# CJRA PLAN FOR THE DISTRICT OF VERMONT

## Introduction

The court has adopted the recommendations of the Advisory Committee contained in the Civil Justice Expense and Delay Report approved May 11, 1993 with the following exceptions.

1. The court declines to adopt the recommendation which appears at section III.D. of the Report with regard to making jury instructions available to the public and Bar. The court believes that in light of the numerous revisions and frequent changes involving instructions to the jury, the time, effort and costs involved in implementing this recommendation outweigh the anticipated benefit.

2. The court declines to adopt the recommendations with regard to a second clerk for the magistrate judge and a part-time magistrate for the Rutland division which appear at sections III.E.1. and 2. of the Report in light of the Administrative Office guidelines with respect to these positions.

3. The court adopts the recommendation with regard to use of conference calls which appears at section III.G. of the Report as amended to reflect the difficulty of creating an adequate record in some cases when utilizing conference calls.

4. The recommendation for notification of the availability of consensual trial by the magistrate judge which appears at section E.5. of the Report is adopted with a minor clarifying amendment.

5. The court has substituted the actual language of the Early Neutral Evaluation rule by committee, prepared after the report was adopted, for section III.A. of the Report recommending adoption of ENE. Additionally, after reviewing a suggestion made during the commentary period, the court has supplemented paragraph 5 of the ENE Rule to allow for selection of the Early Neutral Evaluator by the parties when so stipulated.

6. The court has modified recommendation F.1.a. amending the discovery schedule provision to conform the language of the amendment to its decision to adopt the ENE requirement as a rule rather than an order, to narrow the time frame during which the evaluation must be held, and to clarify the language governing counsels' obligation to plan for ENE.

7. The portion of recommendation F.4. dealing with settlement authority at conferences pursuant to trial order has been modified to reflect the practice of the court.

8. The plan includes the entire text of the local rule section amended by adoption of the plan. Deleted material is stricken. New material is high-lighted for amendments of existing rules but not for entirely new sections or rules.

The plan does not include the Committee's comments to the recommendations and the text of sections III.H and IV included in the report. The latter sections describe contributions required by the plan of court, litigants and attorneys, and principles and techniques suggested by the Civil Justice Reform Act considered by the court respectively. The recommendations have been reorganized to facilitate amendment of local rules.

VI. Effective Date

The effective date of the local rule amendments is December 1, 1993, except for Rule 12 which applies to all cases filed on or after July 1, 1994. The court has taken steps to implement Local Rule 12 governing Early Neutral Evaluation. The list of evaluators has been compiled and the ADR subcommittee has begun work on the required manuals for evaluators and attorneys, as well as the design of training program for court staff, evaluators and attorneys.

All recommendations which do not require amendment of the local rules will be implemented on December 1, 1993, or as soon as practical thereafter.

VII. Measures Which Do Not Require Amendments to Local Rules of Procedure

A. Appointment of a Data Subcommittee; Periodic Reports Including ICMS Reports

1. Courtroom deputies should fully utilize the capabilities of the automated system to monitor motions filed. Each courtroom deputy should generate at least monthly reports of pending motions and review the printout to insure prompt referral of matters to the magistrate judge, scheduling of motions and decisions on motions submitted to their judge.

2. The District should develop appropriate caseload data to enable the court and community to better identify possible sources and causes of unnecessary delay and cost and implement its recommendations for ADR, especially ENE.

3. The clerk's office should generate the two reports designed by the subcommittee in collaboration with the clerk's office. The first is the "Quarterly Executive Summary of the District Court Cases" which provides data relative to pending caseload, pending motions, age and disposition time of motions, age and disposition time of cases, trial hours, civil cases pending trial and their age, and age of cases tried. The second is the yearly report which provides mean disposition time for "procedural progress at termination" based on "nature of suit." These reports should be made available to court personnel and the Committee on a

regular basis.

4. The Committee recommends that the Administrative Office more carefully monitor the reporting of caseload data by the districts to insure that the data is in fact uniformly reported. The Committee has been unable to develop meaningful data comparing its caseload processing performance to that of other districts because of a well-grounded perception that other districts report data in a favorable light.

5. The data subcommittee should work with the clerk's office to develop a mechanism to monitor the effectiveness of ENE in meeting the objectives established by the Committee.

B. Bar Education and Meetings

1. The district should establish a mechanism with which the court and Committee can work with members of the district bar to develop and nurture a local legal culture that creates and fulfills the expectations of all participants (judges, lawyers, litigants and the public) for the efficient, effective resolution of disputes.

2. For the duration of the CJRA Committee, the mechanism should be the bar relations subcommittee of the Committee. The subcommittee should arrange an annual conference of the bar to, inter alia:

a. discuss problems in the district and solicit recommendations for more efficient, effective resolution of cases;

b. discuss CJRA efforts and the Committee's recommendations to reduce cost and delay;

c. conduct continuing legal education seminars with respect to changes in federal practice and procedure, with a focus on local practice;

d. encourage attorneys to undertake representation of *pro se* plaintiffs and arrange for training programs and materials to assist those willing to volunteer; and

e. enlist the cooperation of the bar in the implementation of the district's ADR program.

3. The subcommittee should work with the judges and clerk's office to implement the recommendation that copies of jury instructions be made available to attorneys at the clerk's office. The subcommittee should work with the bar to devise other possible methods of disseminating commonly used instructions.

4. The subcommittee will work with the bar to develop cost containment guidelines for the district modeled on the American Board of Trial Attorneys guidelines for consideration by the full Committee by the end of 1993.

C. Use of Conference Calls

The court should attempt to use conference calls for hearings and conferences in situations where counsel would be required to commute an appreciable distance to meet with a judicial officer, the hearing or conference does not require the personal presence of counsel and others, and the judicial officer who is scheduled to conduct the hearing or conference is confident that any record required can adequately reflect the remarks of counsel and the judicial officer. Examples of appropriate use are status conferences and focused discovery disputes. Counsel should be encouraged to request use of a conference call in appropriate circumstances, mindful of the need to identify themselves for the reporter when on the record and to not speak while another participant is speaking. The judicial officer may terminate a conference call and reschedule the hearing or conference at the court when appropriate.

D. Magistrate Judge Utilization

1. The clerk's office should notify the parties in social security cases, at the time the Government files its answer or other motion, encouraging them to consent to a decision by the magistrate judge. A copy of a model consent form should be sent with the letter.

2. In the interim period before the bar relations subcommittee is able to solicit assistance from the bar for *pro se* plaintiffs, the magistrate judge should send a letter to members of the district bar asking their assistance in providing representation to *pro se* prisoners in appropriate cases. Positive responses would be used to update the list of attorneys willing to assist *pro se* prisoner plaintiffs. The magistrate judge should assemble a modest library of materials devoted to representation of *pro se* prisoners and inform members of the bar of the materials in the solicitation letter.

3. The clerk's office should notify the parties, on the date set in the discovery order for completion of discovery, that they can request a pretrial conference with the magistrate judge pursuant to Local Rule 6 and that they can consent to a trial before the magistrate judge at a time certain.

4. The Committee should undertake further efforts to alleviate the burden caused by *pro se* prisoner petitions and the lack of an adequate approved state grievance procedure. Specifically, the magistrate judge and reporter should continue their efforts to cooperate with the Department of Corrections in drafting an adequate procedure. Second, the reporter, in consultation with the magistrate judge, should prepare a report on whether use of a model discovery form in *pro se* cases in other districts has been successful in obtaining information

necessary to process the petitions expeditiously. If other districts' experience has proven successful, the reporter should draft a proposed form or forms for use by the district.

VIII. Measures Which Require Amendments of Existing Local Rules

A. Amend Rule 4.A.I. as follows:

A. Discovery Schedule

I. Within thirty days from the date of filing answer (last answer in multiple defendant cases), counsel for the parties then before the court shall jointly prepare and file a single schedule providing for the completion of discovery no later than eight months from the date on which answer has been filed. ~~In those cases in which, due to their complexity or to other extraordinary circumstances, additional time for discovery may be needed, counsel shall apply to the court within thirty days from the date of filing answer for an enlargement of the discovery period. The court will schedule a hearing on said application to determine the amount of additional time, if any, which will be allowed.~~ Counsel is directed to include in the schedule a time to conduct early neutral evaluation (mid-way through the discovery period) in conformity with Rule 12 in all cases subject to early neutral evaluation. Discovery schedules shall provide specific dates by which specific discovery items are to be completed. Counsel shall strictly comply with the terms of this section. Failure to do so shall constitute a waiver of the need for discovery and the case will be scheduled for trial when reached in the ordinary course of the court's business.

The discovery schedule filed by the parties when approved by the court shall be the scheduling order provided by Rule 16(b) of the Federal Rules of Civil Procedure with respect to the time limits for the completion of discovery, and for filing and hearing motions, including motions to join other parties and to amend the pleadings pursuant to Local Rule 5(B). In cases where additional time may be required for discovery, due to case complexity or other extraordinary circumstances, counsel may apply for an extension of time for good cause shown. Absent exceptional circumstances, such request shall be made prior to the expiration of the date set for completion of discovery.

B. Amend Rule 5.A.II as follows:

A. Written Motions and Arguments

II. ~~Any party desiring to oppose the granting of such motion shall file a brief or memorandum in opposition thereto, not later than ten days after the date of service of such motion and memorandum or brief, unless such time is extended by order of the judge to whom the case is assigned.~~ A party desiring to oppose the granting of any motion other than a summary judgment motion shall file a brief or memorandum in opposition thereto not later

than ten days after the service of such motion. The opposing party shall file a brief or memorandum in opposition to a motion for summary judgment not later than thirty days after service of the motion. The moving party shall file a reply, if any, within ten days of service of the opponent's papers. Such times may be extended by order of the judge to whom the case is assigned.

C. Amend Rule 5.D. as follows:

D. Motions in Appeals from Social Security Judgments

Within ~~ninety~~ thirty days from the date of the filing of the defendant's answer and certified copy of the transcript of the record in Social Security appeals, the plaintiff shall file ~~their~~ its motions for ~~disposition by the court or other relief and supporting memoranda.~~ summary judgment and supporting memoranda. Within thirty days from the date of service of plaintiff's motion, defendant shall file its response and any cross-motion with supporting memoranda. Plaintiff shall file any reply within ten days of service of defendant's papers.

E. Amend Rule 7.A. as follows:

Rule No. 7. Requests for Jury Instruction and Requests to Charge

A. Jury Cases. ~~Requests for jury instructions must be filed no later than fourteen days from the date when counsel are first notified that the case has been placed on the master calendar for trial by jury.~~ Requests for jury instructions must be filed no later than seven days prior to the date set for trial of the case. The failure to file requests for instructions as provided shall, except in exceptional circumstances, be deemed a waiver of a party's need or desire to file such requests.

IX. Measures Which Require Adding an Entirely New Provision to the Local Rules

A. Adopt a new section B to existing Rule 11 and renumber existing Rule 11 as Rule 13.

B. Federal Rule of Civil Procedure 12 provides that the United States or an officer or agency thereof shall have 60 days to answer a complaint, cross-claim or counterclaim. This shall include all cases in which a federal employee is sued in an individual (as opposed to official) capacity, such as suits seeking money damages for the employee's alleged constitutional violations, so long as the allegations concern activities related to the individual's employment with the government.

B. Adopt new Rule 11 as follows:

Rule No. 11 Trial Order in Cases Where Pre-Trial Conference Pursuant to Rule 6 is Not Ordered by the Court

A. General

The court will ordinarily issue a trial order at or shortly after the time a case is scheduled for trial if the case has not been scheduled for a full pre-trial conference pursuant to Rule 6. The purpose of the trial order is to require counsel to take certain actions which can be undertaken without undue hardship on counsel or expense to clients, and which will expedite trial of the case and facilitate a settlement discussion with the court a few weeks in advance of the scheduled trial. The settlement aspect of the conference is intended to elicit cooperation of counsel in effecting settlement far enough in advance of trial so the court can adjust its trial list if the case can be settled, thereby promoting efficient use of the court's time and early trial of cases requiring trial. Counsel are expected to anticipate issuance of the trial order after the completion of the time provided for discovery and incorporate the requirements of the order into their trial preparation so that they will be prepared for a conference scheduled as early as a week after the order is issued.

B. Preparation For and Topics to be Addressed at the Conference

Counsel are directed to confer with opposing counsel with respect to the matters set forth below which require consultation, and to be prepared to advise the court of the following at the conference:

1. Their best estimate of the time required to try the case;

2. The witnesses they intend to call during their case in chief;

3. The issues with respect to which they have been able to reach agreement and those remaining to be resolved at the trial;

4. Whether the parties may by agreement be able to reduce any of the issues remaining in controversy, and whether the court might assist the parties in further reducing the issues to be tried;

5. Whether the witnesses and evidence which are required at trial are available for presentation or use at trial and, if not, what steps have been taken to procure the required evidence (issuance of subpoenas or submission of designated portions of deposition transcripts or videotapes);

6. The status of settlement negotiations, and whether settlement of the action should be explored by the court;

7. Any evidentiary issue or other matter which the party seeks to have the court consider prior to trial. Counsel are expected to raise evidentiary issues which if raised at trial would consume a significant amount of time and disrupt the flow of the trial. Where the issue is novel or complex, the court will then be able to request that memoranda be submitted by the date scheduled for trial if required to resolve the issue.

C. Exhibits and Foundational Issues

All exhibits are to be marked prior to the trial. Prior to trial, counsel are directed to meet to discuss foundational issues pertaining to such exhibits and to complete the following:

1. Joint marking and preparation of a copy for each party and the court of a set of exhibits which contains those exhibits which each party intends to offer during the direct examination of their witnesses;

2. Any agreements pertaining to the admissibility of evidence.

D. Designated Portions of Deposition Testimony

Counsel are further directed to provide the court and opposing counsel with the designated portions of transcript or videotaped deposition which they intend to offer during their case in chief no later than the date set for the conference. Objections to any of the designated deposition testimony must be made on or before the date the trial begins.

E. Discussion of Settlement and Settlement Authority

Possible settlement of the case shall be explored orally at the conference. Counsel shall be prepared to inform the court at the conference of the extent and nature of prior settlement negotiations, including any reasons for the absence thereof, other than any discussions which took place at an early neutral evaluation. Prior to the conference, counsel for the parties shall discuss with their clients terms of settlement which would be acceptable. Each party shall be represented at such conference by counsel responsible for trial of the case. Each party shall be present at the conference, or have a representative with settlement authority present or available by telephone for consultation with counsel during the conference.

F. Additional Requirements

1. In appropriate cases, the court may require that counsel prepare additional materials prior to trial or be prepared to discuss additional matters at the conference.

2. Counsels' attention is directed to the requirements of Rule 7.

G. Adopt new Rule 12 as follows:

Rule No. 12 Early Neutral Evaluation

1. The ENE Process and Goals

Early in the processing of a case, after an opportunity for limited discovery, the litigants shall meet with a neutral evaluator, who is knowledgeable in the subject matter of the litigation, to discuss all aspects of the case. The purpose for this early neutral evaluation (ENE) procedure is to reduce the cost and duration of litigation by providing an early opportunity for realistic settlement negotiations or, in the absence of settlement, narrowing issues and structuring discovery and trial preparation to avoid unnecessary delay and expenditure of resources by the parties and the court.

2. Cases Subject to ENE

a. Civil cases in the following categories, as designated under "nature of suit" in the Civil Cover Sheet, shall be subject to the ENE procedure set forth in this order:

CONTRACT: 110 (Insurance), 120 (Marine), 140 (Negotiable Instrument), 150 (Recovery of Overpayment & Enforcement of Judgement), 160 (Stockholders Suit), 190 (Other Contract) and 195 (Contract Product Liability)

REAL PROPERTY: 230 (Rent Lease & Ejectment), 240 (Torts to Land), 245 (Tort Product Liability) and 290 (All Other Real Property)

TORTS: 310-368 (all Personal Injury cases) and 370-385 (all Personal Property cases)

CIVIL RIGHTS: 442 (Employment) and 440 (Other Civil Rights)

LABOR: 720 (Labor/Mgmt Relations), 740 (Railway Labor Act), 790 (Other Labor Litigation) and 791 (Empl. Ret. Inc. Security Act)

PROPERTY RIGHTS: 820 (Copyrights), 830 (Patent) and 840 (Trademark)

OTHER STATUTES: 410 (Antitrust), 430 (Banks and Banking), 470 (Racketeer Influenced and Corrupt Organizations), 850 (Securities/Commodities/Exchange), 891 (Agricultural Acts), 893

(Environmental Matters) and 900 (Appeal of Fee Determination Under Equal Access to Justice)

b. A case included in a category listed in Section 2.a. may be excused from ENE only by order of the Court upon a showing of good cause.

c. Categories of cases subject to this rule are subject to change pursuant to order of the court.

3. ENE Administration

a. A member of the court staff shall be appointed ENE Administrator, to oversee the ENE program and perform the duties specified under this rule.

b. The Alternative Dispute Resolution Subcommittee of the Civil Justice Reform Act Advisory Committee (ADR Subcommittee) shall assist with the selection of neutral evaluators, and in the evaluation and oversight of the program.

4. Timing of ENE; Inclusion in Discovery Schedule

The ENE session shall be scheduled by the parties at or near the midpoint of the eight month discovery period and shall be included in the discovery schedule required under Local Rule No. 4. In selecting a date for the session, the parties shall consult with the evaluator designated for the case pursuant to Section 6.a., to ensure his/her availability, and the ENE Administrator. The parties should plan discovery to ensure that they are prepared for serious and productive settlement negotiations and to otherwise facilitate the goals of ENE. The ENE session shall be held on the date scheduled unless delayed or excused by order of the Court upon a showing of good cause.

5. Neutral Evaluators; Roster and Compensation

a. The Court shall maintain a roster of neutral evaluators who shall be appointed with the advice of the ADR Subcommittee. To be eligible for the roster a person should be:

1) an attorney admitted to practice for not less than five years, with significant trial experience and substantive expertise that will serve the objectives of the ENE program; or

2) a non-attorney, or an attorney admitted to practice for less than five

years, who has expertise in a substantive or legal area that will serve the objectives of the ENE program.

b. Evaluators shall be paid $500 per case evaluated, the cost to be shared equally by the parties. This fee assumes an ENE session of approximately half a day, related preparation and submission of an evaluator's report. If significantly more time is required for the ENE session, an additional session(s) is required or the parties request the evaluator to prepare a formal evaluation, the parties and the evaluator shall agree upon any additional compensation.

c. Early Neutral Evaluation by Stipulation. Nothing herein shall prevent all of the parties from agreeing by stipulation to early neutral evaluation performed by a person of their choosing, for such fee as the parties may agree to pay the evaluator. ENE by Stipulation shall be permitted if, no later than the date on which the parties are required to report their selection of an evaluator to the ENE administrator, they file with the ENE administrator a Stipulation, signed by all parties, which contains the following information:

1) the name and mailing address of the evaluator;

2) the fee arrangement with the evaluator, clearly setting forth each parties share of the fees;

3) the agreement of each party to the litigation to participate in the evaluation procedure; and

4) the agreement of the evaluator to perform early neutral evaluation in accordance with the rules of the court, including the filing of an ENE report with the court on a date set forth in the Stipulation which date shall be no later than 60 days after the date the Stipulation is filed.

d. In the event that the court's ENE administrator does not receive an ENE report from the evaluator within the time set forth on the Stipulation, the ENE administrator shall schedule early neutral evaluation in accordance with Rule 12, paragraph 6.

6. Selection of Neutral Evaluator

a. After the answer in a case is filed (the last answer in a multiple defendant case), the ENE Administrator shall send to the parties a list of potential evaluators from the Court's roster. The number of evaluators on the list shall be one more than the number of "sides" in the litigation. For purposes of this

order, all plaintiffs are one side, all defendants are one side, and all third-party defendants are one side. The parties shall have ten days from the date of the correspondence containing the list to select an evaluator and report their selection, in writing, to the ENE Administrator. If the parties fail to agree on an evaluator, each "side" may, but need not, strike the name of one potential evaluator, notifying the ENE Administrator, in writing, of the strike within ten days of the date of the correspondence containing the list. The ENE Administrator shall assign to the case the evaluator selected by the parties or, in the absence of agreement, an evaluator whose name has not been stricken and promptly notify the parties and the evaluator of the designation. The evaluator selection process should be completed expeditiously to enable the parties to consult with the evaluator in scheduling the ENE session for inclusion in the discovery schedule required by Local Rule No. 4.

b. No person shall serve as a neutral evaluator for a case in which any of the circumstances specified in 28 USC Section 455 exist, unless there is a waiver by all parties. An evaluator shall promptly disclose disqualifying circumstances to the ENE Administrator. A party who believes that a potential or assigned evaluator has a conflict of interest shall bring this concern to the attention of the ENE Administrator within five days of learning of the source of the possible conflict or shall be deemed to have waived objection.

7. Attendance at ENE Sessions

a. The parties themselves shall attend the ENE session, except when excused under Section 7.c. This requirement reflects the Court's view that the main objectives of ENE are to afford litigants an opportunity to articulate their positions, to hear first hand their opponents views on the matters in dispute, to hear a neutral assessment of the strengths and weaknesses of each party's case and to foster an environment for serious and productive settlement efforts.

b. When a party is not a natural person (for example, a corporation), a person (other than outside counsel) who has settlement authority and authority to enter stipulations on behalf of the party shall attend. When a party is the United States Government, or an agency or unit thereof, this requirement is satisfied by the attendance of counsel from the United States Attorney's office who has settlement authority and authority to enter stipulations.

c. In cases involving insurance carriers, representatives of the insurance companies with settlement authority shall attend the ENE session. If an insurance carrier has exclusive settlement authority, the insured party need not attend.

d. An attorney for each party who has primary responsibility for handling the trial of the case shall attend the ENE session.

e. A party or attorney will be excused from attending an ENE session only with approval of the Court upon a showing of unreasonable hardship. A person who is excused shall be available by telephone during the session and shall designate a person who is familiar with the case to attend in his/her place. A request to be excused shall be submitted to the Court, in writing, not less than fifteen calendar days before the date set for the session and shall identify the substitute who will attend the session and describe his/her familiarity with the case. The designation of a substitute shall be subject to Court approval.

8. Evaluation Statements

a. No later than ten calendar days before the ENE session, each party shall submit directly to the evaluator, and shall serve on all parties, a written evaluation statement not to exceed ten pages (excluding exhibits and attachments). The statements shall:

1) give a brief statement of facts;

2) identify the legal and factual issues in dispute and the submitting party's positions relating to those issues;

3) address whether there are legal or factual issues the early resolution of which might facilitate early settlement or reduce the scope of the dispute;

4) identify the attorney who will represent the party at the ENE session; and

5) identify the person(s), in addition to counsel, who will attend the ENE session as the party's representative with decision making authority.

Other matters that will assist the evaluator may be included. Parties shall attach to their statements copies of key documents out of which the case arose (e.g., a contract) or other materials that will assist the evaluator and advance the purposes of the ENE session (e.g., medical reports, photographs).

b. Written evaluation statements are solely to facilitate the ENE and shall not be filed with the Court or given to the presiding judge.

9. Procedures at the ENE Session

a. The evaluator shall have broad discretion in structuring the ENE session. The session shall be informal and the rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses.

b. The evaluator shall:

1) permit each party to make an oral presentation of its position;

2) help the parties to identify areas of agreement and enter a stipulation, where feasible;

3) assess the strengths and weaknesses of the parties' contentions and evidence and explain the reasons for the assessments;

4) explore the possibility of settlement using private caucusing and mediation techniques;

5) estimate, where feasible, the likelihood of liability and the range of damages.

c. If negotiation and mediation do not result in settlement, the evaluator shall:

1) discuss with the parties follow-up measures that will contribute to efficient case development or future settlement (e.g., an additional ENE session, formal evaluation, other ADR procedures); and

2) help the parties develop an information sharing plan or discovery plan to expedite settlement discussions or position the case for efficient and timely disposition by other means.

d. The parties shall be prepared to participate fully in the procedures outlined in Sections 9. a. through 9. c. above and to discuss realistic estimates of case value and cost and delay that will result if settlement efforts are not successful. The costs to be addressed shall include, but are not limited to, those for additional discovery, expert witnesses, attorney fees and other costs associated with preparation for trial and actual trial.

10. Evaluator's Report

a. Within fifteen calendar days after the ENE session, the evaluator shall file

with the Court, and send to the parties, a report that includes:

1) the date on which the session was held, including the starting and finishing times;

2) a list of the names and addresses of the persons attending, showing their role in the session and specifically identifying the representative of each party who had decision making authority;

3) a summary of any substitute arrangement made regarding attendance at the session;

4) the date of receipt of each parties written evaluation statement;

5) notations showing whether each party did or did not make an oral presentation of its position;

6) the results of the session, i.e., stating whether full or partial settlement was reached and, where appropriate, describing:

i. any stipulation entered to narrow the scope of the dispute; and

ii. any agreement made to limit discovery, facilitate future settlement or otherwise reduce cost and delay associated with trial preparation; (including the scheduling of an additional ENE session).

b. The report shall not disclose:

1) the evaluator's assessment of any aspect of the case; or

2) substantive matters discussed during the session, except as is required to report information described in Section 10. a. 6. above.

11. Confidentiality

a. All written and oral communications made in connection with or during the ENE process shall be confidential. The ENE process shall be treated as settlement negotiations under Federal Rule of Evidence 408.

b. This section shall not apply to any stipulation or agreement to narrow the

scope of the dispute, facilitate future settlement or otherwise reduce cost and delay that was approved by all parties.

c. Parties, counsel, insurance representatives and evaluators may respond to inquires from persons authorized by the Court to monitor or evaluate the ENE program. The sources of data and opinions collected for this purpose shall be kept confidential.

12. Effective Date

This rule shall apply to all cases not subject to exemption under section 2 filed in the district on or after July 1, 1994.