30-Hour
Civil Mediation Skills
Training Manual

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Acknowledgement

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Introduction

Summary

Welcome to the 30-Hour Civil Mediation Skills Training. This section will give you a broad overview of the mediation skills training and how to use this manual.

Desired Outcomes

- Understand how the training is organized and how to use this manual
- Get to know your colleagues through introductions

Key Points

- Context plays a key role in how you mediate.
- There are universal principles for mediation in the Western context including self-determination of the mediation participants and impartiality of the mediator.
- Mediation is a process with distinct steps, ethical guidelines and at its core a focus on interests.
- The “mediator” mind requires intentionality and self-reflection.

What to Expect from This Training

Why this approach?

This training is certified by the MN Supreme Court under Rule 114 of the General Rules of Practice for the District Courts. There are different approaches to mediation – for example: evaluative, facilitative, narrative, and transformative. The MN rules use a facilitative model of mediation. The focus is on facilitating the mediation participants’ communication and negotiation to promote voluntary decision making by the participants (Rule 114.02(c)). The Rules require that we cover specific topics with a set number of hours, and that the training is interactive. There is overlap among mediation approaches. How to bring your individual strengths to the mediator role will be discussed in depth during this training.

The benefits of facilitative mediation include: 1) the participants have more control over their joint decisions and agreements, and agreements are thus more likely to be durable and do-able; 2) relationships can be preserved or even strengthened; 3) the focus on interests can lead to creative solutions which benefit all participants; and, 4) it can be less expensive than other styles (which require more resources and rely on others’ expertise instead of the participants’) and going to court. The facilitative mediation process in this manual can be applied in many contexts outside of courts – from disputes between kids in schools to the workplace. You will learn the steps to the mediation process, get lots of practice, and develop your unique mediator “style.”

What is covered?

The manual starts with the context for mediation. Mediators:

- Understand the array of options people have for resolving disputes, including mediation and going to court
- Manage conflict responses, their own and those of the participants

- Facilitate participants' interest-based negotiations
- Communicate the benefits of mediation
- Build rapport and common understanding through active listening

Next, the manual explains a five-step model of mediation. Here are the steps:

1. Orientation
2. Information Sharing
3. A) Identifying Issues & Interests, and B) Framing Issues
4. Generating and Evaluating Options
5. Closing

The manual covers "preparing for mediation" after the five steps. Training participants generally get more out of thinking through how to prepare after understanding the process itself.

After the mediation steps, the manual covers specific topics such as coaching parties, breaking impasse, power dynamics, intercultural considerations and ethics.

How is the material covered?

For each step in the mediation process, you will hear a short presentation, see a demonstration, reflect on the demonstration and try it yourself through an interactive exercise. As the training progresses you will be spending more time role playing in mediation case studies and less time taking in information.

This manual also provides desired outcomes, key points, highlights from lectures and additional resources for each Module. For readability, cites to the work of authors mentioned in the Modules are included in the resources at the end of each Module.

There are six mediation case studies in which you will play a mediator or mediation participant. Depending on the number of people in the training, you may also be an observer or co-mediator. You will have at least two opportunities to play the role of mediator or co-mediator. Coaches, who are experienced mediators from the community, will be with role play teams to assist and facilitate a small group debrief. The person playing the mediator can ask the coach to help whatever way helps them learn – receive real-time feedback or wait until the end to debrief.

It is tempting when debriefing a role play to focus on the facts or outcome rather than the mediation process. There are many right ways, and some wrong ways, to mediate. The coach will guide you through questions to reflect on how the participants experienced the process in their role, mediator successes and challenges, and other options for mediator responses.

Practicing the mediation process in "real time" also means that you may not reach a final resolution in your role play group. That is normal and expected – a mediation may take anywhere from a few hours to a few days.

The days can be intense. We will take morning and afternoon breaks, and quick stretch breaks as needed. Lunch will be from noon to 1:00 PM. We encourage you to take care of yourself – stand up if you need to, take a moment away, etc. To avoid distracting others, please do not be on electronic devices while seated in the classroom. Note that the Court requires you to be present for the full thirty hours to qualify for the Court's roster of mediators (the "Civil Facilitative/Hybrid Roster" – see Rule 114.12 Subd.2

(a) Rosters). If something comes up and you need to miss more than a few minutes of training time, please talk with the Mediation Center administrator about your options.

You will come to this training with experiences in conflict and negotiation; you may also have experience with mediation. You will learn much from one another. We ask you to come to the material with an open mind, and to share your insights and questions with your colleagues.

What if?

If you learn and practically apply the concepts, principles and skills, they can help you in a wide variety of contexts: leading, parenting, intimate relationships, working, etc.

Reflection

- What questions do you have about what you can expect from this training?

Resources

Books about the Mediation Process:

Jennifer Beer & Caroline Packard, *The Mediator's Handbook,* New Society Publishers, 4th Ed. (2012).

Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflict,* Jossey-Bass, 4th Ed. (2014).

Elaine Yarbrough, *Artful Mediation: Constructive Conflict at Work*, Cairns (1996).

Module 1: Conflict: The Context for Mediation

Summary

This module covers a framework for understanding the key characteristics of mediation in the context of conflict responses.

- Images of Conflict
- Conflict Responses
- Mediation: Philosophy and Values
- Role Play

Desired Outcomes

- Appreciate how our default reactions to conflicts and disputes influence the ways we approach them
- Understand similarities and differences between various conventional approaches to resolving disputes
- Appreciate and experience the specific differences between mediation and arbitration

Key Points

- Our "default" reaction to conflict influences what we tend to say and do, as a participant and mediator.
- There are various conventional ways of approaching disputes, each with advantages and disadvantages.

1.1: Images of Conflict

Draw on your images of conflict to understand your assumptions and tendencies, and how others may experience it.

Definitions of Conflict and Dispute

Conflict is *an expressed struggle between interdependent parties who perceive incompatible goals, scarce resources, and interference.* (Hocker, Berry & Wilmot)

Conflict *can be long-term with deeply rooted issues that are seen as "non-negotiable." A* **dispute** *is a short-term disagreement that can result in the disputants reaching some sort of resolution. It involves issues that are negotiable. Conflict, in contrast, is long-term with deeply rooted issues that are seen as "non-negotiable".* (John Burton)

Assumptions About Conflict

- Conflict is a normal part of human interaction
- People respond to conflict differently
- Conflict has emotional, social, cultural and legal dimensions
- Finding ways to channel and manage conflict other than through force is a central theme in civilized societies
- Conflict can be destructive or constructive

Dynamics of Conflict

Michelle LeBaron says in her book *Bridging Cultural Conflict: A New Approach for a Changing World*, that awareness of our lens for conflict makes us more aware of the ways we, and others construct reality, increasing understanding of other points of view. To help us understand the dynamics of conflict, LeBaron describes three dimensions of conflict.

1. Material – the "what" of the dispute
2. Communication – the "how" of the communication
3. Symbolic – meanings and identities, often outside of conscious awareness

Mediators help parties come to agreements about the material elements of a dispute. They facilitate communication. And all that is important to the participants is not explicit, even to them. There are many influences underneath and behind their words and actions – on the symbolic level. The influences include culture -- individual and shared values, perceptions, assumptions, identities, and beliefs.

LeBaron says "since we are social (in relationship with each other) and since we are cultural (in relationship with many shared influences), conflict is a social and cultural phenomenon. It follows that culture and conflict cannot be separated into modules or manipulated like pieces on a chessboard." We must understand culture to understand conflict (or, in her words, "to become fluent in conflict"). Conflict fluency is essentially understanding the workings of conflict to be aware of the choices we make regarding it, as well as the impacts of our choices, and to act in ways that will bridge cultural conflict.

1.2 Approaches to Conflict

People use different lenses though which they perceive, interpret and respond to conflict. Their lens influences the assumptions they make about how to approach a dispute. Different approaches described by William Ury, Jeanne Brett and Stephen Goldberg in the book *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* include:

- Determine who has more **power** -- go to war
- Determine who is **right** -- go to court
- Examine underlying **interests*** -- negotiate to a win/win resolution

****Interests*** are what must be satisfied for a sense of resolve to occur. They are what is at stake for stakeholders. Fisher and Ury say interests are the reasons underlying the hubbub of people's positions – their demands, wants or expectations. Later Modules cover how mediators probe for, understand and frame interests.

Another lens is to look beyond the immediate dispute and view the deeper patterns and seek to address what is happening in human relationships. (John Paul Lederach)

- Focus on **relationships** – transform conflict through dialogue

The MN Supreme Court's Approach to Dispute Resolution- Rule 114.02

Between negotiation and going to court is a spectrum of Alternative Dispute Resolution ("ADR") processes. The Court calls the third parties who run the processes "neutrals." Neutrals who take the required training and get on the Court's roster of neutrals are considered "Qualified Neutrals." The Court categorizes the processes as "adjudicative" (neutral decides), "evaluative" (neutral provides opinion), "facilitative" (mediation only, neutral facilitates), "hybrid" (a blend of approaches), and "other" (anything, if the parties agree in writing). See Rule 114.02 for definitions of each process.

Adjudicative

1. Arbitration
2. Consensual Special Magistrate
3. Summary Jury Trial

Evaluative

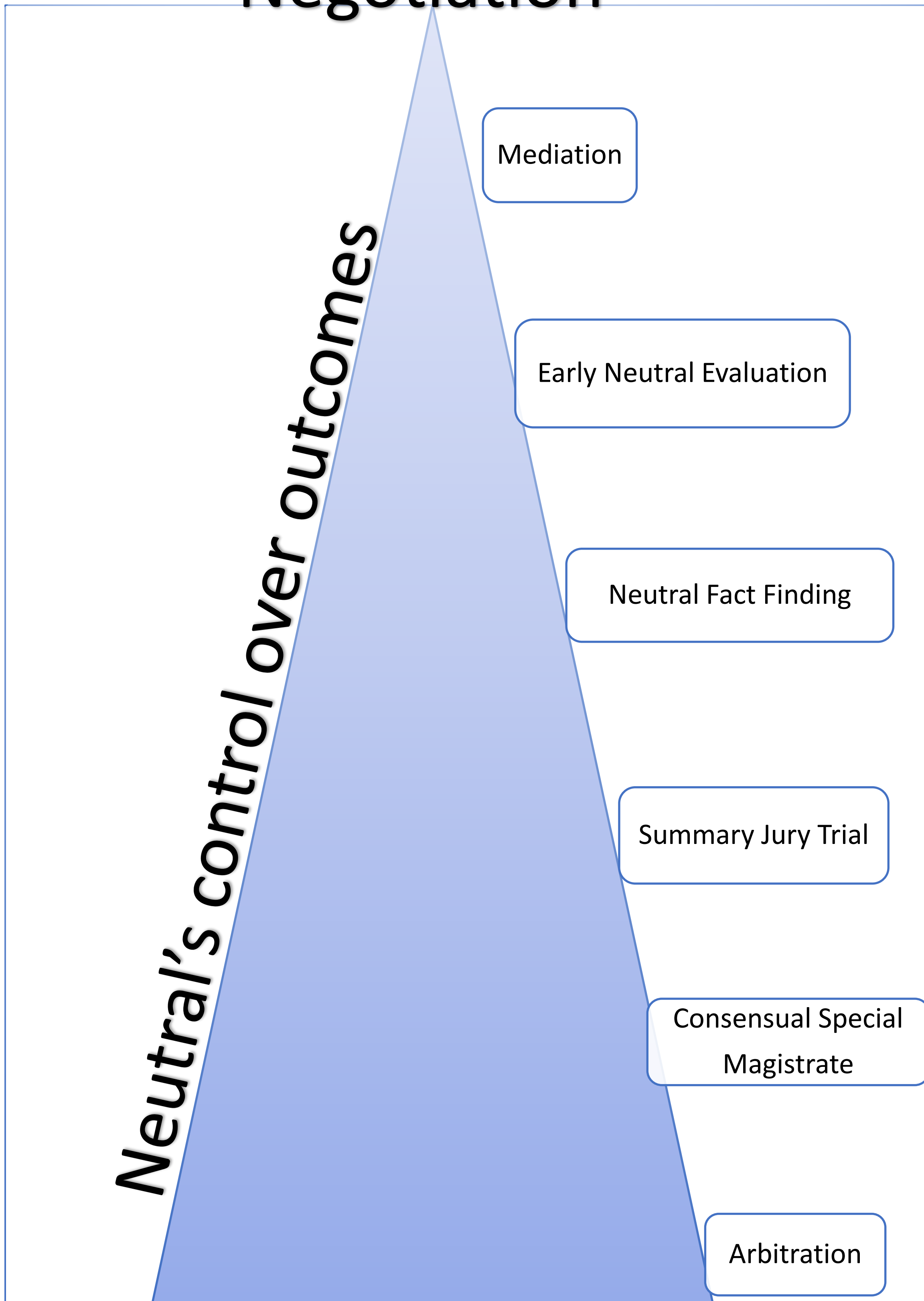
4. Early Neutral Evaluation
5. Non-Binding Advisory Opinion
6. Neutral Fact Finding

Facilitative

7. Mediation

Hybrid

8. Mini-Trial
9. Mediation-Arbitration
10. Arbitration-Mediation
11. Other


Negotiation
Neutral's control over outcomes
Mediation
Early Neutral Evaluation
Neutral Fact Finding
Summary Jury Trial
Consensual Special Magistrate
Arbitration
Trial

Comparison of Arbitration (Deciding) and Mediation (Facilitating)

Arbitration	Mediation
Parties present their arguments, and the arbitrator decides the outcome	Mediator helps parties discuss and reach agreement – mediator does not decide outcome
Parties give up control over process and outcome	Parties maintain control over outcome and, to some extent, process
Formal process – "legalized"	Informal, flexible process – no guarantee of "due process"
Focus on factual or legal issues	Focus on problems
Often results in legal or "split in the middle" solutions	Encourages integrative, creative solutions

1.3: The Senate Table Role Play

Instructions:

You will be assigned the role of either Morgan, Alex or Arbitrator/Mediator. Meeting in groups of three, you will have a few minutes to first ARBITRATE the case. (In an arbitration parties present their best arguments to persuade the arbitrator of the rightness of their position. The arbitrator may ask questions but does not encourage settlement discussions.) **Do not announce your decision to the parties.**

The Arbitrator then moves to another group where the become the MEDIATOR for the same facts. (In a mediation the neutral's role is to facilitate discussion between the parties to help them reach a resolution which is mutually acceptable.) As a group in mediation, come up with as many creative solutions as you can.

After you have completed both the arbitration and mediation, you will share your outcomes with the full group and receive further instruction.

The Facts:

Morgan and Alex have been life-long friends. They have also practiced law together for 20years. Due to some serious management differences, they have decided that it is time to end their legal partnership. They have negotiated a division of everything -- except for the Senate table. Morgan and Alex had no trouble dividing their clients, the library, the word processing equipment, and their excellent staff. But neither will budge on the Senate Table.

The Senate table is an antique table which had been in one of the State Senate's hearing rooms in the 1890s. When Morgan and Alex began practicing together, Morgan's spouse,who haunts antique stores, estate sales and auctions, had looked for months for the perfect table for the lawyers' main conference room. Spouse had made other "good finds" of desks, chairs and lamps -- which Morgan and Alex have had no troubledividing -- but it had taken endless hours of searching to locate THE perfect table for Morgan's and Alex's office.

The table had not been snatched up by other antique buyers because it had been painted over with several coats of horrendously ugly gunk, and it had gashes and bruises and one side was lower than the other. But Morgan's spouse recognized the hidden gem that it was.

When Morgan and Alex saw the table, they knew at once that Morgan's spouse had done well. A vocational woodworker, Alex lovingly removed the decades-old paint, healed the table's bruises, balanced the surface by adding a strip to one leg, refinished the table and restored it to its antique beauty.

Both Morgan and Alex have proudly used and cared for the table for most of the past 20 years. Their clients, other lawyers and visitors to their office have always commented on the rarity and beauty of the table. Morgan, Morgan's spouse and Alex believe the table is priceless. As a result, neither Morgan nor Alex is willing to part with the table, and neither will sell it to the other regardless of the extravagance of the other's bid.

Adapted from *The Senator's Desk* by Gary A. Weissman

1.4: Mediation: Rule 114 Philosophy and Values

Mediation. A process in which a Neutral *facilitates communication* and negotiation to promote *voluntary* decision making *by the parties* to the dispute. (Rule 114.02(c)(1))

A mediator shall act in a manner that recognizes that mediation is based on the principle of *self-determination by the parties*. (Rule 114.13 Code of Ethics Subd. 8)

Mediation has:

1. Structure
2. A set of ethical and pragmatic guidelines
3. At its core, a focus on interests

Reflection

- How might your default approach to conflict influence you as a mediator?
- What would you like to focus on as you develop your mediator style?

Resources

-

There are approaches to mediation which differ from the facilitative style. The approaches are not mutually exclusive, although in some the mediator has a very different mindset. See the Appendix for a brief description of other styles.

John Burton, editor, *Conflict: Human Needs Theory* (1871)

Joyce Hocker, Berry and Wilmot, *Interpersonal Conflict*, 11th ed, McGraw Hill (2021)

Michelle LeBaron, *Bridging Cultural Conflict: A New Approach for a Changing World*, Jossey-Bass (2003)

John Paul Lederach, *The Little Book of Conflict Transformation*, Good Books (2003)

William Ury et al., *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict,* Jossey-Bass (1988)

Module 2: Negotiation and the Mediation Process

Summary

In this module, you will become acquainted with the key features of mediation as a facilitated form of interest-based negotiation. The key tasks and responsibilities of the mediator are presented, and a five-step mediation process is introduced.

- Positional and Interest-Based Negotiations
- Positions and Interests
- Mediation Process and the Mediator's Roles

Desired Outcomes

- Appreciate the difference between positional and interest-based negotiation
- Understand how focusing on interests expands the possibilities for integrated solutions in negotiations, and mediations
- Be introduced to the five-step mediation process and the mediators' roles

Key Points

- Interests are why people want what they say they want (their positions) – their needs, goals and desires.
- Focusing on interests helps people find common ground and find creative solutions which may not have been visible when they were focused on positions.

2.1: Positional Negotiation and Role Play

Basic Assumptions in Positional Bargaining

- Negotiation is inherently competitive and antagonistic
- Resources are limited--what you win, I lose
- All that matters is today's decision
- Goal is to win as much as possible--and especially more than the opponent
- Concessions are a sign of weakness

Benefits

- Useful when parties must uphold principles
- Offers potential for "winning"
- Appropriate if no on-going or recurring relationship is anticipated

Risks

- If negotiators "lock into" their positions, this can impede negotiation or produce unwise agreements that do not meet the deeper needs of the parties and are less durable.
- If negotiators start with extreme positions, this can increase dramatically the time and effort required to reach a settlement.
- Contests of wills can endanger a favorable ongoing relationship and are hard on the negotiators.

Positional Negotiation Role Play Instructions

Participants divide into pairs. You will be provided with information about a negotiating situation.

The instructor will tell you how long you will have to negotiate. At the end of that time, discuss how close you are to a resolution and how satisfied you are with the results.

2.2: Principles of Interest Based Negotiation

Basic Assumptions in Interest-Based Negotiation

- Negotiators are problem-solvers together
- Resources may be expandable or can be shared in a way that meets the needs of both negotiators
- Negotiators' interests can be interdependent
- There is more than one right answer – there are multiple solutions which could be mutually beneficial
- Goal is mutually agreeable solution that is fair to all parties and efficient for community

Benefits

- Useful for development of creative, mutually beneficial solutions
- Appropriate when there is an on-going or recurring relationship
- Provides precedent for future problem solving
- Recognizes common or interrelated interests

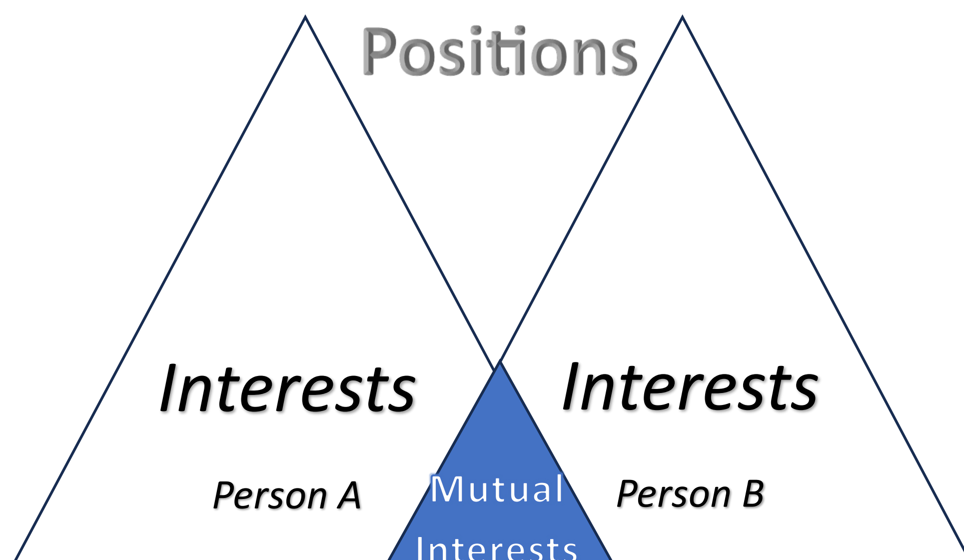
Risks

- Can be time-consuming
- May bias negotiators toward cooperation
- May make negotiator more vulnerable to deception
- May make it more difficult to calculate aspiration levels and bottom line

2.3: Positions and Interests

Positions: Specific solutions which a party proposes.

Interests: Needs which must be satisfied to resolve the conflict. (Note that "interests" in mediation are different than the common meaning of the word.)



Example: *In an employer-employee dispute over compensation, the* ***position*** *that the employee may take is that they should receive a 7% salary increase. (The employer may take a very different position.) The employee may have an* ***interest*** *in being able to save enough to purchase a house as well as an* ***interest*** *in receiving a tangible indication that his work has been good.*

Example: *A utility company wishes to build a dam. This clashes with farmers' need for water and environmentalists' concern for the downstream habitat of an endangered fish. Their* ***position*** *is that the dam should or should not be built. The* ***interest*** *of the utility company is increased economic return, the* ***interest*** *of the farmers is irrigated crops, and the* ***interests*** *of the environmentalists is preserved species.*

Example: *Parents may have very different* ***positions*** *about how to share their children's time when they are separating. They may also have a* ***mutual interest*** *in their children's well-being and their children having time with both parents.*

In the Senate Table Exercise

- What were the parties' positions?
- What were the parties' interests?

2.4: Interest Based Negotiation Role Play

Instructions:

Divide into pairs. You will play the same role as in the previous exercise with a different negotiating partner. You will be provided with additional information for the negotiation. Read the new information and then negotiate again from the beginning, focusing on trying to understand and address the other person's interests and your own.

When you have finished the negotiation, discuss the extent to which you learned more this time and were better able to maintain progress toward resolution.

2.5: The Mediation Process and the Mediator's Roles

A. Pre-Mediation Preparation

B. Steps in the Mediation Process

1. **Orientation**
2. **Information-gathering**

   * Listening for interests, issues and positions

3. **A) Identifying Issues and Interests, and B) Framing Issues**

   * Issues, interests and positions
   * Dialogue about interests
   * Framing Issues

4. **Generating Options**

   * Generate, evaluate and select

5. **Closing**

The Role of the Mediator

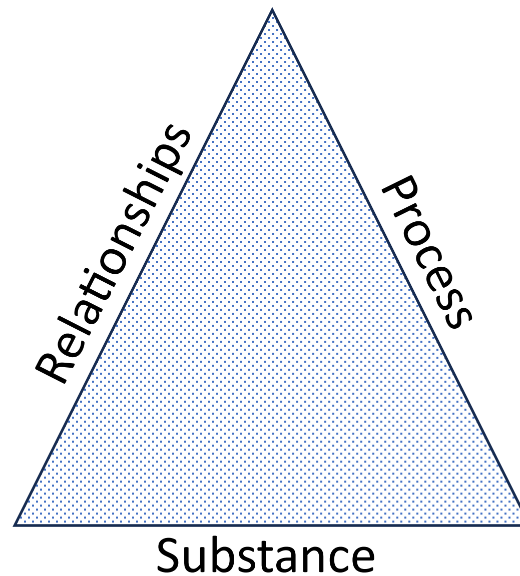
Mediators plays several roles as they help parties move through the mediation process. These roles include:

- ❑ Listener
- ❑ Synthesizer
- ❑ Translator
- ❑ Modeler of healthy behavior
- ❑ Power balancer
- ❑ Agent of hope
- ❑ Agent of reality
- ❑ Creative catalyst
- ❑ Resource expander

The roles require mediators to be flexible and competent in a variety of ways. They should possess the following **qualities**:

- ❑ Emotional stability
- ❑ Empathy
- ❑ Impartiality
- ❑ Ethics and integrity
- ❑ Sensitivity and Insight
- ❑ Courage
- ❑ A genuinely positive attitude
- ❑ Clear thought and analysis
- ❑ Sound reasoning
- ❑ Creative problem solving
- ❑ Clear oral and written communication skills

The Mediator Balances Among



Reflection

- Expressing needs can make people feel vulnerable. How could the mediator set the scene to elicit open, thoughtful responses and sharing of underlying interests?

Resources

Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, Penguin Books (2011)

Richard Shell*, Bargaining for Advantage: Negotiation Strategies for Reasonable People*, Blackstone Publishing (2021)

Module 3: Setting the Stage – Orientation and Information Sharing

Summary

In this module, participants learn the first two steps of the mediation process, Orientation and Information Sharing. Listening skills are taught as part of the Information Gathering process. Participants observe a mediation demonstration.

- Importance of orientation
- How to prepare and conduct an orientation
- Importance of information gathering
- How to get information

Desired Outcomes

- Appreciate the importance of effectively orienting the mediation participants
- Understand the topics to cover in an orientation
- Appreciate the importance of, and skills for, artfully orchestrating participants' information sharing

Key Points

- It is important to spend time orienting the parties to mediation for a variety of reasons
- Gathering information helps the parties understand the different perspectives, share desired outcomes and start to learn interests.

3.1: Step One: Orientation

<u>Steps in the Mediation Process</u>

1. **Orientation**
2. Information-Sharing
3. A) Identifying Interests & Issues, and B) Framing Issues
4. Generating and Evaluating Options
5. Closing

The reasons for doing an orientation are to:

- Enhance a feeling of safety
- Develop trust in the mediator
- Provide a sense of procedure
- Begin commitment to the process

3.2: Orientation Demonstration

What kind of information did the Mediator present?

What did the Mediator do to:

- Enhance a feeling of safety?
- Develop trust?
- Provide a sense of procedure?
- Begin commitment to the process?

3.3: Orientation Preparation Exercise

You will have the opportunity to try an orientation, incorporating the information listed below. Take a few minutes to plan what you will say. **When you have prepared your orientation select a partner and practice saying the orientation to each other and give each other feedback.**

Prepare your own orientation, incorporating the following information:

1. Introductions

   o Mediators

   o Parties & Attorneys

2. Mediator qualifications
3. Discuss the benefits of mediation
4. Explain the role of the mediator
5. The mediator follows the Rule 114 Code of Ethics and is subject to the jurisdiction of the ADR Ethics Board
6. Describe the mediation process, voluntariness
7. Explain the use of a private meeting
8. Discuss confidentiality and admissibility of evidence
9. Describe what will happen if there is/is not an agreement
10. Requirements for binding agreement
11. Explanation of fees
12. Review or establish ground rules
13. Ask for and answer questions
14. Sign 'Agreement to Mediate'

TIPS

- Ask for and answer questions throughout your orientation for a "conversational" style
- Everyone participating, including the mediator, signs the Agreement to Mediate

* The Minnesota Civil Mediation Act and Rule 114 require that a mediator providing mediation services for compensation must provide information about his or her educational background and relevant training experience in the field to the parties *in writing*. A mediator who fails to comply is guilty of a petty misdemeanor.

3.4: Step Two: Information Sharing

Steps in the Mediation Process

1. Orientation
2. **Information Sharing**
3. A) Identifying Interests & Issues, and B) Framing Issues
4. Generating and Evaluating Options
5. Closing

The second step in the mediation process is the mediator developing a clear, impartial picture of the situation. The mediator gathers information about each person's perspective about what brings them to mediation and their desired outcomes, and helps parties understand each other. The mediator asks open and closed questions and uses active listening to gather information.

TIPS

- All participants generally have uninterrupted time to speak during information sharing.
- The mediator maintains awareness of all parties' reactions and signals when one person is speaking.
- The goal is for the mediator to build shared understanding, although participants do not need to agree on their separate perspectives. The goal is NOT for the mediator to decide who is "wrong" or "right."
- It may be helpful to summarize key points after each speaker and ask whether there is anything else the speaker wants others to understand. It is essential to find out what you can share outside the room if you are in private meetings.
- Maintain balance – be sure all parties have had the opportunity to share information before moving to the next step.
- The mediator models listening and learning for the parties
- Listen For
  - Objective observations about the conflict
    - *"What specifically did you see or hear that led to yourreaction/conclusion?"*
  - Emotional reactions to the conflict
    - *"What was that experience like for you? How did it affect you?"*
  - Assumptions, interpretations, suspicions about each other
    - *"It sounds like you have some suspicions about what's really going on here. You think..., is that right? What specifically has s/he said or donethat makes you think that?"*
  - Values underlying reactions
    - *"I'm hearing that ... is very important to you."*
  - Needs that must be met for a satisfactory solution

        - *"What would it mean to you if you had that?"*

3.5 Information Sharing Demonstration

- What information is important in developing a clear, neutral picture of this case?
- What did the mediator do or say to effectively obtain that information? (Note examples of specific questions.)
- Did the mediator listen effectively to both sides? What active listening skills did she use? (What specifically did you watch and hear her do?)
- What did the mediator do and say to identify the **issues**?
- What did the mediator do and say to help the parties identify their **interests** and concerns?
- Identify some examples of statements being presented as fact which were really
    - Opinion
    - Feelings or emotional responses
    - Assumptions or interpretations
    - Values statements
    - Needs

Reflection

- Parties sometimes would prefer to get straight into negotiating their positions and not "waste time" with the orientation and information sharing. What are the risks to the process of skipping these steps?

Resources

See the appendix for sample open ended questions and questions for mediators to deal with the past and present from Prof. John Barkai at the University of Hawaii Law School.

Douglas Stone, Bruce Patton and Sheila Heen, *Difficult Conversations: How to Discuss What Matters Most*, Penguin Books (2010).

Sue Annis Hammond and Andrea B. Mayfield, *The Thin Book of Naming Elephants: How to Surface Undiscussables for Greater Organizational Success*, Thin Book Publishing Co. (2004).

Module 4: A) Identifying Interests and Issues, and B) Framing Issues

Summary

This module provides a deeper understanding of the core concept of interests, and distinguishing among interests, issues and positions. Through practice and discussion, you hone your skills in identifying the interests and issues in mediation situations and learn how to frame and articulate both. Participants will also learn how and when to use private meetings as a strategy for addressing issues with disputants one-on-one.

- Identifying Issues, Interests, and Positions
- Skills Practice: Active Listening
- Use of Private Meetings
- Demonstration of Identifying Interests, Issues and Positions
- Framing Issues with Exercise

Desired Outcomes

- Begin to learn how to effectively identify, acknowledge and address interests
- Sort interests from positions and issues
- Constructively frame issues to prepare an agenda
- Appreciate the importance of active listening, especially during this stage, and artfully apply skills.

Key Points

- There are different kinds of interests.
- It is important to understand, identify, sort and address issues, positions and interests.

4.1 Step Three: Differentiating between Interests, Issues and Positions

Steps in the Mediation Process

1. Orientation
2. Information Sharing
3. **A) Identifying Interests & Issues**, and B) Framing Issues
4. Generating and Evaluating Options
5. Closing

Issues: **What --** Elements of a dispute which are capable of being addressedin mediation -- the "agenda" for the mediation.

Positions: **How --** Specific solutions which a party proposes.

Interests: **Why --** Needs which must be satisfied to resolve the conflict.

Three Types of Interests

- **Procedural** Interests are about how the process is conducted.
  - Mediator is impartial and balanced
  - All participants are respected and heard
  - Participants have control over the development of mediated outcomes
- **Relationship** (sometimes called Psychological) Interests are how people feel about participating in mediation, their identity, how they are perceived, and how they relate to others.
  - In Beyond Reason, Using Emotions as you Negotiate, Dan Shapiro and Roger Fisher talk about core concerns which are present in every negotiation.
    - Appreciation – thoughts, feelings and actions are acknowledged as having merit.
    - Affiliation – parties are colleagues in problem solving rather than an adversaries
    - Autonomy – freedom to decide is acknowledged
    - Status – standing is recognized where deserved
    - Role – outcomes define role and activities that parties find fulfilling
- **Substantive** Interests relate to the items that are being negotiated – the "things."

What expectations might parties have regarding each of these interests?

What impact might that have on the decisions a mediator makes about the mediation process?

Recognizing Interests, Issues, and Positions

Example

Exchange at a community meeting concerning the site of anew airport.

"I think they should have chosen the site ten miles out of town,not the one they did." (This is a **position**.)

"I don't like the site they are recommending. There will be toomuch noise in the neighborhood." (Noise level is an **issue**. Having a peaceful neighborhood is an **interest**.)

"Those planes will probably take off and land right over ourhomes. We won't be able to hear each other talk in our own living rooms." (Takeoffs and landing patterns are an **issue**. Maintaining a normal family life is an **interest**.)

"I want to get a good night's sleep. And I don't want planes flying over my house early in the morning." (Timing of plane trafficis an **issue**. Being able to get rest is an **interest**.)

Adapted from *Managing Public Disputes* by Susan L. Carpenter and W.J.D. Kennedy

From the Technoworks Demonstration

Identify these statements as Issues, Positions or Interests

"I'd love going back to work."

"You can't buy groceries. You can't live."

"He was just doing stuff he never should have done." "…about a week later I got fired." . . . "You weren't fired."

"I had an impossible time finding a job."

"This guy was over the top… it got to be way too much."

TIP

- Some statements may be viewed as an issue or an interest, or both, depending on the framing. For example, between co-workers *"we need better communication"* could be an issue – effective communication – or an interest related to how to improve working relationships.

Identifying Interests & Issues

The mediator listens for issues during the Information Sharing stage. The mediator keeps track of issues and interests, and often summarizes them for the parties. The mediator may ask follow-up questions to be sure all issues and interests have been articulated, at least for the moment. Parties may add new issues and interests as the mediation unfolds.

Identifying Issues

- Structure the discussion by summarizing the main topic areas or issues for discussion
- Identify the substantive, procedural and relational issues
- Frame the issues in neutral language and in terms of interests
- Prioritize issues – help the parties choose one topic area and begin todiscuss it

Identifying Interests

- Questions
  - Ask about parties' feelings, resentments, assumptions, needs
  - Variations on "Why?"
- Use active listening skills – focus on verbal and nonverbal communication
- Clarify with verification
- Validate and highlight new information, positive intentions, desires to change, and points of de-escalation
- Help each party understand and acknowledge the key interests of the other party using:
  - Mediator summarizing the interests of all participants
  - Ask one party to paraphrase the concerns of the other
- Re-frame with verification

> You will return to the second part of step three in the mediation process, Framing Issues, in Module 4.7. When summarizing and clarifying Mediators often re-frame issues – restate a person's statement to make it less provocative and more productive.

4.2: Active Listening: The Key to Effective Mediation

Change happens by listening and then starting a dialogue with the people who are doing something you don't believe is right. Jane Goodall Reported in Yolanda Brooks, Do Animals Have Rights? (2008)

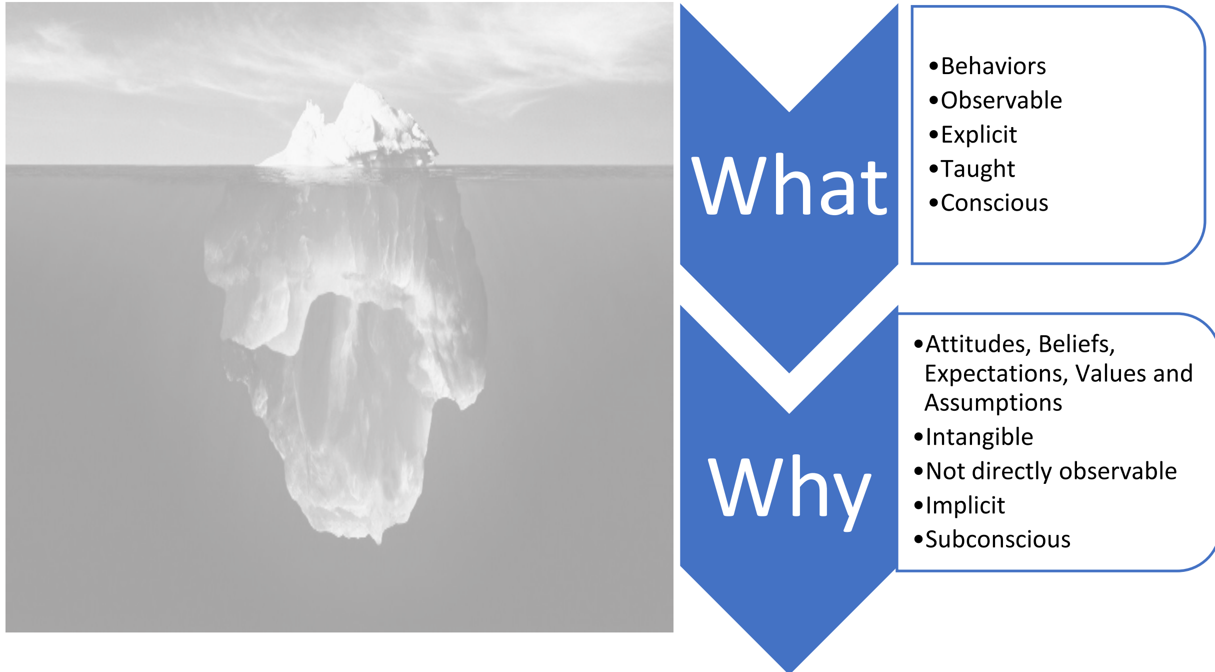
When you talk, you are only repeating what you already know. But if you listen, you may learn something new. Dalai Lama

Listening is an art – it can be learned. Active listening involves more than passively hearing what is being said. As a mediator you model active listening techniques as well as help the parties to actively listen to each other.

Active listening in a mediation session accomplishes the following:

- Signals respect for the parties
- Lets the parties know they are being heard and understood
- Accurately assesses the situation as it is
- Helps clarify what is being said
- Communicates acceptance of feelings without agreeing with or approving of them
- Manages emotions that block problem solving

Communication Iceberg



Common Blocks to Listening

Most people speak at about 125 - 140 words per minute. The ear can hear about 400 words per minute. The brain processes information at a rate of 1,000 - 1,400 words per minute. The brain can tune in for a fraction of a second and process the words the speaker said and then tunes out before the next series of words arrives.

Listeners do things which prevent them from effectively listening.

Advising Playing counselor or psychologist	**Bottom Lining** “Get to the point” attitude
Interrogating Trying to get information to solve the problem	**Rehearsing** Thinking about what you’re going to say next

What are some other blocks to listening?

FACES – Active Listening Acronym

Focus: Posture and eye contact shouldreflect the fact that you are listening

Attend: Pay attention to the speaker's words and emotional tone, body language and other non-verbal communication

Clarify: Paraphrase what you have heard to be sure you have not assumed a meaning for specific words, use open-endedquestions which encourage the party to elaborate

Empathize: Acknowledge feelings as valid, that each person is entitled to his or her point of view; ask questions that make the parties seem more real as people; recognize the difficulty of the process

Summarize: Using neutral language, re-state your understanding of theperson's concerns and issues, providing the speakers with an opportunity to confirm or amend the meaning of what they have said

TIP

- Listen for and validate the parties' attempts to understand each other
- Emphasize any points of agreement, forward progress, or shared understanding.

4.3: Private Meetings – What and How

Mediation may include private meetings, sometimes called a "caucus." between the mediator and each of theparties (and their attorneys) individually. Other groupings are also possible.

- The private meeting may be initiated by the parties **or** by the mediator.
- The possible use of private meetings should be covered in the orientation.
- If you have a private meeting with one party always caucus with the other.
- Clarify confidentiality of the private meeting.

Why Is a Caucus Needed?

When Should a Caucus Be Called?

What Might Be the Ethical Issues of Caucus?

In Technoworks, Why Might the Mediator Call a Caucus?

TIPS

- Be aware of how long you spend in each private meeting
- Co-mediators stay together in private meetings
- Have clear rules for confidentiality – and follow them
- Three stages of private meetings
  - Rapport Building
  - Analyzing
  - Bargaining

4.4: Identifying Interests, Issues and Positions Demonstration

Identify techniques the mediator uses in Technoworks to identify issues and to probe for interests:

4.5: Exercise Differentiating Between Interests, Issues and Positions

Try sorting the issues, interests and positions you hear during the Technoworks demonstration:

Issues:

Interests:

Positions:

4.6 Mediation Role Play #1

Instructions:

For this Role Play, the mediator's focus should be on conducting the orientation, gathering information, listening actively, and identifying the issues and interests. Do not try to go on to terms of resolution.

General information will be provided to the mediator and the parties. In addition, parties will receive confidential information sheets.

You will be told how much time to allow for this Role Play. You will also have time for a small group debrief when you give feedback to the mediator about the process.

4.7: Framing Issues

Steps in the Mediation Process

1. Orientation
2. Information Sharing
3. A) Identifying Interests & Issues, and **B) Framing Issues**
4. Generating and Evaluating Options
5. Closing

Framing refers to the way a conflict is described (or the way a proposal is worded – more on that in step three of the mediation process). During steps one and two, the mediator listens to the parties' narrative about the conflict and asks questions to discern the interests and issues. **Re-framing** is the process of changing the way the ideas are presented when the mediator summarizes them so that they maintain their fundamental meaning but are more likely to support resolution. The mediator re-frames in a way which will cause less resistance. In other words, the mediator helps the parties hear each other.

Re-Framing Issues

The goal of re-framing issues is to create a common definition of the problem which is acceptable to all parties. This helps increase the likelihood of collaborative outcomes.

- Use neutral language
- Emphasize the commonality of interests
- Express in terms of a search for a common solution
- Focused on the future, not the past
- Avoid Buzz words

Example

A utility company wishes to build a dam. This clashes with farmers' need for water and environmentalists' concerns for the downstream habitat of an endangered fish.

The issue could be stated as:

> *Whether or not to construct the dam?*

The issue could be re-framed to better match their interests as:

> *How to provide the community with power while ensuring the supply of downstream water and protecting fish habitat.*

4.8 Framing Issues Exercise: Mama Greco's

Instructions:

Working in small groups, read the following story and frame the issues. Each group should send a representative to the trainer to record on PowerPoint their ideas about how to frame the issues. The groups' framing of the issues will be discussed by the large group. Be sure your statements are really issues and not statements of position and that they are stated in neutral, forward-looking terms.

Facts:

You live in the Fulton neighborhood of Minneapolis. It is primarily residential. However, over the last few years, several businesses have located in the neighborhood. Now there is a quaint, busy retail district in a two or three block area.

Mama Greco's, a restaurant located at the edge of this district, has grown increasingly popular. The owner of the restaurant claims that she does not have enough parking space for all her customers. As a result, she has requested a variance of local ordinances to expand her parking lot.

Your house is across the street from the restaurant. You and your neighbors are vehemently opposed to this request for a variance. Although you appreciate having a retail district nearby, you do not appreciate all the traffic, congestion and strangers walking past your house. You are worried about your children's safety. You also do not relish the thought of looking at an even bigger parking lot across the street.

What happened to the nice neighborhood you thought you lived in?

Identify and frame the issues in "Mama Greco's":

4.9 Identifying Interests

Review the issues listed for the “Mama Greco’s” exercise and try to state the interests for the parties that might cluster around the issues.

Asking Questions to Identify Interests – Variations on “Why?”

- *What works for you in this proposal?*
- *What do you most want me or the other party to understand?*
- *What are you unhappy with in the present situation?*
- *What about the current situation would you like to be different?*
- *If you get what you’re asking for, what would it mean to you?*
- *What criteria will you use to judge proposals?*
- *What’s important about this proposal/situation from yourperspective?*
- *What’s important about this proposal/situation from the other party’sperspective?*
- *If you get what you’ve asked for, what problems would that solve foryou?*
- *What needs won’t be met if this issue/problem is not dealt with?*
- *For a solution to be viable for you, what problems or needsmust be addressed?*

Identifying Interests – Tools of the Mediator

- Ask Questions – variations of “why?”
- Use Active Listening – focus on verbal and non-verbal communication
- Clarify with Verification
- Re-frame with Verification

4.10 Identifying Interests Exercise

Instructions:

Read the “Window Washer” paragraph below. The trainers will play the roles of Wilson and Hale. Each training participant will have an opportunity to question Wilson and Hale, together or in private meetings, to identify their interests. Questions should be framed to identify interests ***not pose solutions.*** (Hint: What is at stake for each? What is important to them underneath the obvious?)

Participants will then:

1. List the interests they have identified
2. Discuss what questions could be asked to identify or clarify interests
3. Have another opportunity to ask questions of the worker and supervisor

Window Washer Identifying Interests Exercise

The Building Maintenance crew for the City of Fud consists of five skilled handy persons: a plumber, an electrician, a carpenter, an HVAC specialist and a horticulturist. It's a non-union shop. Hale oversees the crew of five. Hale's been with the City for *years* and has been the supervisor for 10 yrs. Wilson is the carpenter. Wilson's been on the job for 2 ½ years. The city has always had a policy of having three undesirable, routine jobs at City Hall done by employees with the least seniority: cleaning the fishpond, cleaning the gutters, and changing the storms and screens. City hall has 15 windows on the 1st floor and 15 on the 2nd floor. Wilson, having the least seniority, has had the task of changing the windows since starting to work for the city. There are no newer employees and now there is a hiring freeze. It's time for the windows to be changed, and Wilson has refused to do this job again.

Reflections

- People spend a lot of time and energy trying to figure out what is "behind" or "underneath" words and actions. We ask ourselves why others are doing what they are doing. Could interests be a helpful approach to understanding these questions in a variety of contexts? For example, to parents, partners, a leader?
- When we have effectively recognized and acknowledged others' interests, there is a welcome resonance, "Exactly!" Often, people are not aware of their own interests, let alone other's. When someone has pinpointed our interests, we feel "known."

Resources

Module 5: Generating and Evaluating Options

Summary

This module presents information on the mediator's role in helping to generate options for resolution. Participants learn the skill of helping parties in a dispute to evaluate options and build agreements.

- Generating Options
- Generating Options Demonstration
- Evaluating Options
- Role Play

Desired Outcomes

- Appreciate the importance of working effectively with participants as they generate and evaluate options, and artfully orchestrate the process.

Key Points

- The foundation for effectively mediating this step of the process is the communication skills practiced earlier. These skills help build trust and establish rapport.
  - Observing and responding to verbal and non-verbal cues
  - Descriptive, supportive, impartial language
  - Active listening
- It is important to first help participants expand and explore – diverge from initial positions – before closing in on "solutions".
- It is also important to eventually help participants narrow down the range of possibilities by effectively evaluating options (converging).
- There are established techniques mediators use to help generate and evaluate options.

Step Four: Generating and Evaluating Options

Steps in the Mediation Process
1. Orientation 2. Information Sharing 3. A) Identifying Interests & Issues, and B) Framing Issues **4. Generating and Evaluating Options** 5. Closing

5.1 Generating Options

The skillful communications practiced during the earlier stages of the mediation process will facilitate the generation of options. During the option generation stage, the mediator should monitor verbal and non-verbal signals that could affect the problem-solving approach you are trying to implement. Avoid putting the parties into a position from which graceful retreat is impossible.

1. Ensure participation by all parties
2. Ask neutral, non-threatening questions, such as: *"What do you most hope can be done here?" "What would it take to overcome the barrier you raised earlier?"*
3. Brainstorm/Brainswarm
4. Question assumptions
5. Write down ideas separately, then share
6. Ask "imagining" questions - "*What do you most hope could happen?*"
7. Ask for examples - "*What have you seen others do?*"
8. Probe for model solutions - "*Who has done this already?*"
9. Make mediator suggestions (last resort) - "*Would this be a feasible alternative?*"

Evaluating Options

The mediator's role in evaluating options should be handled carefully, keeping in mind the principle of self-determination by the parties. It is acceptable for the mediator to suggest options *in response to parties' requests*, but not to coerce the parties to accept a specific option. In most cases, mediator ideas are given only after the parties have exhausted other means of finding mutually agreeable options.

Mediator Approaches for Evaluating Options

- Conduct reality testing.
- Ask, does the solution meet the parties' needs or interests?
- Ask, does the solution meet the parties' idea of fairness or justice?
- Help parties compare options.
- Help parties assess long and short-term impact of options.
- Help parties consider their:
    - BATNA (best alternative to a negotiated agreement);
    - WATNA (worst alternative to a negotiated agreement); or,
    - MLANTA (most likely alternative to a negotiated agreement).
- Focus on benefits of settling or not settling.
- Focus on costs of settling or not settling.
- Consider whether solution allows attorneys and experts to be paid.

What other criteria might be used to evaluate options?

5.2: Generating Options Demonstration

In Technoworks, how did the mediator use questions to help the parties generate options?

What techniques did the mediator use?

Did the mediator suggest options?

Reflections

- What signals from the parties might tell the mediator to stay with listening, learning and acknowledging and when to nudge or ask parties to move on?

Resources

Module 6: Coaching and Helping Parties Make Offers

Summary

This module covers the mediator's role as coach. In this context, the mediator helps the parties see the strengths and weaknesses of their proposals and helps them think through their negotiation strategies by asking questions. Coaches do not tell people what to do. Participants learn when and how to help parties reconsider positions and make offers that can lead to resolution.

- Coaching and Helping Parties Make Offers
- Role Play
- Using a Flipchart and other Technology
- Exercise

Desired Outcomes

- Understand a range of factors that can affect the likelihood of participants' consideration of proposals.
- Understand and effectively exercise strategies and techniques for guiding participants through making and responding to offers.
- Effectively manage context, technology and aids (such as notes and writing/typing surfaces).
- Exercise promising practices for calling, managing and returning from private meetings with parties (sometimes called caucuses).

Key Points

- There are established strategies for coaching participants as they make and respond to proposals.
- It helps to anticipate common forms/sources of resistance to accepting offers.
- It is essential to artfully orchestrate factors associated with online mediation, other technological factors, notes and visual aids.
- There are established preferred practices for calling, managing and returning from private meetings.

6.1: Coaching and Helping Parties Make Offers

Mediators can help parties make offers that will be acceptable to the other side. Mediators may consider the following when preparing one party to make an offer or preparing the other party to accept it.

Negotiation Factor	Mediator Techniques
Preparing a Party for Accepting an Offer	The mediator can aid parties in discussing their feelings and interests, evaluating the party's BATNA, discussing doubts regarding the strength of their position, and exploring possible settlement options. All of these can help a party to prepare to accept another's offer.
Preparing a Party to Make a Proposal	The mediator can help parties prepare to make an offer by encouraging them to restate everyone's interests (with the others first) and identify how a proposal is mutually beneficial.
Effectively Timing Offers	The mediator can help a party to avoid premature offers or offers that are too late.
Testing the Waters	The mediator initially may claim an offer as their own tentative idea to test its reception and to avoid identifying it prematurely as an idea from the other side.
Encouraging Unilateral Actions/Employing Symbolism	The mediator can help a party find and make symbolic offers that will have a favorable psychological impact and may break an impasse.
Helping Parties Save Face	The mediator can help parties make an offer without losing face by helping them find a logical argument or a new piece of information which explains their behavior.

The Psychology of Negotiation: Sources of Resistance to Concessions/Agreements

- **Availability:** People fail to differentiate adequately their case from notorious cases.
- **Rejection of Offers and Later Cognitive Dissonance (Commitment Bias):** It's harder to say "yes" if you've already said "no."
- **Risk Aversion:** People are risk avoiding in the face of gains.
- **Loss Aversion:** People are risk seeking in the face of losses.
- **Concession Aversion (status quo bias):** People don't value equal trades from a neutral perspective. They distort to overvalue the loss, making equal trades difficult to effectuate.
- **Reactive Devaluation:** Things that are offered lose their value. (Also note other Self-Enhancing Biases: negotiators view their reactions as positive and their opponents' as negative.)
- **Reciprocation of Concessions:** People feel obligated to reciprocate for acts of goodwill, even if the act produces no value and was not requested or wanted.
- **Fairness as a Decision-Making Criterion:** People reject deals that leave them better off than no deal if they perceive that their norms of fairness are being violated in accepting the deal.
- **False Uncertainty:** People hesitate to make decisions when awaiting the outcome of a preliminary event, even where that preliminary event is irrelevant to the decision.
- **False Consensus Bias (Projection):** People believe that others think the way they do or have values like their own.
- **Naive Realism and Biased Assimilation:** People believe that they "see the world as it is" and this causes them to overweight information that confirms pre- existing hypotheses, and underweight disconfirmatory information. This also impacts where we search for information.

Source: Professor Richard Birke, Center for Dispute Resolution at Willamette University College of Law (1998 Negotiation Training for Hamline's Dispute Resolution Institute), summarizing contemporary social science research.

6.2: Role Play #2

Instructions:

For this Role Play the mediator’s focus should be on doing a brief orientation, gathering information, active listening, identifying issues and interests, and on generating and evaluating options. **You do not need to arrive at terms of resolution.**

General information will be provided to the mediator and the parties. In addition, parties will receive confidential information sheets.

You will be told how much time to allow for this simulation. You will also be given time for a small group debrief when you should give feedback to the mediator.

6.3: Online Mediation Tips

Before the Mediation - Planning

1. Advance log-on, at least 10 minutes before the scheduled start time
2. Confirm sufficient broadband to handle the application
3. Provide the parties back-up telephone numbers and email in case of technological problems during the mediation; make sure the mediator has phone numbers of all participants
4. Have a backup plan for when technology fails. Plan A. Plan B. and Plan C
5. Confirmation that no one else is present off-camera
6. Reminder of no multi-tasking
7. Mediator's right to terminate if technological problems interfere with a smooth mediation process
8. Confirmation that no one is recording
9. Confirmation of confidentiality
10. Conduct prep call through the same platform
11. Encourage how and when to talk; i.e. taking turns, raising electronic "hand"
12. Mute unless you're speaking
13. Allow for breaks – discuss what works best for least comfortable user

Tips for Online Presentation

Visual

14. Make sure you are in a well-lit area. Position a light facing your face. Back lighting can make your face difficult to see.
15. Put your camera at face level (use a stand, or stack of books if you are using a laptop camera), relatively close to you.
16. Explore setup options. Select 'Settings' and consider using a virtual background or remove distractions in the background.
17. If you look directly at your camera while speaking, your attendees will feel much more included in the conversation. Position the 'active speaker' window on your screen directly under the camera so that it is natural for your eyes to be looking towards the camera.

Audio

18. Make sure you are in a quiet area, mute other devices (it also helps to turn off internet on other devices to maximize band width).

19. Use a pair of ear buds or headphones (any that work with your computer) along with your computer microphone. If you can't be in a quiet area, consider a headset with microphone.

Thanks to the MN Department of Education Special Education ADR Panel members for their contributions to this list.

6.4: Meeting Notes: Flipcharts and Technology Tips

SET IT UP BEFORE YOU START

Flipchart stands and projectors often have a will of their own. Set it up before the parties arrive for the mediation. Make sure flip charts and monitors are set up so that it is easy for you to write or type and for participants to see.

CHECK YOUR MATERIALS

Use flipchart markers, and make sure they have not dried up. Use bold colors -- black, brown, purple – for text; save red and orange for accent colors. Double-check the amount of paper on your pad. Also bring masking tape or putty, so that you can display multiple pages on the wall. If you are using electronic pages, make sure you use a font size large enough for everyone to read.

DON'T WRITE TOO MUCH – AND WRITE CLEARLY

It's best to 'write big' and use broad tip pens, so that everyone can see easily. Print words rather than writing in script. If your words tend to slant down the page, consider using a lined pad, or add some light pencil lines before the session.

WORD CHOICE

Flipcharts and screens are good for keywords. Check with participants before writing and frame words in neutral language. You may choose to list interests, suggested options, and the agreement as it develops.

WORD POSITION ON THE PAGE or SCREEN

Avoid dividing the page or screen in half and using a different side for each party. This encourages parties to stay polarized.

BODY AWARENESS

When writing on a stand you should find a comfortable position that does not block the chart from the participants. Avoid talking to the flipchart or computer, rather than to the parties. Move away when you have finished writing a point so that participants can see what you have written.

FOLLOWING THE MEDIATION SESSION

When you take sheets off the wall, fold the tape over so that you do not tear the paper. Number and date the sheets so that you do not forget their sequence when drafting any agreements. If you are using electronic sheets, be sure to save information the parties will need later. Take care after the mediation is over to destroy or erase the notes.

6.5: Bringing the Parties Back Together After Caucus, Options Demonstration

In Technoworks, what did the mediator do to help the party prepare to make an offer?

What did the mediator do to help the party prepare to accept an offer?

Reflections

Resources

Module 7: Intervening to Break Impasse

Summary

In this module, trainees consider techniques the mediator might use to help parties move past an impasse. Using an impasse situation, trainees develop strategies for breaking the impasse, then use and evaluate the effectiveness of those strategies.

- Strategies for Breaking Impasse
- Impasse Exercise

Desired Outcomes

- Know what to do and effectively intervene to close gaps and break impasse.

Key Points

- There are established techniques for helping participants move beyond impasse.
- There are established techniques for helping participants close gaps between their respective proposals.

7.1: Intervening to Break Impasse

- Review Interests

- Reframe Issues

- Reconsider BATNA and WATNA
  Best/Worst Alternative to a Negotiated Agreement

- Ask parties to "stand in each other's shoes"

- Ritual

- Change Something
  Take a break, have lunch, change seats, stand up Move on to another, move to a less troublesome issue

- Ask the Parties
  Remind them of the progress so far, commitment to the process
  Use silence to generate movement

- Add Something
  A co-mediator, another party, attorneys
  Have the parties get additional information

- Mediator Offer Opinion or Suggestion (last resort)

- Stop
  Discuss next steps, consider a different process

- Examine your role as Mediator
  Did each party feel heard?
  Are you too invested in the outcome/settlement?

Impasse: Closing $$ Gaps

Assumptions:

- All underlying interests have been explored and exhausted
- The parties view their differences solely in terms of dollars
- The mediator's goal is to generate movement

Mediator Strategies:

- What if the other person went to X?
- Joyful, comfortable, painful number
- Secret bottom line ("Contuzzi lock box")
- Move in blocks (i.e., packaging terms, 10%)
- Risk assessment
- Corkscrew (move without sharing others' moves, used with multiple defendants)
- Mediator proposal
- Last best offer, or next to last offer
- Stop, mediator follow up later
- Expert only mediation or stakeholder reps mediation
- Negotiate next steps (other alternatives to court, bifurcate a trial)
- Change the scope – sweeten pot (e.g., pay attorney's fees or costs or pay debts)

7.2: Impasse Exercise

At the end of the last joint session in the Technoworks demonstration, the parties appeared to have come to an impasse. The agreement so far includes:

- Computer Training
- COBRA
- Placement Services
- Letter of Reference
- Fees for Mediation and Parking
- Training for Technoworks Employees on Sexual Harassment Issues
- Reporting Protocol
- Letter in Sam's File
- Monitoring of All Employees

THE STALEMATE: $50,000 VS. $0

Working in small groups, decide on what strategies you think might be effective in getting parties past impasse. Choose a "designated hitter" who will have an opportunity to try the techniques you've chosen with two of your classmates who will play the parts of Donna and Richard. You may meet with either of the parties privately or meet with them in joint session.

Reflections

Resources

Peter Contuzzi, *Moving Negotiations from Idle to Forward: The Commitment to Flexibility*, 1987 J. Disp. Resol. (1987) Available at: https://scholarship.law.missouri.edu/jdr/vol1987/iss/6

Module 8: Power Dynamics and Difficult Situations

Summary

This module addresses how an imbalance of power can affect the outcome of mediation and suggests how a mediator might manage an imbalance of power.

- Power Imbalance and Difficult Situations

- Power Imbalance – Examples and Strategies

Desired Outcomes

- Effectively analyze if, when and how to address a perceived power imbalance.
- Recognize and understand the range of types and sources of power for each participant, and leverage them to help empower all participants to do their best work.

Key Points

- There are a range of types and sources of power in negotiation settings.
- Knowing, recognizing and managing sources of power helps mediators keep the process fair and constructive, and helps them facilitate mutually satisfactory, durable agreements.
- There are strategies for analyzing power and possibly intervening to “balance” power which can help ensure participants’ self-determination.

8.1 Role Play #3

Instructions:

For this role play the mediator's focus should be on conducting a brief orientation, gathering information, active listening, identifying issues and interests, generating and evaluating options, **and on the use of caucus and coaching.**

General information will be provided to the mediator and the parties. In addition, parties will receive confidential information sheets.

You will be told how much time to allow for this simulation. You will also be given time for a small group de-brief when you should give feedback to the mediator.

8.2: Power Dynamics and Difficult Situations

Types of Power in Negotiation

Constructive Power	The ability to satisfy the other party's needs
Obstructive Power	The ability to block the satisfaction of the other party's wants or needs
Jumping Power	The ability to leave the negotiation because of better alternatives
Personal Power	Confidence, skills and knowledge

Sources of Power in Negotiation

- Knowledge or expertise
- Power to reward behavior
- Referential power, ability to create alliances
- Moral justification
- Access to resources
- Strong WATNA
- Personal power – persuasiveness, argumentation, patience

What are other sources of power which may influence the outcome of mediation?

Mediator Strategies for Dealing with Power Imbalance

Ask First...

Is there a true power imbalance?

Are you accurately perceiving a power imbalance -- or are you imposingyour own value judgments on the parties?

Is one party's power latent or subtle?

If there is a power imbalance can or should it be confronted andre-aligned - or should mediation be terminated?

Mediator techniques within the mediation process:

Set and reinforce clear ground rules

Ask questions to

- Help the perceived weaker party recognize his/her sourcesof power
- Detoxify or de-intensify party's source of power
- Disrupt easy assumptions

Caucus with parties

Explore parties' BATNA and WATNA

Recommend resources supplementary to the mediation process

Ask parties about their comfort level

Do nothing

Reflections

In the simulations and exercises thus far, identify where there may have beenconcerns about power imbalance:

- What effect, if any, did the imbalance have on communication?
- What effect did the imbalance have on outcome?
- What could or should the mediator have done in those cases to manage the consequences of power imbalance?

Resources

Module 9: Ethics I, Rules of Conduct and Closing the Mediation

Summary

This module provides an overview of the issues involved in bringing closure to the mediation with a "durable and do-able" agreement. It also discusses the mediator's role in closing. Participants are provided with information on techniques and strategies for ensuring parties are clear on the agreement and committed to carrying it out.

Participants also discuss ethical issues that arise in the normal course of the mediation process by considering several scenarios in light of the Rule 114 Code of Ethics.

- Ethics I
- Closing Mediation
- Writing Agreements

Desired Outcomes

- Clarify if, and when, to mediate.
- Understand and follow ethical standards and guidelines.
- Know how to structure and write effective, durable agreements,

Key Points

- There are important ethical questions to consider about if, when and how to mediate.
- Ther are national and state-level standards and guidelines for ethical mediation.
- There are conventional best practices for structuring and writing mediation agreements.
- In MN, there is specific language required to create a binding agreement.

9.1: Ethics I and Rules of Conduct

Even though mediation is used extensively for numerous kinds of disputes, it has been criticized for several reasons.

Consider what concerns or criticisms you might have about the mediation process:

Various codes have been adopted to address at least some of these ethical concerns. For example:

MODEL STANDARDS OF CONDUCT FOR MEDIATORS

Adopted by the American Arbitration Association and the American Bar Association, and Association for Conflict Resolution.

MINNESOTA RULE 114 CODE OF ETHICS

This code has been adopted by the Minnesota Supreme Court and applies to all ADR neutrals, including mediators, in court annexed cases. (See Rule 114.01. All civil and family cases are subject to this rule, with exceptions listed. The rule applies to all neutrals without regard to whether they are Qualified Neutrals under Rule 114.02.)

OTHER MN ADR GUIDELINES

Specific Forms of Neutrals

- Community Dispute Resolution Program -- Minn. Stat. §494
- Parenting Time Dispute Resolution – Minn. Stat. §518.1751

Confidentiality/Exceptions/Testimony

- Testimony of Witnesses – Minn. Stat. §595.02 Subd.1a. Alternative dispute resolution privilege
- Reporting of Maltreatment of Minors – Minn. Stat. §626.556
- Reporting of Maltreatment of Vulnerable Adults -- Minn. Stat. §626.557

Civil Immunity

- Alternative Dispute Resolution Immunity – Minn. Stat. §604A.32

Other

- MN Civil Mediation Act Presentation of Mediator to the Public - Minn. Stat. §572
- MN Rule of Professional Responsibility (lawyers) Rule 1.12 conflicts of interest
- MN Rule of Professional Responsibility (lawyers) Rule 2.4 lawyer serving as neutral with unrepresented parties
- ABA Section of Dispute Resolution guidance on the unauthorized practice of law

9.2 Step Five: Closing the Mediation

Steps in the Mediation Process

1. Orientation
2. Information Sharing
3. A) Identifying Interests & Issues, and B) Framing Issues
4. Generating and Evaluating Options
5. **Closing**

Bringing Closure – The Mediator's Role

- Clarify issues and points of agreement
- Identify next steps
- Celebrate successes

If Parties have arrived at a settlement agreement:

- Review the specifics of the agreement to be certain there is a meetingof minds on each point
- If there is to be a written document, decide who will draft it
- Discuss what will happen if the agreement is breached
- Determine how any future disputes will be resolved

If Parties have not reached a settlement

- Review points where there was agreement
- Encourage parties to consider future mediation sessions (or other formsof ADR)
- Thank participants for their work and encourage them to continue thenegotiation process

Compliance with reporting requirements

- If mediation is to be reported (e.g., to the court) be sure that confidentiality is protected. Report only the fact that mediation occurred and whether there was a settlement.

9.3: Writing Agreements

Mediators have different opinions about the appropriateness of a mediator drafting the settlement agreements. Non-lawyers have concerns about the unlicensed practice of law. Lawyer-mediators have concerns about conflicts of interest and whether the drafter can be truly neutral in the choice of language. The Rule 114 Code of Ethics is clear that facilitative and evaluative neutrals shall not "draft legal documents that are intended to be submitted to the court as an order to be signed by a judge or judicial officer." (Rule 114.13 Subd. 7 (c) (1))

However, most lawyers and mediators agree that an appropriate role for the mediator is drafting a **Memorandum of Agreement** which can be used by attorneys for the parties in preparing legally binding documents.

Choose language that is neutral, precise and appropriate for the disputants. Explain how the disputants arrived at their settlement. Explicitly identify areas where the parties did not reach agreement.

The Memorandum should state clearly WHO is agreeing to WHAT, WHEN and HOW.

An Effective Memorandum of Agreement

1) Is Specific

Avoid ambiguous words (soon, reasonable, cooperative, neighborly, frequent, quiet) because they can mean quite different things to different people. Any statement that can be interpreted in more than one way may cause fresh misunderstanding between the disputants.

Cover all pertinent details. Thus *"Mrs. Wrangle and the McBickers agree to build a dam"* is less satisfactory than *"Mrs. Wrangle and the McBickers agree to build a 5' high removable board dam on Clean Stream along their shared property line at a point 83 feet north of the SE 1/4 of the SW 1/4 of Section 17, Range 42. Mrs. Wrangle agrees to buy the building materials and the McBickers agree to construct the dam."*

2) Sets Times

State clearly all times and deadlines: *"Mrs. Wrangle will purchase the materials for the dam no later than May 8, 2018, and the McBickers will finish the dam by May 30, 2018. Both parties agree to comply with all water quality standards and flowage requirements set out by state, county and federal regulations."* Or *"Feudora agrees to turn down the volume to `3' on her stereo after 9:00 p.m. every night except Saturday."* Or *"Mr. Discord agrees to mow his lawn at least once every three weeks from mid-May to mid-October."*

3) Is Balanced

Both parties should give something, both should gain. One person's actions should not be contingent on the others: *"Marcy agrees to clean the room on Tuesdays. Randy agrees to do the laundry"* rather than *"Randy agrees to wash the laundry if Marcy has cleaned the room."*

4) Is Positive

Wherever possible, phrase points of agreement in terms of what disputants agree they WILL do in the future, rather than in terms of what they WON'T do or will STOP doing. Use *"Dick Cavil agrees to..."* instead of *"Dick Cavil must"* or *"Dick Cavil should."* Steer clear of judgmental expressions (good behavior, bad attitude, acceptable manner...). Disputants may feel criticized and not see the mediator as impartial.

5) Provides for the Resolution of Future Disputes or Implementation Issues

Encourage disputants to think about ways to communicate if more problems come up. For example: required negotiation by individuals, scheduled meetings.

6) Is Legal

The agreement should not be illegal or anticipate illegal transactions.

Adapted from *Mediator's Handbook,* July l982 Friends Suburban Project, Concordville, PA.

MN Requirements for Mediated Agreement to be Binding

In 1998 the Minnesota Supreme Court held that a handwritten, signed mediation settlement agreement was not an enforceable agreement because it did not state, as required by the Minnesota Civil Mediation Act, that it was a **binding agreement**.

Haghighi v. Russian-American Broadcasting Co., Case No. C6-97-1842 (Minn. Sup. Ct. May 7, 1998).

Because the statute was unambiguous, the strict, plain language of the statute precluded enforcement of the agreement - it was up to the legislature to correct the statute. In 1999 the legislature amended the Civil Mediation Act to be consistent with the *Haghighi* decision. According to the Minnesota Civil Mediation Act, a mediated settlement agreement is not binding unless it:

- contains a provision stating that it is binding, and
- contains a provision stating substantially that the parties were advised in writing that
  - the mediator has no duty to protect their interests or to provide them with information about their legal rights;
  - signing a mediated settlement agreement may adversely affect their legal rights; and
  - they should consult an attorney if they are uncertain of their rights

In 2023 the MN Supreme Court incorporated the same written provision requirement into Rule 114.13 Subd. 8 (b) (7), Requirement of Written Agreement for ADR Services.

Sample Paragraph to Include in Mediated Settlement Agreements

Enforceability and Governing Law. This Agreement will be construed and interpreted in accordance with the laws of the State of Minnesota. It is the express intent of the parties that this Agreement which resulted out of mediation be binding and enforceable under the principles of law applicable to contract and that the Agreement itself may be used as evidence in a subsequent proceeding in which any party alleges a breach of this Agreement. As required by the Civil Mediation Act, MN Stat. §572.35, subd. 1, the parties hereby acknowledge they have been advised in writing that: (a) the mediator has no duty to protect their interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights.

The Memorandum of Agreement should also include:

- The fact that the mediation took place
- Any pertinent background data
- Procedural matters (e.g., whether parties were represented by counsel)
- Issues mediated
- Decisions regarding all the above
- Contingencies
- Future dispute resolution
- Legal effect

Suggestions for Structuring Written Agreements

The following ideas are offered as suggestions when writing agreements. The proper structure of the agreement is important because the parties will rely on it. The agreement should reflect a sense of balance to the parties. If successful, everyone should walk away feeling as though they accomplished something, and the written agreement should reflect these feelings of achievement.

The following are suggestions relating to the **order** in which the elements of the agreement should be recorded:

1) List first those items which require **both** parties to do something. This instills a sense of balance and justice signifying that there are no winners or losers.

2) List next the **individual** obligations incurred by the respective individuals. Remember to categorize the elements, listing first those categories which appear **least** threatening to the party undertaking the action. This is done to cushion somewhat the most "painful" issues, i.e., payment of money, return of valuable property, etc. by placing them at the end of the agreement.

3) Categorize the agreement according to which party has agreed to do something for the other; then, list the elements of the agreement, alternating between what A has agreed to do for B and vice versa.

- *A agrees to park his car in the street when B is home.*
- *B agrees to notify A at least 48 hours prior to having a party.*

Thus, the written agreement should reflect a sense of **balance** thereby leaving the parties with a sense of achievement and making it more likely that they will abide by the written agreement.

Suggestions for Formatting Written Agreements

1) Separate the elements of the agreement; assign a different number to each. Do **not** write a narrative.

2) Avoid using "plaintiff" and "defendant." Use Mx., Mr., Mrs., or Ms. Jones (use Mx. Carlson and Mr. Dudek but not **Arnette** Carlson and **Mr.** Dudek).

3) Write out all dates and dollar amounts. For example, if someone is to pay $20,000 by check or money order by February 10, 2018:

- **Correct:** *Mr. Ali agrees to pay Ms. Kluge Twenty Thousand Dollars ($20,000.00) by check or money order by February 10, 2018.*
- **Incorrect:** *Mr. Ali agrees to pay Ms. Kluge $20,000 by 2/10/18.*

4) Be as specific as possible. If the parties agree to provide a service at a specific place and time, record it; do not use the phrase *"to be provided at a time and place agreed to."*

5) Do not make criminals out of the parties.

- **Correct:** *Mx. Pfieffer will pay to Mr. Ray Forty Dollars ($40.00) in cash or money order for replacement of the window that was broken on January 29, 2018.*
- **Incorrect:** *Mx. Pfieffer will pay Mr. Ray Forty Dollars ($40.00) for the window she broke when she threw a rock through it on January 29, 2018.*

6) Avoid adverbs like "satisfactorily." One may ask, "Satisfactorily to whom?"

7) When referring to matters involving the exchange of money, indicate the incident or date on which the action occurred for which the money is being paid. Also, the form of payment and to whom payment is made should be noted.

- **For example:**

  Randy Tinti agrees to pay Jane Smith Eighty Dollars ($80.00) in cash, certified check or money order for the Sylvania color TV damaged on December 14, 2017, and presently in Jane Smith's possession.

  Payment will be mailed or delivered to the New York Mediation Center, 313 Chandler Street, New York, New York 10021 on or before February 28, 2018."

8) If parties agree to obtain support from local social service agencies, the agreement should reflect that referral.

Andy Harding will contact Jaden Smith, counselor, at the Alcohol and Drug Abuse Center, 112 Central Avenue, New York, New York, 10021 no later than Monday, November 3, 2018, to arrange for an appointment for purposes of counseling."

9) Additional Tips from Burnham, *Drafting Contracts* (1987)

a. Draft in the present tense.

b. Draft in the active voice. Who is obligated to do something or refrain from doing something?

c. Delete unnecessary language of agreement.

d. State obligations with the word shall. When you have used shall, ask if you can substitute "has the duty to."

e. State authorization with the word may. When you have used may, ask if you can substitute "is authorized to."

f. State conditions precedent with the word must. When you have used must, ask if you can substitute "has to do X before Y will happen."

g. Consider whether you have used a term that requires greater specificity. Predict whether the term may cause problems in the future.

h. Constantly ask "What if?" Provide for the significant contingencies.

i. When you have stated an obligation, ask, "What happens if the obligor doesn't do it?" Protect the obligee by stating a remedy in the contract.

j. Cross-check the agreement for internal references. Make sure the references are consistent.

Source: NYS Unified Court System Community Dispute Resolution Centers Program.

Module 10: Tools for Analyzing Conflict

Summary

This module provides participants with a diagnostic tool for understanding the aspects of conflict that can undermine, stall, or create impasses in the mediation process. Different approaches to conflict resolution, including the mediator's approach and the impact that may have on mediation, are discussed.

- Root Causes of Conflict
- Approaches to Conflict

Desired Outcomes

- Understand various types (i.e., causes, categories, elements) of conflict
- Leverage insights about causes to effectively address issues and interests and help secure durable outcomes/agreements.
- Understand various styles of/approaches to conflict and how to manage varying process interests
- Understand reasons, considerations and tips for co-mediation (using more than one mediator).

Key Points

- Mediators can leverage what they learn about the underlying causes and dimensions of a conflict to effectively manage conflict dynamics.
- Mediators can leverage what they learn about tendencies and styles of each of the participants and their own tendencies to effectively manage conflict dynamics.
- Mediating with a partner can be helpful under certain circumstances.

10.1 Root Causes of Conflict

Understanding the root causes of conflict can influence what mediator choices might be helpful in finding satisfactory outcomes. Regardless of the type of conflict, the mediator should always be aware of the interests – procedural, structural, psychological – which help find common ground to resolve disputes.

Types of Conflict and Possible Interventions

Data Conflicts	**Possible Intervention**
Lack of information/Misinformation	Reach agreement on what is important
Different views on what is relevant/Different interpretation of data	Agree on process to collect data
Different assessment procedures	Develop common criteria to assess data/Use third party experts to get an outside opinion or break deadlocks
Relationship Conflicts	**Possible Interventions**
Strong emotions	Control expression of emotions through procedure
Misperceptions or stereotypes	Promote expression of emotions by legitimizing feelings and providing a process
Poor or miscommunication	Clarify perceptions/build positive perception Improve quality, quantity of communication
Repetitive negative behavior	Block negative repetitive behavior by changing structure
	Encourage positive problem-solving attitudes

Structural Conflicts	Possible Interventions
Destructive patterns of behavior or interaction Unequal control or ownership of limited sources Unequal power/authority Geographic, physical, or environmental conditions that hinder cooperation	Clearly define/change roles Replace destructive behavior patterns Establish a fair and mutually acceptable decision-making process Change negotiation process to interest-based bargaining Modify means of influence used by (less coercion, more persuasion) Change physical/environmental relationship of parties (closeness/distance) Modify external pressures on parties Change time constraints
Interest Conflicts	**Possible Interventions**
Perceived or actual competitives Substantive (content) interests Procedural interests Psychological interests	Focus on interests, not positions Look for objective criteria Develop integrative solutions that address all parties needs Search for ways to expand options or resources Develop tradeoffs to satisfy interests of different strengths

Value Conflicts	Possible Interventions
Different criteria for evaluation ideas orbehaviors Exclusive intrinsically valuable goods Different ways of life, ideology, religion	Avoid defining problems in terms of value Allow parties to agree to disagree Create spheres of influence where one set ofvalues dominates Search for a superordinate

Source: Bernard Mayer, *The Dynamics of Conflict Resolution: A Practitioner's Guide,* Jossey-Bass (2000)

10.2 Co-Mediation

Why and when to use co-mediation

- Greater insight/skill
- Strategic backup
- Specific expertise
- Training new mediators
- Assurance of neutrality
- Racial/ethnic/gender representation
- Share the work

What to consider in preparing for co-mediation

- Complementary styles (compatible)
- Joint strategy
  - How to change strategies if needed
  - How to interrupt each other
  - Signals for calling a caucus
  - Who will lead in first session
- Possible divisions of responsibilities
  - By stages
  - By specific tasks
  - By session
  - By types of issues
  - Integrated
- Balanced involvement by both mediators
- Strengths and weaknesses of each mediator

Source: "Co-Mediation" by CDR Associates (1989)

10.3: Role Play #4

Instructions:

For this role play the mediator's focus should be on doing a brief orientation, gathering information, active listening, identifying issues and interests, generating and evaluating options, on the use of caucus and coaching, and strategies for breaking impasse.

General information will be provided to the mediator and the parties. In addition, parties will receive confidential information sheets.

You will be told how much time to allow for this simulation. You will also be given time for a small group debrief.

10.4 Conflict Styles

Avoiding

- Does not want to talk about it
- Does not pursue his/her own concerns or the concerns of others
- Prefers to deny that there's a problem

Accommodating

- A "fixer"
- Doesn't want to discuss it — does whatever is necessary to resolve the problem
- Neglects her/his own concerns to address the concerns of others

Competing

- Objective is to win
- Tends to pursue goals even at the expense of others
- Power-oriented

Compromising

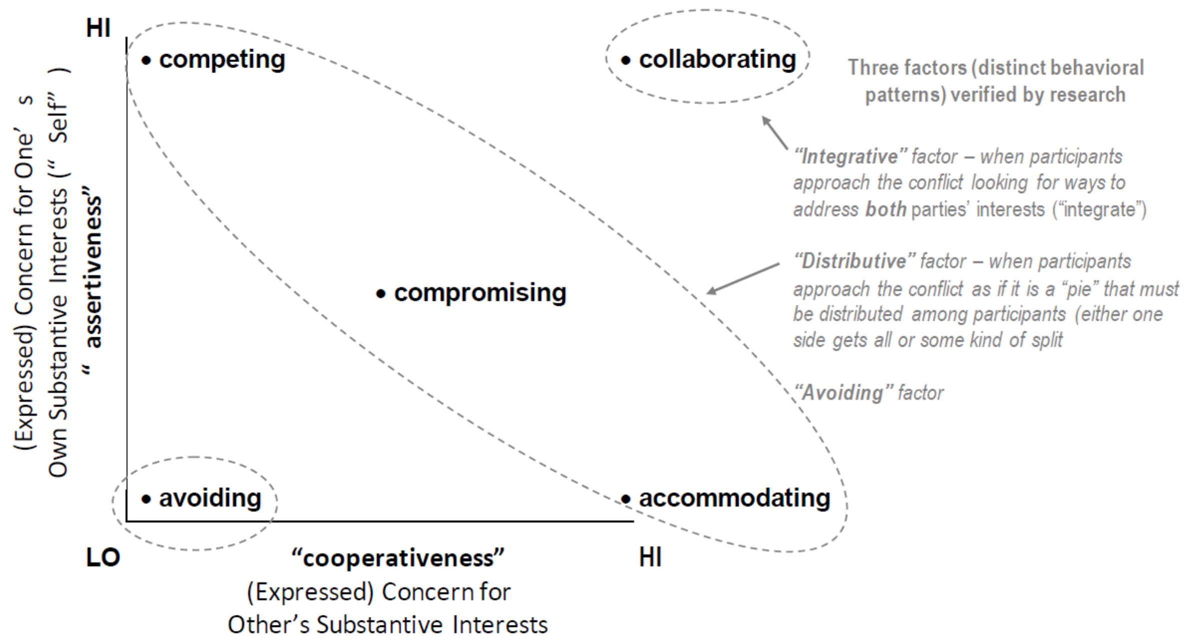
- Tries to find the middle ground
- Willing to split the difference, find a "fair" solution
- The okay-okay approach — no one really wins, and everyone loses something

Collaborating

- The win-win approach
- Tries to find a creative solution that will meet the needs of both (all) parties
- Believes you can learn from the other's insights

Source: Thomas-Kilmann Conflict Mode Instrument

Thomas and Kilmann's Conflict Styles



Caveats

- These ***tendencies*** are not the same as ***outcomes***.
- "Expressed" concern is not the same as ***actual*** concern.
- Any given style is more or less effective depending upon the context and other styles in play.
- All of us employ multiple approaches, often at the same time; one might also employ a given approach to achieve a different outcome (accommodate now to "win" later).
- The value of the model is less about "pigeon-holing" yourself into a single "style" than it is about recognizing that, when and how you slip into a "default," "automatic" way of reacting to conflict.

Reflections

- How can mediators effectively determine underlying causes and dimensions of conflict?
- How can mediators develop more self-awareness about their own conflict tendencies?
- How can mediators learn to adapt to participants in the mediation process?
- How do you feel about the prospect of co-mediating? When might you want to do so? When might you not want to do so?

Resources

Bernard Mayer *The Dynamics of Conflict Resolution: A Practitioner's Guide,* Jossey-Bass (2000).

Module 11: Culture and Diversity in Mediation

Summary

This module focuses on the ways in which culture, gender, and personal background can affect the interaction of the parties during the mediation process. Participants are introduced to some of the sources of differences and discuss the mediator's role in facilitating communication between parties who are divided by different worldviews.

- Role Play #5
- Communicating Across Worldviews

Desired Outcomes

- Understand how cultural influences play out in conflict and mediation.
- Know what to do to manage cultural factors to effectively mediate when differences are evident.

Key Points

- Cultural differences affect conflict and mediation dynamics in particular ways.
- There are strategies and tactics mediators can use to effectively address cultural factors and differences.

11.1 Role Play #5

This Role Play is an "assisted negotiation," rather than a traditional mediation. The designated mediators (or facilitators) will want to think about what kind of orientation would be appropriate and how they might prepare for the negotiation. Parties will also want to give some thought to the roles they are expected to play. You will break into three groups to prepare for the Role Play – Alphas, Betas, and Mediators. A coach will help you plan for your role.

For this simulation the mediator's focus should be on doing a brief orientation, gathering information, active listening, identifying issues and interests, generating and evaluating options, **and on helping participants communicate across worldviews.**

General information will be provided to the mediator and the parties. In addition, parties will receive confidential information sheets.

11.2 Communicating Across Worldviews

Worldviews

- A comprehensive conception of the world from a specific standpoint. (Webster's Ninth New Collegiate Dictionary).
- Worldviews are enduring beliefs and assumptions establishing a foundation for:
    - What is desirable
    - What is fair
    - What is right or wrong

Dimensions of Conflict

- **Behavioral** - Actions
- **Emotional** - Feelings
- **Cognitive** - Beliefs

When Beliefs are Triggered

- We become blind to our own role in the problem
- Our motives degrade
- We limit our choices

In Order to Change the Dynamic, Re-Evaluate Your Response

- We know us
- We have access to us
- We can change

Micro Engagement Mindset

- Awareness of trigger responses, often caused by challenging core beliefs
- Accept and consider that this is a sign that something matters
- Accept and consider that there are other possible narratives
- Intentionally choose how you will communicate

Constructive Conflict Communications

Reduce Mistrust Though Integrity & Transparency

- Keep track of what you promise to do (follow up, questions to answer) and do it.
- Provide feedback loops. If you gather information, report what you learn.
- Summarize and give participants the opportunity to clarify misunderstandings.

Perceived "Fairness"

- Meaningful opportunity to speak.
- Treated all participants with dignity and respect.
- Received assurance that responder has listened to their story and cared about what was said.
- People prefer "voice" to "mute." (Greenberg & Folger, 1983) And are more likely to judge the interaction as "fair," even if they do not agree with the outcome.

Requires Asking and Active Listening

- Listen with the intent to fully understand
- Challenge your own assumptions
- Demonstrate that you have listened
- Empathy rather than antipathy

Get (Not Take) Others' Perspectives: "If your belief about the other side's perspective is mistaken, then carefully considering that person's perspective will only magnify the mistake's consequences." (Nicholas Epley)

Suggestions for Providing Culturally Sensitive Mediation Services

- ❑ Design the process with substantial input from the disputants

- ❑ Clearly explain your role and the factors that will enable you to be more effective

- ❑ Consider using cultural “translators” who are known to the disputants as co-interveners

- ❑ Consider using physical settings that are familiar to the disputants

- ❑ Under some mutually agreeable circumstances, allow the intervener the option of providing strategic advice to the disputants

- ❑ Consider allowing the disputants to use opening and closing rituals during the ADR sessions

Source: training content, Mark McCrea and Aimee Gourlay

Reflections

- What examples of cultural differences in conflict can you recall?
- How might any of the strategies identified in Module 11.3 help manage cultural differences and conflict dynamics?

Module 12: Legal Context, Preparation and Ethics II

Summary

This module includes a review of the legal context of mediation, and a discussion of how to prepare for mediation. Ethical issues are the focus point of for the Role Play. Participants are given an opportunity to witness ethical dilemmas in simulated situations and to experience handling them.

- The Legal Context of Mediation
- Preparation for Mediation
- Role Play #6
- Handling Ethical Dilemmas
- Wrap Up

Desired Outcomes

- Understand the legal context in which mediation occurs, and implications for practice.
- Appreciate the importance of preparing effectively to mediate and follow promising practices.

Key Points

- Your practice needs to conform to Minnesota's legal and ethical requirements and parameters.
- Attending well to the full range of considerations for preparing will help promote success during the process.

12.1 The MN Legal Context

- Rule 114 applies to most civil and family law cased file in MN District Courts
- Information on ADR selection and timing shall be included in the Informational Statement (except in cases where there is an allegation of domestic abuse)
- Parties can agree on the ADR process or recommend to the court that ADR is inappropriate
- Court may order the parties into a non-binding process and can appoint a Qualified Neutral from the Neutral Roster
- Court may not order indigent parties to ADR unless affordable services are available
- Evidence of an ADR proceeding is not admissible in subsequent proceedings
- Statements made during mediation which are not "otherwise discoverable" are not admissible in subsequent proceedings
- Communications to the court by the neutral are limited, confidentiality maintained
- Rule 114.13 requires specific terms in the Agreement to Mediate

12.2 Preparation for Mediation

Mediation doesn't begin when the parties and the mediator sit down at the table. There are several preliminary steps:

- Case intake
  - Screening for appropriate ADR process
- Checking for conflicts of interest
- Scheduling and logistics (when, where etc.)
- Sendingout information, (e.g., Agreement to mediate, mediator's biographical information, Q & A about mediation)
- Information from the Parties
  - Written Case Information Statements
  - Court documents
- Pre-mediation meetings or telephone conferences with parties or attorneys
- Mediator's preparation, (e.g., reviewing statutes, cultural information)
- Agreement regarding payment of fees

12.3 Role Play #6

Instructions:

For this role play the mediator's focus should be on doing a brief orientation, gathering information, active listening, identifying issues and interests, generating and evaluating options, and use of private meetings.

General information will be provided to the mediator and the parties. In addition, parties will receive confidential information sheets.

You will be told how much time to allow for this simulation. You will also be given time for a small group debrief.

12.4 Ethics II: Ethical Dilemmas

In this segment, trainers will set up several scenarios which pose potential ethical dilemmas for mediators. One or more individuals will be assigned to serve as the mediator in these scenarios. Other participants will volunteer to take the place of the original mediator and try a different technique or approach.

Appendix

GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

(Amended rules effective January 1, 2023)

Rule 114. Alternative Dispute Resolution

Rule 114.01 Applicability

(a) Applicability to Actions. This rule governs court-annexed Alternative Dispute Resolution (ADR). All civil and family cases are subject to this rule except:

(1) As provided in Minnesota Statutes, section 604.11 (medical malpractice);

(2) As provided in Family Court Rules 303 and 310;

(3) Cases enumerated in Rule 111.01;

(4) Cases excluded under Minnesota Statutes, section 484.76;

(5) In rare circumstances where the court in its discretion finds ADR to be inappropriate or to operate as a sanction;

(6) Where parties have proceeded in good faith to resolve the matter using collaborative law, the court may excuse the parties from using further ADR processes; and

(7) Proceedings conducted by a special master appointed under Rule 53 of the Rules of Civil Procedure.

(b) Applicability of Ethics Rules to All Neutrals. All Neutrals serving in court-annexed ADR processes under this rule are subject to the authority of the ADR Ethics Board and the Code of Ethics for Court-Annexed ADR Neutrals, without regard to whether they are Qualified Neutrals as defined in Rule 114.02.

(c) 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 require that party to participate in ADR.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2023.)

Advisory Committee Comment - 1996 Amendment

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

Advisory Committee Comments - 2022 Amendments

Rule 114 is amended broadly to collect the provisions that govern court proceedings involving court-annexed ADR. Provisions of the rules that relate solely to family law matters are now contained in Rule 310.

Rule 114 governs ADR as a tool in managing pending litigation. The procedures employed may mirror those available to resolve disputes wholly outside the court-based litigation process, but Rule 114 does not govern ADR in those non-court contexts.

Rule 114.01(b) is new and is designed to provide notice to Neutrals that they are subject to the authority of the ADR Ethics Board and its rules, and the Code of Ethics for Court-Annexed ADR Neutrals. The Board's rules and the Code are set forth in separate sets of rules.

Rule 114.01(c) retains and relocates the provisions of former rule 114.11(d). Where free or low-cost ADR services are available, inability to pay should not be a barrier to using ADR.

Rule 114.02 Definitions

The following terms shall have the meanings set forth in construing these rules.

(a) Adjudicative Processes.

(1) *Arbitration.* A process in which a Neutral or panel renders an award after consideration of the evidence and presentation by each party or counsel. The award may be binding or non-binding, pursuant to the agreement of the parties.

(2) *Consensual Special Magistrate.* A process in which a Neutral decides issues after the parties have presented their positions in a similar manner as a civil lawsuit is presented to a judge. This process is binding and parties have the right of appeal to the Minnesota Court of Appeals.

(3) *Summary Jury Trial.* A process in which a Neutral presides over the parties' abbreviated presentation of evidence and argument to a jury. The jury issues a verdict which may be binding or non-binding, according to the agreement of the parties. The number of jurors on the panel is six unless the parties agree otherwise. The panel may issue a binding or non-binding decision regarding liability, damages, or both.

(b) Evaluative Processes

(1) *Early Neutral Evaluation (ENE).* A process in which one or more Neutrals with experience in the subject matter of the dispute reviews information from the parties or their attorneys after the case is filed but before formal discovery is conducted. The Neutral may give an assessment of the strengths and weaknesses a claim, case, or defense; an opinion of settlement value; and an opinion as to how the parties should expect the court to rule on the case or issue presented. The parties, with or without the assistance of the Neutrals, negotiate after hearing the Neutrals' evaluation. If settlement does not result, the Neutrals may help narrow the dispute and suggest guidelines for managing discovery.

(2) *Non-Binding Advisory Opinion.* A process 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.

(3) *Neutral Fact Finding.* A process in which the parties present evidence and argument to a Neutral who analyzes a factual dispute and issues findings. The findings are non-binding unless the parties agree to be bound by them.

(c) Facilitative Processes

(1) *Mediation.* A process in which a Neutral facilitates communication and negotiation to promote voluntary decision making by the parties to the dispute.

(d) Hybrid Processes

(1) *Mini-Trial.* A process in which each party and their counsel, if any, present their positions before a selected representative for each party, a neutral third party, or both, to develop a basis for settlement negotiations. The Neutral(s) 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.

(2) *Mediation-Arbitration (Med-Arb).* A process in which a Neutral first mediates the parties' dispute and then, in the event of an impasse, serves as arbitrator of the dispute. The decision may be binding or non-binding, pursuant to the agreement of the parties.

(3) *Arbitration-Mediation (Arb-Med).* A process in which the Neutral first serves as an arbitrator of the parties' dispute. Prior to issuing the decision, the Neutral will mediate. In the event of impasse, the Neutral discloses the decision which may be binding or nonbinding, pursuant to the agreement of the parties.

(4) *Other.* Parties may create other ADR processes by means of a written agreement that defines the role of the Neutral.

(e) Neutral. A "Neutral" is an individual who provides an ADR process under this rule.

(f) Qualified Neutral. A "Qualified Neutral" is an individual or Community Dispute Resolution Program (CDRP) listed on the State Court Administrator's roster as provided in the Rules of the Minnesota Supreme Court for ADR Rosters and Training.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective August 31, 1998; amended effective January 1, 2005; amended effective July 1, 2013; amended effective January 1, 2023.)

Implementation Committee Comment - 1993

The definitions of ADR processes that were set forth in the 1990 report of the joint Task Force have been used. No special educational background or professional standing (e.g., licensed attorney) is required of neutrals.

Advisory Committee Comment - 1996 Amendment

The amendments to this rule are limited, but important. In subdivision (a)(10) is new, and makes it explicit that parties may create an ADR process other than those enumerated in the rule.

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

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

Advisory Committee Comments - 2022 Amendments

Rule 114.02 is amended to clarify and update the specific processes available for use in court-annexed ADR. The mini-trial is retained as an available process, although it is rarely used. The definitions of "Neutral" and "Qualified Neutral" are important under the revisions made to Rule 114. Any person providing ADR services under Rule 114 is a Neutral and thereby is subject to Rule 114 and is deemed under Rule 114.04(a) to have consented to the authority of the ADR Ethics Board.

The definition of "Consensual Special Magistrate" borrows from the Special Magistrate process set forth in Minnesota Statutes, section 484.74, subdivision 2a, which is limited to the Second and Fourth Judicial Districts. The two processes are different, however, and care should be taken when specifying which process is being selected. See generally Daniel S. Kleinberger, The Consensual Special Magistrate, Minnesota's Appealable Alternative to Arbitration, Bench & B. Minn. (Jan. 2016).

According to the ADR Ethics Board's 2017 report to the Court, the definition of "Non-Binding Advisory Opinion" was added in 2007 to replace the Moderated Settlement Conference for civil matters as it was easier to understand the contours of the process and whether it was truly adjudicative as opposed to evaluative in nature. See Recommendations of the Minnesota Supreme Court Alternative Dispute Resolution Ethics Board, #ADM09-8009 11-12 (July 14, 2017). The Moderated Settlement Conference process is being reintroduced in family court Rule 310 as a process primarily used in the later stages of family court matters.

Rule 114.03 Notice By Court and Advice by Attorneys About ADR Processes

(a) Notice. Upon request, and in cases where ADR is required under these rules, the court administrator shall provide information about ADR processes and the availability of a list of Neutrals who provide ADR services in that county.

(b) Duty to Advise Clients of ADR Processes. Upon being retained to advise on any civil dispute potentially subject to Rule 114, attorneys shall provide clients with information about available ADR processes.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2023.)

Implementation Committee Comment - 1993

This rule is designed to provide attorneys and parties to a dispute with information on the efficacy and availability of ADR processes. Court personnel are in the best position to provide this information. A brochure has been developed which can be used by court administrators to give information about ADR processes to attorneys and parties. The State Court Administrator's Office will maintain a master list of all qualified neutrals and will update the list and distribute it annually to court administrators.

Advisory Committee Comment - 1996 Amendment

This change is made only to remove an ambiguity in the phrasing of the rule and to add titles to the subdivisions. Neither change is intended to affect the meaning or interpretation of the rule.

Advisory Committee Comment - 2022 Amendment

Rule 114.03 sets forth similar duties on the part of the court administrator (to provide information) and by attorneys for the parties (to advise their clients) about available ADR processes.

Rule 114.04 Selection of ADR Process and Appointment of Neutral

(a) Applicability of Ethics Rules. Neutrals serving under this rule shall be deemed to consent to the jurisdiction of the ADR Ethics Board and shall comply with the ADR Code of Ethics for Court-Annexed ADR Neutrals.

(b) Selection and Appointment. The parties, after service of the complaint, petition, or motion, shall promptly confer regarding selection and timing of the ADR process and selection of a Neutral. The parties shall include information regarding the ADR process in the submissions required by Rules 111.02 and 304.02.

If the parties agree on a process, the court should order the parties to participate in that process. If the parties cannot agree on an ADR process, the court shall order the parties to use a non-binding ADR process. In the event that the parties are unable to agree on a Neutral, the court shall make the selection of a Qualified Neutral. If the parties decide on a process and cannot decide on a Neutral, the court should not substitute its judgment on process. The court shall, with the advice of the parties, establish a deadline for completion of the ADR process.

Any individual providing ADR services under Rule 114 must either be a Qualified Neutral or be selected and agreed to by the parties.

(c) Removal. If the court selects a Qualified Neutral without the consent of all parties, any party may file a notice to remove the Qualified Neutral. Such notice must be filed with the court and served on the opposing party within 7 days of notice of the court's appointment. Upon

receipt of the notice to remove, the court shall select another Qualified 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 by motion filed within 7 days of notice of the court's appointment.

(d) Notice to Court and Neutral. In all filed actions, the parties shall notify the court administrator of any agreed Rule 114 ADR process and the name and contact information for the selected Neutral.

Upon appointment of a Neutral by the court, the court administrator shall provide a copy of the Order of Appointment to the Neutral.

(e) Scheduling. The Neutral shall schedule the ADR Session in accordance with the Order of Appointment.

(Added effective July 1, 1994; amended effective January 1, 1996; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2008; amended effective July 1, 2013; amended effective July 1, 2015; amended effective January 1, 2023.)

Implementation Committee Comment - 1993

Early case evaluation and referral to an appropriate ADR process has proven to facilitate speedy resolution of disputes, and should be encouraged whenever possible. Mandatory referral to a non-binding ADR process may result if the judge makes an informed decision despite the preference of one or more parties to avoid ADR. The judge shall not order the parties to use more than one non-binding ADR process. Seriatim use of ADR processes, unless desired by the parties, is inappropriate. The judge's authority to order mandatory ADR processes should be exercised only after careful consideration of the likelihood that mandatory ADR in specific cases will result in voluntary settlement.

Advisory Committee Comment - 1995 Amendment

Rule 114.04 is amended to make explicit what was implicit before. The rule mandates a telephone or in-court conference if the parties cannot agree on an ADR process. The primary purpose of that conference is to resolve the disagreement on ADR, and the rule now expressly says that. The court can, and usually will, discuss other scheduling and case management issues at the same time. The court's action following the conference required by this rule may be embodied in a scheduling order entered pursuant to Rule 111.03 of these rules.

Advisory Committee Comment - 1996 Amendment

The changes to this rule are made to incorporate Rule 114's expanded applicability to family law matters. The rule adopts the procedures heretofore followed for ADR in other civil cases. The beginning point of the process is the informational statement, used under either Rule 111.02 or 304.02. The rule encourages the parties to approach ADR in all matters by conferring and agreeing on an ADR method that best suits the need of the case. This procedure recognizes that ADR works best when the parties agree to its use and as many details about its use as possible.

Subdivision (a) requires a conference regarding ADR in civil actions and after commencement of family law proceedings. In family cases seeking post-decree relief, ADR must be considered in the meeting required by Rule 303.03(c). Cases involving domestic abuse are expressly exempted from the ADR meet-and-confer requirement and courts should accommodate implementing ADR in these cases without requiring a meeting nor compromising a party's right to choose an ADR process and neutral.

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

Advisory Committee Comment - 2007 Amendment

Rule 114.04(b) is amended to provide a presumptive exemption from court-ordered ADR under Rule 114 where the parties have previously obtained a deferral on the court calendar of an action to permit use of a collaborative law process as defined in Rule 111.05(a).

Advisory Committee Comments - 2022 Amendments

Rule 114.04 is amended in several important ways. It now focuses on the requirements for selection of an ADR process and of a Neutral.

Rule 114.04(c) restates and relocates former rule 114.05(c). The seven-day period for removal of the initially assigned Neutral is taken from Gen. R. Prac. 114.05(c) (effective January 1, 2020). The seven-day period for removal for cause of a substituted Neutral is taken from Minn. Gen. R. Prac. 106 (effective July 1, 2019).

Rule 114.04(d) requires notice to the court of any agreed ADR process for actions that have been filed. This provision recognizes that actions may be pending for a year or longer without being filed and that ADR may still be required or undertaken during that period. When the action is filed, the parties are required to provide notice to the court administrator (who would otherwise be unaware of the Neutral's identity and contact information) and, if the court enters an order appointing a Neutral, the court administrator is required to provide the Neutral with a copy of the appointment order. The former Rule 114.04(d) is moved to Rule 310 because it relates exclusively to family law matters.

Rule 114.05 Notice to Court Upon Settlement

If a filed action is settled through an ADR process, the attorneys shall promptly notify the court and, whether filed or not, complete the appropriate documents to bring the case to a final disposition.

(Amended effective January 1, 2023.)

Advisory Committee Comments - 2022 Amendments

Former Rule 114.05 is relocated to several new rules. Former Rule 114.05(a) is now part of new Rule 114.04(b).

Rule 114.05 is substantially similar to former Rule 114.06, although the notice and scheduling provisions have been relocated. The requirement of notice to the court in the event of settlement is new and is similar to Rule 115.10, which requires a moving party to give notice to the court if meet-and-confer efforts result in settlement of the issues raised by a motion. Rule 114.06 continues to require the prompt completion of documents necessary to close the court's file. The notice requirement in this rule applies only to filed actions; the requirement that settlement documents be prepared promptly applies to all actions, although there may be no requirement that those documents be filed if the action is not filed.

Rule 114.06 Attendance at ADR Sessions

(a) Privacy. ADR sessions are not open to the public except with the consent of all parties.

(b) Attorney Attendance. The court may require that the attorneys who will try the case attend the ADR sessions in a manner determined by the court.

(c) Attendance at Adjudicative Sessions. Unless the court has ordered otherwise, individuals with the authority to settle the case need not attend adjudicative ADR sessions as long as such individuals are reasonably accessible.

(d) Attendance at Evaluative, Facilitative, and Hybrid ADR Sessions. Unless the court has ordered otherwise, individuals with the authority to settle the case shall attend all evaluative, facilitative, and hybrid ADR sessions.

(e) Sanctions. The court may impose sanctions for violations of this rule.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2023.)

Implementation Committee Comment - 1993

Effective and efficient use of an ADR process depends upon the participation of appropriate individuals in the process. Attendance by attorneys facilitates discussions with clients about their case. Attendance of individuals with authority to settle the case is essential where a settlement may be reached during the process. In processes where a decision is made by the neutral, individuals with authority to settle need only be readily accessible for review of the decision.

Advisory Committee Comment - 1996 Amendment

This rule is amended only to incorporate the collective definitions now incorporated in Rule 114.02. This change is not intended to create any significant difference in the requirements for attendance at ADR sessions.

Advisory Committee Comments - 2022 Amendments

Rule 114.06 is substantially similar to former Rule 114.07. The committee has clarified that the requirements for attendance at ADR sessions apply to "sessions" and not "processes." The committee believes this nomenclature to be more precise in identifying the events where attendance is required.

Rule 114.07 Use of ADR Evidence in Court

(a) Evidence. Without the consent of all parties and an order of the court, except as provided in paragraph (c), no evidence from an ADR process or any fact concerning the ADR process may be admitted in any later proceeding involving any of the issues or parties.

(b) Inadmissability. 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 that are not otherwise discoverable shall be subject to discovery or other disclosure. Such evidence is inadmissible for any purpose at a later trial, including for impeachment.

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

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2023.)

Implementation Committee Comment - 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.

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.

Advisory Committee Comments - 2022 Amendments

Rule 114.07 is substantially identical to former Rule 114.08, though former Rule 114.08(e) is relocated to new Rule 114.08(a).

Rule 114.08 Neutral's Duty of Confidentiality

(a) Records of Neutral. Notes, records, impressions, opinions and recollections of the Neutral are confidential, and the Neutral shall not disclose them to the parties, the public, or any third person, unless (1) all parties and the Neutral agree to such disclosure, or (2) disclosure is required by law or other applicable professional codes or permitted by these rules. No record or recording of an ADR session may be made or disclosed without the agreement of all parties and the Neutral. If an ADR session is conducted in a court facility where proceedings are automatically recorded, the recording made shall not be used for any purpose in the case without the agreement of all parties and the Neutral.

(b) Disclosure to the Court. The Neutral may only disclose to the court information permitted to be disclosed under Rules 114.10-11.

(Adopted effective January 1, 2023.)

Advisory Committee Comments - 2022 Amendments

Rule 114.08 is a new rule that is intended to establish clear guidelines for maintaining the confidentiality of court-annexed ADR proceedings. Rule 114.08(a) includes a provision for confidentiality of a record that is unavoidable and would otherwise violate the no-recording rule. Some ADR proceedings are conducted in courtrooms where security protocols provide for automatic recording whenever the courtroom is occupied. The rule does not encourage conducting ADR sessions in such courtrooms, but recognizes that such a courtroom may be the best available location.

Rule 114.09 Arbitration Proceedings

(a) General. Parties may use binding or non-binding arbitration.

(1) Non-Binding Arbitration. Any non-binding arbitration shall be conducted pursuant to Rule 114.09, subsections (b)-(f). Parties may agree to modify the arbitration procedure as they deem appropriate.

(2) Binding Arbitration. Any binding arbitration shall be conducted pursuant to Minnesota Statutes, chapter 572B ("Uniform Arbitration Act"), subject to any agreed-upon modifications permitted under the Act.

(3) Modification. For binding and non-binding arbitration, the parties may agree to any procedural rules not inconsistent with either the Uniform Arbitration Act or this rule.

(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 and relevant 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 14 days before 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 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 opinion contained in a police report 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 that 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 14 days before the hearing; and (2) no other party has delivered to the proponent of the evidence a written demand at least 7 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 14 days before 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) The issuance of subpoenas to compel attendance at hearings is governed by Minn. R. Civ. P. 45. The attorney issuing or a 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 14 days after 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 on all parties by first class mail or other method of service authorized by the rules or ordered by the court.

(2) If no party has filed a request for a trial within 21 days after the award is filed, the court administrator shall enter the decision as a judgment and shall promptly transmit 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 collaterally 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 572B.

(f) Trial after Arbitration.

(1) Within 21 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 21-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; amended effective July 1, 2015; amended effective January 1, 2020; amended effective January 1, 2023.)

Implementation Committee Comment - 1993

The Committee made a conscious decision not to formulate rules to govern other forms of ADR, such as mediation, early neutral evaluations, and summary jury trials. There is no consensus among those who conduct or participate in those forms of ADR as to whether any procedures or rules are necessary at all, let alone what those rules or procedures should be. The Committee urges parties, judges and neutrals to be open and flexible in their conduct of ADR proceedings (other than arbitration), and to experiment as necessary, at some time in the future, to revisit the issues of rules, procedures or other limitations applicable to the various forms of court-annexed ADR.

Hennepin County and Ramsey County both have had substantial experience with arbitrations, and have developed rules of procedure that have worked well. The Committee has considered those rules, and others, in developing its proposed rules.

Subd. (a) of this rule is modeled after rules presently in use by the Second and Fourth Judicial Districts and rules currently in use by the American Arbitration Association.

Subd. (b) of this Rule is modeled after rules presently in use in the Second and Fourth Judicial Districts. In non-binding arbitration, the arbitrator is limited to providing advisory awards, unless the parties do not request a trial.

Subd. (c) of this Rule is modeled after rules presently in use in the Second and Fourth Judicial Districts. Records of the proceeding include records made by a stenographer, court reporter, or recording device.

Subd. (d) of this Rule is modeled after Rule 25 VIII of the Special Rules of Practice for the Second Judicial District.

Advisory Committee Comment - 1996 Amendment

The changes to this rule in 1996 incorporate the collective labels for ADR processes now recognized in Rule 114.02. These changes should clarify the operation of the rule, but should not otherwise affect its interpretation.

Advisory Committee Comments - 2022 Amendments

Rule 114.09 is substantially unchanged. Statutory references are updated to the current codification of the Minnesota Uniform Arbitration Act.

Rule 114.10 Communication with Parties and Court in ADR Process

(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) Evaluative, Facilitative, and Hybrid Processes. Parties and their counsel may communicate ex parte with the Neutral in evaluative, facilitative, and hybrid 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 Neutral may inform the court of only the following:

(1) Without comment or recommendations, whether the case has undergone an ADR process and whether it has or has not been resolved;

(2) Whether a party or an attorney has failed to comply with the order to attend the process or pay the court-ordered fees;

(3) Any request by the parties for additional time to complete the ADR process;

(4) With the written consent of the parties, any procedural action by the court that would facilitate the ADR process;

(5) The Neutral's assessment that the case is inappropriate for that ADR process; and

(6) A Neutral may, with the consent of the parties or by court order, disclose to the court information obtained during the ADR process.

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

(1) That the case has been settled and may also include a copy of the written agreement;

(2) Without further comment, that the case has not been settled and, with the written consent of the parties or their counsel, that resolution of pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate resolution of the dispute;

(3) That some or all of the fees have not been paid; or

(4) Notice of the court of parenting time adjustments required by Rule 310.03(c)(3).

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2023.)

Implementation Committee Comment - 1993

This Rule is modeled after Rule 25 VI of the Special Rules of Practice for the Second Judicial District.

Advisory Committee Comment - 1996 Amendment

The changes to this rule in 1996 incorporate the collective labels for ADR processes now recognized in Rule 114.02. These changes should clarify the operation of the rule, but should not otherwise affect its interpretation.

Advisory Committee Comments - 2022 Amendments

Rule 114.10 contains important restrictions on communications about the ADR process. The rule addresses two similar potential concerns: ex parte communications between the parties and the Neutral and communications between the Neutral and the court. Neither type of communication is forbidden in all circumstances, as the parties may consent to additional communications.

Rule 114.11 Fees

(a) Setting of Fee. The Neutral shall be paid according to the terms of the agreement with the parties, their attorney, or as ordered by the court. All fees of Neutral(s) for ADR services shall be fair and reasonable.

(b) Remedies for Non-Payment. If parties or attorneys fail to pay the Neutral, the court, with notice to the parties and counsel and upon filing of an affidavit from the Neutral or a party, may issue an order granting such relief as the court deems just and proper. The Neutral, in seeking relief under this rule, shall maintain confidentiality as required by these rules. The Neutral has the right to suspend services if not paid in accordance with the court order or agreement with the parties and/or their attorneys.

(Added effective July 1, 1994; amended effective July 1, 1997; amended effective January 1, 2005; amended effective January 1, 2023.)

Implementation Committee Comment - 1993

The marketplace in the parties' geographic area will determine the rates to be offered by neutrals for their services. The parties can then best determine the appropriate fee, after considering a number of factors, including availability, experience and expertise of the neutral and the financial abilities of the parties.

ADR providers shall be encouraged to provide pro bono and volunteer services to parties unable to pay for ADR processes. Parties with limited financial resources should not be denied access to an ADR process because of an inability to pay for a neutral. Judges and ADR providers should consider the financial abilities of all parties and accommodate those who are not able to share equally in costs of the ADR process. The State Court Administrator shall monitor access to ADR processes by individuals with limited financial resources.

Advisory Committee Comment - 1996 Amendment

The payment of fees for neutrals is particularly troublesome in family law matters, where the expense may be particularly onerous. Subdivision (d) of this rule is intended to obviate some difficulties relating to inability to pay ADR fees. The advisory committee rejected any suggestion

that these rules should create a separate duty on the part of neutrals to provide free neutral services. The committee hopes such services are available, and would encourage qualified neutrals who are attorneys to provide free services as a neutral as part of their obligation to provide pro bono services. See Minn. R. Prof. Cond. 6.1. If free or affordable ADR services are not available, however, the party should not be forced to participate in an ADR process and should suffer no ill-consequence of not being able to do so.

Advisory Committee Comment - 2022 Amendments

Rule 114.11 provides for the payment of fees to Neutrals. The rule creates a process for seeking an order compelling payment of a Neutral's fees. The rule requires that the Neutral maintain any required confidentiality under the rules, but this requirement is not intended to be a significant constraint, as the agreement (or order) to pay a Neutral, the billings by the Neutral, and the failure to pay can be submitted without disclosure of any confidential information from the ADR process. The rule also confirms that a Neutral is entitled to suspend the provision of services if payments due are not made. Amended Rule 114.10(d)(3) also confirms the right of the Neutral to communicate with the court about unpaid fees.

Rules 114.12 to 114.14 are deleted and their subject matter moved to the separate Rules of the Minnesota Supreme Court for ADR Rosters and Training.

Rule 114.12ADR Rosters and Training

Subdivision 1. Applicability of Rules; Definitions.

(a) Applicability of Rules. These rules apply to ADR Neutral rosters and training requirements maintained by the State Court Administrator's office. The definitions for any terms used in these rules are as found in Rules 114 and 310 of the Minnesota General Rules of Practice for the District Courts, and as set forth below.

(b) Definitions.

(1) "Classroom training" includes both interactive training conducted in person and interactive training conducted through virtual means. Classroom training also includes a "ride-along."

(2) "Experiential learning" includes, but is not limited to, a "ride-along."

(3) "Ride-along" means observation of a real-life ADR process, including observation by remote means, conducted by a Qualified Neutral. With consent of the parties and under the supervision of the Qualified Neutral, the ride-along may also include participation in the ADR process.

Subd. 2. Rosters of Neutrals; Fees.

(a) Rosters. The State Court Administrator shall establish rosters of Qualified Neutrals in the following categories:

(1) Civil

(A) Civil Facilitative/Hybrid

(B) Civil Adjudicative/Evaluative

(2) Family

(A) Family Law Facilitative/Hybrid

(B) Family Law Hybrid

(i) Parenting Time Expeditor

(ii) Parenting Consultant

(C) Family Law Evaluative/Hybrid

(i) Social Early Neutral Evaluation

(ii) Financial Early Neutral Evaluation

(iii) Moderated Settlement Conference

(D) Family Law Adjudicative

The State Court Administrator shall review applications from individuals who apply to be listed on the roster of Qualified Neutrals, which shall include those who meet the training requirements established in subdivision 4, or who have received a waiver under subdivision 4(m). 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 suspended or revoked. A Qualified Neutral may not provide services during a period of suspension of a professional license unless a waiver is granted by the ADR Ethics Board. A Qualified Neutral shall immediately notify the State Court Administrator if his or her professional license has been suspended, revoked, or reinstated.

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

Subd. 3. Qualification of Neutrals.

(a) Qualification. To become a Qualified Neutral, an applicant must have completed the certified training requirements provided in these rules. Once qualified, the Neutral must comply with the continuing education requirements set out in subdivision 4(j)-(k) of this Rule to remain on the roster.

(b) Community Dispute Resolution Programs (CDRPs). A Community Dispute Resolution Program (CDRP) is one certified by the State Court Administrator pursuant to Minnesota Statutes, chapter 494. Each CDRP may place its organization on the appropriate roster of Qualified Neutrals as a provider of services pursuant to these rules provided that the CDRP maintains records and ensures that any Neutral providing services that are subject to these rules satisfies the roster requirements for those services. These Neutrals are subject to the jurisdiction of the ADR Ethics Board when providing services within the scope of these rules, and shall follow the Code of Ethics set forth in this Rule.

Subd. 4. Training, Standards, and Qualifications for Neutral Rosters.

(a) Civil Facilitative/Hybrid Neutrals Roster.

(1) *Qualifications.* All Qualified Neutrals providing facilitative or hybrid services, that include a mediation component in civil, non-family matters, must have received a minimum of 30 hours of classroom training, with an emphasis on experiential learning.

(2) *Training.* The training outlined in this subdivision shall include a maximum of 15 hours of lectures and a minimum of 15 hours of experiential learning. The certified training must include the following topics:

(A) Conflict resolution and mediation theories, including: the principle of party self-determination, root causes of conflict, interest-based versus positional bargaining, models of conflict resolution, intercultural conflict, and mediator bias awareness and power dynamics;

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

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

(D) Mediator conduct, including conflicts of interest, confidentiality and admissibility of evidence, neutrality, ethics, standards of practice, support of party self-determination, and mediator introduction pursuant to the Civil Mediation Act, Minnesota Statutes, sections 572.31-572.40;

(E) 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; and

(F) The importance of parties understanding and selecting the mediation model in which they are participating.

(b) Civil Adjudicative/Evaluative Neutrals Roster.

(1) *Qualifications.* All Qualified Neutrals providing arbitration, summary jury trial, early neutral evaluation, and adjudicative or evaluative services or serving as a consensual special magistrate must have received a minimum of 6 hours of classroom training.

(2) *Training.* The certified training must include the following topics:

(A) Pre-hearing communications between parties and between parties and Neutral;

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

(C) Settlement techniques;

(D) 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

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

(c) Family Law Facilitative/Hybrid Neutrals Roster.

(1) *Qualifications.* All Qualified Neutrals providing family law facilitative or family law hybrid services that include a mediation component must have received a minimum of 40 hours of classroom training, with an emphasis on experiential learning.

(2) *Training.* The certified training shall consist of at least 40 percent experiential learning. The training must include at least:

(A) 4 hours of conflict resolution theory, including intercultural conflict and mediator bias awareness;

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

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

(D) 6 hours of family law including custody and parenting time, visitation, child and spousal support, asset distribution and valuation, and taxation;

(E) 5 hours of family budget and finances;

(F) 2 hours of ethics, including: (i) self-determination of the parties; (ii) the role of mediators and parties' attorneys in the facilitative process; (iii) the prohibition against mediators dispensing legal advice; and (iv) the parties' rights to terminate the mediation process; and

(G) A minimum of 6 hours of certified training in domestic abuse issues, which must be a part of the 40-hour training above, to include at least:

(i) 2 hours about domestic abuse in general, including legal definitions, dynamics of abusive relationships, and types of power imbalance;

(ii) 3 hours of domestic abuse screening, including simulation or roleplaying; and

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

(d) Family Law Hybrid Neutrals Roster - Parenting Time Expeditor.

(1) *Qualifications.* All Qualified Neutrals providing parenting time expediting services must: (1) be qualified family law facilitative Neutrals under subdivision 4(c); (2) demonstrate at least 5 years of experience working with high-conflict couples in the area of family law; and (3) be recognized as qualified practitioners. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses related to high-conflict couples or acceptance by peers as experts in their field.

(2) *Training.* All qualified Parenting Time Expeditors (PTEs) shall have also completed minimum of 12 hours of certified training, including at least 40 percent experiential learning, on the following topics:

(A) Overview of family law Neutral roles and distinguishing the PTE role;

(B) Emotional and psychological dynamics of separation and divorce;

(C) Code of Ethics for Court-Annexed ADR Neutrals and the PTE statute;

(D) Appointing orders;

(E) Orientating parties to the process;

(F) Managing the parenting time expediting process, including decision making;

(G) Addressing domestic abuse in parenting time expediting;

(H) Protocols and fees;

(I) Standards and best practices;

(J) Avoiding and handling complaints; and

(K) Drafting summaries and decisions.

(e) Family Law Hybrid Neutrals Roster - Parenting Consulting.

(1) *Qualifications.* All Qualified Neutrals providing parenting consulting services must: (1) be qualified family law facilitative Neutrals under subdivision 4(c); (2) demonstrate at least 5 years of experience working with high-conflict couples in the area of family law; and (3) 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 related to high-conflict couples, or acceptance by peers as experts in their field.

(2) *Training.* Parenting Consultants shall have also completed a minimum of 18 hours of certified training, including at least 40 percent experiential learning, on the following topics:

(A) Emotional and psychological dynamics of separation and divorce;

(B) Developmental needs of children;

(C) Addressing domestic abuse in the parenting consulting process;

(D) Appointing orders;

(E) Fee agreements and billing;

(F) Managing the parenting consulting process;

(G) Standards and best practices;

(H) Statutes and rules, including the Code of Ethics for Court-Annexed ADR Neutrals;

(I) Issues and techniques;

(J) Drafting summaries and decisions; and

(K) Avoiding and handling complaints.

(f) Family Law Evaluative/Hybrid Neutrals Roster - SENE.

(1) *Qualifications.* All Qualified Neutrals providing Social Early Neutral Evaluations (SENE) must: (1) be qualified family law facilitative Neutrals under subdivision 4(c); (2) have at least 5 years of experience as family law attorneys, mental health professionals dealing with divorce-related matters, or as other professionals working in the area of family law; and (3) 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 related to high-conflict couples, or acceptance by peers as experts in their field.

(2) *Training.* Neutrals performing SENE must have observed two SENEs and completed 12 hours of certified training, including at least 40 percent experiential learning, on the following topics:

(A) Demonstration of a judicial officer's Initial Case Management Conference orientation;

(B) Pre-SENE considerations and staging the SENE;

(C) Introduction to the process;

(D) Information gathering;

(E) SENE team consultation;

(F) Feedback;

(G) Attorney-client caucus;

(H) Negotiation;

(I) Completing the process;

(J) Reporting to the court; and

(K) Addressing domestic violence in SENE and FENE.

(g) Family Law Evaluative/Hybrid Neutrals Roster - FENE.

(1) *Qualifications.* All Qualified Neutrals providing Financial Early Neutral Evaluations (FENE) must: (1) be qualified family law facilitative Neutrals under Rule 4(c); (2) have at least 5 years of experience as family law attorneys, as accountants dealing with divorce-related matters, or as other professionals working in the area of family law; and (3) 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 related to family law related finances, or acceptance by peers as experts in their field.

(2) *Training.* Neutrals performing FENE must have observed two FENEs, and completed 12 hours of certified SENE training and 5 hours of certified FENE training, including at least 40 percent experiential learning, on the following topics:

(A) Pre-FENE considerations;

(B) The financial evaluative meeting;

(C) Making sure the parties are heard;

(D) Delivering the opinion;

(E) Concluding the FENE; and

(F) Finalizing the agreement.

(h) Family Law Evaluative/Hybrid Neutrals Roster - MSC.

(1) *Qualifications.* All Qualified Neutrals providing a Moderated Settlement Conference (MSC) must 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 related to family law, or acceptance by peers as experts in their field.

(2) *Training.* Neutrals performing MSCs must have observed one MSC and have completed 4 hours of certified MSC training, including at least 40 percent experiential learning, with the training to include the following topics:

(A) When MSC process is appropriate;

(B) Logistics of MSC process;

(C) Dealing with attorneys and parties in highly entrenched positions;

(D) How to share opinions without alienating parties or attorneys;

(E) Managing domestic abuse situations (e.g. OFP, DANCO, HRO);

(F) Confidentiality and communication with judicial officers; and

(G) MSC notes and records in discovery process.

A Neutral already listed on the Family Law Evaluative/Hybrid Neutrals Roster - SENE or on the Family Law Evaluative/Hybrid Neutrals Roster - FENE may alternatively satisfy the training requirements for the MSC Roster by either (1) observing one MSC, or (2) completing a one-hour classroom training covering the subject matters listed above.

(i) Family Law Adjudicative Neutral Roster.

(1) *Qualifications.* All Qualified Neutrals providing family law adjudicative services must: (1) have at least 5 years of professional experience in the area of family law; and (2) 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.

(2) *Training.* All qualified family law adjudicative Neutrals shall have also completed a minimum of 6 hours of certified training on the following topics:

(A) Pre-hearing communications among parties and between the parties and Neutral(s);

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

(C) Settlement techniques; and

(D) Rules, statutes, and practices pertaining to arbitration in the trial court system, including this rule, Special Rules of Practice for the District Courts, and applicable state and federal statutes.

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

(i) 2 hours about domestic abuse in general, including legal definitions, dynamics of abusive relationships, and types of power imbalance;

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

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

(j) Continuing Education for Facilitative, Hybrid, and Evaluative Neutrals. All Qualified Neutrals providing facilitative, hybrid, or evaluative 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. These hours may be attained through course work and attendance at state and national ADR conferences. Up to 9 hours of continuing education can be from participation in a facilitated consultation group with other Neutrals. 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 60 days after the close of the period during which his or her education requirements must be completed.

(k) Continuing Education for Adjudicative Neutrals. Qualified Neutrals providing adjudicative services 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. The Qualified Neutral shall submit continuing education credit information to the State Court Administrator's Office within 60 days after the close of the period during which his or her education requirements must be completed.

(l) Certification of Training Programs and Trainers. The State Court Administrator shall certify training programs which meet the training criteria of this rule. In order to qualify as a certified training program, one or more trainers must meet the following requirements:

(1) Have taken training as set forth in this rule or equivalent training on the same topic before teaching it;

(2) Be a Qualified Neutral if providing ADR services in Minnesota. If a trainer from out of state is not on the roster, the Minnesota ADR rules/law topics as required in this section, including the Code of Ethics for Court-Annexed ADR Neutrals, must be taught by a local expert who is on the roster;

(3) Demonstrate 5 years of experience as a Neutral in the ADR process being taught; and

(4) Demonstrate experience as a trainer using the role play/experiential learning format required by these rules.

(m) Waiver of Training Requirement. An individual seeking to be included on the roster of Qualified Neutrals without having to complete training requirements under these rules shall apply for a waiver to the Minnesota Supreme Court ADR Ethics 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, 1997; amended effective January 1, 2005; amended January 1, 2023.)

Advisory Committee Comment - 1996 Amendment

This rule is primarily new, though it incorporates the procedure now in place administratively under Rule 114.12(b) for placement of neutrals on the roster and the establishment of fees.

This rule expands the State Court Administrator's neutral roster to create a new, separate roster for family law neutrals. It is intended that the new roster will function the same way the current roster for civil ADR under existing Rule 114 does. Subparagraph (b) is new, and provides greater detail of the specific sub-rosters for civil neutrals. It describes the roster as it is now created, and this new rule is not intended to change the existing practice for civil neutrals in any way. Subparagraph (c) creates a parallel definition for the new family law neutral roster, and it is intended that the new roster appear in form essentially the same as the existing roster for civil action neutrals.

Rule 114.13 Code of Ethics and Enforcement Procedures

(A) CODE OF ETHICS FOR COURT-ANNEXED ADR NEUTRALS.

Introduction

Rule 114 of the Minnesota General Rules of Practice provides that alternative dispute resolution (ADR) must be considered for certain civil cases filed in district court. The ADR Ethics Board, appointed by the Supreme Court, approves individuals and Community Dispute Resolution Programs (CDRPs) that are qualified under the rules governing Neutrals in court-referred cases.

This Code of Ethics governs Neutrals appointed or serving by agreement of the parties in any court-annexed ADR proceedings.

Individuals and rostered CDRPs and individuals who volunteer for rostered CDRPs, when providing ADR services under Rule 114 or 310 of the General Rules of Practice, consent to the jurisdiction of the ADR Ethics Board and to compliance with this Code of Ethics. The purpose of this code is to provide standards of ethical conduct to guide Neutrals who provide ADR services, to inform and protect consumers of ADR services, and to ensure the integrity of the various ADR processes.

In order for ADR to be effective, there must be broad public confidence in the integrity and fairness of the process. Neutrals have a responsibility not only to the parties and to the court, but also to the continuing improvement of ADR processes. Neutrals must observe high standards of ethical conduct. The provisions of this Code should be construed to advance these objectives.

Neutrals should explain the ADR process to the parties before beginning a proceeding. Neutrals should not practice, condone, facilitate, or promote any form of discrimination on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age. Neutrals should be aware that cultural differences may affect a party's values and negotiating style.

Failure to comply with any provision in this Code of Ethics may be the basis for the ADR Ethics Board to impose any of the remedies or sanctions set out in these rules, or for other actions by the Minnesota Supreme Court.

Violation of a provision of this Code shall not create a claim for relief or presumption that a legal duty has been breached. Nothing in this Code should be deemed to establish or augment any substantive legal duty on the part of Neutrals.

Subdivision 1. Impartiality.

A Neutral shall conduct the dispute resolution process in an impartial manner and shall serve only in those matters in which the Neutral can remain impartial. Impartiality means freedom from favoritism or bias either by word or action, and a commitment to serve all parties as opposed to a single party. If at any time the Neutral is unable to conduct the process in an impartial manner, the Neutral shall withdraw.

Subd. 2. Conflicts of Interest.

(a) A conflict of interest is a direct or indirect financial or personal interest in the outcome of the proceeding or any existing or past financial, business, professional, family, or social relationship which is likely to affect impartiality or which might reasonably create an appearance of partiality or bias. The Neutral must be committed to the parties and the ADR process and not allow pressures from outside the ADR process to influence the Neutral's conduct or decisions. A Neutral shall disclose all actual and potential conflicts of interest reasonably known to the Neutral. After disclosure, the Neutral may serve, with the consent of the parties. Even with the consent of the parties, the Neutral must exercise caution in circumstances that would raise legitimate questions about the integrity of the ADR process. If a conflict of interest impairs a Neutral's impartiality, the Neutral shall withdraw regardless of the consent of the parties. Without the consent of all parties, and for a reasonable time under the particular circumstances, a Neutral who also practices in another profession shall not establish a professional relationship in that other profession with one of the parties, or any person or entity, in a substantially factually related matter.

(b) Neutrals acting as arbitrators shall disclose to the parties in writing at the time of selection, or promptly after it becomes known, any actual or potential conflict of interest known to the Neutral arbitrator.

Subd. 3. Competence.

No person shall serve as a Neutral unless they possess the qualifications and ability to fulfill the role that the Neutral has been requested or assigned to serve and must decline appointment, request assistance, or withdraw when a dispute is beyond the Neutral's competence. No individual may act as a Neutral for compensation without providing the parties with a written statement of qualifications prior to beginning services. The statement shall describe the Neutral's educational background and relevant training and experience in the field.

Subd. 4. Confidentiality.

The Neutral shall discuss issues of confidentiality with the parties before beginning an ADR process, including limitations on the scope of confidentiality and the extent of confidentiality

provided in any private sessions that a Neutral holds with a party. The Neutral shall maintain confidentiality as required by Rules 114.08, 114.10, and 114.11 of the General Rules of Practice, and any additional agreements made with or between the parties.

Subd. 5. Quality of the Process.

A Neutral shall work to ensure a quality process. A quality process requires a commitment by the Neutral to diligence and procedural fairness. A Neutral shall ensure that the reasonable expectations of the parties concerning the timing of the ADR process are satisfied and shall exert every reasonable effort to expedite the process, including prompt issuance of written reports, awards, or agreements. A Neutral shall withdraw from an ADR process or postpone a session if the process is being used to further illegal conduct, or if a party is unable to participate due to drug or alcohol abuse, or other physical or mental incapacity. A Neutral shall not knowingly make false statements of fact or law.

Subd. 6. Advertising and Solicitation.

A Neutral shall be truthful in advertising and solicitation for alternative dispute resolution. A Neutral shall make only accurate and truthful statements about any alternative dispute resolution process, its costs and benefits, the Neutral's role and her or his skills and qualifications. A Neutral shall refrain from promising specific results.

In an advertisement or other communication to the public, a Neutral who is on the Roster of Qualified Neutrals may use the phrase "qualified neutral under the Rules of the Minnesota Supreme Court for ADR Rosters and Training." It is not appropriate to identify oneself as a "certified" Neutral.

Subd. 7. Fees; Requirement of Written Agreement for ADR Services; Prohibited Actions.

(a) Fees. A Neutral shall fully disclose and explain the basis of compensation, fees and charges to the parties. The parties shall be provided sufficient information about fees at the outset to determine if they wish to retain the services of a Neutral. A Neutral shall not enter into a fee agreement that is contingent upon the outcome of the alternative dispute resolution process. The fee agreement shall be included in the written agreement and shall be consistent with a court order appointing the Neutral. A Neutral shall establish a protocol for regularly advising parties on the status of their account and requesting payment of fees. If one party does not pay the fee, and another party declines to cover the fee, the Neutral may withdraw, proceed, or suspend services for both parties until payment is made. If proceeding with services, the Neutral shall not refuse participation by any party based on payment status. A Neutral who withdraws from a case shall return any unearned fee to the parties. A Neutral shall not give or receive any commission, rebate, or similar remuneration for referring a person for alternative dispute resolution services.

(b) Requirement of Written Agreement for ADR Services. In any civil or family court matter in which ADR is used, the Neutral shall enter into a signed written agreement for services with the parties either before or promptly after the commencement of the ADR process. The written agreement shall be consistent with any court order appointing the Neutral. If any court order requires the Neutral to do something that would violate these rules, the Code of Ethics for Court-Annexed ADR Neutrals, or any applicable court rules or statutes, the Neutral must decline

appointment or defer appointment until the parties obtain amendment of the appointment order or obtain a subsequent order. The written agreement shall include, at a minimum, the following:

(1) A description of the role of the Neutral.

(2) If the Neutral's role includes decision making, whether the Neutral's decision is binding or non-binding.

(3) An explanation of confidentiality and admissibility of evidence.

(4) If the Neutral is to be paid, the amount of compensation, how the compensation will be paid, and include a notice that the Neutral could seek remedies from the court for non-payment pursuant to Rule 114.11(b) of the General Rules of Practice for the District Courts.

(5) If adjudicative, the rules of the process.

(6) That the Neutral must follow the Code of Ethics for Court-Annexed ADR Neutrals and is subject to the jurisdiction of the ADR Ethics Board.

(7) Neutrals for facilitative and evaluative processes shall include the following language in the agreement signed at the commencement of the process:

(A) the Neutral has no duty to protect the interests of the parties or provide them with information about their legal rights;

(B) no agreement reached in this process is binding unless it is put in writing, states that it is binding, and is signed by the parties (and their legal counsel, if they are represented) or put on the record and acknowledged under oath by the parties;

(C) signing a settlement agreement may adversely affect the parties' legal rights;

(D) the parties should consult an attorney before signing a settlement agreement if they are uncertain of their rights; and

(E) in a family court matter, the agreement is subject to the approval of the court.

(c) Prohibited Actions by Facilitative and Evaluative Neutrals. A Neutral in a facilitative or evaluative process shall not:

(1) Draft legal documents that are intended to be submitted to the court as an order to be signed by a judge or judicial officer;

(2) Regardless of a Neutral's qualifications or licenses, provide therapy to either party nor provide legal representation or advice to any party or engage in the unauthorized practice of law in any matter during an ADR process; or

(3) Require a party to stay in the ADR process or attempt to coerce an agreement between the parties.

Subd. 8. Self-Determination in Mediation.

A mediator shall act in a manner that recognizes that mediation is based on the principle of self-determination by the parties.

(B) RULES OF THE MINNESOTA ADR ETHICS BOARD.

Introduction

(a) Application. These rules are to be applied in a manner that protects the public, instructs Neutrals, and improves the quality of court-annexed alternative dispute resolution practice under Rules 114 and 310 of the General Rules of Practice for the District Courts and the Code of Ethics for Court-Annexed ADR Neutrals in Minnesota court proceedings. To the extent possible, the remedies provided for in these rules are intended to be rehabilitative in nature.

(b) Inclusion on Roster; Revocable Privilege. Inclusion on the list of Qualified Neutrals pursuant to the Rules of the Minnesota Supreme Court for ADR Rosters and Training is a conditional privilege, revocable for cause.

Subdivision 1. Scope.

These rules apply to complaints against any individual or community dispute resolution program subject to Rule 114 or 310 of the General Rules of Practice for the District Courts, The Code of Ethics for Court-Annexed ADR Neutrals, or the Rules of the Minnesota Supreme Court for ADR Rosters and Training. Collaborative attorneys or other professionals as defined in Rule 111.05(a) of the Minnesota General Rules of Practice are not subject to the Rule 114 Code of Ethics for Court-Annexed ADR Neutrals and these rules while acting in a collaborative process under Rule 111.05, nor are court appointed special masters under Rule 53 of the Rules of Civil Procedure or court appointed experts appointed under Rule 706 of the Rules of Evidence.

Subd. 2. Procedure.

(a) Complaint.

(1) A complaint must be in writing, signed by the complainant, and submitted electronically or mailed to the ADR Ethics Board at 25 Rev. Dr. Martin Luther King Jr. Blvd., 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.

(2) The ADR Ethics Board, in conjunction with the State Court Administrator's Office, shall review the complaint and determine whether the Board has a reasonable belief that the allegation(s), if true, would constitute a violation of the Code of Ethics for Court-Annexed ADR Neutrals. The ADR Ethics Board may request additional information from the complainant if it is necessary prior to making a recommendation.

(3) If the allegation(s) of the complaint, if true, would not constitute a violation of the Code of Ethics for Court-Annexed ADR Neutrals, the complaint shall be dismissed and the complainant and the Neutral shall be notified in writing. The ADR Ethics Board's decision is final and no further review is permitted.

(b) Investigation. If the complaint is not dismissed, the Board will review, investigate, and act as it deems appropriate. In all such cases, the Board shall send to the Neutral, by electronic means, 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(a) of the Minnesota General Rules of Practice, or of Rule IV of the Code of Ethics for Court-Annexed ADR Neutrals, or these rules, for the Neutral to disclose notes, records, impressions, opinions, 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 30 days, the allegation(s) shall be deemed admitted.

(c) Response and decision.

(1) Upon receipt of the Neutral's response, a member of the ADR Ethics Board shall lead the investigation and shall write a report with findings and recommended actions to the Board. The Board shall determine by clear and convincing evidence whether the ethical code has been violated, and if so, determine what remedies or sanctions would be appropriate.

(2) After review and investigation, the Board shall advise the complainant and Neutral of the Board's findings, conclusions, and sanctions in writing by electronic means or U.S. Mail. If the ADR Ethics Board makes a finding that ethical violations have occurred and is imposing sanctions, the Neutral shall have the right to request reconsideration or to proceed directly to a formal hearing. If no ethical violations have been found or the complaint has been resolved informally, there is no right to a hearing.

Subd. 3. Remedies and Sanctions.

(a) Available Sanctions. 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) Issue a public reprimand on the ADR webpage of the Minnesota Judicial Branch website, which shall include publishing the Neutral's name, a summary of the violation, and any sanctions imposed. The public reprimand may also be published elsewhere.

(5) Remove the Neutral from the roster of Qualified Neutrals, and set conditions for reinstatement if appropriate.

In situations where the conduct is unintentional and minimal, the Board may determine that an informal remedy, including discussions with the Neutral, which may include the complainant, is appropriate to resolve the complaint in lieu of a sanction.

(b) Standards for Imposition of Sanctions. 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) Request for Reconsideration. If the ADR Ethics Board finds a violation, the Neutral may request in writing reconsideration of the findings, conclusions, and sanctions. The request shall be submitted within 14 days after the date the findings, conclusions, and sanctions are sent to the Neutral. The request shall be no longer than 2 pages in length, a copy of which must be sent to the complainant. Complainants may file a response of no longer than 2 pages in length within 7 days of notification of the Neutral's request. The Board shall address reconsideration

requests in a timely manner. Requests for reconsideration will only be granted upon a showing of compelling circumstances.

(d) Review Hearing.

(1) *Request for Hearing.* The Neutral shall have 28 days from the date the ADR Ethics Board's findings, conclusions, and sanctions are sent to the Neutral, or 28 days from the date of the final resolution of a Request for Reconsideration, whichever is later, to request a hearing. The request for a hearing shall be in writing and be submitted to the ADR Ethics Board. The hearing will be de novo and will be limited to the ethical violations as found by the ADR Ethics Board.

(2) *Appointment of the Referee.* The State Court Administrator's Office shall notify the Supreme Court of the request for hearing. The court shall appoint a referee to conduct the hearing. Unless the court otherwise directs, the proceedings shall be conducted in accordance with the Minnesota Rules of Civil Procedure and Minnesota Rules of Evidence and the referee shall have all powers of a district court judge. All prehearing conferences and hearings shall be held at the Minnesota Judicial Center, shall be recorded electronically by staff of the State Court Administrator's Office, and shall not be accessible by the public.

(3) *Timing of Prehearing Conference.* The referee shall schedule a prehearing conference within 28 days of being appointed. Notice of this prehearing conference shall be sent to the Neutral and the ADR Ethics Board.

(4) *Right to Counsel.* An attorney designated by the State Court Administrator's Office shall represent the ADR Ethics Board at the hearing. The Neutral shall have the right to be represented by an attorney at the Neutral's expense.

(5) *Settlement Efforts.* At the prehearing conference, the referee should encourage alternative dispute resolution between representatives of the ADR Ethics Board and the Neutral.

(6) *Discovery, Scheduling Order.* At the prehearing conference, discovery shall be discussed. The parties shall have the right to conduct discovery, which must be completed within the time limits as set by the referee. The referee will issue a scheduling order setting forth the extent and scope and time for discovery. The scheduling order will set the hearing date and deadlines for the exchange of witness and exhibit lists. The referee may issue subpoenas for the attendance of witnesses and production of documents or other evidentiary material.

(7) *Burden of Proof.* At the hearing, the ADR Ethics Board has the burden to prove by clear and convincing evidence that the Neutral committed a violation of the Code of Ethics for Court-Annexed ADR Neutrals.

(8) *Order.* Within 60 days of the closing of the record, the referee shall issue written findings and conclusions as to whether there was a violation of the Code of Ethics for Court-Annexed ADR Neutrals. Copies of the decision shall be sent to the complainant, the Neutral, and the ADR Ethics Board. If the referee determines that there is an ethical violation, the referee may:

(A) Issue a private reprimand.

(B) Designate the corrective action necessary for the Neutral to remain on the roster.

(C) Notify the appointing court and any professional licensing authority with which the Neutral is affiliated of the complaint and its disposition.

(D) Issue a public reprimand on the Minnesota Judicial Branch website, which shall include publishing the Neutral's name, a summary of the violation, and any sanctions imposed. The public reprimand may also be published elsewhere.

(E) Remove the Neutral from the roster of Qualified Neutrals, and set conditions for reinstatement if appropriate.

(F) Require the Neutral to pay costs and disbursements and reasonable attorney fees in those cases in which it is determined that the Neutral acted in bad faith in these proceedings.

(e) Final Decision. The decision of the referee is final.

Subd. 4. Confidentiality.

(a) Public Access.

(1) *Exceptions to Confidentiality.* Unless and until final sanctions are imposed, all files, records, and proceedings of the Board that relate to or arise out of any complaint shall be confidential, except:

(A) As between Board members and staff;

(B) After final sanctions are imposed, upon request of the Neutral, copies of the documents contained in the file maintained by the Board, excluding its work product, shall be provided to the Neutral;

(C) As otherwise required or permitted by rule or statute;

(D) To the extent that the neutral waives confidentiality; and

(E) At the discretion of the Board, any findings, conclusions, and sanctions by the ADR Ethics Board may be provided to the complainant.

(2) *Public Sanctions.* If the Board designates a sanction as public, the sanction and the grounds for the sanction shall be of public record, and the Board file shall remain confidential.

(b) Prohibited Disclosure. The deliberations, mental processes, and communications of the Board and staff, shall not be disclosed.

(c) Access to District Court Records. Accessibility to records maintained by district court administrators relating to complaints or sanctions about Neutrals shall be consistent with this rule.

Subd. 5. Privilege; Immunity.

(a) Privilege. A statement made in these proceedings is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the statement.

(b) Immunity. Board members and staff shall be immune from suit for any conduct in the course of their official duties.

(Added effective July 1, 1994; amended and renumbered effective July 1, 1997; amended effective March 1, 2001; amended effective January 1, 2005; amended effective January 1, 2023.)

Implementation Committee Comment - 1993

The training requirements are designed to emphasize the value of learning through experience. Training requirements can protect the parties and the integrity of the ADR processes from neutrals with little or no dispute resolution skills who offer services to the public and training to neutrals. These rules shall serve as minimum standards; individual jurisdictions may make requirements more stringent.

Advisory Committee Comment - 1996 Amendment

The provisions for training and certification of training are expanded in these amendments to provide for the specialized training necessary for ADR neutrals. The committee recommends that six hours of domestic abuse training be required for all family law neutrals, other than those selected solely for technical expertise. The committee believes this is a reasonable requirement and one that should significantly facilitate the fair and appropriate consideration of the concerns of all parties in family law proceedings.

Advisory Committee Comment - 2000 Amendment

Rule 114.13(g) is amended in 2000 to replace the current annual training requirement with a three-year reporting cycle. The existing requirements are simply tripled in size, but need only be accumulated over a three-year period. The rule is designed to require reporting of training for ADR on the same schedule required for CLE for neutrals who are lawyers. See generally Rule 3 of Rules of the Supreme Court for Continuing Legal Education of Members of the Bar and Rule 106 of Rules of the Board of Continuing Legal Education. Non-lawyer neutrals should be placed by the ADR Board on a similar three-year reporting schedule.

Implementation Committee Comment - 1993

Some neutrals may be permitted to continue providing ADR services without completing the training requirements. A Board, made up of dispute resolution professionals, court officials, judges and attorneys, shall determine who qualifies.

Advisory Committee Comment - 1996 Amendment

This rule is amended to allow "grandparenting" of family law neutrals. The rule is derived in form from the grandparenting provision included in initial adoption of this rule for civil neutrals.

Advisory Committee Comment - 2015 Amendments

The amendment to Rule 114.04 is not substantive in nature or intended effect. The term "self-represented litigant" is being used uniformly throughout the judicial branch and is preferable to "non-represented party" and "pro se party," both to avoid a Latin phrase not used outside legal jargon and to facilitate the drafting of clearer rules.

Rule 114.09 is amended to delete the requirement that the arbitrator must serve a copy of the award by first-class mail. Service is required, but service by mail is permitted, as is any other method authorized by the rules or ordered by the court with respect to the arbitration.

Agreement to Mediate (Minnesota Rule 114 Case)

The parties named below acknowledge and agree that they are willing to participate in a mediation process in an effort to reach voluntary agreement to resolve the following:
[dispute summary…could be court case name/caption or other narrative].

1. **Duty to Meet.** The parties will attend scheduled mediation conferences unless they advise the mediator of their inability to attend at least 24 hours before the conference or unless there is an emergency.

2. **Termination of Mediation.** The effort to resolve the matter through mediation may be terminated without cause upon written notice by either party or the mediator delivered by email, certified mail or personally to the people who have signed this Agreement to Mediate.

3. **Obligations of the Mediator.** The mediator shall promote and facilitate voluntary decision making by the parties to the dispute. The mediator does not represent either party and has no responsibility concerning the fairness or legality of the resolution (if any) chosen by the parties. The mediator will follow the Code of Ethics for Court-Annexed ADR Neutrals and is subject to the jurisdiction of the ADR Ethics Board.

4. **Other Participants.** In events of Family Mediation, children or other persons having a direct interest in the mediation, with the consent of all participants and the mediator, may participate in the mediation.

5. **Conduct.** I agree to be respectful in speech and manner to all individuals involved in the mediation process.

6. **Conflict of Interest/Bias.** Neither party knows of any circumstances which would cause reasonable doubt regarding the impartiality of the mediator.

7. **Confidentiality.** The parties and mediator agree to the following confidentiality provisions:

   a) Without the consent of all parties and an order of the court, no evidence that there has been a mediation or any fact concerning the mediation may be admitted in a trial de novo or in any subsequent proceeding involving any of the issues or parties to the mediation.

   b) Statements made and documents produced in this mediation which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose, including impeachment.

c) The mediator will not discuss the mediation process or disclose any communications made during the mediation process except as authorized by the parties or required by law or other applicable professional codes. If either party seeks to subpoena the mediator or the mediator's records, that party shall be liable for, and shall indemnify the mediator against any liabilities, costs or expenses, including reasonable attorneys' fees, which the mediator may incur in lawfully resisting such compulsion.

8. **Fees.** The hourly rate for mediation sessions is $____.00, divided among the parties. A one-time $100.00 administrative fee is to be paid by each party at the first session. Payments will be collected at the end of each session. Dollar amounts are in U.S. Dollars (USD). The mediator may seek remedies from the court for non-payment pursuant to Rule 114.11(b) of the General Rules of Practice for the District Courts.

9. **Requirement for a Written Agreement**. No agreement reached in this process is binding unless it is put in writing, states that it is binding, and is signed by the parties (and their legal counsel, if they are represented) or put on the record or acknowledged under oath by the parties.

10. **Civil Mediation Act Disclosures**: Prior to beginning this mediation, the parties were each provided with a written statement of the mediator's qualifications as required by the Civil Mediation Act, Minn. Stat. § 572.37. The parties have been advised that a mediated settlement agreement is not binding unless it is signed by the parties (and their legal counsel, if they are present) or put on the record and acknowledged under oath by the parties, Rule 114.13A subd 7(b)(7)(B); and in a family court matter, the agreement is subject to the approval of the court, Rule 114.13A subd 7(b)(7)(E). The parties have also been advised that under the Civil Mediation Act, Minn. Stat. § 572.35, subd. 1:

> The effect of a mediated settlement agreement shall be determined under principles of law applicable to contract. A mediated settlement agreement is not binding unless: (1) it contains a provision stating that it is binding and a provision stating substantially that the parties were advised in writing that (a) the mediator has no duty to protect their interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights; and (c) they should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights; or (2) the parties were otherwise advised of the conditions in clause (1).

11. **Voluntary Acknowledgment**. The parties hereby voluntarily sign this Agreement to Mediate to affirm that they have read the Agreement to Mediate and agree to be bound by its provisions as they attempt to mediate their problem.

Party	Date	Party	Date
Party	Date	Party	Date
Counsel	Date	Counsel	Date
Mediator	Date	Mediator	Date

Agreement to Mediate (For Non-Court-Annexed Cases)

The parties below acknowledge and agree that they are willing to participate in a mediation process to address:____.

The parties also acknowledge and agree to the following guidelines:

1. **Duty to Meet.** Both parties agree to attend scheduled mediation sessions. Parties will provide 24-hour notice if they need to reschedule, unless there is an emergency.

2. **Termination.** Any party or the mediator may terminate this mediation at any time for any reason.

3. **Good Faith.** The parties agree to approach this process in good faith. The parties also agree that there will be no action against anyone in their organization because of the parties open communication during mediation.

4. **Mediator(s) Role.** The mediator facilitates the parties' communication and negotiations and does not represent any of the parties. The mediator has no duty to provide advice or information to the parties or to assure that a party understands the consequences of their actions. The mediator has no responsibility concerning the fairness or legality of any decisions that may be reached. The parties do not know of any circumstances that would cause reasonable doubt regarding the impartiality of the mediator.

5. **Confidentiality.** The parties and the mediator agree to the following confidentiality provisions:

   a) *Inadmissibility of Evidence.* All discussions, representations, and statements made during the mediation will be privileged as alternative dispute resolution. The parties agree that they will not attempt to discover or use as evidence in any legal proceeding anything related to the mediation, including any communications or the thoughts, impressions, or notes of the mediator. No document produced in mediation, which is not otherwise discoverable, will be admissible by any of the parties in any legal proceedings for any purpose, including impeachment.

   b) *Mediator will not Testify.* The parties will not subpoena the mediator, or any records or documents of the mediator or the League of MN Cities and the League of MN Cities Insurance Trust ("LMC/LMCIT") in any legal proceedings of any kind. If so called or subpoenaed, LMC/LMCIT and/or the mediator(s) may refuse to testify or produce the requested documents. Should any party attempt to compel such testimony or production, such party shall be liable for, and shall indemnify LMC/LMCIT and/or the mediator against any liabilities, costs or expenses, including reasonable attorney's fees, which LMC/LMCIT and/or the mediator may incur in resisting such compulsion.

   c) *Mediator Confidentiality.* The mediator(s) will not discuss the mediation process or disclose any communications made during the process except: 1) as authorized by the parties; 2) as required by law or other applicable professional codes; or, 3) to the staff of LMC/LMCIT as necessary.

d) *Party Confidentiality.* The parties agree not to record mediation conversations. The parties will agree during mediation what, if any, statement about the mediation process will be provided, and to whom. The parties agree not to discuss the mediation process in the community unless they decide together during mediation that it is appropriate.

6. **Civil Mediation Act Disclosures.** This agreement is governed by MN law. The parties were each provided with a written copy of the mediator's qualifications as required by the Civil Mediation Act.

7. **Fees.** Mediation services are an LMC/LMCIT member benefit and there is no fee for participation.

8. **Voluntary Acknowledgment and Execution.** The parties and mediator voluntarily sign this Agreement to Mediate to affirm that they have read the Agreement to Mediate and agree to be bound by its provisions. This agreement is valid if signed in counterparts or with electronic signature.

Date:
Signature:
Signature:
Signature:
Signature:
Signature:
Signature:
Signature:

Useful Statutes and Rules

Ethics

- The Model Standards of Conduct for Mediators, https://www.adr.org/sites/default/files/document_repository/AAA-Mediators-Model-Standards-of-Conduct-10-14-2010.pdf

Minnesota

- MN Statutes can be found by searching for the statue at this link: https://www.revisor.mn.gov/statutes/
  - The MN Civil Mediation Act Minn. Stat. § 572.31 - 572.40
  - Community Dispute Resolution Programs Minn. Stat.§ 494
  - Evidentiary Privilege for Mediation Minn. Stat. § 595.02(k)
  - Reporting of Maltreatment of MinorsMinn. Stat. § 626.556
  - Reporting of Maltreatment of Vulnerable AdultsMinn. Stat.§ 626.557

Professional Associations

Minnesota State Bar Association – Alternative Dispute Resolution Section
https://www.mnbar.org/members/sections/adr-section

Association of Conflict Resolution (ACR)
https://acrnet.org/

Conflict Resolution Minnesota
https://conflictresolutionmn.org/

ADR Government/Court Programs

Minnesota Supreme Court ADR Ethics Board
https://www.mncourts.gov/Help-Topics/AlternativeDisputeResolution.aspx

MN Office of Collaboration and Dispute Resolution
https://mn.gov/admin/ocdr/

Resolution Systems Institute
National information about court ADR Programs
https://www.aboutrsi.org/

MN Community Mediation Programs

Community Mediation Minnesota
Lists all local MN Community Dispute Resolution Programs (CDRPs)
https://communitymediationmn.org/

Approaches to Mediation

EVALUATIVE/DIRECTED: The evaluative mediator takes the role of providing direction for appropriate grounds for settlement. The mediator is often hired for their subject matter expertise, meaning they are deemed qualified for the role based on background, training and experience.

FACILITATIVE: The facilitative mediator believes that parties understand their situation best, and thus create better solutions than ones proposed by others and that they are more likely to adhere to agreements they helped forge. In this approach the mediator focuses on the parties communicating with each other, and on parties' interests to help them build their own agreement.

HUMANISTIC: This approach is "dialogue driven" rather than "settlement driven." The mediator, instead of actively and efficiently guiding the parties toward a settlement, initiates a process in which the parties enter a dialogue with each other, experience each other as people, and seek ways to help each other find peace, which may or may not involve a formal, written settlement agreement.

NARRATIVE: This approach does not see the mediator as an expert who will do something "to" the participants. Here the mediator helps participants co-create a new story of how the conflict emerged, see what about it they want to change, and then helps them engage in dialogue about what it would be like between them in an alternative to conflict. Narrative mediation has three phases: 1) engaging the participants, 2) revealing and deconstructing the conflict-saturated story, and 3) creating the new alternative story that reduces orchanges the conflict. For more information: Narrative Mediation: A New Approach to Conflict Resolution by John Winslade, Gerald Monk.

TRANSFORMATIVE: The transformative approach to mediation seeks empowerment and mutual recognition of the parties involved. This approach defines empowerment as enabling the parties to define their ownissues and to seek solutions on their own. Recognition means enabling the parties to see and understand the other person's point of view -- to understand how they define the problem and why they seek the solution that they do. The primary goal of transformative mediation is to foster the parties' empowerment and recognition, thereby enabling them to approach their current problem, as well as later problems, with a stronger, and more open view. Empowerment and recognition pave the way for a mutually agreeable settlement, but that is a secondary effect.

Prof. Barkai's Questions

Open Ended Questions – The Barkai Chorus

- Tell me more about that.
- What do you mean by that?
- Can you put that in other words?
- How do you feel about that?
- What do you mean by________?
- Can you be more specific?
- How so?
- In what way?
- That's helpful, keep going
- Humm, hum.

Barkai's Mediator Questions - Dealing with the Past and Present

- Can we agree that as a ground rule, we will ...
- Remember, you both agreed not interrupt. You will get your uninterrupted time too.
- Tell me more about that.
- When did this happen?
- So, what you are saying is ...
- Wait. Let me be sure I understand correctly. You're saying ...
- So, as far as you are concerned ...
- What else is important?
- Could you say more about that?
- How do you feel about what happened?
- What do you mean by that?
- Is there anything else you want to add?
- Let's move to the issue of ...
- Can you tell me more about ...?
- What additional information do you have on that?
- Of all that you have talked about, what is most important to you now?

Barkai's Mediator Questions: Dealing with the Future

- What could X do to help you solve this problem?What can you do to help solve this problem?
- Do you have any other ideas for solving this problem?
- What do you think will happen if you can't negotiate a solution?
- How do you want things to be between the two of you?
- Is what you are talking about now helpful in reaching a solution? Put yourself in X's shoes. How do you think they feel right now?

- What do you have in mind on that topic?
- If X were to do A, what would you be willing to do? What I hear you saying is that you might be willing to...
- You both seem to agree that...
- Do you agree with the solution we are talking about?
- What you are talking about sounds like it might work. What will happen if...?

Source: Prof. John Barkai, University of Hawaii William S. Richardson School of Law

Trainers

Aimee Gourlay, JD, past CEO of Mediation Center for Dispute Resolution, has worked with the Center since 1992. Ms. Gourlay is also an Adjunct Professor at Mitchell Hamline University School of law, teaching Mediation Skills and Alternative Dispute Resolution, and is a frequent presenter at national conferences and seminars. Ms. Gourlay is a mediator and facilitator. With expertise in providing assistance to people in highly conflictual relationships and diverse backgrounds, she frequently mediates workplace disputes, public policy issues, family cases, and organizational problems. She is a facilitative mediator who focuses her workplace mediation on pre-litigation employment issues, working with individuals and teams to resolve problems before they escalate and to improve the quality of the workplace. Ms. Gourlay also serves on the United States Postal Service panel of EEO mediators. She provides consultation and administration of Alternative Dispute Resolution ("ADR") processes within organizations, and conflict management coaching. Her work includes consulting with the Midwest and Atlantic area consortia of electric utilities to design and implement an ADR system for member utilities as required by the Federal Energy Regulation Commission. Her public policy mediation and facilitation work includes cases involving nonprofit boards, funders and staff; racial discrimination; allocation of public resources; and, work with teams within state and local government. She also facilitates communication between community members, elected officials, city staff and developers about redevelopment projects. She received a B.A. with honors from Macalester College, and graduated cum laude from the University of Minnesota Law School.

Heron Diana, B.A., is a Qualified Neutral under the Minnesota General Rules of Practice for the District Courts Rule 114 and has practiced as a mediator, consultant and coach for over twenty years. She has worked in the Diversity, Equity, Inclusion and Belonging (DEI+B) field since 2000, coaching organizations and individuals working towards equitable and inclusive goals and facilitating dialogues on racism, equity and equality. Ms. Diana has a B.A. in Medical Anthropology, is certified in Mind-Body Medicine through the Center for Mind-Body Medicine in Washington, D.C. and has authored the book "Memory Stored, Memory Waiting; A Journey and Roadmap of Recovering From Trauma." She works with multi-cultural groups in high conflict and coaches individuals and leads workshops and classes in Mind-Body-Medicine. She is a Qualified Administrator of the Intercultural Developmental Inventory® tool. She is a former EMT with three-years experience on a rural ambulance and has extensive training in many integrative-medicine practices and healing modalities.

James R. Coben, JD, is emeritus professor at Mitchell Hamline School of Law and a senior fellow in the law school's internationally acclaimed Dispute Resolution Institute (DRI), which he directed from 2000-2009. He teaches negotiation and mediation, as well as civil procedure and advocacy. He is a co-author of the Thomson Reuters trial practice series treatise Mediation: Law, Policy & Practice (2022-2023), a co-editor of the four-volume Rethinking Negotiation Teaching Series (DRI Press 2009-2013), and a former editorial board member of the American Bar Association's Dispute Resolution Magazine, for which he co-writes a Research Insights featured column. As a consultant and trainer, he works

with state and local government boards and agencies to improve the quality of public deliberation and decision-making. As a facilitator, he plans and conducts strategic planning and helps private and public organizations to build and maintain a culture of collaboration.

Ken Fox, JD, is a Professor of Business, founding university Director of Conflict Studies at Hamline University, and a Senior Fellow of the Dispute Resolution Institute at the Mitchell | Hamline School of Law. Professor Fox teaches a range of conflict theory and theory-to-practice courses to undergraduate, graduate and professional (business, law and education) students and regularly teaches intensive courses designed for practicing attorneys and working professionals. His publications focus on negotiation, mediation, restorative justice, public conflict engagement, reflective practice and conflict theory. Outside the university, professor Fox has taught, trained, presented and consulted widely in practice areas related to mediation, negotiation and organizational conflict management throughout the United States in a variety of settings including courts, federal, state and local government agencies, regulated industries, schools, universities, workers compensation programs and private and community organizations, including serving on the inaugural national training team and as an EEO mediator for the US Postal Service REDRESS workplace mediation program. Over the past twenty-five years, he has made more than 100 academic and professional presentations on four continents.

Internationally, Professor Fox has directed, taught, presented or worked on a range of negotiation, mediation, and conflict transformation courses, seminars, presentations or projects in Australia, Austria, Canada, China, England, France, Hong Kong, India, Italy, Japan, Latvia, Malta, Mexico, Middle Eastern communities, Northern Ireland, Spain and Turkey. Professor Fox has served as a U.S. State Department J. William Fulbright Senior Specialist in law/peace and conflict resolution studies, teaching and consulting at the Riga Graduate School of Law in Latvia. Between 2001 and 2015, he was on the leadership team for a series of multi-year U.S. State Department-funded civil society and conflict transformation (peace building) projects, working directly in-region with Israeli, Palestinian, Jordanian and Lebanese educators and civic leaders. He has developed mediation trainer's materials for the Afghanistan Center for Alternative Dispute Resolution in Kabul, Afghanistan and mediation curriculum materials for a new course offering at Kabul's three Law schools, in cooperation with ADR Centre, Rome. Professor Fox has also served on the editorial board of ADR World, a periodic publication of the India International ADR Association (IIADRA) and, since 2007, annually teaches graduate conflict courses at the Catholic University (L'Institut Catholique) of Paris.

Leslie Sinner McEvoy, JD, is a mediator, arbitrator, teacher, trainer and consultant. Leslie founded McEvoy Conflict Management and Legal Education Consulting on January 1, 2020, where she offers ADR and legal education consulting services. Prior to starting her business, Leslie was the Web Education Director at Minnesota CLE where she and her team developed and produced up to 300 webcast continuing legal education programs per year for Minnesota attorneys in a spectrum of practice areas. Prior to joining Minnesota CLE, Leslie was in private practice as a mediator, arbitrator, teacher and trainer. Leslie was initially trained as a mediator in 1993 in Hamline University's summer dispute resolution program. She is a Rule 114 Qualified Neutral and has been a member

of the Commercial and Employment Panels of the American Arbitration Association. Since 1994, she has arbitrated a variety of commercial and employment disputes as both a sole and panel arbitrator. As a mediator, she has mediated both commercial and employment disputes. She has been a mediator with the USPS REDRESS program, and she has also served on mediation panels for Community Mediation & Restorative Services, the Minnesota Department of Human Rights and the Minneapolis Department of Civil Rights.

Leslie has served as an adjunct professor at William Mitchell College of Law and Mitchell Hamline School of Law, teaching (in-person) the ADR survey course in 2008, 2009 and Fall 2015. Since the fall of 2017, she has served a number of times as an online adjunct in the Hybrid and Blended Learning programs, teaching: ADR Survey, Mediation, Cross-Cultural Dispute Resolution, Organizational Conflict Management, Negotiation, Facilitation, Justice and Dispute Resolution, and Civil Dispute Resolution. She is also a frequent continuing legal education speaker and trainer in the area of ADR and ADR Ethics. In 2011 Leslie co-authored the Minnesota ADR Handbook with Gary Weissman and Linda Mealey-Lohmann. Leslie has served in various capacities on the Executive Council of the ADR Section of the Minnesota State Bar Association, including Secretary Co-Chair of Programs, Vice-Chair for Legislation and currently serves on the council. She has also served as a member of the Board of Directors for Community Mediation & Restorative Services and as a member of the Community Dispute Resolution Program Advisory Council of the Minnesota State Office of Collaboration and Dispute Resolution, from 2015 to 2016. Leslie is also active in the international Association for Continuing Legal Education, serving on the newsletter and conference planning committees.

Prior to her ADR practice, she was a trial attorney practicing with the firm of O'Connor and Hannan (1983-1985) and with the firm of Fruth & Anthony, P.A. (1985-1994). As a litigator, she handled a wide variety of commercial and employment matters, including securities fraud, shareholder disputes, contract claims, employment discrimination, sexual harassment, and non-competition clause disputes. Leslie is a graduate of the University of Minnesota Law School (cum laude 1983) where she served on the Minnesota Law Review. She received her bachelor's degree in English from the College of St. Benedict (summa cum laude 1980).

Milt Thomas, M.A., is Change Management Specialist for the State of MN where he designs, coaches and facilitates continuous improvement efforts and other large and small group projects and meetings, especially when conflict is present. He also developed and taught an annual leadership academy, managed an employee engagement program, and consulted with and coached employees at all levels of State Government. He teaches Leading Through Change for Hamline University graduate programs; graduate courses for the Opus College of Business and workshops for the Executive Education and Business Excellence program at the University of St. Thomas; Communication for Metropolitan State University; and, taught courses in leadership, interpersonal skills, gender and communication, and training and development for St. Catherine University. Milt also spent many years as a volunteer mediator and trainer for community mediation programs.

Susan Mainzer, JD, was named a Leading American Attorney in the alternative dispute resolution (ADR) areas of employment, commercial law, and family matters. She is an experienced ADR practitioner, a trainer, retreat facilitator, workplace coach and organization development consultant. Susan is accustomed to mediating cases in which emotions are raw and to helping high conflict participants from diverse backgrounds reach agreements. She serves as a mediator on the Appellate Court's Family Mediation roster; and mediates employment discrimination claims, dog bite cases, and business disputes. Ms. Mainzer has taught family, workplace, and civil mediation for Mediation Center and the American Arbitration Association. She creates customized workshops in creative problem solving, negotiation strategies and appreciative inquiry to improve the workplace climate. Susan consults with companies on conflict prevention approaches. She coaches mediators, managers and staff in conflict resolution interventions, and individuals on career, transition, and life choices. Susan earned her law degree from the University of Wisconsin. She is a qualified neutral for family, contracts, personal injury, and employment cases under Rule 114 of Minnesota's General Rules of Practice. She is on Minnesota's master contract roster to facilitate public policy disputes. She worked for two years at the Metropolitan Council as an internal facilitator, trainer, executive coach, and organization development consultant. Susan served as an arbitrator and mediator on the American Arbitration Association's panel for more than 15 years. She often mediates Minnesota and Wisconsin special education cases. Susan Mainzer also mediates family business, healthcare, seniors' end of life decisions and lake property inheritance cases.

Tobin Lay, JD, MBA, is the COO of Mediation Center, a facilitator, a Minnesota Supreme Court Rule 114 qualified civil and family mediator, and occasionally works as an Adjunct Professor at Mitchell Hamline School of Law, teaching Negotiation, Theories of Conflict, and Organizational Conflict Management. Until recently, Mr. Lay has worked professionally as a public administrator, where he served as City Administrator and other roles for the Minnesota Cities of Landfall Village, Birchwood Village, and North St. Paul. Mr. Lay received a B.S. from University of Phoenix, with a major in Business Management, an M.B.A. from Hamline University, with a concentration in International Management, and a J.D. and Certificates in International Business Negotiations and Advocacy and Problem Solving from Hamline University School of Law.