court encourages parties and their attorneys, if represented, to focus on resolving and narrowing the contested issues, and to develop a case management plan tailored to the specific issues of the case. An ICMC may be scheduled when no Affidavit of Service or Answer and Counter Petition has been filed. Waiting for the Affidavit of Service to be filed can result in delays in the scheduling of an ICMC and the parties' potential participation in ENE. However, ICMCs may not be as helpful if the opposing party has not been served and is not aware of the issues involved in the case, particularly when the ICMC is held remotely.

Exceptions to the scheduling of an ICMC may be determined by the judicial officer or local practices. ICMCs are typically not scheduled in domestic abuse proceedings, expedited process proceedings, administrative dissolutions, or in cases filed with a request to proceed by default.

Cases that will likely result in default hearings or in which self-represented parties are in agreement on all issues may be referred at the ICMC to the Statewide Self-Help Center or to online forms to complete a Judgment and Decree, and a default

or final hearing can be scheduled. These practices shorten the time from filing to resolution of many family court cases.

ICMCs are typically scheduled for a 30-minute period and may take as little as 10 minutes or as long as 60 minutes. This scheduling allows the judicial officer adequate time to talk with the parties and attorneys, if represented, about the issues in the case, alternatives to litigation, exchange of information, and timelines for possible resolution of the case. ICMCs are typically not scheduled with more than one case at the same time because each family court case has its own unique issues and facts for discussion with the judicial officer at the ICMC.

**C. BEST PRACTICE THREE: Motions Should not be Served, Scheduled or Filed before the ICMC. Formal Discovery Should be Suspended.**

This best practice helps maintain parity in the process and ensure that parties are not unduly entrenched before the judicial officer has the opportunity to address them at the ICMC. A party may still submit an ex parte motion for custody or child support or a request for an expedited hearing for temporary relief pursuant to statutes or court rules. Other motions should rarely be filed and even more rarely granted prior to the ICMC. Formal discovery should also be suspended until completion of the ICMC. This best practice does not preclude informal discovery. (*See also* Best Practice Twenty-Three, precluding the service, scheduling, or filing of motions, and suspending formal discovery, during an ENE process.)

**D. BEST PRACTICE FOUR: If Directed by the Judicial Officer, Court Administration Should Send Parties ICMC Data Sheets with the Request to Complete before the ICMC. The Data Sheets are not Filed.**

If directed by the judicial officer, court administration should send blank ICMC Data Sheets when sending the Notice of Initial Case Management Conference. The informal data sheets provide the judicial officer with basic information regarding children's names and ages, incomes and expenses, assets and debts, case numbers for other types of cases in which the parties are involved (e.g. domestic abuse, harassment or juvenile court proceedings, or criminal proceedings involving Domestic Abuse No Contact Orders (DANCOS) or other no contact orders), and whether any agreements have already been reached. A judicial officer may also decide to verbally discuss the ICMC Data Sheet questions at the ICMC.

The ICMC Data Sheet is intended to provide just enough information to the judicial officer to tailor the ICMC to each particular case. The Data Sheets are typically prepared quickly and prior to discovery, and therefore may not be an accurate reflection of the parties' full circumstances. This preliminary information permits

the ICMC to focus on the process by which the case might get resolved rather than on the accuracy or veracity of the data sheets. The family law bar expressed concerns in the past about signing a document without having conducted discovery or obtaining complete information.

At the judicial officer's discretion, ICMC Data Sheets may be returned to parties/counsel at the conclusion of the ICMC, destroyed by the judicial officer, or maintained by the judicial officer as part of his or her private case notes. ICMC Data Sheets are not filed with the court or admissible, and cannot be used for impeachment purposes at trial.

**E. BEST PRACTICE FIVE: The Judicial Officer Explains the Purpose of the ICMC; the Purpose of Early Case Management; and Options for Proceeding with the Case, Including Traditional Litigation, Alternative Dispute Resolution Processes, and Early Neutral Evaluations, during the ICMC.**

Active judicial involvement and management of family court cases engages the parties in communication, and is essential to effectively and efficiently resolve those cases and facilitate early settlement. During the ICMC, the judicial officer should talk with the parties and attorneys about the purpose of the ICMC and ECM, the issues in the case, litigation timelines and procedures, and alternatives to litigation, including ENE and other ADR processes. It is incumbent upon the judicial officer to explain that participation in ADR processes is voluntary and that the processes are confidential.

**F. BEST PRACTICE SIX: Parties and Their Attorneys, if Represented, Should Appear at the ICMC.**

Attorneys have occasionally questioned the necessity of their appearance or their client's appearance because ICMCs are informal. An ICMC is still a court appearance, and attorneys are obligated under the Rules of Professional Conduct to appear. Even if parties agree to participate in an ENE before the ICMC, it is important for parties to attend the ICMC to hear a description of the ENE processes from the judicial officer, to learn about alternatives to ENE, and to participate in the development of their case management plan.

**G. BEST PRACTICE SEVEN: Judicial Officers Should Screen for Domestic Abuse and Discuss Amendment of any Orders for Protection or Harassment Restraining Orders, as Needed to Participate in ADR Processes, during the ICMC.**

In this context, “domestic abuse” is not to be limited to the definition in Minn. Stat. § 518B.01, or to the existence of an Order for Protection (OFP). Domestic abuse may be present without the existence of any court order or any police involvement. It may take many forms from actual physical assault to more subtle coercive, controlling behavior. It also may not be readily disclosed by a victim of such behavior.

It is incumbent upon the judicial officer to be part of the screening process throughout the proceeding, in addition to attorneys, if the parties are represented, ENE evaluators, and other ADR professionals. The screening process may begin with the ICMC data sheet and should continue at the ICMC by appropriate inquiry of the court. Judicial officers and local courts should develop ways to inquire about domestic violence if there are no OFPs, Harassment Restraining Orders (HROs), or DANCOs listed on the ICMC Data Sheets, e.g. fear of harm, safety concerns in or out of court, power dynamics.

The existence of domestic abuse does not preclude participation in an ENE or other ADR process. However, it does impact the judicial officer’s development of a case management plan, assessment of whether ENE or other ADR options are appropriate and, if so, how parties can safely and effectively participate in such processes.

If an existing OFP, HRO, or no contact order does not permit contact between the parties, participation in ENE or another ADR process may constitute a violation by the respondent in that proceeding. The no contact provisions in an OFP or HRO may need to be amended by court order and/or the parties may need to be kept separated during the ADR process. Note that amendment of an OFP or HRO does not affect any DANCOs or other criminal no contact orders that may be in effect against one party.

**H. BEST PRACTICE EIGHT: Judicial Officers Should not Make Decisions on Disputed Issues at the ICMC. Any Agreements Reached by the Parties at the ICMC Should be Incorporated into an Order.**

The ICMC is a resolution-focused, case planning conference, and not a forum in which contested issues are argued and/or decided. Agreements may be read into

the record. Any agreements read into the record and incorporated into an order are binding on the parties.

**I. BEST PRACTICE NINE: The Decision to Participate in an ENE Should be Made by the Parties Early in the Case.**

Ideally, referral to ENE is made at the ICMC. Referral after the ICMC may not be “early” in the case. Court rules anticipate an ENE is conducted after the case is filed and before formal discovery is conducted.<sup>3</sup> Engaging in lengthy and ultimately unsuccessful negotiations can further polarize and entrench parties in their positions and reduce the likelihood of settlement in an ENE process. Parties and attorneys, if represented, may approach the court to request an order for an ADR process after the ICMC.

**J. BEST PRACTICE TEN: The ENE Evaluators Should be Selected at the ICMC.**

The Rule 114 ADR Roster maintained by the State Court Administration includes qualified ENE evaluators statewide. The availability of evaluators may vary greatly from county to county. Once selected, the name of the evaluators and contact information should be listed in the ICMC Order and/or Order for Early Neutral Evaluation.

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<sup>3</sup> Minn. Gen. R. Prac. 114.02(b)(1).

**K. BEST PRACTICE ELEVEN: An ICMC Order Should Issue and Include or Address the Following:**

1. Any temporary or permanent agreements reached by the parties.
2. If an OFP, HRO, DANCO, and/or other criminal no contact order exists, or if a party has indicated the presence of abuse.
3. The valuation date.
4. ENEs/Neutrals:
  - a. Appointment of any ENE evaluator(s) or other Neutral(s).
  - b. Required attendance by parties and attorneys, if represented, at all ENE sessions.<sup>4</sup>
  - c. Fees for ENE(s) and allocation of payment of those fees between the parties.<sup>5</sup>
  - d. Timelines for completion of any ENE process.<sup>6</sup>
  - e. Confidentiality provisions regarding any ENE process.<sup>7</sup>
5. Discovery issues.
6. The next court appearance.
7. Procedures to schedule telephone conferences and hearings with the court.

The ICMC Order memorializes the case management plan and any agreements reached at the ICMC, reiterates the confidentiality of ENE, if selected, and ensures ongoing case management by the judicial officer.

**Orders for Protection, Harassment Restraining Orders, DANCOs, Domestic Abuse:** These provisions notify any court-appointed Neutral whether one party is prohibited from having contact with the other party and whether domestic abuse has been identified as an issue. This information will assist the Neutral with respect to any alternative logistical arrangements that may be necessary for the ENE or ADR process, help ensure that the process is free of coercion, and that any agreements reached are voluntary.

**Valuation Date.** The statutory valuation date is the date of the initially scheduled prehearing settlement conference, unless a different date is agreed upon by the

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<sup>4</sup> Unless the court has ordered otherwise, individuals with the authority to settle the case shall attend all evaluative, facilitative and hybrid ADR sessions. Minn. Gen. R. Prac. 114.06(d).

<sup>5</sup> The Neutral shall be paid according to the terms of the agreement with the parties, their attorney, or as ordered by the court. Minn. Gen. R. Prac. 114.11(a).

<sup>6</sup> The court shall, with the advice of the parties, establish a deadline for completion of the ADR process. Minn. Gen. R. Prac. 114.04(b).

<sup>7</sup> See Minn. Gen. R. Prac. 114.06(a); 114.07; 114.08; 114.10.



parties or the court makes findings for another valuation date.<sup>8</sup> Addressing the valuation date at the ICMC permits parties to engage in settlement discussions with an agreed upon valuation date earlier than the statutory valuation date. Typically, the alternative to the statutory valuation date is the date of the ICMC. The ICMC Order should include the valuation date, and reiterate the parties' statutory right to argue an alternative valuation date if circumstances warrant.

**Discovery Issues.** *See* Best Practices Three and Twenty-Three.

**Next Court Appearance/Future Hearings:** These provisions assist the court in managing the case efficiently and expeditiously. Scheduling the next court appearance keeps the case moving toward a resolution. The provisions also assist in communicating to parties and attorneys, if represented, the court's parameters for case management and communication with the court.

## **VII. BEST PRACTICES FOR EARLY NEUTRAL EVALUATION PROCESSES**

### **A. BEST PRACTICE TWELVE: Parties' Participation in an ENE Process is Voluntary.**

ENEs will generate successful outcomes if voluntarily selected by the parties. ENE may not be the appropriate ADR process for all cases, including cases with domestic abuse or a high level of conflict.

### **B. BEST PRACTICE THIRTEEN: ENE Processes are Confidential as Provided in the General Rules of Practice.**

Rules 114.08 and 114.10 of the General Rules of Practice set forth the confidentiality provisions for ADR processes. For a candid discussion of the issues to occur, parties must be able to trust that discussions held during an ENE process will be held in confidence by the evaluators and from the court, and will not be part of the underlying litigation unless permitted under General Rule of Practice 114.07. Exceptions to confidentiality may include mandated reporting of the abuse or neglect of a minor, duty to warn of the contemplation or commission of an ongoing crime, or statements or conduct that could constitute professional misconduct or give rise to disqualification proceedings under the Rules of Professional Conduct for attorneys. Confidentiality may also be waived by agreement of the parties to

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<sup>8</sup> Minn. Stat. § 518.58, subd. 1.

allow the evaluators to communicate with the Court and as specifically provided in General Rules of Practice 114.10 and 114.11(b).

**C. BEST PRACTICE FOURTEEN: ENE Processes Should Have a Sliding Fee Scale.**

A sliding fee scale ensures access to ENE processes by all parties regardless of income and financial circumstances, and compensates ENE providers appropriately in cases where parties have greater means. Local courts may find it helpful to keep lists of Neutrals that will provide ENE using a sliding fee scale or pro bono.

**D. BEST PRACTICE FIFTEEN: ENE Evaluators Should Screen for Domestic Abuse.**

Screening at every level of the case maximizes the likelihood that domestic abuse will be identified. Evaluators must complete certified trainings regarding domestic abuse issues, cases, and screening to be placed on the Rule 114 ADR Roster.<sup>9</sup> Local courts may find it helpful to keep lists of Neutrals that have advanced training in issues such as domestic abuse and high conflict cases.

The existence of domestic abuse is important knowledge for the evaluators to have in preparing for the ENE as alternative logistical arrangements may need to be made to conduct the evaluation. It also helps ensure that the process is appropriate, free of coercion, and that any agreements reached are voluntary. A victim of domestic abuse may be excused from an ENE previously agreed to if he or she is no longer comfortable with the process.

**E. BEST PRACTICE SIXTEEN: SENEs Should be Conducted by Teams of Two Evaluators.**

By utilizing a team approach, SENE evaluators can be paired to ensure that the full range of necessary skill sets are available on any given case. The team models how to constructively communicate, problem solve, speak respectfully, and normalize differences of opinion while addressing difficult issues. The team delivers a qualitatively enhanced evaluative opinion because they merge perspectives and thereby inject a more comprehensive and holistic view of the case. The team is better equipped to deliver creative options for settlement. The team approach enhances the ability to track the often complicated dynamics of the session. When one member is speaking, the other can collect their thoughts or observe the parties' non-verbal communication or dynamics between the attorneys, if represented; these

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<sup>9</sup> Minn. Gen. R. Prac. 114.12, subd. 4(c)(2)(G).

observations often provide cues as to how to structure subsequent aspects of the session. The team can make strategic decisions regarding which member should say what to whom while delivering the evaluative opinion and making recommendations, which can be critical to how the parties react to the feedback.

A male/female SENE team may alleviate parental concerns about gender bias on custody and parenting time issues in the family court system. A dual-gendered team may not be the best fit in all cases, including those cases with same-sex or non-binary parents, or where evaluators of the same gender bring specific skills. Selection of the evaluators is ultimately left to the parties and attorneys, if represented.

**F. BEST PRACTICE SEVENTEEN: SENEs Should be Completed prior to the Next Scheduled Court Appearance, Unless the Deadline is Specifically Extended by the Court Upon Request by the Parties, Attorneys, if Represented, and/or Evaluators.**

The evaluators, parties and attorneys, if represented, should complete the SENE as soon as possible following the ICMC and prior to the next scheduled court appearance. This timeline promotes early resolution of custody and parenting time issues. Scheduling issues and other extenuating circumstances may occur that require extending those deadlines. The decision to extend those deadlines is part of the judicial officer's management of the case.

An attorney is responsible for requesting an extension of the SENE deadline from the court and submitting a proposed order to the court extending the deadline. If neither party is represented by an attorney, the evaluators are responsible for submitting a letter to the court with a request for an extension from the court, and the court shall be responsible for issuing an order extending the deadline.<sup>10</sup>

**G. BEST PRACTICE EIGHTEEN: FENEs Should be Completed prior to the Next Scheduled Court Appearance, Unless the Deadline is Specifically Extended by the Court Upon Request of the Parties, Attorneys, if Represented, and/or Evaluators.**

The evaluators, parties, and attorneys, if represented, should complete the FENE as soon as possible following the ICMC and prior to the next scheduled court appearance. This timeline promotes early resolution of financial issues. However, because FENEs potentially require the gathering and review of multiple documents, additional time may be needed to complete the evaluation. Additionally, parties

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<sup>10</sup> Minn. Gen. R. Prac. 114.10(c)(3); Minn. Gen. R. Prac. 114.13(A), subd. 7(c)(1).

who are also participating in an SENE may wish to complete that process first as the outcome may have an impact on the financial issues. Scheduling issues and other extenuating circumstances may occur that require extending those deadlines. The decision to extend those deadlines is part of the judicial officer's management of the case.

An attorney is responsible for requesting an extension of the FENE deadline from the court and submitting a proposed order to the court extending the deadline. If neither party is represented by an attorney, the evaluators is responsible for submitting a letter to the court with a request for an extension from the court, and the court shall be responsible for issuing an order extending the deadline.<sup>11</sup>

**H. BEST PRACTICE NINETEEN: Attorneys of Record Should Attend All ENE Sessions.**

General Rule of Practice 114.06(b) grants the court authority to “require that the attorneys who will try the case attend ADR proceedings in a manner determined by the court.” Participation by the attorney of record is critical to any resolution of a case in an ENE. Attorneys have the ability to guide and advise their clients during the process. Failure to attend an ENE and a later attempt to advise a client about any agreements reached can lead to an unraveling of those agreements. Attorneys of record also have the responsibility for drafting any stipulations and proposed orders incorporating any agreements reached in an ENE under General Rule of Practice 114.05.

**I. BEST PRACTICE TWENTY: Any Agreements Reached during an ENE Should be Incorporated into a Stipulation Signed by the Parties and Attorneys, if Represented, at the Conclusion of the ENE.**

Drafting a written agreement at the conclusion of an ENE helps ensure both parties know the terms of the agreement. A stipulation may prevent enforceability issues for the parties and the court. Attorneys, if any, are responsible for completing appropriate documents to bring the case to a final disposition.<sup>12</sup> Neutrals are prohibited from drafting legal documents intended to be submitted to the court as a proposed order to be signed by the judicial officer.<sup>13</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Minn. Gen. R. Prac. 114.05.

<sup>13</sup> Minn. Gen. R. Prac. 114.13(A), subd. 7(c)(1).

**J. BEST PRACTICE TWENTY-ONE: The Evaluators May Communicate Only the Following to the Court during an ENE:**

- 1. Without comment or recommendations, the case has undergone an ENE and has or has not been resolved.**
- 2. A party or an attorney has failed to comply with the order to attend the ENE process or pay court-ordered fees.**
- 3. Any request by the parties for additional time to complete the ENE.**
- 4. With the written consent of the parties, any procedural action by the court that would facilitate the ENE.**
- 5. The Neutral's assessment that the case is inappropriate for ENE.**
- 6. With the consent of the parties or by court order, disclose to the court information obtained during the ENE.**

The evaluator may need to contact the court while the ENE process is pending or in process. General Rule of Practice 114.10(c) sets forth the specific and limited information the Neutral may share with the court during an ENE. The evaluator may share that an ENE occurred and, without further comment, that the issues were or were not resolved. The evaluator may communicate that a party or attorney failed to comply with the court order to attend an ENE or pay ENE fees. The evaluator may share the parties' request to extend the time for an ENE. (*See also* Best Practices Seventeen and Eighteen.) An evaluator may share that the case is inappropriate for ENE. Finally, with the written consent of the parties or as ordered by the court, the evaluator may disclose information obtained through the ENE.

**K. BEST PRACTICE TWENTY-TWO: The Evaluators May Communicate Only the Following to the Court at the Conclusion of the ENE:**

- 1. The case has been settled.**
- 2. The case has not been settled, without further comment.**
- 3. Some or all of the fees have not been paid.**
- 4. Notice of parenting time adjustments required by Minn. Gen. R. Prac. 310.03(c)(3).**

Communication from the evaluator(s) regarding the outcome of an ENE assists the court in continuing case management that is tailored to the case. General Rules of Practice 114.10(d) sets forth the specific and limited information the Neutral may share with the court after an ADR process.

The Neutral may share that the case has settled. A copy of the written agreement may be included in the communication. If a case has not been settled, the Neutral can share that information with the court without further comment. With the

written consent of the parties or attorneys, if represented, the Neutral can also share what may facilitate resolution of the dispute, including resolution of pending motions or outstanding legal issues, the discovery process, or other action by any party.

The Neutral shall maintain confidentiality as required by General Rules of Practice 114.08 and 114.10 when seeking payment of fees.<sup>14</sup> The Neutral may suspend services if not paid per the court order or agreement with the parties and/or attorneys, if represented.

**L. BEST PRACTICE TWENTY-THREE: No Motions Should be Served, Scheduled, or Filed during the ENE Process. Formal Discovery Should be Suspended.**

This best practice helps parties focus on the critical issues they face in ENE or another ADR process. A party may still submit an ex parte motion for custody or child support or a request for an expedited hearing for temporary relief pursuant to statute or court rules. Formal discovery should be suspended while the parties participate in ENE, except to the extent it is deemed necessary by the ENE evaluator(s) or the court. General Rule of Practice 114.02(b)(1) anticipates ENE will occur after the case is filed and before formal discovery is conducted. This best practice does not preclude informal discovery. (*See also* Best Practice Three, which establishes a best practice precluding the service, scheduling or filing of motions, or conducting formal discovery, prior to the ICMC.)

**M. BEST PRACTICE TWENTY-THREE: The Bench, Bar, and Neutrals Should Regularly Discuss ENE and ADR Processes.**

The bench, local family law attorneys, and Neutrals may benefit from regular meetings to discuss ENE, ADR processes, and related issues. Local steering committees can assist in developing sliding fee scales and tracking issues. The development of quality ENE programs is most successful when steering committees include representatives from all stakeholder groups. It is recommended that steering committees include judicial officers, court administration staff, members of the bar (private and/or legal aid attorneys), Neutrals, members of domestic abuse advocacy groups, and other community stakeholders. This helps

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<sup>14</sup> Minn. Gen. R. Prac. 114.11(b).

ensure that the various and sometimes competing interests of all involved are considered.

The steering committees may find it helpful to keep lists of Neutrals that have advanced training in issues such as domestic abuse, addiction, mental health, or high conflict cases, and those that use a sliding fee scale for ADR processes or provide the services pro bono. Steering committees can also serve as a forum for feedback to and from Neutrals, judicial officers, court administration, and attorneys.