

GENERAL RULES OF PRACTICE

General Rules of Practice for the District Courts

Adopted September 5, 1991 Effective January 1, 1992
With amendments received through August 1, 2005

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TEXT OF RULES

TITLE I - RULES APPLICABLE TO ALL COURT PROCEEDINGS

[For text of Rule 1. to Rule 10., see M.S. 2004, Volume 14]

Rule 11. Submission of Confidential Information

Revisor's Note: By order of the Supreme Court, dated May 6, 2005, Rule 11 applies to pleadings and other documents submitted to, or judgments, orders, decisions, and notices issued by the court on or after July 1, 2005.

Rule 11.01 Definitions

The following definitions apply for the purposes of this rule:

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

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

Rule 11.02 Restricted Identifiers

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

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

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

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

(b) Records Generated by the Court. Restricted identifiers maintained by the court in its register of actions (i.e., activity summary or similar information that lists the title, origination, activities, proceedings and filings in each case), calendars, indexes, and judgment docket shall not be accessible to the public. Courts shall not include restricted identifiers on judgments, orders, decisions, and notices except on the Confidential Information Form (Form 11.1), which shall not be accessible to the public.

Rule 11.03 Sealing Financial Source Documents

Financial source documents shall be submitted to the court under a cover sheet designated "Sealed Financial Source Documents" and substantially in the form set forth as Form 11.2 appended to these rules. Financial source documents submitted with the required cover sheet are not accessible to the public except as provided in Rule 11.05 of these rules. The cover sheet or copy of it shall be accessible to the public. Financial source documents that are not submitted with the required cover sheet and that contain restricted identifiers are accessible to the public, but the court may, upon motion or on its own initiative, order that any such financial source document be sealed.

Rule 11.04 Failure to Comply

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

Rule 11.05 Procedure for Requesting Access to Sealed Financial Source Documents

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

(b) Waiver of Notice. If the person seeking access cannot locate a party to provide the notice required under this rule, after making a good faith reasonable effort to provide such notice as required by applicable court rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provisions of this rule. The court may waive the notice requirements of this rule if the court finds that further good faith efforts to locate the party are unlikely to be successful.

(c) Balancing Test. The court shall allow access to Sealed Financial Source Documents, or relevant portions of the documents, if the court finds that the public

interest in granting access or the personal interest of the person seeking access outweighs the privacy interests of the parties or dependent children. In granting access the court may impose conditions necessary to balance the interests consistent with this rule.

Advisory Committee Comment - 2005 Adoption

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

New in 2005 is the procedure for obtaining access to restricted identifiers and sealed financial source documents. This process requires the court to balance the competing interest involved. See, e.g., Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197 (Minn. 1986) (when party seeks to restrict access to settlement documents and transcripts of settlement hearings made part of civil court file by statute, court must balance interests favoring access, along with presumption in favor of access, against those asserted for restricting access).

(Added effective July 1, 2005.)

APPENDIX OF FORMS

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

State of Minnesota

District Court

County of _____

_____ Judicial District

Case Type: _____

Case No. _____

Plaintiff/Petitioner

and

CONFIDENTIAL INFORMATION FORM
(Provided in Accordance With
Rule 11 of the Minnesota
General Rules of Practice)

Defendant/Respondent

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

NAME

SOCIAL SECURITY NUMBER
EMPLOYER IDENTIFICATION
NUMBER AND FINANCIAL
ACCOUNT NUMBERS

Plaintiff/
Petitioner 1. _____
 2. _____
 3. _____

Defendant/
Respondent 1. _____
 2. _____
 3. _____

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

Information supplied

by: _____

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

Signed: _____

Attorney Reg. #: _____

Firm: _____

Address: _____

Date: _____

(Added effective July 1, 2005.)

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

State of Minnesota

District Court

County of _____

_____ Judicial District

Case Type: _____

Case No. _____

Plaintiff/Petitioner

and

Defendant/Respondent

SEALED FINANCIAL SOURCE DOCUMENTS
(Provided in Accordance With Rule 11.02 of the Minnesota General Rules of Practice)

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

Income tax records
Periods covered: _____

Bank statements
Periods covered: _____

Pay stubs
Periods covered: _____

Credit card statement
Periods covered: _____

Other: _____

Information supplied

by: _____

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

Signed: _____

Attorney Reg. #: _____

Firm: _____

Address: _____

Date: _____

(Added effective July 1, 2005.)

TITLE II - RULES GOVERNING CIVIL ACTIONS
PART A - PLEADINGS, PARTIES, AND LAWYERS

[For text of Rule 101. to Rule 107., see M.S. 2004, Volume 14]

Rule 108. Guardian Ad Litem

Rule 108.01 Role of Guardian Ad Litem

Whenever the court appoints a guardian ad litem, the guardian ad litem shall be furnished copies of all pleadings, documents and reports by the party or agency which served or submitted them. A party or agency submitting, providing or serving reports and documents to or on a party or the court, shall provide copies promptly thereafter to the guardian ad litem.

Upon motion, the court may extend the guardian ad litem's powers as it deems necessary. Except upon a showing of exigent circumstance, the guardian ad litem shall submit any recommendations, in writing, to the parties and to the court at least 10 days prior to any hearing at which such recommendations shall be made. For purposes of all oral communications between a guardian ad litem and the court, the guardian ad litem shall be treated as a party.

(Amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

Rule 108.02 Other Guardian Ad Litem Roles Distinguished

A guardian ad litem appointed under this Rule is not a guardian ad litem within the meaning of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court and is not governed by those rules except when appointed in a paternity action.

(Added effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

Rule 108.03 Guardian Ad Litem Not Lawyer for Any Party

The guardian ad litem shall not be a lawyer for any party to the action.

Cross Reference: Minn. R. Civ. P. 17.

(Renumbered and amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

[For text of Rule 109. to Rule 110., see M.S. 2004, Volume 14]

PART B - SCHEDULING

[For text of Rule 111. to Rule 113., see M.S. 2004, Volume 14]

Rule 114. Alternative Dispute Resolution

[For text of Rule 114.01, see M.S. 2004, Volume 14]

Rule 114.02 Definitions

The following terms shall have the meanings set forth in this rule in construing these rules and applying them to court-affiliated ADR programs.

(a) ADR Processes.

Adjudicative Processes

(1) *Arbitration.* A forum in which a neutral third party renders a specific award after presiding over an adversarial hearing at which each party and its counsel present its position. If the parties stipulate in writing that the arbitration will be binding, then the proceeding will be conducted pursuant to the Uniform Arbitration Act (Minnesota Statutes, sections 572.08-.30.). If the parties do not stipulate that the arbitration will be binding, then the award is non-binding and will be conducted pursuant to Rule 114.09.

(2) *Consensual Special Magistrate*. A forum in which the parties present their positions to a neutral in the same manner as a civil lawsuit is presented to a judge. This process is binding and includes the right of appeal to the Minnesota Court of Appeals.

(3) *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

(4) *Early Neutral Evaluation (ENE)*. A forum in which attorneys present the core of the dispute to a neutral evaluator in the presence of the parties. This occurs after the case is filed but before discovery is conducted. The neutral then gives an assessment of the strengths and weaknesses of the case. If settlement does not result, the neutral helps narrow the dispute and suggests guidelines for managing discovery.

(5) *Non-Binding Advisory Opinion*. A forum in which the parties and their counsel present their position before one or more neutral(s). The neutral(s) then issue(s) a non-binding advisory opinion regarding liability, damages or both.

Investigation and Report Process

(6) *Neutral Fact Finding*. A forum in which a neutral investigates and analyzes a factual dispute and issues findings. The findings are non-binding unless the parties agree to be bound by them.

Facilitative Processes

(7) *Mediation*. A forum in which a neutral third party facilitates communication between parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties.

Hybrid Processes

(8) *Mini-Trial*. A forum in which each party and their counsel present its position before a selected representative for each party, a neutral third party, or both, to develop a basis for settlement negotiations. A neutral 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 any deadlocked issues.

(10) *Other*. Parties may by agreement create an ADR process. They shall explain their process in the Informational Statement.

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

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective August 31, 1998; amended effective January 1, 2005.)

Rule 114.03 Notice of ADR Processes

(a) *Notice*. The court administrator shall provide, on request, 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; amended effective January 1, 2005.)

Rule 114.04 Selection of ADR Process

(a) Conference. After the service of a complaint or petition, the parties shall promptly confer regarding case management issues, including the selection and timing of the ADR process. Following this conference ADR information shall be included in the informational statement required by Rule 111.02 and 304.02.

In family law matters, the parties need not meet and confer where one of the parties claims to be the victim of domestic abuse by the other party or where the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party. In such cases, both parties shall complete and submit form 9A or 9B, specifying the form(s) of ADR the parties individually prefer, not what is agreed upon.

(b) Court Involvement. If the parties cannot agree on the appropriate ADR process, the timing of the process, or the selection of neutral, or if the court does not approve the parties' agreement, the court shall, in cases subject to Rule 111, schedule a telephone or in-court conference of the attorneys and any unrepresented parties within thirty days after the due date for filing informational statements pursuant to Rule 111.02 or 304.02 to discuss ADR and other scheduling and case management issues.

Except as otherwise provided in Minnesota Statutes, section 604.11 or Rule 310.01, the court at its discretion may order the parties to utilize one of the non-binding processes; provided that no ADR process shall be approved if the court finds that ADR is not appropriate or if it amounts to a sanction on a non-moving party.

(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).

(Added effective July 1, 1994; amended effective January 1, 1996; amended effective July 1, 1997; amended effective January 1, 2005.)

Rule 114.05 Selection of Neutral

(a) Court Appointment. If the parties are unable to agree on either a neutral or the date upon which the neutral will be selected, the court shall, in those cases subject to Rule 111, appoint a qualified neutral at the time of the issuance of the scheduling order required by Rule 111.03 or 304.03. In cases not subject to Rule 111, the court may appoint a qualified neutral at its discretion, after obtaining the views of the parties. In all cases the order may establish a deadline for the completion of the ADR process.

(b) Exception from Qualification. Except when mediation or med-arb is chosen as a dispute resolution process, the court, in its discretion, or upon recommendation of the parties, may appoint a neutral who does not qualify under Rule 114.12 of these rules, if the appointment is based on legal or other professional training or experience. A neutral so selected shall be deemed to consent to the jurisdiction of the ADR Review Board and compliance with the Code of Ethics set forth in the Appendix to Rule 114.

(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 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 may conduct a custody investigation, or evaluation only (1) where the parties

agree in writing executed after the termination of mediation, that the neutral shall conduct the investigation or evaluation; or (2) where there is no other person reasonably available to conduct the investigation or evaluation. Where the neutral is also the sole investigator for a county agency charged with making recommendations to the court regarding child custody and visitation, the neutral may make such recommendations, but only after the court administrator has made all reasonable attempts to obtain reciprocal services from an adjacent county. Where such reciprocal services are obtainable, the custody evaluation must be conducted by a person from the adjacent county agency, and not by the neutral who served in the family law matter.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005.)

Rule 114.06 Time and Place of Proceedings

(a) Notice. The court shall send to the neutral a copy of the Order of Appointment.

(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; amended effective January 1, 2005.)

Rule 114.07 Attendance at ADR Proceedings

(a) Privacy. Non-binding ADR processes are not open to the public except with the consent of all parties.

(b) Attendance. The court may require that the attorneys who will try the case attend ADR proceedings.

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

(d) Attendance at Non-Adjudicative Sessions. Individuals with the authority to settle the case shall attend non-adjudicative processes aimed at settlement of the case, such as mediation, mini-trial, or med-arb, 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; amended effective January 1, 2005.)

Rule 114.08 Confidentiality

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

(b) Inadmissibility. Subject to Minnesota Statutes, section 595.02, and except as provided in paragraphs (a) and (d), no statements made nor documents produced in non-binding ADR processes which are not otherwise discoverable shall be subject to discovery or other disclosure. Such evidence is inadmissible for any purpose at the trial, including impeachment.

(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; amended effective January 1, 2005.)

Implementation Committee Comments—1993

If a candid discussion of the issues is to take place, parties need to be able to trust that discussions held and notes taken during an ADR proceeding will be held in confidence.

This proposed rule is important to establish the subsequent evidentiary use of statements made and documents produced during ADR proceedings. As a general rule, statements in ADR processes that are intended to result in the compromise and settlement of litigation would not be admissible under Minn. R. Evid. 408. This rule underscores and clarifies that the fact that ADR proceedings have occurred or what transpired in them. Evidence and sworn testimony offered in summary jury trials and other similar related proceedings is not excluded from admissibility by this rule, but is explicitly treated as other evidence or as in the other sworn testimony or evidence under the rules of evidence. Former testimony is excepted from the hearsay rule if the witness is unavailable by Minn. R. Evid. 804(b)(1). Prior testimony may also be admissible under Minn. R. Evid. 613 as a prior statement.

(Amended effective January 1, 2005.)

Advisory Committee Comment—2004 Amendment

The amendment of this rule in 1996 is intended to underscore the general need for confidentiality of ADR proceedings. It is important to the functioning of the ADR process that the participants know that the ADR proceedings will not be part of subsequent (or underlying) litigation. Rule 114.08(a) carries forward the basic rule that evidence in ADR proceedings is not to be used in other actions or proceedings. Mediators and lawyers for the parties, to the extent of their participation in the mediation process, cannot be called as witnesses in other proceedings. 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; amended effective January 1, 2005.)

Rule 114.09 Arbitration Proceedings

(a) General.

Parties are free to opt for binding or non-binding arbitration. Whether they elect binding or non-binding arbitration, the parties may construct or select a set of rules to govern the process. The agreement to arbitrate must state what rules govern. If the parties elect binding arbitration, and their agreement to arbitrate is otherwise silent, the arbitration will be deemed to be conducted pursuant to Minnesota Statutes, section 572.08 *et seq.* (“Uniform Arbitration Act”). If they elect non-binding arbitration, and their agreement is otherwise silent, they shall conduct the arbitration pursuant to Rule 114.09, subsections (b)-(f). Parties are free, however, to contract to use provisions from

both processes or to modify the arbitration procedure as they deem appropriate to their case.

(b) Evidence.

(1) Except where a party has waived the right to be present or is absent after due notice of the hearing, the arbitrator and all parties shall be present at the taking of all evidence.

(2) The arbitrator shall receive evidence that the arbitrator deems necessary to understand and determine the dispute. Relevancy shall be liberally construed in favor of admission. The following principles apply:

(I) *Documents.* If copies have been delivered to all other parties at least 10 days prior to the hearing, 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. 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. If the property was repaired, the statement must indicate whether the estimated repairs were made in full or in part and must be accompanied by a copy of the receipted bill showing the items repaired and the amount paid. The arbitrator shall not consider any police report opinion as to ultimate fault. In family law matters, the arbitrator may consider property valuations, business valuations, custody reports and similar documents.

(II) *Other Reports.* The written statement of any other witness, including written reports of expert witnesses not enumerated above and statements of opinion which the witness would be qualified to express if testifying in person, shall be received in evidence if: (1) copies have been delivered to all other parties at least 10 days prior to the hearing; and (2) no other party has delivered to the proponent of the evidence a written demand at least 5 days before the hearing that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to the rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(III) *Depositions.* Subject to objections, the deposition of any witness shall be received in evidence, even if the deponent is not unavailable as a witness and if no exceptional circumstances exist, if: (1) the deposition was taken in the manner provided for by law or by stipulation of the parties; and (2) not fewer than 10 days prior to the hearing, the proponent of the deposition serves on all other parties notice of the intention to offer the deposition in evidence.

(IV) *Affidavits.* The arbitrator may receive and consider witness affidavits, but shall give them only such weight to which they are entitled 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) Attorneys must obtain subpoenas for attendance at hearings through the court administrator, pursuant to Minn. R. Civ. P. 45. The party requesting the subpoena shall modify the form of the subpoena to show that the appearance is before the arbitrator and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be grounds for an adjournment or continuance of the hearing. If any witness properly served with a subpoena fails to appear or refuses to be sworn or answer, the court may conduct proceedings to compel compliance.

(c) Powers of Arbitrator

The arbitrator has the following powers:

(1) to administer oaths or affirmations to witnesses;

(2) to take adjournments upon the request of a party or upon the arbitrator's initiative;

(3) to permit testimony to be offered by deposition;

(4) to permit evidence to be introduced as provided in these rules;

(5) to rule upon admissibility and relevance of evidence offered;

(6) to invite the parties, upon reasonable notice, to submit pre-hearing or post-hearing briefs or pre-hearing statements of evidence;

(7) to decide the law and facts of the case and make an award accordingly;

(8) to award costs, within statutory limits;

(9) to view any site or object relevant to the case; and

(10) any other powers agreed upon by the parties.

(d) Record

(1) No record of the proceedings shall be made unless permitted by the arbitrator and agreed to by the parties.

(2) The arbitrator's personal notes are not subject to discovery.

(e) The Award

(1) No later than 10 days from the date of the arbitration hearing or the arbitrator's receipt of the final post-hearing memorandum, whichever is later, 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 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 90 days after its entry, a party against whom a judgment is entered pursuant to an arbitration award may move to vacate the judgment on only those grounds set forth in Minnesota Statutes Chapter 572.

(f) Trial after Arbitration

(1) Within 20 days after the arbitrator files the decision with the court, any party may request a trial by filing a request for trial with the court, along with proof of service upon all other parties. This 20-day period shall not be extended.

(2) The court may set the matter for trial on the first available date, or shall restore the case to the civil calendar in the same position as it would have had if there had been no arbitration.

(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; amended effective January 1, 2005.)

Rule 114.10 Communication with Neutral

(a) Adjudicative Processes. Neither the parties nor their representatives shall communicate ex parte with the neutral unless approved in advance by all parties and the neutral.

(b) Non-Adjudicative Processes. Parties and their counsel may communicate ex parte with the neutral in non-adjudicative ADR processes with the consent of the neutral, so long as the communication encourages or facilitates settlement.

(c) Communications to Court during ADR Process. During an ADR process the court may be informed only of the following:

- (1) The failure of a party or an attorney to comply with the order to attend the process;
- (2) Any request by the parties for additional time to complete the ADR process;
- (3) With the written consent of the parties, any procedural action by the court that would facilitate the ADR process; and
- (4) The neutral's assessment that the case is inappropriate for that ADR process.

(d) Communications to Court after ADR Process. When the ADR process has concluded, the court may only be informed of the following:

- (1) If the parties do not reach an agreement on any matter, the neutral shall report the lack of an agreement to the court without comment or recommendations;
- (2) If agreement is reached, any requirement that its terms be reported to the court should be consistent with the jurisdiction's policies governing settlements in general; and
- (3) With the written consent of the parties, the neutral's report also may identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005.)

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 qualifies for waiver of filing fees under Minnesota Statutes, section 563.01, or if 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; amended effective January 1, 2005.)

Rule 114.12 Rosters of Neutrals

(a) Roster. The State Court Administrator shall establish one roster of neutrals for civil matters and one roster of neutrals for family law. Each roster shall be updated and published on a regular basis. The State Court Administrator shall not place on, and shall delete from, the rosters the name of any applicant or neutral whose professional license has been revoked. A qualified neutral may not provide services during a period of suspension of a professional license. The State Court Administrator shall review applications from those who wish to be listed on the roster of qualified neutrals, which shall include those who meet the training requirements established in Rule 114.13, or who have received a waiver under Rule 114.14.

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

(Added effective July 1, 1997; amended effective January 1, 2005.)

Rule 114.13 Training, Standards and Qualifications for Neutral Rosters

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

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

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

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

(4) Mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, standards of practice and mediator introduction pursuant to the Civil Mediation Act, 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 Neutrals. All qualified neutrals serving in arbitration, summary jury trial, early neutral evaluation and adjudicative or evaluative processes or serving as a consensual special magistrate must have received a minimum of 6 hours of classroom training on the following topics:

(1) Pre-hearing communications between parties and between parties and neutral; and

(2) Components of the hearing process including evidence; presentation of the case; witness, exhibits, and objectives; awards; and dismissals; and

(3) Settlement techniques; and

(4) Rules, statutes, and practices covering arbitration in the trial court system, including Supreme Court ADR rules, special rules of court and applicable state and federal statutes; and

(5) Management of presentations made during early neutral evaluation procedures and moderated settlement conferences.

(c) Family Law Facilitative Neutrals.

All qualified neutrals serving in family law facilitative processes must have:

(1) Completed or taught a minimum of 40 hours of family mediation training which is certified by the Minnesota Supreme Court. The certified training shall include at least:

(a) 4 hours of conflict resolution theory;

(b) 4 hours of psychological issues related to separation and divorce, and family dynamics;

(c) 4 hours of the issues and needs of children in divorce;

(d) 6 hours of family law including custody and visitation, support, asset distribution and evaluation, and taxation as it relates to divorce;

(e) 5 hours of family economics; and,

(f) 2 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 5 hours of family economics. The certified training shall consist of at least 40 percent role-playing and simulations.

(2) Completed or taught a minimum of 6 hours of certified training in domestic abuse issues, which may be a part of the 40-hour training above, to include at least:

(a) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(b) 3 hours of domestic abuse screening, including simulations or role-playing; and,

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

(d) Family Law Adjudicative Neutrals.

All qualified neutrals serving in a family law adjudicative capacity must have had at least 5 years of professional experience in the area of family law and be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure; professional certification; faculty membership of approved continuing education courses for family law; service as court-appointed adjudicative neutral, including consensual special magistrates; service as referees or guardians ad litem; or acceptance by peers as experts in their field. All qualified family law adjudicative neutrals shall have also completed or taught a minimum of 6 hours of certified training on the following topics:

(1) Pre-hearing communications among parties and between the parties and neutral(s);

(2) Components of the family court hearing process including evidence, presentation of the case, witnesses, exhibits, awards, dismissals, and vacation of awards;

(3) Settlement techniques; and,

(4) Rules, statutes, and practices pertaining to arbitration in the trial court system, including Minnesota Supreme Court ADR rules, special rules of court, and applicable state and federal statutes.

In addition to the 6-hour training required above, all qualified family law adjudicative neutrals must have completed or taught a minimum of 6 hours of certified training in domestic abuse issues, to include at least:

(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(2) 3 hours of domestic abuse screening, including simulations or role-playing; and,

(3) 1 hour of legal issues relative to domestic abuse cases.

(e) Family Law Evaluative Neutrals: All qualified neutrals offering early neutral evaluations or non-binding advisory opinions (1) shall have at least 5 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 (2) shall have completed or taught a minimum of 2 hours of certified training on management of presentations made during evaluative processes. Evaluative neutrals shall have knowledge on all issues on which they render opinions.

In addition to the 2-hour training required above, all qualified family law evaluative neutrals must have completed or taught a minimum of 6 hours of certified training in domestic abuse issues, to include at least:

(1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(2) 3 hours of domestic abuse screening, including simulations or role-playing; and,

(3) 1 hour of legal issues relative to domestic abuse cases.

(f) Exceptions to Roster Requirements. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be included on the State Court Administrator's roster.

(g) Continuing Training. All qualified neutrals providing facilitative or hybrid services must attend 18 hours of continuing education about alternative dispute resolution subjects within the 3-year period in which the qualified neutral is required to complete the continuing education requirements. All other qualified neutrals must attend 9 hours of continuing education about alternative dispute resolution subjects during the 3-year period in which the qualified neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences. The qualified neutral is responsible for maintaining attendance records and shall disclose the information to program administrators and the parties to any dispute. The qualified neutral shall submit continuing education credit information to the State Court Administrator's office within sixty days after the close of the period during which his or her education requirements must be completed.

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

(Added effective July 1, 1994; amended and renumbered effective July 1, 1997; amended effective March 1, 2001; amended effective January 1, 2005.)

Rule 114.14 Waiver of Training Requirement

A neutral seeking to be included on the roster of qualified neutrals without having to complete training requirements under Rule 114.13 shall apply for a waiver to the Minnesota Supreme Court ADR Review Board. Waivers may be granted when an individual's training and experience clearly demonstrate exceptional competence to serve as a neutral.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005.)

[For text of Code of Ethics, see M.S. 2004, Volume 14]

RULE 114 APPENDIX CODE OF ETHICS ENFORCEMENT PROCEDURE

Effective August 31, 2000

I. Scope

[For text of I., see M.S. 2004, Volume 14]

Advisory Comment

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

Minn. Gen. R. Prac. 114.02(b): "Neutral. A 'neutral' is an individual or organization that provides an ADR process. A 'qualified neutral' is an individual or organization included on the State Court Administrator's roster as provided in Rule 114.12. An

individual neutral must have completed the training and continuing education requirements provided in Rule 114.13. An individual neutral provided by an organization also must meet the training and continuing education requirements of Rule 114.13. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be on the State Court Administrator's roster."

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

(Amended effective January 1, 2005.)

II. Procedure

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

B. The Board shall review the complaint to determine whether the allegations(s), if true, constitute a violation of the Code of Ethics.

C. If the allegations(s) of the complaint do not constitute a violation of the Code of Ethics, the complaint shall be dismissed and the complainant and the neutral shall be notified in writing.

D. If the Board concludes that the allegations of the complaint, if true, constitute a violation of the Code of Ethics, the Board will undertake such review, investigation, and action it deems appropriate. In all such cases, the Board shall send to the neutral, by certified mail, a copy of the complaint, a list identifying the ethical rules which may have been violated, and a request for a written response to the allegations and to any specific questions posed by the Board. It shall not be considered a violation of Rule 114.08(e) of the Minnesota General Rules of Practice or of Rule IV of the Code of Ethics, Rule 114 Appendix, for the neutral to disclose notes, records, or recollections of the ADR process complained of as part of the complaint procedure. Except for good cause shown, if the neutral fails to respond to the complaint in writing within thirty (30) days, the allegations(s) shall be deemed admitted.

E. The Board, at its discretion, may refer the complainant and neutral to mediation conducted by a volunteer qualified neutral to resolve the issues raised by the complainant. Mediation shall proceed only if both the complainant and neutral consent. If the complaint is resolved through mediation, the Board shall dismiss the complaint, unless the resolution includes sanctions to be imposed by the Board. If no agreement is reached in mediation, the Board shall determine whether to proceed further.

F. After review and investigation, the Board shall advise the complainant and neutral of the Board's action in writing by certified mail sent to their respective last known addresses. Upon request within fourteen (14) days from receipt of the Board's action on the complaint, the neutral shall be entitled to a hearing before a three-member panel of the Board to contest proposed sanctions or findings. The neutral shall have the right to defend against all charges, to be represented by an attorney, and to examine and cross-examine witnesses. The Board shall receive evidence that the Board deems necessary to understand and determine the dispute. Relevancy shall be liberally construed in favor of admission. The Board shall make an electronic recording of the proceedings. The Board at its own initiative, or by request of the neutral, may issue subpoenas for the attendance of witnesses and the production of documents and other evidentiary matter. If the neutral does not file a request for hearing as prescribed, the Board's decision becomes final.

G. The neutral or the complainant may appeal the panel decision to the Board, which shall conduct a de novo review of the existing record. An appeal must be filed in writing with the ADR Review Board within fourteen (14) days from receipt of the

panel's decision. The party that appeals shall pay for the record to be transcribed. The decision of the Board shall be final.

(Amended effective January 1, 2005.)

III. Sanctions

A. The Board may impose sanctions, including but not limited to:

- (1) Issue a private reprimand.
- (2) Designate the corrective action necessary for the neutral to remain on the roster.
- (3) Notify the appointing court and any professional licensing authority with which the neutral is affiliated of the complaint and its disposition.
- (4) Publish the neutral's name, a summary of the violation, and any sanctions imposed.
- (5) Remove the neutral from the roster of qualified neutrals, and set conditions for reinstatement.

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

C. Sanctions against an organization may be imposed for its ethical violation and its member's violation if the member is acting within the rules and directives of the organization.

(Amended effective January 1, 2005.)

[For text of IV. and V., and Part C., see M.S. 2004, Volume 14]

PART D - MISCELLANEOUS MOTION PRACTICE

[For text of Rule 116. to Rule 118., see M.S. 2004, Volume 14]

Rule 119. Applications for Attorney Fees

[For text of Rule 119.01 to Rule 119.04, see M.S. 2004, Volume 14]

Rule 119.05 Attorney Fees in Default Proceedings

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

- (1) the fees requested do not exceed fifteen percent (15%) of the principal balance owing as requested in that party's pleadings, up to a maximum of \$3,000.00. Such a party may seek a minimum of \$250.00; and
- (2) the requesting party's pleading includes a claim for attorney fees in an amount greater than or equal to the amount sought upon default; and
- (3) the defaulting party, after default has occurred, has been provided notice of the right to request a hearing under section (c) of this rule, a form for making such a request substantially similar to Form 119.05, and the affidavit required under Rule 119.02.

(b) A party may request a formal hearing and seek fees in excess of the amount described herein if that party provides the court with evidence relevant to the amount of attorneys' fees requested as established by the factors a court considers when determining the reasonableness of the attorneys' fees.

(c) A defaulting party may request a hearing and further judicial review of the attorneys' fees requested by completing a "Request for Hearing" provided by the plaintiff substantially similar to Form 119.05. A party may serve the form, at any time after a default has occurred, provided that the defaulting party is given at least twenty (20) days notice before the request for judgment is made. A defaulting party must serve the Request for Hearing upon the requesting party or its counsel within twenty (20) days of its receipt. Upon timely receipt of a Request for Hearing the party seeking fees shall request a judicial assignment and have the hearing scheduled.

(d) Rule 119.05 does not apply to contested cases, ancillary proceedings (e.g., motions to compel or show cause) or proceedings subsequent to the entry of judgment.

(Added effective January 1, 2004; amended effective January 1, 2005.)

Advisory Committee Comment—1997 Amendment

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

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

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

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

(Added effective January 1, 1997; amended effective December 7, 1997; amended effective January 1, 1998; amended effective January 1, 2005.)

Advisory Committee Comment - 2003 Amendment

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

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

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

(Added effective January 1, 2004; amended effective January 1, 2005.)

Advisory Committee Comment - 2004 Adoption

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

(Added effective January 1, 2005.)

[For text of Part E. to Part H., and Title III., see M.S. 2004, Volume 14]

TITLE IV - RULES OF FAMILY COURT PROCEDURE

[For text of Rule 301., see M.S. 2004, Volume 14]

Rule 302. Commencement; Continuance; Time; Parties

[For text of Rule 302.01 to Rule 302.03, see M.S. 2004, Volume 14]

Rule 302.04 Designation of Parties

(a) Petitioner and Respondent. Parties to dissolution, legal separation, annulment, custody, domestic abuse, U.C.C.J.A., and R.U.R.E.S.A. proceedings shall be designated as petitioner (joint petitioners) and respondent. Parties to parentage and Minnesota Statutes, section 256.87 reimbursement actions shall be designated as plaintiff and

defendant. After so designating the parties, it is permissible to refer to them as husband and wife by inserting the following in any petition, order, decree, etc.:

Petitioner is hereinafter referred to as (wife/husband), and respondent as (husband/wife).

(b) Guardians Ad Litem. Appointment of a guardian ad litem is governed by the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. A guardian ad litem for minor children may be designated a party to the proceedings in the order of appointment. If the child is made a party to the proceeding, then the child's guardian ad litem shall also be made a party.

(Amended effective for guardian ad litem appointments in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

[For text of Rule 303. to Rule 312., see M.S. 2004, Volume 14]

Rule 313. Confidential Numbers and Tax Returns

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

(Amended effective July 1, 2005.)

Rules 313.01-313.03 (Deleted effective July 1, 2005.)

EXPEDITED CHILD SUPPORT PROCESS RULES

Effective July 1, 2001

I. GENERAL RULES

[For text of Rule 351. to Rule 356., see M.S. 2004, Volume 14]

RULE 357. LEGAL REPRESENTATION AND APPOINTMENT OF GUARDIAN AD LITEM

[For text of Rule 357.01 to Rule 357.03, see M.S. 2004, Volume 14]

Rule 357.04. Appointment of Guardian Ad Litem

Subdivision 1. Applicability of Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. Child support magistrates shall appoint guardians ad litem to advocate for the best interests of children when required under Minn. Stat., section 518.165. When a child support magistrate determines that the appointment of a guardian ad litem is necessary, that appointment shall be made according to the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

(Amended effective for guardian ad litem appointments in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

[For text of Rule 358. to Rule 360., see M.S. 2004, Volume 14]

RULE 361. DISCOVERY

[For text of Rule 361.01, see M.S. 2004, Volume 14]

Rule 361.02. Exchange of Documents

Subdivision 1. Documents Required to be Provided Upon Request. If a complaint or motion has been served and filed in the expedited process, a party may request any of the documents listed below. The request must be in writing and served upon the appropriate party. The request may be served along with the pleadings. A party shall provide the following documents to the requesting party no later than ten (10) days from the date of service of the written request.

(a) Verification of income, health/dental insurance costs and availability, child care costs, and expenses.

(b) Copies of last three months of pay stubs.

(c) A copy of last two years' State and Federal income tax returns with all schedules and attachments, including Schedule Cs, W-2s and/or 1099s.

(d) Written verification of any voluntary payments made for support.

(e) Written verification of any other court-ordered child support obligations.

Subd. 2. Remedies for Non-compliance. If a party does not provide the documents, the party shall be prepared to explain the reason for the failure to the child support magistrate. If the magistrate determines that the documents should have been provided, the magistrate may impose the remedies available in Rule 361.04.

Subd. 3. Financial Statement. If a complaint or motion has been served, any party may request in writing that a financial statement be completed by a party, other than a county agency, and submitted five (5) days prior to hearing, or if no hearing is scheduled, within ten (10) days from the request being served. Failure to comply is subject to remedies under Rule 361.04. Where a financial statement requests supporting documentation, it shall be attached.

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

(Amended effective November 1, 2003; amended effective July 1, 2005.)

Revisor's Note: By order of the Supreme Court, dated May 6, 2005, Rule 361.02 applies to pleadings and other documents submitted to, or judgments, orders, decisions, and notices issued by the court on or after July 1, 2005.

[For text of Rule 361.03 and Rule 361.04, see M.S. 2004, Volume 14]

Rule 361.05. Filing of Discovery Requests and Responses Precluded

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

(a) ordered by the child support magistrate;

(b) filed in support of any motion;

(c) introduced as evidence in a hearing; or

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

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

(Amended effective November 1, 2003; amended effective July 1, 2005.)

Revisor's Note: By order of the Supreme Court, dated May 6, 2005, Rule 361.05 applies to pleadings and other documents submitted to, or judgments, orders, decisions, and notices issued by the court on or after July 1, 2005.

[For text of Rule 361.06 to Rule 366., see M.S. 2004, Volume 14]

**RULE 367. ADMINISTRATION OF EXPEDITED CHILD SUPPORT
PROCESS; CHILD SUPPORT MAGISTRATES**

[For text of Rule 367.01 to Rule 367.03, see M.S. 2004, Volume 14]

Rule 367.04. Conflict of Interest

Subdivision 1. Generally. A child support magistrate shall not serve as:

(a) an attorney in any family law matter within any county in which the person serves as a child support magistrate; or

(b) a guardian ad litem in any family law matter in any district in which the person serves as a child support magistrate.

Subd. 2. Disqualification. The disqualifications listed in subdivision 1 shall not be imputed to other members of a child support magistrate's law firm.

(Amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

[For text of Rule 367.05 to Rule 369., see M.S. 2004, Volume 14]

II. PROCEEDINGS

RULE 370. ESTABLISHMENT OF SUPPORT PROCEEDINGS

[For text of Rule 370.01 to Rule 370.03, see M.S. 2004, Volume 14]

Rule 370.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

(a) the original summons;

(b) the original complaint;

(c) the original supporting affidavit, if served;

(d) the request for hearing form, if returned to the initiating party; and

(e) proof of service upon each party pursuant to Rule 355.04.

Subd. 2. Responding Party. If a noninitiating party responds with a written answer pursuant to Rule 370.05, the following shall be filed with the court no later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served:

(a) the original written answer; and

(b) proof of service upon each party pursuant to Rule 355.04.

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

Revisor's Note: By order of the Supreme Court, dated May 6, 2005, Rule 370.04 applies to pleadings and other documents submitted to, or judgments, orders, decisions, and notices issued by the court on or after July 1, 2005.

[For text of Rule 370.05 to Rule 370.12, see M.S. 2004, Volume 14]

RULE 371. PARENTAGE ACTIONS

[For text of Rule 371.01 to Rule 371.03, see M.S. 2004, Volume 14]

Rule 371.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original summons;
- (b) the original complaint;
- (c) the original supporting affidavit, if served; and
- (d) proof of service upon each party pursuant to Rule 355.04.

Subd. 2. Responding Party. If a noninitiating party responds with a written response pursuant to Rule 371.05, the following, if served, shall be filed with the court no later than five (5) days before any scheduled hearing:

- (a) the original written answer; or
- (b) a request for blood or genetic testing; and
- (c) proof of service upon each party pursuant to Rule 355.04.

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

Revisor's Note: By order of the Supreme Court, dated May 6, 2005, Rule 371.04, applies to pleadings and other documents submitted to, or judgments, orders, decisions, and notices issued by the court on or after July 1, 2005.

[For text of Rule 371.05 to Rule 371.15, see M.S. 2004, Volume 14]

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

[For text of Rule 372.01 to Rule 372.03, see M.S. 2004, Volume 14]

Rule 372.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original notice of motion;
- (b) the original motion;
- (c) the original supporting affidavit;
- (d) the request for hearing form, if returned to the initiating party; and
- (e) proof of service upon each party pursuant to Rule 355.04.

Subd. 2. Responding Party. If a noninitiating party responds with a responsive motion or counter motion pursuant to Rule 372.05, the following shall be filed with the court no later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served:

- (a) the original responsive motion or counter motion; and
- (b) proof of service upon each party pursuant to Rule 355.04.

Subd. 3. To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition,

financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

Revisor's Note: By order of the Supreme Court, dated May 6, 2005, Rule 372.04 applies to pleadings and other documents submitted to, or judgments, orders, decisions, and notices issued by the court, on or after July 1, 2005.

[For text of 372.05 to Rule 379., see M.S. 2004, Volume 14]

APPENDIX OF FORMS

[For text of Forms 1. to 10., see M.S. 2004, Volume 14]

FORM 11. CONFIDENTIAL INFORMATION FORM

(Replaced by Form 11.1 in Title I, effective July 1, 2005.)

[For text of Form 12., Attachments A and B, and Title V, see M.S. 2004, Volume 14]

TITLE VI—CONCILIATION COURT RULES

[For text of Rule 501. to Rule 520., see M.S. 2004, Volume 14]

Rule 521. Removal (Appeal) to District Court

(a) **Trial de novo.** Any person aggrieved by an order for judgment entered in conciliation court after contested trial may remove the cause to district court for trial de novo (new trial). An "aggrieved person" may be either the judgment debtor or creditor.

(b) **Removal Procedure.** To effect removal, the aggrieved party must perform all the following within twenty days after the date the court administrator mailed to that party notice of the judgment order:

(1) Serve on the opposing party or the opposing party's lawyer a demand for removal of the cause to district court for trial de novo. Service shall be by first class mail. Service may also be by personal service in accordance with the provisions for personal service of a summons in district court. The demand for removal shall state whether trial demanded is to be by court or jury, and shall indicate the name, address, and telephone number of the aggrieved party's lawyer, if any. If the aggrieved party is a corporation, the demand for removal must be signed by the party's attorney.

(2) File with the court administrator the original demand for removal with proof of service. The aggrieved party may file with the court administrator within the twenty day period the original and copy of the demand together with an affidavit by the party or the party's lawyer showing that after due and diligent search the opposing party or opposing party's lawyer cannot be located. This affidavit shall serve in lieu of making service and filing proof of service. When an affidavit is filed, the court administrator shall mail the copy of the demand to the opposing party at the party's last known residence address.

(3) File with the court administrator an affidavit by the aggrieved party or that party's lawyer stating that the removal is made in good faith and not for purposes of delay.

(4) Pay to the court administrator as the fee for removal the amount prescribed by law for filing a civil action in district court, and if a jury trial is demanded under Rule 521(b)(1) of these rules, pay to the court administrator the amount prescribed by law for requesting a jury trial in a civil action in district court. A party who is unable to pay the fees may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes, section 563.01.

(c) **Demand for Jury Trial.** Where no jury trial is demanded on removal under Rule 521(b) by the aggrieved party, if the opposing party desires a jury trial that party

shall perform all the following within 20 days after the demand for removal was served on the party or lawyer:

(1) Serve a jury trial demand by first class mail upon the aggrieved party or that party's lawyer. Service may also be by personal service in accordance with the provisions for personal service of a summons in district court.

(2) File the original jury trial demand and proof of service with the court administrator.

(3) Pay to the court administrator the amount prescribed by law for requesting a jury trial in a civil action in district court and, if the demand is the first paper filed by the party in the district court proceeding, pay to the administrator the amount prescribed by law for filing a civil action in district court. A party who is unable to pay the fees may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes, section 563.01.

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

(e) Limited Removal.

(1) When a motion for vacation of an order for judgment, or judgment under Rule 520 (a) or (b) of these rules, is denied, the aggrieved party may demand limited removal to the district court for hearing de novo (new hearing) on the motion. Procedure for service and filing of the demand for limited removal and notice of hearing de novo, proof of service of the notice, and procedure in case of inability of the aggrieved party to make service on the opposing party or the opposing party's lawyer shall be in the same manner prescribed in part (b) of this rule, except that the deadline for effecting limited removal shall be twenty days after the date that the court administrator mails notice of the denial of the motion for vacation of the order for judgment or judgment. The fee payable by the aggrieved party to the court administrator for limited removal shall be the same as the filing fee prescribed by law for filing of a civil action in district court. The court administrator shall then place the matter on the special term calendar for the date specified in the notice. At the hearing in district court, either party may be represented by a lawyer.

(2) A judge other than the conciliation court judge who denied the motion, shall hear the motion de novo (anew) and may (A) deny the motion or (B) grant the motion. In determining the motion the judge shall consider the entire file plus any affidavits submitted by either party or their lawyers.

(3) The court administrator shall send by mail a copy of the order made in district court after de novo hearing to both parties and the venue shall be transferred back to conciliation court.

(Amended effective January 1, 1998; amended effective March 1, 2001; amended effective January 1, 2005.)

Cross Reference: Minn. R. Civ. P. 4.02, 4.06, 5.02, 6.01, 6.02, and 6.05.

Advisory Committee Comment - 2004 Amendments

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

Rule 521 establishes an approved and effective means of service by mail to accomplish removal of a conciliation court case to district court for trial de novo. By decision in 2004, the Minnesota Supreme Court held that a party may also rely on the different means of

service by mail contained in Minn. R. Civ. P. 4.05. See *Roehrdanz v. Brill*, 682 N.W.2d 626 (Minn. 2004). Because service under that rule may require a signed receipt from the party being served, such service may not be effective.

(Added effective January 1, 2005.)

[For text of Rule 522. to Rule 525., Appendix of Forms,
and Title VII, see M.S. 2004, Volume 14]

TITLE VIII - RULES RELATING TO CRIMINAL AND EXTENDED JURISDICTION JUVENILE MATTERS

Rule 701. Applicability of Rules

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

(Amended effective January 1, 2005.)

Rule 702. Bail

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

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

(c) **Surety Insolvency.** Whenever a corporate surety becomes insolvent, the local agent shall notify the State Court Administrator's Office and the court in every county in which it has issued or applied to issue bonds, in writing immediately. Within fourteen (14) days after such notice to the court, the agent shall file with the trial court administrator a security bond to cover outstanding obligations of insolvent surety, which may be reduced automatically as the obligations are reduced. In the absence of such surety or security bond, a summons shall be sent to all principals on the bonds of the surety.

(d) **Posting Bonds.** Before any person is released on bond, the bond must be approved by a judge after submission to the prosecuting lawyer for approval of form and execution and filed with the court administrator during business hours or thereafter with the custodian of the jail. In cases where bail has been set by the court and the defendant has provided a bail bond with corporate surety, approval by a judge is unnecessary if the bond conforms to Form 702.

(e) **Forfeiture of Bonds.** Whenever a bail bond is forfeited by a judge, the surety and bondsman shall be notified by the court administrator in writing, and be directed to make payment in accordance with the terms of the bond within ninety (90) days from the date of the order of forfeiture. A copy of the order of forfeiture shall be forwarded with the notice.

(f) Reinstatement. Any motion for reinstatement of a forfeited bond or cash bail shall be supported by a petition and affidavit and shall be filed with the court administrator. A copy of said petition and affidavit shall be served upon the prosecuting attorney and the principal of the bond in the manner required by Minn. R. Civ. P. 4.03(e)(1). A petition for reinstatement filed within ninety (90) days of the date of the order of forfeiture shall be heard and determined by the judge who ordered the forfeiture, or the chief judge. Reinstatement may be ordered on such terms and conditions as the court may require. A petition for reinstatement filed between ninety (90) days and one hundred eighty (180) days from date of forfeiture shall be heard and determined by the judge who ordered forfeiture or the judge's successor and reinstatement may be ordered on such terms and conditions as the court may require, but only with the concurrence of the chief judge and upon the condition that a minimum penalty of not less than ten per cent (10%) of the forfeited bail be imposed. No reinstatement of a forfeited bond or cash bail shall be allowed unless the petition and affidavit are filed within one hundred eighty (180) days from the date of the order of forfeiture.

(g) Forfeited Bail Money. All forfeited bail money shall be deposited in the state treasury in the manner provided by law.

(h) Bonding Privilege Suspension. A failure to make payment on a forfeited bail within ninety (90) days as above provided shall automatically suspend the surety and its agent from writing further bonds. Such suspension shall apply throughout the State of Minnesota and shall continue for a period of thirty (30) days from the date the principal amount of the bond is deposited in cash with the court administrator.

(Amended effective January 1, 1994; amended effective January 1, 1996; amended effective January 1, 1998; amended effective February 1, 2005.)

Advisory Committee Comment - 2004 Amendments

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

(Added effective February 1, 2005.)

[For text of Rule 703. to Rule 706., see M.S. 2004, Volume 14]

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

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

(a) Court reporters and operators of electronic recording equipment shall file the stenographic notes or tape recordings of guilty plea or sentencing hearings with the court administrator within 90 days of sentencing. The reporter or operator may retrieve the notes or recordings if necessary. Minnesota Statutes, section 486.03 (2002) is superseded to the extent that it conflicts with this procedure.

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

(c) The maximum rate charged for the transcription of any proceeding shall be established, until July 1, 2005, by the Conference of Chief Judges, and thereafter by the Judicial Council. Minnesota Statutes, section 486.06 (2002), is superseded to the extent that it conflicts with this procedure.

(Added effective January 1, 2005.)

Advisory Committee Comment - 2004 Amendment

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

(Added effective January 1, 2005.)

[For text of Appendix of Forms, see M.S. 2004, Volume 14]

TITLE IX—JURY MANAGEMENT RULES

[For text of Rule 801. to Rule 807., see M.S. 2004, Volume 14]

Rule 808. Qualifications for Jury Service.

(a) The jury commissioner shall determine on the basis of information provided on the juror qualification questionnaire, supplemented if necessary, whether the prospective juror is qualified for jury service. This determination shall be entered on the questionnaire or other record designated by the court.

(b) To be qualified to serve as a juror, the prospective juror must be:

- (1) A citizen of the United States.
- (2) At least 18 years old.
- (3) A resident of the county.
- (4) Able to communicate in the English language.

(5) Be physically and mentally capable of rendering satisfactory jury service. A person claiming disability may be required to submit a physician's certificate as to the disability, and the Judge may inquire of the certifying physician. A prospective qualified juror who is 70 years of age or older, who requests to be excused from jury service shall be automatically excused from service without having to submit evidence of an inability to serve.

(6) A person who has had their civil rights restored if they have been convicted of a felony.

(7) A person who has not served as a state or federal grand or petit juror in the past two years.

(c) A judge, serving in the judicial branch of the government, is disqualified from jury service.

(Amended effective July 1, 2003.)

Jury Task Force Comment - 2003 Amendment

The Minnesota Supreme Court Jury Task Force recommends that Rule 808(b)(7) of the General Rules of Practice for District Courts be amended to provide that "A person who has not served as a state or federal grand or petit juror in the past two years." This change will allow counties with a reduced term of service to have an appropriately large pool of eligible jurors on which to draw.

(Added effective July 1, 2003.)

[For text of Rule 809. to Rule 813., see M.S. 2004, Volume 14]

Rule 814. Records

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

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

(1) in a criminal case that access to any such information should be restricted in accordance with Minn. R. Crim. P. 26.02, subd. 2(2); or

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

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

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

(d) **Unqualified Public Access.** After one year has elapsed since preparation of the list and all persons selected to serve have been discharged, the contents of any records or lists, except identifying information to which access is restricted by court order and social security numbers, shall be accessible to the public.

(Amended effective July 1, 2005.)

Advisory Committee Comment - 2005 Amendment

The 2005 change to Rule 814 is intended to ensure the privacy of juror social security numbers and to reflect the constitutional limits on closure of criminal case records. Juror qualification records on a particular juror will be subject to those constitutional limits only to the extent that the juror has participated in voir dire in a criminal case. Access to completed supplemental juror questionnaires used in specific cases is governed by separate rules. See MINN. R. CIV. P. 47.01; MINN. R. CRIM. P. 26.02, subd. 2(3).

(Added effective July 1, 2005.)

**TITLE X - MINNESOTA RULES OF GUARDIAN AD LITEM
PROCEDURE IN JUVENILE AND FAMILY COURT**

Effective January 1, 1999

RULE 901. SCOPE OF RULES; IMPLEMENTATION

Rule 901.01 Scope of Rules

These Rules govern the appointment, responsibilities, and removal of guardians ad litem appointed to advocate for the best interests of the child, minor parent, or incompetent adult in family and juvenile court cases. These Rules do not govern guardians ad litem appointed pursuant to Minnesota Statutes sections 245.487-245.4888, 253B, 256B.77, 257.60(1), 494.01-494.05, 501B.19, 501B.50, 508.18; 524.1-403, 540.08, and when the person appointed as a guardian ad litem for a minor parent in a paternity action pursuant to Minnesota Rules of Civil Procedure 17.02 is the minor parent's parent or adult relative.

For purposes of Rules 902 to 907:

(a) The phrase "family court case" refers to the types of proceedings set forth in the Comment to Rule 301 of the Minnesota Rules of Family Court Procedure, including, but not limited to, marriage dissolution, legal separation, and annulment proceedings; child custody enforcement proceedings; domestic abuse and harassment proceedings; support enforcement proceedings; contempt actions in family court; parentage determination proceedings; and other proceedings that may be heard or treated as family court matters.

(b) The phrase "juvenile court case" refers to the child protection matters set forth in Rule 2.01(k) of the Minnesota Rules of Juvenile Protection Procedure, including all of the following matters: child in need of protection or services, neglected and in foster care, termination of parental rights, review of out of home placement, and other matters that may be heard or treated as child protection matters, guardianship and adoption proceedings. The phrase "juvenile court case" also refers to the juvenile delinquency proceedings set forth in Rule 1.01 of the Minnesota Rules of Juvenile Procedure.

(Amended effective January 1, 1999; amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

2004 Advisory Committee Comment

The previous Rules of Guardian Ad Litem Procedure also addressed the qualifications, recruitment, screening, training, selection, supervision, and evaluation of guardians ad litem. The administration and oversight of these issues is now the responsibility of the Office of the State Court Administrator. The issues are now to be included in a standards manual. It is the responsibility of the Office of the State Court Administrator to prepare that manual, with the advice and consent of the Conference of Chief Judges. The minimum standards set forth in the previous rules are to be maintained in the manual, together with the procedures governing complaints about the performance of a guardian ad litem. Also to be included in the manual are standards regarding knowledge and appreciation of the prevailing social and cultural standards of the Indian and other minority communities. The manual is to be published in both print and electronic forms and is to be available to the public.

(Added effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

Rule 901.02 Implementation

The chief judge of the judicial district shall be responsible for insuring the implementation of the Rules of Guardian ad Litem of Procedure. The responsibilities set forth in the Rules of Guardian ad Litem of Procedure shall be carried out in each judicial district at the direction of the judicial district administrator.

(Amended effective January 1, 1999; amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

RULE 902. MINIMUM QUALIFICATIONS

Before a person may be recommended for service as a guardian ad litem pursuant to Rule 903, the person must satisfy the following minimum qualifications:

- (a) have an abiding interest in children and their rights and needs;
- (b) have sufficient listening, speaking, and writing skills in the person's primary language to successfully conduct interviews, prepare written reports, and make oral presentations;
- (c) not have been involved in any conduct or activity that would interfere with the person's ability to discharge the duties assigned by the court;

(d) have knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served;

(e) be available for at least 18 months and have sufficient time, including evenings and weekends, to gather information, make court appearances, and otherwise discharge the duties assigned by the court;

(f) have the ability to (1) relate to a child, family members, and professionals in a careful and confidential manner; (2) exercise sound judgment and good common sense; and (3) successfully discharge the duties assigned by the court;

(g) not have been removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation; and

(h) have satisfactorily completed the pre-service training requirements and demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in Rule 905.

Additional qualifications for a guardian ad litem appointed pursuant to these Rules may be established by the Office of the State Court Administrator, with the advice and consent of the Conference of Chief Judges. Any additional qualifications shall be published in a standards manual. The standards manual shall be published in print and electronic forms and be available to the public.

(Amended effective January 1, 1999; amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

RULE 903. APPOINTMENT OF GUARDIAN AD LITEM

Rule 903.01 Order by Court; Recommendation of Guardian Ad Litem for Appointment

When the court orders the appointment of a guardian ad litem in a particular case, the district guardian ad litem manager or the manager's designee shall promptly recommend a guardian ad litem for appointment. If in the exercise of judicial discretion the court determines that the guardian ad litem recommended is not appropriate for appointment, and communicates the reasons for that determination to the district guardian ad litem manager or the manager's designee, the district guardian ad litem manager or the manager's designee shall promptly recommend another guardian ad litem for appointment. No guardian ad litem shall be appointed unless recommended by the district guardian ad litem manager or manager's designee.

(Amended effective January 1, 1999; renumbered and amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

Rule 903.02 Juvenile Court Appointment

A guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth:

(a) the statute or rule providing for the appointment of the guardian ad litem;

(b) the provisions for parental fee collection as applicable under Minn. Stat. sections 260B.331 subd. 6 (a) and 260C.331 subd. 6 (a) and as established by the Conference of Chief Judges, and

(c) in an adoption proceeding or a juvenile court case in which adoption is the intended permanency plan for the child, authorization for the guardian to review the home studies.

When a guardian ad litem is appointed pursuant to Minn. Stat. section 260C.163 subd. 5 (a), the court shall not appoint as guardian ad litem an individual who is the party, or an agent of the party, who has already filed a petition in the case pursuant to Minnesota Statutes section 260C.141.

(Added effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

2004 Advisory Committee Comment

Rule 903.02 prohibits appointment as a guardian ad litem in a juvenile court case any individual, or the individual's agent, who has filed the initial petition in the case. The Rule is also intended to prohibit an individual serving as a guardian ad litem in both a family court matter and a juvenile court matter involving the same child, if the family court guardian ad litem has filed the initial petition in the juvenile court matter. The Rule does not prohibit a guardian ad litem already serving in a juvenile court matter from continuing to serve if, in the course of the case, the guardian ad litem files a petition or other pleadings.

(Added effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

Rule 903.03 Family Court Appointment

A guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth:

- (a) the statute or rule providing for the appointment of the guardian ad litem;
- (b) the specific duties to be performed by the guardian ad litem in the case;
- (c) to the extent appropriate, deadlines for the completion of the duties set forth;
- (d) to the extent appropriate; the duration of the appointment; and
- (e) the provisions for parental fee collection as applicable under Minnesota Statutes sections 257.69 subd. 2 (a) and 518.165 subd. 3 (a), and as established by the Conference of Chief Judges.

(Amended effective January 1, 1999; renumbered and amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

Rule 903.04 Other Roles Precluded

A guardian ad litem under the supervision of the Office of the State Court Administrator shall not be ordered to, and shall not perform the following roles in a case in which they serve as a guardian ad litem;

- (a) custody evaluator pursuant to Minnesota Statutes section 518.167; or
- (b) parenting time evaluator; or
- (c) mediator, as that role is prescribed in Minnesota Statutes section 518.619 and Rule 310 of the Minnesota Rules of Family Court Procedure; or
- (d) arbitrator or individual authorized to decide disputes between parties; or
- (e) parenting time expeditor, as that role is prescribed in Minnesota Statutes sections 518.619 and 518.1751; or
- (f) substitute decision-maker under Minnesota Statutes section 253B.092; or
- (g) evaluator charged with conducting a home study under Minnesota Statutes sections 245A.035 or 259.41; or
- (h) attorney for the child.

Nothing in this rule shall prevent a properly qualified person who also serves in other cases as a guardian ad litem from serving in the above roles on a privately-paid basis.

(Added effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

RULE 904. COMPLAINT PROCEDURE; REMOVAL OR SUSPENSION OF GUARDIAN AD LITEM FROM PARTICULAR CASE

Rule 904.01 Complaint Procedure

Complaints about the performance of a guardian ad litem shall be governed by procedures established by the Office of the State Court Administrator with the advice

and consent of the Conference of Chief Judges. Unless offered into evidence by the guardian ad litem or by written order following an in camera review by the court, the complaints and complaint investigation reports shall not be received as evidence or used in any manner in any proceeding governed by these Rules.

(Amended effective January 1, 1999; renumbered and amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

Rule 904.02 Removal or Suspension of Guardian Ad Litem From Particular Case

Subdivision 1. A guardian ad litem appointed to serve in a particular case may be removed or suspended from the case only by order of the presiding judge. Removal or suspension may be upon initiation of the presiding judge or after hearing upon the motion of a party pursuant to subd. 2 of this Rule.

Subd. 2. A party to the case who wishes to seek the removal or suspension of a guardian ad litem for cause must proceed by written motion before the judge presiding over the case. A motion to remove or suspend a guardian ad litem for cause shall be served upon the parties and the guardian ad litem and filed and supported in compliance with the applicable rules of court. At the time the motion is served, a copy of the motion and all supporting documents shall be provided to the district guardian ad litem manager by the party making the motion.

Subd. 3. The presiding judge shall remove a guardian ad litem from a particular case:

(1) when it is shown by written communication from the district guardian ad litem manager or the manager's designee that the individual is a contract guardian ad litem who does not have a current contract with the state of Minnesota, or the guardian ad litem has been removed from the state program for cause; or

(b) upon notice of any felony, gross misdemeanor, or misdemeanor conviction of the guardian ad litem of an offense involving children or domestic assault; or

(c) upon notice of a finding by the Minnesota Department of Human Services of maltreatment of a child by the guardian ad litem.

Subd. 4. The presiding judge may remove or suspend a guardian ad litem from a particular case:

(a) for failure to comply with a directive of the court, including provisions of the order appointing the guardian ad litem; or

(b) for failure to comply with the responsibilities set forth in these Rules; or

(c) upon notice of formal sanction of the guardian ad litem by any professional or occupational licensing board; or

(d) upon formal request from the district guardian ad litem program for good cause; or

(e) for other good cause shown.

As an alternative to removal or suspension from a specific case, the presiding judge may ask the district guardian ad litem manager to provide appropriate remedial action for the guardian ad litem.

(Amended effective January 1, 1999; renumbered and amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

RULE 905. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM

In every family court and juvenile court case in which a guardian ad litem is appointed and in every paternity action in which a guardian ad litem has been appointed for a child who has been made a party pursuant to Minnesota Statutes sections 257.60 (2) and (3), the guardian ad litem shall:

(a) conduct an independent investigation to determine the facts relevant to the situation of the child or incompetent adult and the family, which must include, unless specifically excluded by the court: reviewing relevant documents, which in the case of an adoption shall include the home studies upon order of the court pursuant to Minnesota Statutes section 259.53, subdivision 3(b); meeting with and observing the child in the home setting and considering the child's or incompetent adult's wishes, as appropriate; and interviewing parents, caregivers, and others relevant to the case;

(b) advocate for the best interests of the child or incompetent adult by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(c) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child or incompetent adult;

(d) monitor the best interests of the child or incompetent adult throughout the judicial proceeding; and

(e) present written reports on the best interests of the child or incompetent adult that include conclusions and recommendations, and the facts upon which they are based.

(Renumbered and amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

RULE 906. EX PARTE CONTACT PROHIBITED

Ex parte communication with the court by a guardian ad litem is prohibited, except as to procedural matters not affecting the merits of the case.

(Added effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

RULE 907. RIGHTS OF GUARDIANS AD LITEM

Rule 907.01 Rights in Every Case

In every case in which a guardian ad litem is appointed pursuant to Rule 903, the guardian ad litem shall have the rights set forth in clauses (a) to (d).

(a) The guardian ad litem shall have access to the child or incompetent adult including meeting with the child alone as deemed appropriate by the guardian ad litem; and shall have access to all information relevant to the child's or incompetent adult's and family's situation which is accessible under applicable state and federal laws.

(b) The guardian ad litem shall be furnished copies of all pleadings, documents, and reports by the party which served or submitted them. A party submitting, providing, or serving pleadings, documents, or reports shall simultaneously provide copies to the guardian ad litem.

(c) The guardian ad litem shall be notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case. Timely notice of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case shall be provided to the guardian ad litem by the party scheduling the proceeding.

(d) The guardian ad litem shall have the right to participate in all proceedings through submission of written and oral reports, and may initiate and respond to motions.

(Amended effective January 1, 1999; renumbered and amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

Rule 907.02 Rights as a Party

In addition to the rights set forth in Rule 907.01 and any other rights set forth in statute, court order, or Rule, in every case in which a guardian ad litem is a party, the guardian ad litem shall have the right to:

- (a) legal representation;
- (b) be present at all hearings;
- (c) conduct discovery;
- (d) bring motions before the court;
- (e) participate in settlement agreements;
- (f) subpoena witnesses;
- (g) make argument in support of or against the petition;
- (h) present evidence;
- (i) cross-examine witnesses;
- (j) request review of the referee's findings and recommended order;
- (k) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;
- (l) bring post-trial motions; and
- (m) appeal from orders of the court.

The exercise of these rights shall not constitute the unauthorized practice of law.

(Amended effective January 1, 1999; renumbered and amended effective for guardian ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)