INTRODUCTION

MINNESOTA'S ALTERNATIVE DISPUTE RESOLUTION PROVIDER ORGANIZATIONS

Nancy A. Welsh, Executive Director, Mediation Center and Bobbi McAdoo, Associate Professor of Law, Hamline University School of Law

I. INTRODUCTION

Hamline University School of Law and Mediation Center have been informally engaged in collaborative activities for almost a decade. In 1993, a more formal collaboration began when Hamline's Dispute Resolution Institute and Mediation Center began offering the first 30-hour mediation skills trainings certified by the Minnesota Supreme Court under Rule 114 of the General Rules of Practice for District Courts. These trainings, together with similar efforts by other training organizations, have now resulted in a Supreme Court-maintained Roster of Qualified Neutrals that totals approximately 1600 individuals and 100 organizations. Many people have complained, however, that the number of people on the published Roster, without more descriptive information, is not as helpful as it could be. Since the Hamline Journal of Public Law and Policy provides a forum for discussion about views of current public importance, this seemed a likely vehicle for a compilation on ADR providers. The Journal's Editor-in-Chief enthusiastically embraced the project and it is now our hope that the Directory of Organizations contained in this volume will begin to provide the information that lawyers and consumers of ADR services in Minnesota would like to have. It is envisioned as a continuing project, to be updated and published as part of an ADR Symposium issue every two years.

II. RULE 114

Late in 1993, the Minnesota Supreme Court promulgated Rule 114 of the Minnesota General Rules of Practice. The rule's provisions largely became effective on July 1, 1994. Under Rule 114—which applies to most civil cases filed in Minnesota district courts—the courts are required to provide information to attorneys regarding ADR processes which are available to them. In addition, attorneys are now required to
provide information regarding ADR to their clients and to advise the court regarding whether ADR would be appropriate to help resolve their cases. If the attorneys and clients do not elect to use ADR, Minnesota judges have the power to order parties into a non-binding form of ADR.

The Rule describes nine ADR processes—mediation, mini-trial, moderated settlement conference, summary jury trial, neutral fact-finding, early neutral evaluation, med-arb, arbitration and consensual special magistrate. These processes were not intended, however, to be exhaustive. Attorneys, parties and judges are encouraged to be creative in developing processes which will help to resolve lawsuits.

The Rule also establishes training requirements for the ADR professionals who provide services pursuant to the Rule. These ADR professionals are listed on the Roster of Qualified Neutrals, which is maintained by the Office of the State Court Administrator.

III. The Hamline Journal of Public Law and Policy's Directory of Organizations

It has proved to be a time-consuming and difficult task for the Hamline Journal Associates to gather consistent and meaningful information on the listed organizations. This is due, in part, to the extremely busy schedules of the various program administrators. In addition, however, the Associates found that several organizations were unable or unwilling to provide basic information. Therefore, we feel that the difficulties posed require us to delineate, with some comment, the editorial choices made in an effort to insure fair coverage. The students will be looking for ways to improve the criteria used for organizational listings or for possible individual listings as they look toward the 1997 directory.

Basic Criteria for the Directory Listings:

1. Only organizations listed on the Supreme Court Roster as of December, 1994, are included.

Comment. There had to be a cut off date so the December, 1994
Roster was the one students used to start the collection of information. Organizations on that Roster that are not listed with detailed information in this Directory are those that did not reply to the students, or that refused to supply the requested information. The Journal directory will be updated every two years so that as organizations are added to the Supreme Court Roster, they will be added to the Directory database and will appear in the Journal in the Spring 1997 issue.

2. To be listed, the organization had to have at least two individuals acting as neutrals for the organization during 1994.

Comment. In this Directory, the hundreds of single individuals on the Roster are not being included. It was decided, therefore, that if a single person had a corporate structure, that was not sufficient for the organizational list. The students will be soliciting ideas for ways the 1997 Directory can be organized and/or changed to make it the most useful.

3. Neutrals are identified in three categories: staff neutrals, exclusive panel members, and nonexclusive panel members. Where provided, educational degrees of the neutrals are listed.

Comment. The larger organizations all utilize the panel concept to some extent. Many have very extensive lists of "nonexclusive" panel members (those who work independently as well as for one or more organizations) who sometimes have never actually handled a case for the organization. A few utilize staff members and panel members who agree to perform as neutrals only for that organization ("exclusive panel members"). A consumer can always ask for information on whether a particular neutral has handled any cases for the organization and for information about the education and training of the neutral (see section IV. below).

4. For community mediation programs in the Twin Cities, the names of volunteer mediators, all of whom are nonexclusive panel members, are not listed.

Comment. The community programs were concerned about publishing the names of volunteer mediators, or their degrees. Notwith-
standing the requirements of the Civil Mediation Act that mediators reveal their training, experience and education, consumers are reminded that professional ADR organizations uniformly consider training and experience to be far more important to mediator success than educational degree (see section IV below).

5. Organizations refusing to give out estimates of case activity are listed, but their refusal is noted.

Comment. This criterion turned out to be extremely controversial and several points need to be made: 1) organizations formed in 1994 could very understandably have few, if any, cases to be reported; 2) organizations refusing to give caseload information could be advantaged vis-a-vis those who gave honest numbers, albeit low ones; and 3) Journal associates had no way to verify the accuracy of the case estimates given by the organizations. Again, consumers can ask for this information prior to engaging the services of any organization or neutral.

IV. HOW TO CHOOSE THE ADR ORGANIZATION

The success of any ADR process is heavily reliant on the skills, knowledge and character of the ADR professional chosen by the parties. The ADR professional can speed resolution and minimize problems. Thus, whether relying upon the services of an ADR organization or an individual ADR professional, it becomes very important to ask questions regarding the ADR professional who may help on a given case.

What are some of the most important considerations in selecting an ADR professional?¹

First, think carefully about what assistance is being sought.

Mediators guide the parties' negotiations, asking questions to understand the parties' interests and concerns, interpreting for the parties

¹ These questions are drawn in part from "Selecting Experienced Assistance for Resolving Conflict" developed by the Conflict Resolution Center International and "Questions for Mediator Candidates" developed by the Ohio Commission on Dispute Management and Conflict Resolution.
in order to insure that they understand each other, reality-testing, and helping the parties to generate options. Ultimately, the parties must reach their own mutually agreeable settlement. Some mediators act as facilitators only. Other mediators will interpose their own views more readily, making suggestions and offering their evaluations of both parties' positions and likely settlement ranges. Still other mediators are able to play either a facilitator role or an evaluator role, depending upon the needs of the parties. In order to determine the type of mediator being sought, it is important to consider the type of dispute in which the parties are involved, the particular problems which have been interfering with settlement negotiations, and the type of negotiation the parties want to conduct to resolve the dispute.

Arbitrators and consensual special magistrates hear evidence and issue a decision, much like a judge.

ADR neutrals in moderated settlement conferences, neutral fact finding and early neutral evaluation hear attorneys' arguments and provide the parties with their evaluations regarding liability and damage issues.

ADR neutrals in summary jury trials preside over a mock jury trial, much like a judge. They issue rulings on evidentiary issues and instruct the jury. They do not decide the case themselves.

If one is considering receiving services through an ADR organization, the organization's staff should be able to help determine which ADR process will be most helpful for the resolution of the case. In addition, the organization should be able to help tailor the procedural "ground rules" which will be appropriate for the case. Of course, the organization is likely to be more helpful if it is experienced with the variety of ADR processes which are available.

Second, interview or ask questions about particular ADR professionals and talk to references. If an ADR organization has been contacted for services, the organization should be able to provide answers
to the following questions regarding members of their panel of ADR professionals or they should permit one to speak directly with the ADR professionals being considered. Here are some helpful questions to ask:

**Experience.** In general, what kinds of cases has the ADR professional handled? Describe some cases with similar situations or participants to this one. How long did these processes take? What problems are likely to arise? What outcomes were achieved? Does the ADR professional have experience with the decision-making procedures and institutions involved in this case? What education or experience does the ADR professional have that have prepared him/her to assist with this case?

**Process.** What best describes the ADR professional's approach or style? Describe what kinds of processes the ADR professional generally uses in these circumstances. What are some things that the ADR professional believes would not work here? Why?

**Roles.** Does the ADR professional think the necessary parties are involved? If not, what does he/she suggest? How would he/she structure the communication process and the decision making process?

**Logistics.** Will the ADR professional be available and can he/she commit the time required? Will staff be assisting him/her? Where and when will the meetings be held and who will handle the logistical arrangements and costs? Who will be responsible for preparing meeting summaries and other reports?

**Costs.** How does the ADR organization charge and what does the ADR professional estimate the costs for the project will be? Are there ways to keep costs down? If more is involved once the ADR organization begins to provide services, how do the organization and the ADR professional handle cost over-runs? How will payments be handled?

**References.** Seek references from groups or parties the ADR professional has worked with in similar situations. Talk with references about their impressions and satisfaction with the ADR organization, as
well as the ADR professional's service and approach.

V. Conclusion

This volume of the *Hamline Journal of Public Law and Policy* is part of an evolving project. The students want their endeavors to be helpful to judges, lawyers and other consumers of ADR services. We believe their first effort to be very good. The students invite—and we invite—constructive dialogue on how to make it even better.