

Early Neutral Evaluation

1. What is “Early Neutral Evaluation”?

SCADR Rule 14 states the following:

**“Rule 14
Description of Early Neutral Evaluation (ENE)”**

*In early neutral evaluations, the parties and their counsel, in a confidential session, make compact presentations of their claims and defenses, including applicable evidence as developed at the time of the evaluation, and receive a non-binding evaluation of the matters in controversy by an evaluator. **The evaluator also assists in identifying areas of agreement, offers case planning suggestions and assists the parties in settlement discussions.**” (Emphasis added)*

On the family court side, early neutral evaluation (ENE) provides party-litigants and their attorneys with a process for "test-driving" their respective positions before a selected ENE “evaluator” and to receive, among other things, "in a family court case...the likely result of a trial of all issues"¹. The ENE process is also an ADR hybrid

¹ **Rule 15. Procedure at Early Neutral Evaluation Conference**

(a) Components of ENE Session. The evaluator shall to the extent deemed appropriate by the evaluator:

(1) Permit each party (through counsel or otherwise), orally and through documents or other media, to present its claims or defenses and to describe the principal evidence on which they are based;

(2) Assist the parties to identify areas of agreement and, where feasible, enter stipulations;

(3) Assess the relative strength and weakness of the parties' contentions and evidence and provide detailed explanations to support these assessments;

(4) In a circuit court case, estimate, where feasible, the likelihood of liability and the dollar range of damages;

(5) In a family court case, evaluate the likely result of a trial of all issues.

(6) Assist the parties to devise a plan for sharing all relevant information and/or conducting the necessary discovery that will equip them as expeditiously as possible to enter meaningful settlement discussions or to position the case for disposition by other means;

(7) Assist the parties to assess litigation costs realistically;

(8) Assist the parties, through private caucusing and otherwise, to explore the possibility of settling the case;

(9) Determine whether further action after the session would contribute to the case development process or to settlement.

(b) Process Rules. The session shall be informal. Rules of Evidence shall not apply. There shall be no formal examination or cross-examination of witnesses, and no recording of the presentations or discussion shall be made.

(c) Evaluation and Settlement Discussions. The evaluation must be presented orally, and written copies of the evaluation may be provided to the parties at the discretion of the evaluator. The parties should discuss settlement after the evaluation has been presented.

which can combine certain elements both of mediation (for example, private caucusing with the parties, confidentiality, informal presentations, settlement objectives) and non-binding arbitration (e.g., the parties and attorneys shall receive a "non-binding evaluation of the matters in controversy by an evaluator" ...in other words, an evaluation which measures and grades the relative strengths and weaknesses of each party's case).

2. How Early Neutral Evaluation can be both a significant benefit to the South Carolina family law attorney and a financial benefit for the clients.

ADR Rule 14 states, in part, that the “evaluator also...*offers case planning suggestions and assists the parties in settlement discussions*”. In this regard, we can assist you not only with making strategic, trial-related suggestions and recommendations, but also working with your client and you to assess the “strengths and weaknesses” of your case, and assist you in crafting meaningful, realistic settlement options and proposals.

Additionally, if the attorney is having difficulties with a client’s unrealistic litigation demands or “outcome expectations”, we can be expected to carefully, but objectively, work through all of those concerns and “client expectations” to assist the attorney and his/her client in crafting a reasonable outcome.

Furthermore, one of our ENE responsibilities is to provide the attorney and his/her client with a realistic, but candid, assessment of the potential litigation costs which shall be involved in the client’s litigation process.

3. What are the services we are prepared to offer you in accordance and compliance with Early Neutral Evaluation?

We have created a professional group comprised solely of retired South Carolina Family Court judges.

If you choose to engage our services, then we will provide you with two members of our group who, together in tandem, will come to your office, and/or to any other location mutually arranged by the attorney(s) and the ENE evaluators, to meet with your client(s) and you in an intensive work session which will be structured to provide you with the following analysis, objectives, and anticipated results:

- If you have engaged our services after the family court litigation has been commenced, then we will, among other things, (1) identify and evaluate our considered “weaknesses” or “deficiencies” in your case and offer our opinions for addressing, rectifying, and strengthening those deficiencies; (2) provide you with an array of suggested settlement options; and (3) provide the attorney with a “litigation outline” which will meld or blend

the specific facts of your case with the statutory and case law supporting your fact pattern.

- If there are attorneys representing both parties (or multiple parties) who would prefer to engage our ENE services in a mediation-style process, then we will be prepared to conduct that mediation in accordance with the *South Carolina Alternative Dispute Resolution Rules (SCADR)* [mediation may be conducted either at the pre-litigation stage or the post-commencement litigation stage].
- If you have engaged our services prior to the commencement of family court litigation, then we will provide your client and you with a pre-litigation evaluation of a potential array of family court “outcomes”, using your fact pattern, while identifying and addressing your case’s potential problem areas, and also concurrently assisting your client and you in moving forward with a resolution/settlement of your case.

4. What are the fees for our ENE services?

a. Although you will be engaging the services of two of our evaluators, you will be billed at the total rate of \$250 per hour. There will be no cost either for our travel time to and from your office, nor for any “mileage rate”, nor for any “pre-evaluation preparation” (i.e., for our reviewing any materials which we may request in advance of the evaluation), nor for any post-conference preparation of an ENE memorandum or litigation outline. Stated otherwise, you will be billed for the hours invested by us in our actual “in-office” conferences with you (or with your client and you).

b. There shall be a minimum of \$1,000 which shall be due and payable at the beginning of our evaluation (this minimum is payable for the range of hours we spend at the ENE conference anywhere from 1 hour up to 4 hours, and the fee for all hours after 4 hours of time will be billed at the \$250 per hour rate). To make certain that your client is charged only for our actual ENE conference, we shall have that client’s attorney sign a separate short form which states the “ENE Conference Start Time” and “ENE Conference End Time”. **Without exception, payment in full will be due at the conclusion of this ENE conference.**

5. What is the availability of our ENE services?

Depending upon our schedule and availability, we shall be prepared to meet in an ENE conference with your client and you during any day of the week, including, if necessary, Saturdays and Sundays.

6. Will there be any documents which are required to be executed prior to the scheduled Early Neutral Evaluation?

Yes. Once you have decided to use our ENE services your client and you shall be required to execute a Letter of Engagement which is intended to confirm that you have formally engaged our services and that you acknowledge our fees for this service.

Additionally, depending on whether you are requesting our ENE services for your pre-commencement of litigation or post-commencement of litigation purposes, we shall send you in a separate email a list of specific documents which we would want to review in advance of the ENE conference at your office.