General Rules of Practice for the District Courts

Adopted September 5, 1991 Effective January 1, 1992
With amendments received through August 8, 1997

TABLE OF HEADNOTES

TITLE I. RULES APPLICABLE TO ALL COURT PROCEEDINGS

Rule

8 Interpreters

TITLE II. RULES GOVERNING CIVIL ACTIONS

PART B. SCHEDULING

114 Alternative Dispute Resolution

PART D. MISCELLANEOUS MOTION PRACTICE

119 Applications for Attorneys' Fees

TITLE IV. RULES OF FAMILY COURT PROCEDURE

303 Motions; Ex Parte Relief; Orders to Show Cause; Orders and Decrees
304 Scheduling of Cases
310 Alternative Dispute Resolution

APPENDIX OF FORMS

Form

3 Appendix A
9A Informational Statement (Family Court Matters)
9B Alternative Informational Statement (Family Court Matters)

TITLE V. PROBATE RULES

Rule

418 Deposit of Wills

APPENDIX OF FORMS

Form

UCF–22 Financial Disclosure Form

TEXT OF RULES

TITLE I – RULES APPLICABLE TO ALL COURT PROCEEDINGS

[For text of 1. to 7., see M.S. 1996, Volume 15]

Rule 8. Interpreters

Rule 8.01 Statewide Roster

The State Court Administrator shall maintain and publish annually a statewide roster of interpreters which shall include:

(a) **Certified Court Interpreters:** This shall be a list of certified court interpreters who have satisfied all certification requirements pursuant to the Minnesota Supreme Court's Rules on Certification of Interpreters.

(b) **Non–certified Court Interpreters:** This shall be a list of non–certified court interpreters, not including sign language interpreters, who have not satisfied the requirements of the Minnesota Supreme Court's Rules on Certification of Court Interpreters, but who may possess interpreting credentials from other governmental agencies or professional associations and who have: (1) completed the interpreter orientation program sponsored by the State Court Administrator; (2) filed with the State Court Administrator a written affidavit agreeing to be bound by the Code of Professional Responsibility for Interpreters in the Minnesota State Court System as the same may be amended from time to time; and (3) received a passing score on a written ethics examination administered by the State Court Administrator.

(c) **Non–certified Sign Language Court Interpreters:** This shall be a list of non–certified sign language court interpreters who have satisfied the requirements set forth in Rule 8.01(b) and possess, at a minimum, both a Certificate of Transliteration and a Certificate of Interpretation from the Registry of Interpreters for the Deaf or an equivalent certification from the Registry of Interpreters for the Deaf or another organization that is approved by the State Court Administrator.

(Added effective January 1, 1996; amended effective January 1, 1998.)

Advisory Committee Comment 1997 Amendment

It is the policy of the state to provide interpreters to litigants and witnesses in civil and criminal proceedings who are handicapped in communication. Minnesota Statutes, sections 611.30 – .32 (1996); Minn. R. Crim. P. 5.01, 15.01, 15.03, 15.11, 21.01, 26.03, 27.04, subd. 2; Minnesota Statutes, section 546.44, subdivision 3 (1996); see also 42 U.S.C. section 12101; 28 C.F.R. Part 35, section 130 (prohibiting discrimination in public services on basis of disability).

To effectuate that policy, the Minnesota Supreme Court has initiated a statewide orientation program of training for court interpreters and promulgated the Rules on Certification of Court Interpreters. Pursuant to Rule 8.01 of the General Rules of Practice for the District Courts, the State Court Administrator has established a statewide roster of court interpreters who have completed the orientation program on the Minnesota court system and court interpreting and who have filed an affidavit attesting that they understand and agree to comply with the Code of Professional Responsibility for Court Interpreters adopted by the Minnesota Supreme Court on September 18, 1995. The creation of the roster is the first step in a process that is being undertaken to ensure the competence of court interpreters. To be listed on the roster, a non–certified court interpreter must attend an orientation course provided or approved by the State Court Administrator. The purpose of the orientation is to provide interpreters with information regarding the Code of Professional Responsibility, the role of interpreters in our courts, skills required of court interpreters, the legal process, and legal terminology. Merely being listed on the roster does not certify or otherwise guarantee an interpreter's competence.

In 1997, two key changes were made to this rule. First, interpreters are now required to receive a passing score on the ethics examination before they are eligible to be listed on the Statewide Roster. This change was implemented to ensure that court interpreters on the Statewide Roster have a demonstrated knowledge of the Code of Professional Responsibility.

Second, to be eligible to be listed on the Statewide Roster, non–certified sign language court interpreters are required to possess certificates from the Registry of Interpreters for the Deaf (RID), which demonstrate that the interpreter has minimum competency skills in sign language. This change was recommended by the Advisory Committee because of reports to the Committee that courts were hiring sign language interpreters who completed the orientation training, but who were not certified by RID. This practice was troubling because prior to the promulgation of Rule 8, courts generally adopted the practice of using only RID certified sign language interpreters to ensure a minimum level of competency. Unlike most

spoken language interpreting fields, the field of sign language interpreting is well established with nationally developed standards for evaluation and certification of sign language interpreters. Because of the long history of RID, its certification program, the availability of RID certified sign language interpreters in Minnesota and the recent incidents when courts have deviated from their general practice of appointing RID certified sign language interpreters, the Advisory Committee determined that it is appropriate and necessary to amend Rule 8 to maintain the current levels of professionalism and competency among non–certified sign language court interpreters.

(Added effective January 1, 1996; amended effective January 1, 1998.)

Rule 8.02 Appointment

(a) **Use of Certified Court Interpreter.** Whenever an interpreter is required to be appointed by the court, the court shall appoint only a certified court interpreter who is listed on the statewide roster of interpreters established by the State Court Administrator under Rule 8.01, except as provided in Rule 8.02(b) and (c). A certified court interpreter shall be presumed competent to interpret in all court proceedings. The court may, at any time, make further inquiry into the appointment of a particular certified court interpreter. Objections made by a party regarding special circumstances which render the certified court interpreter unqualified to interpret in the proceeding must be made in a timely manner.

(b) **Use of Non–Certified Court Interpreter on Statewide Roster.** If the court has made diligent efforts to obtain a certified court interpreter as required by Rule 8.02(a) and found none to be available, the court shall appoint a non–certified court interpreter who is otherwise competent and is listed on the Statewide Roster established by the State Court Administrator under Rule 8.01. In determining whether a non–certified court interpreter is competent, the court shall apply the screening standards developed by the State Court Administrator.

(c) **Use of Non–Certified Court Interpreter not on the Statewide Roster.** Only after the court has exhausted the requirements of Rule 8.02(a) and (b) may the court appoint a non–certified interpreter who is not listed on the Statewide Roster and who is otherwise competent. In determining whether a non–certified interpreter is competent, the court shall apply the screening standards developed by the State Court Administrator. In no event shall the court appoint a non–certified sign language interpreter who does not, at a minimum possess both a Certificate of Transliteration and a Certificate of Interpretation from the Registry of Interpreters for the Deaf or an equivalent certification from the Registry of Interpreters for the Deaf or another organization that is approved by the State Court Administrator.

(Added effective January 1, 1996; amended effective January 1, 1998.)

Advisory Committee Comment 1997 Amendment

Rule 8.02(a) requires that courts use certified court interpreters. If certified court interpreters are not available or cannot be located, courts should next use only interpreters listed on the statewide roster maintained by the State Court Administrator. Rule 8.02 recognizes, however, that in rare circumstances it will not be possible to appoint an interpreter from the statewide roster. Non–roster interpreters and telephone interpreting services, such at AT & T's Language Lines Service, should be used only as a last resort because of the limitations of such services including the lack of a minimum orientation to the Minnesota Court System and to the requirements of court interpreting. For a detailed discussion of the issues, see Court Interpretation: Model Guides for Policy and Practice in the State Courts, chapter 8 (National Center for State Courts, 1995), a copy of which is available from the State Court Administrator's Office.

To avoid unreasonable objections to a certified court interpreter in a proceeding, the rule makes a presumption that the certified court interpreter is competent. However, the rule also recognizes that there are situations when an interpreter may be competent to interpret, but not qualified. Examples of such situations include when an interpreter has a conflict of interest or the user of the interpreter services has unique demands, such as services tailored to a person with minimal language skills, that the interpreter is not as qualified to meet.

Rule 8.02(b) requires that courts make "diligent" efforts to locate a certified court interpreter before appointing a non–certified court interpreter. Because the certification process is still in an early stage and because it is important to ensure that courts use competent interpreters, courts should seek the services of certified court interpreters who are located outside the court's judicial district if none can be found within its own district. In addition, courts should consider modifying the schedule for a matter if there is difficulty locating a certified interpreter for a particular time.

Because the certification program being implemented by the State Court Administrator is still new, interpreters are being certified in only certain languages at this time. The Advisory Committee recognizes that it may be some time before certification is provided for all languages used in our courts. However, the committee feels strongly that for those languages for which certification has been issued, the courts must utilize certified court interpreters to ensure that its interpreters are qualified. If a court uses non–certified court interpreters, court administrators should administer the screening standards prior to hiring an interpreter. However, the presiding judge is still primarily responsible for ensuring the competence and qualifications of the interpreter. A model voir dire to determine the competence and qualifications of an interpreter is set forth in the State Court Administrator's Best Practices Manual on Court Interpreters.

(Added effective January 1, 1996; amended effective January 1, 1998.)

Rule 8.03 Disqualification from Proceeding

A judge may disqualify a court interpreter from a proceeding for good cause. Good cause for disqualification includes, but is not limited to, an interpreter who engages in the following conduct:

(a) Knowingly and willfully making a false interpretation while serving in a proceeding;

(b) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

(c) Failing to follow applicable laws, rules of court, or the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.

(Added effective January 1, 1996; amended effective January 1, 1998.)

[For text of Comment, see M.S. 1996, Volume 15]

TITLE II – RULES GOVERNING CIVIL ACTIONS

[For text of 101. to 113., see M.S. 1996, Volume 15]

Rule 114. Alternative Dispute Resolution

NOTE: Rule 114 is added effective July 1, 1994, and shall supersede Second Judicial District Local Rules 5 and 25 and Fourth Judicial District Local Rule 5 to the extent inconsistent therewith.

Rule 114.01 Applicability

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

(Added effective July 1, 1994; amended effective July 1, 1997.)

Advisory Committee Comment—1996 Amendment

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

(Added effective July 1, 1997.)

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 each party and its counsel present its position before a neutral third party, who renders a specific award. If the parties stipulate in 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 binding, the award is not binding and a request for trial de novo may be made.

(2) Consensual Special Magistrate: A forum in which 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.

(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.

(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) 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 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.

(6) Neutral Fact Finding: A forum in whice a dispute, frequently one involving complex or technical issues, is investigated and analyzed by an agreed–upon neutral who issues findings and a non–binding report or recommendation.

Facilitative Processes

(7) Mediation: A forum in which a neutral third party facilitates communication between parties to promote settlement. A medator 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 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 disputes; but if they reach impasse, they arbitrate 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 114.13. An individual neutral must have completed the training and continuing education requirements provided in Rule 114.12. An individual neutral provided by an organization also must meet the training and continuing education require-

ments of Rule 114.12. Neutral fact–finders selected by the parties for their expertise need not undergo training nor be on the State Court Administrator's roster.

(Added effective July 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

Advisory Committee Comment—1996 Amendment

The amendments to this rule are limited, but important. In subdivision (a) (10) is new, and makes it explicit that parties may create an ADR process other than those enumerated in the rule. This can be either a "standard" process not defined in the rule, or a truly novel process not otherwise defined or used. This rule specifically is necessary where the parties may agree to a binding process that the courts could not otherwise impose on the parties. For example, the parties can agree to "baseball arbitration" where each party makes a best offer which is submitted to an arbitrator who has authority to select one of the offers as fairest, but can make no other decision. Another example is the Divorce with Dignity Program established in the Fourth Judicial District, in which the parties and the judge agree to attempt to resolve disputed issues through negotiation and use of impartial experts, and the judge determines unresolved preliminary matters by telephone conference call and unresolved dispositive matters by written submissions.

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

(Added effective July 1, 1997.)

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, the court administrator shall provide 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.

(Added effective July 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

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.

(Added effective July 1, 1997.)

Rule 114.04 Selection of ADR Process

(a) Conference. After the filing of an action, 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 schedule a telephone or in–court conference of the attorneys and any unrepresented parties within thirty days after the due date for filing informational statements pursuant to Rule 111.02 or 304.02 to discuss ADR and other scheduling and case management issues. Except as otherwise provided in Minnesota Statutes, section 604.11 or Rule 310.01, if no agreement on the ADR process is reached or if the court disagrees with the process selected, the court may order the parties to utilize one of the non–binding processes, or may find that ADR is not appropriate; provided that any ADR process shall not be approved 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 Rule 310.01 or Minnesota Statutes, section 604.11, 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.

(Added effective July 1, 1994; amended effective January 1, 1996; amended effective July 1, 1997.)

[For text of Comments, see M.S. 1996, Volume 15]

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.

(Added effective July 1, 1997.)

Rule 114.05 Selection of Neutral

(a) Court Appointment. If the parties are unable to agree on a neutral, or the date upon which the neutral will be selected, the court shall appoint the neutral at the time of the

issuance of the scheduling order required by Rule 111.03 or 304.03. The order may establish a deadline for the completion of the ADR process.

(b) Exception from Qualification. In appropriate circumstances, the court, upon agreement 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. This section 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 conduct a custody investigation, unless the parties agree in writing executed after the termination of mediation, that the neutral shall conduct the investigation or 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 court administrator shall make all reasonable attempts to obtain reciprocal services from an adjacent county. Where such reciprocity is possible, another person or agency is "reasonably available."
(Added effective July 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

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.
(Added effective July 1, 1997.)

Rule 114.06 Time and Place of Proceedings

(a) Notice. The court shall send 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.
(Added effective July 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

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.
(Added effective July 1, 1997.)

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

(c) Attendance at Facilitative Sessions. Facilitative 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.

(d) Attendance at Adjudicative Sessions. 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.

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

(Added effective July 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

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.

(Added July 1, 1997.)

Rule 114.08 Confidentiality

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

(b) Inadmissability. Statements made and documents produced in non-binding ADR processes which are not otherwise discoverable are not subject to discovery or other disclosure 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.

(Added effective July 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

Advisory Committee Comment—1996 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 underly-

ing) 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. Minnesota Laws 1996, chapter 388, section 1, to be codified as Minnesota Statutes, section 595.02, subdivision 1a. This confidentiality should be extended to any subsequent proceedings.

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

(Added effective July 1, 1997.)

Rule 114.09 Arbitration Proceedings

(a) 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 artibrator 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 circumstance exist, if: (1) the deposition was taken in the manner provided for by law or by stipulation of the parties; and (2) not less 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 the witnesses at the arbitration hearing, as provided in 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) 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) 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) 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 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) 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.

(Added effective July 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

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.

(Added effective July 1, 1997.)

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.

(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 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.
(Added effective July 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

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.
(Added effective July 1, 1997.)

Rule 114.11 Funding

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

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

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

(d) Inability to Pay. If a party in family law proceedings qualifies for waiver of filing fees under Minnesota Statutes, section 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.
(Added effective July 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

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.
(Added effective July 1, 1997.)

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 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 roster of qualified neutrals and shall include those who meet the training requirements established in Rule 114.13.

(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).

(d) Fees. The State Court Administrator may establish reasonable fees for qualified individuals and entities to be placed on either roster.
(Added effective July 1, 1997.)

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.
(Added effective July 1, 1997.)

Rule 114.13 Training, Standards and Qualifications for Neutral Rosters

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

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

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

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

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

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

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

(b) Civil Adjudicative/Evaluative Neutral Roster. All neutrals serving in adjudicative or evaluative processes or serving as a consensual special magistrate shall receive 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 Neutral Roster.

To qualify for the family law facilitative roster neutrals shall:

(1) Complete or teach 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) Complete or teach 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 Neutral Roster.

To qualify for the family law adjudicative 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 neutrals applying to the adjudicative neutral roster shall also complete or teach 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 neutrals applying to the adjudicative neutral roster shall complete or teach 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 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 neutrals applying to the family law evaluative neutral roster shall complete or teach 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 neutrals providing facilitative or hybrid services must attend 6 hours of continuing education about alternative dispute resolution subjects annually. All other neutrals must attend 3 hours of continuing education about alternative dispute resolution subjects annually. These hours may be attained through course work and attendance at state and national ADR conferences. The neutral is responsible for maintaining attendance records and shall disclose the information to program administrators and the parties to any dispute. The neutral shall submit continuing education credit information to the State Court Administrator's office on an annual basis.

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

(Added effective July 1, 1994; amended and renumbered effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

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.

(Added effective July 1, 1997.)

Rule 114.14 Exceptions

(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) Waiver of Training Requirement. 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.

(Added effective July 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

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.

(Added effective July 1, 1997.)

[For text of 115. to 118., see M.S. 1996, Volume 15]

Rule 119. Applications for Attorneys' Fees

In any action or proceeding in which an attorney seeks the award, or approval, of attorneys' fees in the amount of $1,000.00 for the action, or more, application for award or approval of fees shall be made by motion. The motion shall be accompanied by an affidavit of any attorney of record which establishes the following:

1. A description of each item of work performed, the date upon which it was performed, the amount of time spent on each item of work, the identity of the lawyer or legal assistant performing the work, and the hourly rate sought for the work performed;

2. The normal hourly rate for each person for whom compensation is sought, with an explanation of the basis for any difference between the amount sought and the normal hourly billing rate, if any;

3. A detailed itemization of all amounts sought for disbursements or expenses, including the rate for which any disbursements are charged and the verification that the

amounts sought represent the actual cost to the lawyer or firm for the disbursements sought; and

4. That the affiant has reviewed the work in progress or original time records, the work was actually performed for the benefit of the client and was necessary for the proper representation of the client, and that charges for any unnecessary or duplicative work has been eliminated from the application or motion.

The court may require production of copies of additional records, including any fee agreement relevant to the fee application, bills actually rendered to the client, work in progress reports, time sheets, invoices or statements for disbursements, or other relevant records. These documents may be ordered produced for review by all parties or for *in camera* review by the court.

The motion should be accompanied by a memorandum of law that discusses the basis for recovery of attorney's fees and explains the calculation of the award of fees sought and the appropriateness of that calculation under applicable law.

(Added effective January 1, 1997.)

Advisory Committee Comment—1996 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.

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.

(Added effective January 1, 1997.)

[For text of 121. to 302., see M.S. 1996, Volume 15]

Rule 303. Motions; Ex Parte Relief; Orders to Show Cause; Orders and Decrees

[For text of 303.01 and 303.02, see M.S. 1996, Volume 15]

Rule 303.03 Motion Practice

(a) Requirements for Motions.

(1) Moving Party, supporting documents, time limits. No motion shall be heard unless the initial moving party serves a copy of the following documents on opposing counsel and files the original with the court administrator at least 14 days prior to the hearing:

(i) Notice of motion in form required by Minn. Gen. R. Prac. 303.01(a);

(ii) Motion;

(iii) Any relevant affidavits and exhibits; and

(iv) Any memorandum of law the party intends to submit.

(2) Motion Raising New Issues. A responding party raising new issues other than those raised in the initial motion shall serve a copy of the following documents on opposing counsel and shall file the original with the court administrator at least 10 days prior to the hearing:

(i) Notice of motion in form required by Minn. Gen. R. Prac. 303.01(a);

(ii) Motion;

(iii) Any relevant affidavits and exhibits; and

(iv) Any memorandum of law the party intends to submit.

(3) Responding party, supporting documents, time limits. The party responding to issues raised in the initial motion, or the party responding to a motion which raises new issues, shall serve a copy of the following documents on opposing counsel and shall file the original with the court administrator at least five days prior to the hearing, inclusive of Saturdays, Sundays, and holidays:

(i) Any memorandum of law the party intends to submit

(ii) Any relevant affidavits and exhibits.

(4) Computation of Time for Service and Filing By Mail. Whenever this rule requires documents to be filed with the court administrator within a prescribed period of time before a specific event, filing may be accomplished by mail, subject to the following: (i) 3 days shall be added to the prescribed period; and (ii) filing shall not be considered timely unless the documents are deposited in the mail within the prescribed period. Service of documents on parties by mail is subject to the provisions of Minn. Civ. R. P. 5.02 and 6.05.

(5) Post–Trial Motions. The timing provisions of Section 303.03(a) do not apply to post–trial motions.

(b) Failure to Comply. In the event an initial moving party fails to timely serve and file documents required in this rule, the hearing may be canceled by the court. If responsive papers are not properly served and filed, the court may deem the initial motion or motion raising new issues unopposed and may issue an order without hearing. The court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may consider the matter unopposed, may allow reasonable attorney's fees, or may take other appropriate action.

(c) Settlement Efforts. No motion, except motion for temporary relief, will be heard unless the parties have conferred either in person, or by telephone, or in writing in an attempt to resolve their differences prior to the hearing. The moving party shall initiate such conference. In matters involving post–decree motions, if the parties are unable to resolve their differences in this conference they shall consider the use of an appropriate ADR process under Rule 114 to attempt to accomplish resolution. The moving party shall certify to the court, before the time of the hearing, compliance with this rule or any reasons for not complying, including lack of availability or cooperation of opposing counsel. Whenever any pending motion is settled, the moving party shall promptly advise the court.

(d) Motion with Request for Oral Testimony. Motions, except for contempt proceedings, shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel unless otherwise ordered by the court for good cause shown. If demand is made for the taking of oral testimony, and if the matter cannot be heard adequately in the scheduled time, the hearing shall be utilized as a prehearing conference. Requests for hearing time in excess of one–half hour shall be submitted by written motion specifically setting forth the necessity and reason that evidence cannot be submitted by affidavit. The motion shall include names of witnesses, nature and length of testimony, including cross–examination, and types of exhibits, if any. The court may issue an order limiting the number of witnesses each party may call, the scope of their testimony, and the total time for each party to present evidence. Such an order shall be made only after the lawyer for each party has had an opportunity to suggest appropriate limits. Any motion relating to custody or visitation shall additionally state whether either party desires the court to interview mi-

nor children. No child under the age of fourteen years will be allowed to testify without prior written notice to the other party and court approval.
(Amended effective January 1, 1994; amended effective July 1, 1997.)

[For text of Comment, see M.S. 1996, Volume 15]

Advisory Committee Comment—1996 Amendment

Subdivisions (a)–(d) of this rule are new. They are derived from parallel provisions in new Minn. Gen. R. Prac. 115, and are intended to make motion practice in family court matters as similar to that in other civil actions as is possible and practical given the particular needs in family court matters.

Subdivision (d) of this rule is derived from Rule 2.04 of Rules of Family Court Procedure and from Second Judicial District Rules 2.041 and 2.042.

The requirement in subsection (c) of an attempt to resolve motion disputes requires that the efforts to resolve the matter be made before the hearing, not before bringing the motion. It is permissible under the rule to bring a motion and then attempt to resolve the motion. If the motion is resolved, subsection (c) requires the parties to advise the court immediately.

Rule 303.03(a)(5) is added by amendment to be effective January 1, 1994, in order to make it clear that the stringent timing requirements of the rule need not be followed on post–trial motions. This change is made to continue the uniformity in motion practice between family court matters and general civil cases, and is patterned on the change to Minn. Gen. R. Prac. 115.01(c) made effective January 1, 1993.

Subdivision (c) of this rule is amended in 1996 to require consideration of ADR in post–decree matters. The rule specifies how ADR proceedings are commenced in post–decree matters; the procedures for court–annexed ADR in these matters is generally the same under Rule 114 as for other cases.
(Amended effective January 1, 1994; amended effective July 1, 1997.)

[For text of 303.04 to 303.06 and Comment, see M.S. 1996, Volume 15]

Rule 304. Scheduling of Cases

[For text of 304.01, see M.S. 1996, Volume 15]

Rule 304.02 The Party's Informational Statement

(a) Timing. Within 60 days after filing an action or, if a temporary hearing is scheduled within 60 days of the filing of the action, then within 60 days after a temporary hearing is initially scheduled to occur, whichever is later, each party shall submit, on a form to be available from the court (see Forms 9A and B appended to these rules), the information needed by the court to manage and schedule the case.

(b) Content. The information provided shall include:

(1) Whether minor children are involved, and if so:

(i) Whether custody is in dispute; and

(ii) Whether the case involves any issues seriously affecting the welfare of the children;

(2) Whether the case involves complex evaluation issues, and/or marital and non-marital property issues;

(3) Whether the case needs to be expedited, and if so, the specific supporting facts;

(4) Whether the case is complex, and if so, the specific supporting facts;

(5) Specific facts about the case which will affect readiness for trial;

(6) Recommended alternative dispute resolution process, the timing of the process, the identity of the neutral selected by the parties or, if the neutral has not yet been se-

lected, the deadline for selection of the neutral. If ADR is believed to be inappropriate, a description of the reasons supporting this conclusion; and

(7) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to this rule.

(c) Unrepresented Parties. Parties not represented by a lawyer shall, instead of providing the information required above on Form 9A, provide substantially the information required on Form 9B.

(Amended effective January 1, 1993; amended effective January 1996; amended effective July 1, 1997.)

Rule 304.03 Scheduling Order

(a) When issued. Within thirty days after the expiration of the time set forth in Minn. Gen. R. Prac. 304.02 for filing informational statements, the court shall enter its scheduling order. The court may issue the order after either a telephone or in court conference, or without a conference or hearing if none is needed.

(b) Contents of Order. The scheduling order shall provide for alternative dispute resolution as required by Rule 114.04(c) and may establish any of the following:

(1) Deadlines or specific dates for the completion of discovery and other pretrial preparation;

(2) Deadlines or specific dates for serving, filing or hearing motions;

(3) Deadlines or specific dates for completion and review of custody/visitation mediation and evaluation or property mediation and evaluation;

(4) A deadline or specific date for the prehearing conference; and

(5) A deadline or specific date for the trial or final hearing.

(Amended effective July 1, 1997.)

[For text of 304.04, see M.S. 1996, Volume 15]

Advisory Committee Comment—1996 Amendment

This rule is new. It is patterned after the similar new Minn. Gen. R. Prac. 111. The Task Force believes that the scheduling information and procedures in family court and other civil matters should be made as uniform as possible, consistent with the special needs in family court matters. It is amended in 1996 to include information needed for using alternative dispute resolution in family law matters as required by Minn. Gen. R. Prac. 301.01, also as amended in 1996. These amendments follow the form of similar provisions in Minn. Gen. R. Prac. 111, and should be interpreted in the same manner.

Matters not scheduled under the procedures of this rule are scheduled by motion practice under Minn. Gen. R. Prac. 303.

Rule 304.02 now provides a definite time by which informational statements are required, even if a temporary hearing is contemplated and postponed. Under the prior version of the rule, informational statements might never be due because a temporary hearing might be repeatedly postponed. If the parties seek to have a case excluded from the court scheduling process, they may do so by stipulating to having the case placed on "Inactive Status." This stipulation can be revoked by either party, but removes the case from active court calendar management for up to one year. See Minnesota Conference of Chief Judges (See Exhibit A), Resolution Relating to the Adoption of Uniform Local Rules, Jan. 25, 1991.

This rule provides for a separate Form 9B for use by unrepresented parties. This form contains additional information useful to the court in managing cases where one or both parties are not represented by an attorney. This form is updated in 1996 to request information about any history or claims of domestic abuse and the views of the parties on the use (or potential use) of alternative dispute resolution in the same manner as Form 9A for represented parties.

(Amended effective January 1, 1993; amended effective July 1, 1997.)

[For text of 305. to 309., see M.S. 1996, Volume 15]

Rule 310. Alternative Dispute Resolution

Rule 310.01 Applicability

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

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

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

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

(Amended effective July 1, 1997.)

Advisory Committee Comment—1996 Amendment

This rule is changed from a limited rule dealing only with mediation to the main family law rule governing use of ADR. All of the provisions of the existing rule are deleted because their subject matter is now governed by either the amended rule or Minn. Gen. R. Prac. 114.

The committee believes that there are significant and compelling reasons to have all court–annexed ADR governed by a single rule. This will streamline the process and make it more cost–effective for litigants, and will also make the process easier to understand for ADR providers and neutrals, many of whom are not lawyers.

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

(Added effective July 1, 1997.)

Rule 310.02 Post–Decree Matters

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

(Amended effective July 1, 1997.)

Advisory Committee Comment—1996 Amendment

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

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

(Added effective July 1, 1997.)

[For text of 311. and 312., see M.S. 1996, Volume 15]

APPENDIX OF FORMS

[For text of 1. and 2., see M.S. 1996, Volume 15]

FORM 3

APPENDIX A

NOTICE IS HEREBY GIVEN TO THE PARTIES:

I. PAYMENTS TO PUBLIC AGENCY. ACCORDING TO MINNESOTA STATUTES, SECTION 518.551, SUBDIVISION 1, PAYMENTS ORDERED FOR MAINTENANCE AND SUPPORT MUST BE PAID TO THE PUBLIC AGENCY RESPONSIBLE FOR CHILD SUPPORT ENFORCEMENT AS LONG AS THE PERSON ENTITLED TO RECEIVE THE PAYMENTS IS RECEIVING OR HAS APPLIED FOR PUBLIC ASSISTANCE OR HAS APPLIED FOR SUPPORT AND MAINTENANCE COLLECTION SERVICES. MAIL PAYMENTS TO: (public authority) AT (address).

II. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS – A FELONY. A PERSON MAY BE CHARGED WITH A FELONY WHO CONCEALS A MINOR CHILD OR TAKES, OBTAINS, RETAINS, OR FAILS TO RETURN A MINOR CHILD FROM OR TO THE CHILD'S PARENT (OR PERSON WITH CUSTODIAL OR VISITATION RIGHTS), ACCORDING TO MINNESOTA STATUTES, SECTION 609.26. A COPY OF THAT SECTION IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

III. RULES OF SUPPORT, MAINTENANCE, VISITATION.

A. Payment of support or spousal maintenance is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

B. Payment of support must be made as it becomes due, and failure to secure or denial of rights of visitation is NOT an excuse for nonpayment, but the aggrieved party must seek relief through a proper motion filed with the court.

C. Nonpayment of support is not grounds to deny visitation. The party entitled to receive support may apply for support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.

D. The payment of support or spousal maintenance takes priority over payment of debts and other obligations.

E. A party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding.

F. Child support or maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made throughout the year as ordered.

G. If there is a layoff or pay reduction, support may be reduced as of the time of the layoff or reduction if a motion to reduce the support is served and filed with the court at that time, but any such reduction must be ordered by the court. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2, paragraph (c).

IV. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3. UNLESS OTHERWISE PROVIDED BY THE COURT:

A. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.

B. Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party.

C. In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment.

D. Each party has the right of reasonable access and telephone contact with the minor children.

V. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE. CHILD SUPPORT AND/OR SPOUSAL MAINTENANCE MAY BE WITHHELD FROM INCOME, WITH OR WITHOUT NOTICE TO THE PERSON OBLIGATED TO PAY, WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 518.6111, HAVE BEEN MET. A COPY OF THAT SECTION IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

VI. CHANGE OF ADDRESS OR RESIDENCE. UNLESS OTHERWISE ORDERED, EACH PARTY SHALL NOTIFY THE OTHER PARTY, THE COURT, AND THE PUBLIC AUTHORITY RESPONSIBLE FOR COLLECTION, IF APPLICABLE, OF THE FOLLOWING INFORMATION WITHIN TEN DAYS OF ANY CHANGE: THE RESIDENTIAL AND MAILING ADDRESS, TELEPHONE NUMBER, DRIVER'S LICENSE NUMBER, SOCIAL SECURITY NUMBER, AND NAME, ADDRESS, AND TELEPHONE NUMBER OF THE EMPLOYER.

VII. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE. CHILD SUPPORT AND/OR SPOUSAL MAINTENANCE MAY BE ADJUSTED EVERY TWO YEARS BASED UPON A CHANGE IN THE COST OF LIVING (USING THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX MPLS. ST. PAUL, FOR ALL URBAN CONSUMERS (CPI-U), UNLESS OTHERWISE SPECIFIED IN THIS ORDER) WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 518.641, ARE MET. COST OF LIVING INCREASES ARE COMPOUNDED. A COPY OF MINNESOTA STATUTES, SECTION 518.641, AND FORMS NECESSARY TO REQUEST OR CONTEST A COST OF LIVING INCREASE ARE AVAILABLE FROM ANY COURT ADMINISTRATOR.

VIII. JUDGMENTS FOR UNPAID SUPPORT; INTEREST. ACCORDING TO MINNESOTA STATUTES, SECTION 548.091:

A. If a person fails to make a child support payment, the payment owed becomes a judgment against the person responsible to make the payment by operation of law on or after the date the payment is due, and the person entitled to receive the payment or the public agency may obtain entry and docketing of the judgement **without notice** to the person responsible to make the payment.

B. Interest begins accruing on a payment or installment of child support whenever the unpaid amount due is greater than the current support due.

IX. JUDGMENTS FOR UNPAID MAINTENANCE. A JUDGMENT FOR UNPAID SPOUSAL MAINTENANCE MAY BE ENTERED WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 548.091, ARE MET. A COPY OF THAT SECTION IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

X. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT. A JUDGMENT FOR ATTORNEY FEES AND OTHER COLLECTION COSTS INCURRED IN ENFORCING A CHILD SUPPORT ORDER WILL BE ENTERED AGAINST THE PERSON RESPONSIBLE TO PAY SUPPORT WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 518.14, SUBDIVISION 2, ARE MET. A COPY OF THAT SECTION AND FORMS NECESSARY TO REQUEST OR CONTEST THESE ATTORNEY FEES AND COLLECTION COSTS ARE AVAILABLE FROM ANY COURT ADMINISTRATOR.

XI. CAPITAL GAIN ON SALE OF PRINCIPAL RESIDENCE. INCOME TAX LAWS REGARDING THE CAPITAL GAIN TAX MAY APPLY TO THE SALE OF THE PARTIES' PRINCIPAL RESIDENCE AND THE PARTIES MAY WISH TO CONSULT WITH AN ATTORNEY OR TAX ADVISOR CONCERNING THE APPLICABLE LAWS. THESE LAWS MAY INCLUDE, BUT ARE NOT LIMITED TO, THE EXCLUSION AVAILABLE ON THE SALE OF A PRINCIPAL RESIDENCE FOR THOSE OVER A CERTAIN AGE UNDER SECTION 121 OF THE INTERNAL REVENUE CODE OF 1986, OR OTHER APPLICABLE LAW.

XII. VISITATION EXPEDITOR PROCESS. ON REQUEST OF EITHER PARTY OR ON ITS OWN MOTION, THE COURT MAY APPOINT A VISITATION EXPEDITOR TO RESOLVE VISITATION DISPUTES UNDER MINNESOTA STATUTES, SECTION 518.1751. A COPY OF THAT SECTION AND A DESCRIPTION OF THE EXPEDITOR PROCESS IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

XIII. VISITATION REMEDIES AND PENALTIES. REMEDIES AND PENALTIES FOR WRONGFUL DENIAL OF VISITATION RIGHTS ARE AVAILABLE UNDER MINNESOTA STATUTES, SECTION 518.175, SUBDIVISION 6. THESE INCLUDE COMPENSATORY VISITATION; CIVIL PENALTIES; BOND REQUIREMENTS; CONTEMPT; AND REVERSAL OF CUSTODY. A COPY OF THAT SUBDIVISION AND FORMS FOR REQUESTING RELIEF ARE AVAILABLE FROM ANY COURT ADMINISTRATOR.

(Amended effective August 1, 1993; amended effective January 1, 1994; amended effective July 1, 1994; amended effective August 1, 1996; amended effective July 2, 1997; amended effective August 5, 1997.)

[For text of Comment and 4A. to 8E., see M.S. 1996, Volume 15]

FORM 9A. INFORMATIONAL STATEMENT (Family Court Matters)

See Minn. Gen. R. Prac. 304.02

State of Minnesota **District Court**

COUNTY JUDICIAL DISTRICT CASE NO.

____________________ ________________________________

In Re The Marriage Of:

____
Petitioner

and

INFORMATIONAL STATEMENT FORM

____
Respondent

1. All parties (have) (have not) been served with process.

2. All parties (have) (have not) joined in the filing of this form.

3. The parties are in agreement on all matters and this case will proceed by default.
   Yes ___ No___
   If you answered yes to the preceding question, please check all of the following that apply:
   _____ Default hearing by General Rules of Practice, Rule 306.
   _____ Marriage includes minor children.
   _____ Approval without a hearing pursuant to M.S.A. 518.13, subdivision 5.
   _____ The marriage includes minor children, each party is represented by a lawyer and each party has signed a stipulation.
   _____ The marriage does not include minor children and each party has signed a stipulation.
   _____ The marriage does not include minor children, at least 50 days has elapsed since service of the Summons and Petition, and the respondent has not appeared in the action.

4. The case involves the following:

   (Check all that apply and supply estimates where indicated.)

a. minor children No___ Yes ___ Number:______
b. custody dispute No___ Yes ___ Specify:______________

____

c. visitation dispute No___ Yes ___ Specify:______________

____

Each party will submit an exhibit outlining custody and visitation proposals for each child.

d. marital property No___ Yes___
Identify the asset and the requested disposition: ______________________________

____

____

e. nonmarital property No___ Yes___
Each party shall identify any nonmarital claims, their respective positions for the basis for the claim, the method(s) used to arrive at the claimed amount or trace the claim and requested disposition:

____

____

____

f. complex evaluation issues No___ Yes___

5. It is estimated that the discovery specified below can be completed within ________ months from the date of this form. (Check all that apply and supply estimates where indicated.)

a. Factual Depositions No___ Yes___
Identify the person who will be deposed by either party:

____

____

____

____

b. Medical/Vocational Evaluations No___ Yes___

Identify the person who will conduct such evaluations for either party:

____

____

____

c. Experts No___ Yes___
Identify any experts for either party:

____

____

____

6. The dates and deadlines specified below are suggested.

a. __________ Deadline for bringing motion regarding: __________________________.
(specify)

b. __________ Deadline for completion and review of property evaluation.

c. __________ Deadline for completion and review of custody/visitation mediation.

d. __________ Deadline for completion and review of custody/visitation evaluation.

e. __________ Deadline for submitting __________________________ to the court.
(specify)

f. __________ Date for prehearing conference.

g. __________ Date for trial or final hearing.

7. Estimated trial or final hearing time: ___ Days ___ Hours
(Estimates less than a day must be stated in hours.)

8. a. MEETING: Counsel for the parties met on ______________________________
(date)
to discuss case management issues.
b. ADR PROCESS: (check one):
_ Counsel agree that ADR is appropriate and choose the following:
_ Mediation
_ Arbitration (non–binding)
_ Arbitration (binding)
_ Med–Arb
_ Early Neutral Evaluation
_ Moderated Settlement Conference
_ Mini–Trial
_ Summary Jury Trial
_ Consensual Special Magistrate
_ Impartial Fact–Finder
_ Other (describe) ______________________________
____
____
_ Counsel agree that ADR is appropriate but request that the court select the process
_ Counsel agree that ADR is NOT appropriate because:
_ the case implicates the federal or state constitution
_ other (explain with particularity) ______________________________
____
____
_ domestic violence has occurred between the parties
c. PROVIDER (check one):
_ the parties have selected the following ADR neutral:
____
_ The parties cannot agree on an ADR neutral and request the court to appoint one.
_ The parties agreed to select an ADR neutral on or before: ______________________________
______________________________.
d. DEADLINE: The parties recommend that the ADR process be completed by ______________________.
(date)

9. Please list any additional information which might be helpful to the court when scheduling this matter including, e.g., facts which will affect readiness for trial and any issues that significantly affect the welfare of the children:
____
____

Signed: ______________________________
Lawyer for (Petitioner)

Attorney Reg. #: ______________________
Firm: ______________________________
Address: ______________________________
Telephone: ______________________________
Date: ______________________________

Signed: ______________________________
Lawyer for (Respondent)

Attorney Reg. #: ______________________
Firm: ______________________________
Address: ______________________________
Telephone: ______________________________
Date: ______________________________

(Amended effective January 1, 1993; amended effective July 1, 1997.)

FORM 9B. ALTERNATIVE INFORMATIONAL STATEMENT
(Family Court Matters)
See Minn. Gen. R. Prac. 304.02

State of Minnesota **District Court**

COUNTY JUDICIAL DISTRICT CASE NO.

______________________ ______________________________

In Re The Marriage Of:

____
Petitioner

and

INFORMATIONAL STATEMENT FORM

____
Respondent

PLEASE READ THE FOLLOWING CAREFULLY. COURT PERSONNEL ARE NOT ALLOWED TO HELP YOU COMPLETE THIS FORM.

These questions must be answered to help the court make a schedule for the dissolution of your marriage. This statement is your opportunity to tell the Court those factors that will require consideration in scheduling. If the information is incomplete, the Court will design its own schedule from the information supplied.

If you are representing yourself please complete questions 1 through 5. If you are an attorney please complete the entire Scheduling Information Statement.

Some questions have more than one part. Be sure to read and answer all questions completely.

1. This form is being filled out:
   a. Jointly (both parties together) _______________.
   b. Separately _______.

   Check or complete the following if they apply.
   1. ____ An Order for Protection petition has been filed at some time during the marriage.
   2. ____ An Order for Protection is in effect.
   3. ____________________ is the Court file number for the Order for Protection.

2. FINAL HEARING BY DEFAULT

   The parties are in agreement on all matters and this dissolution will proceed by default.
   Yes ___ No ___

   If you answered yes to the preceding question, please check all of the following that apply:

   ___ Default hearing by General Rules of Practice, Rule 306.
   ___ Marriage includes minor children.
   ___ Approval without a hearing pursuant to M.S.A. 518.13, subdivision 5.

___ The marriage includes minor children, each party is represented by a lawyer and each party has signed a stipulation.

___ The marriage does not include minor children and each party has signed a stipulation.

___ The marriage does not include minor children, at least 50 days has elapsed since service of the Summons and Petition, and the respondent has not appeared in the action.

3. CHILDREN

A. Do you have minor children born or adopted to the marriage?

Yes ___ No ___ If yes, how many ___

B. If there are minor children:

Do you agree who will have custody? Yes ___ No ___

Do you agree on a visitation schedule? Yes ___ No ___

C. A problem of emotional or physical disability or chemical dependency exists on the part of one party or the other which affects the welfare of the children.

Husband ___ Wife ___ Children ___

D. Using one of the attached blank sheets please explain what custody and/or visitation plan is best for the children. (If you cannot agree, each person should submit separate plans.)

4. ASSET AND DEBT INFORMATION

A. Are you satisfied that you have sufficient information about your assets and debts to make an informed decision about how they should be divided?

Yes ___ No ___

1. If yes, do you agree or disagree about how the assets and debts should be divided?

Agree ___ Disagree ___

2. If no, check the following items that still need to be evaluated.

a. _____ Home
b. _____ Business
c. _____ Retirement benefits and Pensions (Include 401K plans, IRA's, deferred compensation)
d. _____ Savings and checking accounts
e. _____ Life insurance policies
f. _____ Stock options, bonds, mutual funds, etc.
g. _____ Personal property
h. _____ Automobiles and trucks
i. _____ Boats, motorcycles, snowmobiles, etc.
j. _____ Collectibles
k. _____ Vacation property
l. _____ Other

B. Do you agree on how to divide the debts from the marriage?
Yes ___ No ___
If no, estimate the total debt: ____________________

C. Have you filed, or, do you plan on filing for bankruptcy?
Yes ___ No ___

D. Do you agree on the amount of spousal maintenance (alimony), if any?

Yes ___ No ___

If no, please explain why or why not on the blank sheets provided.

E. Do you agree on the amount of child support?
Yes ___ No ___

If yes, is the amount agreed upon pursuant to the child support guidelines?
Yes ___ No ___

If no, please explain why not on the blank sheets provided.

5. ALTERNATIVE DISPUTE RESOLUTION
(NOTE: YOU MAY SKIP THIS QUESTION AND PROCEED TO QUESTION 6 IF YOUR ATTORNEY IS COMPLETING QUESTIONS 7 THROUGH 10.)

Have the parties talked with a third person to decide any of the problems listed in this form?
Yes ___ No ___
If yes, please check one or all of the following:
____ Property/Financial problems
____ Custody problems
____ Visitation problems
____ Third person is on the Supreme Court's roster of qualified neutrals

a. MEETING: The parties (or their attorneys) met on ________________ (date) to discuss case management issues.

b. ADR PROCESS: (check one) (descriptions can be obtained from the court administrator):

You Both Parties
___ ___ Agree that ADR is appropriate and choose the following:
___ Mediation
___ Arbitration (non–binding)
___ Arbitration (binding)
___ Med–Arb
___ Early Neutral Evaluation
___ Moderated Settlement Conference
___ Mini–Trial
___ Summary Jury Trial
___ Consensual Special Magistrate
___ Impartial Fact–Finder
___ Other (describe)

You	Both Parties	
___	___	Agree that ADR is appropriate but request that the court select the process
You	Both Parties	
___	___	Agree that ADR is NOT appropriate because: ___ the case implicates the federal or state constitution ___ other (explain with particularity) ________________________________ ________________________________ ___ domestic violence has occurred between the parties

c. PROVIDER (check one):

You	Both Parties	
___	___	have selected the following ADR neutral: ________________________________
___	___	cannot agree on an ADR neutral and request the court to appoint one
___	___	agreed to select an ADR neutral on or before: ________________. (date)

d. DEADLINE (check one)

You	Both Parties	
___	___	recommend that the ADR process be completed by ________________. (date)

6. List any other information which may help the court schedule your dissolution on the attached additional sheets if necessary.

________________________ Signature of Pro se Petitioner	________________________ Signature of Pro se Petitioner
________________________ Address	________________________ Address
________________________ City, State, Zip Code	________________________ City, State, Zip Code
________________________ Home Telephone	________________________ Home Telephone
________________________ Work Telephone	________________________ Work Telephone
________________________ Date	________________________ Date

THE NEXT TWO PAGES ARE TO BE COMPLETED BY ATTORNEYS ONLY.

7. It is estimated that the discovery specified below can be completed within ___________ months from the date of this form. (Check all that apply and supply estimates where indicated.)

   a. Interrogatories No ___ Yes ___

   b. Document Requests No ___ Yes ___
   estimated number: ___________

   c. Factual Depositions No ___ Yes ___

   Identify the person who will be deposed by either party:

   ____
   ____
   ____
   ____

   d. Medical/Vocational Evaluations No ___ Yes ___

   Identify the person who will conduct such evaluations for either party:

   ____
   ____
   ____

   e. Experts No ___ Yes ___

   Identify any experts for either party:

   ____
   ____
   ____

8. The dates and deadlines specified below are suggested.

   a. ___________ Deadline for bringing motion regarding: _______________. (specify)

   b. ___________ Deadline for completion and review of property evaluation.

   c. ___________ Deadline for completion and review of custody/visitation mediation.

   d. ___________ Deadline for completion and review of custody/visitation evaluation.

   e. ___________ Deadline for submitting ____________________ to the court. (specify)

   f. ___________ Date for prehearing conference.

9. a. MEETING: Counsel for the parties met on ________________ (date) to discuss case management issues.

b. ADR PROCESS: (check one):

___ Counsel agree that ADR is appropriate and choose the following:

- ___ Mediation
- ___ Arbitration (non–binding)
- ___ Arbitration (binding)
- ___ Med–Arb
- ___ Early Neutral Evaluation
- ___ Moderated Settlement Conference
- ___ Mini–Trial
- ___ Summary Jury Trial
- ___ Consensual Special Magistrate
- ___ Impartial Fact–Finder
- ___ Other (describe) ________________

___ Counsel agree that ADR is appropriate but request that the court select the process

___ Counsel agree that ADR is NOT appropriate because:

- ___ the case implicates the federal or state constitution
- ___ other (explain with particularity) ________________
- ___ domestic violence has occurred between the parties

c. PROVIDER (check one):

___ the parties have selected the following ADR neutral: ________________

___ The parties cannot agree on an ADR neutral and request the court to appoint one.

___ The parties agreed to select an ADR neutral on or before: ________________.

d. DEADLINE: The parties recommend that the ADR process be completed by ________________ (date).

10. Please list additional information which might be helpful to the court when scheduling this matter. Include complexity of case facts that will affect readiness for final hearing and any issues that significantly affect the welfare of the children:

____

Signed: ________________ Lawyer for (Petitioner)

Attorney Reg. #: ________________

Firm: ________________

Signed: ________________ Lawyer for (Respondent)

Attorney Reg. #: ________________

Firm: ________________

Address: ______________________ Address: ______________________

Telephone: ______________________ Telephone: ______________________

Date: ______________________ Date: ______________________

(Amended effective July 1, 1997.)

[For text of Form 10. to Rule 417., see M.S. 1996, Volume 15]

Rule 418. Deposit of Wills

(a) Deposit by Testator. Any testator may deposit his or her will with the court administrator in any county subject to the following rules. Wills shall be placed in a sealed envelope with the name, address, and birth date of the testator placed on the outside. The administrator shall give a receipt to the person depositing the will.

(b) Withdrawal by Testator or Agent. Any will may be withdrawn by the testator in person upon presentation of identification and signing an appropriate receipt. A testator's attorney or other agent may withdraw the will by presenting a written authorization signed by the testator and two witnesses with the testator's signature notarized..

(c) Examination by Guardian or Conservator. A guardian or conservator of the testator may review the will upon presentation of identification bearing the photograph of the person seeking review and a copy of valid letters of guardianship or conservatorship. If the guardianship or conservatorship proceedings are venued in a county other than that where the will is filed, the required copy of the letters shall be certified by the issuing court within 30 days of the request to review the will. The will may only be examined by the guardian or conservator in the presence of the court administrator or deputy administrator, who shall reseal it after the review is completed and shall endorse on the resealed envelope the date it was opened, by whom it was opened and that the original was placed back in the envelope.

(d) Copies. No copies of the original will shall be made during the testator's lifetime.

(Added effective January 1, 1997.)

Advisory Committee Comment—1996 Amendment

This rule is new and is intended to provide a standard mechanism for handling wills deposited with the court for safekeeping. Minnesota Statutes, section 524.2–515, became effective in 1996 to permit deposit of any will by the testator. This rule is intended to provide uniform and orderly rules for deposit and withdrawal of wills that are deposited pursuant to this statute.

(Added effective January 1, 1997.)

[For text of Form 417.02 to Rule 525., see M.S. 1996, Volume 15]

APPENDIX OF FORMS

[For text of UCF–8 to UCF–10, see M.S. 1996, Volume 15]

UCF-22 (9/96)
Financial Disclosure Form

UCF-22 FINANCIAL DISCLOSURE FORM

M.S. 491A.02 subd. 9; 550.011

The purpose of this Financial Disclosure Form is to tell the JUDGMENT CREDITOR what money and property you have which may be used to pay the judgment the creditor obtained against you in the lawsuit. It also allows you to tell the creditor that some or all of your property and money is "exempt," which means that it cannot be taken to pay the judgment. You must answer every question on this form. If you need additional space, continue your answer on the back of the form or attach additional sheets if necessary. If you do not understand the questions or don't know how to fill out the form, call the court administrator for assistance or consult with an attorney.

WARNING: IF YOU CLAIM AN EXEMPTION IN BAD FAITH, OR IF THE JUDGMENT CREDITOR WRONGLY OBJECTS TO AN EXEMPTION IN BAD FAITH, THE COURT MAY ORDER THE PERSON WHO ACTED IN BAD FAITH TO PAY COSTS, ACTUAL DAMAGES, ATTORNEY FEES, AND AN EXTRA $100.

1. JUDGMENT DEBTOR Name
2. ☐ Individual ☐ Partnership ☐ Corporation ☐ Other ____
3. Street Address
4. City
5. State
6. Zip
7. Date of Birth
8. If Married, Spouse's Full Name
9. Home Telephone Number ( )
10. Employer or Business
11. Work Telephone Number ( )
12. Street Address
13. City
14. State
15. Zip
16. What are your total wages, salary, or commissions per pay period? $____________
17. How often are you paid? ☐ Daily ☐ Weekly ☐ Twice a month ☐ Monthly ☐ Other ____________
18. Do you have income from any other source? ☐ Yes ☐ No If yes, give the source and amount of the income:
____
____
19. *By answering this question, you will be able to claim the exemptions you have for wages and income. The first exemption is already checked for you, check all others that apply:*
   - ☐ I claim that 75% of my disposable (after-tax) earnings or 40 times the federal minimum wage (~~now equals~~ $170 for 40-hour week; $190 beginning 10-1-96; $206 beginning 9-1-97) is exempt (whichever is greater), unless the judgment is for child support.
   - ☐ If the judgment is for child support, I claim that the following percentage of my after tax earnings is exempt:
     - ☐ 50% (I am supporting a spouse and/or dependent child, and the child support judgment is 12 weeks old or less).
     - ☐ 45% (I am supporting a spouse and/or dependent child, and the child support judgment is more than 12 weeks old).
     - ☐ 40% (I am not supporting a spouse and/or dependent child, and the child support judgment is 12 weeks old or less).
     - ☐ 35% (I am not supporting a spouse and/or dependent child, and the child support judgment is more than 12 weeks old).
   - ☐ *I am presently receiving or have received relief based on need in the past 6 months so all my wages are exempt.*
     Type of relief you receive ____________
   - ☐ I have been an inmate in a correctional institution within the past 6 months so all my wages are exempt.
     Name institution and release date ____________
   - ☐ My income is exempt because it is: ☐ Unemployment Comp. ☐ Worker's Comp. ☐ V.A. Benefits ☐ Social Security ☐ Accident or Disability Benefits ☐ Retirement Benefits ☐ Other (specify) ____________
20. Do you have a checking or savings account? (This includes any account whether you have it by yourself or with someone else, or whether it is in your name or any other name) ☐ Yes ☐ No For each, provide the following information:

Name and Address of Bank, Credit Union or Financial Institution	Type of Account	Account Number

21. If you claimed an exemption for your wages or income, you may claim an exemption when your money is deposited in a bank. Claim your exemptions by checking the boxes that apply to you:
   - ☐ The money in my account is from exempt wages, income, or benefits.
   - ☐ The money in my account is from the exempt sale of my homestead within the past year.
   - ☐ The money in my account is from exempt life insurance received on the death of a spouse or parent.
   - ☐ The money in my account is from other exempt property (specify) ____________
22. Do you have any stocks, bonds, securities, certificates of deposit, mutual funds, money market account, etc.? (This includes any whether owned by you alone or with any other person, or whether it is in your name or any other name.) ☐ Yes ☐ No If yes, itemize these and the location of each:
____
____

23. Do you own your home? ☐ Yes ☐ No Your homestead (house owned and occupied by you) is exempt up to a value of $200,000, or if used primarily for agricultural purposes, $500,000. Do you own any other houses, land, or real estate? ☐ Yes ☐ No For each, give the following:

Location	Estimated Value	Amount Owed (if any)	To Whom

24. Do you own any motor vehicles, motorcycles, boats, snowmobiles, trailers, etc.? ☐ Yes ☐ No For each, provide the following:

Make	Model	Year	Lic. Plate No.	Market Value	Amount You Owe (If any)

One motor vehicle worth up to $3,400 (or $34,000 if the vehicle has been modified at a cost of at least $2,550 to accommodate a physical disability making a disabled person eligible for a parking permit under Minnesota Statutes, section 169.345) after subtracting what you owe is exempt. Which vehicle do you want to claim as exempt?

____

25. Do you own any of the following property?

Cash or travelers checks ☐ Yes ☐ No

Household goods, furnishings, and personal effects that are worth more than $7,650 total ☐ Yes ☐ No

Jewelry ☐ Yes ☐ No

Coins or stamp collections ☐ Yes ☐ No

Firearms/Guns ☐ Yes ☐ No

Life insurance policy with a cash (surrender) value more than $6,800 ☐ Yes ☐ No

Any property that you are selling on a contract for deed ☐ Yes ☐ No

Farm supplies, implements, livestock, grain worth more than $13,000 ☐ Yes ☐ No

Business equipment, tools, machinery worth more than $8,500 total ☐ Yes ☐ No

Inventory ☐ Yes ☐ No

Accounts receivable/claims ☐ Yes ☐ No

Are you the owner or partner in any business not already listed ☐ Yes ☐ No

Any other property please specify ____________________ ☐ Yes ☐ No

If you answered yes to any item in question 25, provide the following information:

Description and location of property (If not at residence)	Estimated Value	Amount Owed (if any)	To Whom

If you need additional space to answer the questions, continue your answers here. Indicate the question number your are answering. Attach additional sheets if necessary.

____

____

____

____

____

____

____

____

____

____

____

____

The above information is true and correct to the best of my knowledge.

Date: ____________________ Signature: ____________________

NOTICE: FAILURE TO COMPLETE, SIGN, AND RETURN THIS FORM TO THE JUDGMENT CREDITOR WITHIN 10 DAYS MAY RESULT IN A CITATION FOR CIVIL CONTEMPT OF COURT.

[For text of 601. to 814., see M.S. 1996, Volume 15]