Minnesota General Rules of Practice for the District Courts
with amendments effective March 1, 2024

TITLE IV. RULES OF FAMILY COURT PROCEDURE

PART A. PROCEEDINGS, MOTIONS, AND ORDERS

APPENDIX OF FORMS [deleted; Family Court Action forms are currently maintained on the state court website (www.mncourts.gov).

PART A. PROCEEDINGS, MOTIONS, AND ORDERS

RULE 301. SCOPE; TIME

Rule 301.01 Applicability of Rules

(a) Applicable Rule or Statute. Rules 301 through 314 and, where applicable, the Minnesota Rules of Civil Procedure shall apply to Family Law Actions practice except where they are in conflict with applicable statutes or the Expedited Child Support Process Rules, Minn. Gen. R. Prac. 351 through 379.

(b) Included Proceedings. The following types of proceedings are referred to in these rules as Family Court Actions:

1. Marriage dissolution, legal separation, annulment proceedings, and child custody actions (Minnesota Statutes, chapter 518);
2. Child custody enforcement proceedings (Minnesota Statutes, chapter 518D);
3. Domestic abuse proceedings (Minnesota Statutes chapter 518B);
4. Proceedings to determine or enforce child support obligations (Minnesota Statutes, chapters 518A, 518C-U.I.F.S.A., sections 256.87; 289A.50, subd. 5; and 393.07, subd. 9);
5. Contempt proceedings in Family Court (Minnesota Statutes, chapter 588);
6. Parentage determination proceedings (Minnesota Statutes, sections 257.51-.74);
7. Proceedings for support, maintenance or county reimbursement judgments (Minnesota Statutes, section 548.091);
8. third-party custody proceedings (Minnesota Statutes, chapter 257C); and
9. Proceedings pursuant to the Hague Convention on Civil Aspects of International Child Abductions and the International Child Abduction Remedies Act.

Other matters may be treated as family court matters by order of the court.

(c) Excluded proceedings. Rules 301 through 314 do not apply to proceedings commenced in the Expedited Child Support Process, except for Rules 302.02, 303.05, 308.02, 309, 313, and 314.

(d) Applicability of Rules of Civil Procedure. The Minnesota Rules of Civil Procedure apply to Family Law Actions as to matters not addressed by these rules. To the extent there is any conflict in these rules, these rules govern.

(Amended effective September 1, 2018.)

Advisory Committee Comment--1992 Amendments

These rules are derived primarily from the Rules of Family Court Procedure. The advisory committee comments from the Rules of Family Court Procedure are included except where inconsistent with new provisions or where applicable rules are not retained.

These rules apply to the following specific types of proceedings that are generally treated as family court actions:

1. Marriage dissolution, legal separation, and annulment proceedings (Minnesota Statutes, chapter 518);

2. Child custody enforcement proceedings (Minnesota Statutes, chapter 518A);

3. Domestic abuse proceedings (Minnesota Statutes, chapter 518B);

4. Support enforcement proceedings (Minnesota Statutes, chapter 518C--R.U.R.E.S.A.);

5. Contempt actions in Family Court (Minnesota Statutes, chapter 588);

6. Parentage determination proceedings (Minnesota Statutes, sections 257.51-.74);

7. Actions for reimbursement of public assistance (Minnesota Statutes, section 256.87);

8. Withholding of refunds from support debtors (Minnesota Statutes, section 289A.50, subdivision 5);

9. Proceedings to compel payment of child support (Minnesota Statutes, section 393.07, subdivision 9); and

10. Proceedings for support, maintenance or county reimbursement judgments (Minnesota Statutes, section 548.091).

Other matters may be heard and treated as family court matters. (Amended effective January 1, 1993.)

Advisory Committee Comment—2001 Amendment

Minn. R. Gen. Prac. 351.01 states that the Rules of Civil Procedure, Rules of Evidence, and General Rules of Practice shall apply to proceedings in the expedited process unless inconsistent with the Expedited Child Support Rules, Minn. Gen. R. Prac. 351 through 379. With the exception of Family Court Rules 302.04, 303.05, 303.06, 308.02, and 313, Minn. Gen. R. Prac. 301-313 are inconsistent with the Expedited Child Support Rules and therefore do not apply to the expedited process.

Advisory Committee Comment--2012 Amendments

Rules 301 through 314 were originally derived primarily from the Rules of Family Court Procedure as they existed in 1992. These rules have been revised in several important ways in the ensuing years, and were revised and completely restated in 2011. The prior Advisory Committee Comments have been incorporated into a single set of Advisory Committee Comments for the benefit of the Minnesota Supreme Court as well as for courts and litigants. As is consistently made clear by the orders that have amended the rules, the Advisory Committee Comments are not adopted by the Supreme Court and do not have any official status. They reflect the views of the Supreme Court's advisory committees that have recommended amendments of the rules from time to time.

Rules 301 through 314 apply in the enumerated proceedings, comprising the majority of types of cases involving family relations. Adoption proceedings are governed by separate Rules of Adoption Procedure, adopted effective January 1, 2005.

Minn. R. Gen. Prac. 351.01 states that the Rules of Civil Procedure, Rules of Evidence, and General Rules of Practice shall apply to proceedings in the expedited process unless inconsistent with the Expedited Child Support Rules, Minn. Gen. R. Prac.

351 through 379. With the exception of Family Court Rules 302.02, 303.05, 308.02, 309, 313 and 314, Rules 301-314 are inconsistent with the Expedited Child Support Rules and therefore do not apply to the expedited process.

Rule 301.02 Time

Computation of time under these rules is governed by Rule 6 of the Minnesota Rules of Civil Procedure.

(Amended effective May 1, 2012.)

Advisory Committee Comment--2012 Amendments

The rules relating to computation of time are critical, and it is important that they be clear and predictable to all users of the court system. Rule 6 of the Minnesota Rules of Civil Procedure provides the appropriate clarity and makes it expressly applicable in family matters thereby eliminating any room for confusion. Rule 6 is consistent with the general day-counting rules set forth in Minn. Stat. § 645.15, and provides additional guidance for counting days where the periods of time are short and for responding to papers served by mail, or facsimile.

The time periods in the rules are intended to apply in most situations. Where unusual circumstances exist and justice so requires, the court may shorten the time limits. See Rule 1.02 of these rules.

RULE 302. COMMENCEMENT; PARTIES

Rule 302.01 Commencement of Proceedings

(a) Methods of Commencement. Family Court Actions shall be commenced by service of a summons and petition or other means authorized by statute upon the person of the other party. Commencement can be accomplished by the following means:

(1) *Personal Service*. The summons and petition may be served upon the person of the party to be served.

(2) *Admission or Waiver of Service.* Service may be accomplished when the party to be served signs an admission of service or waives service as permitted in Minn. R. Civ. P. 4.05.

(3) *Alternate Means*. Service of the summons and petition may be by alternate means as authorized by statute.

(4) *Publication.* Service of the summons and petition may be made by publication only upon an order of the court. If the respondent subsequently is located and has not been served personally or by alternate means, personal service shall be made before the final hearing.

(5) *Joint Petition*. The filing of a joint petition as provided in section (c) of this rule.

(b) Service After Commencement. After a Family Law Action has been commenced, service may be accomplished in accordance with Minn. R. Civ. P. 5.

(c) Joint Petition in Marriage Dissolution Proceedings.

(1) No summons shall be required if a joint petition is filed to commence marriage dissolution proceedings. Proceedings shall be deemed commenced when both parties have signed the verified petition.

(2) Where the parties to a marriage dissolution proceeding agree on all issues, the parties may proceed using a joint petition, agreement, and judgment and decree for marriage dissolution.

(3) Upon filing of the "Joint Petition, Agreement and Judgment and Decree," and Form 11.1 appended to Title I of these rules, and a Notice to the Public Authority if required by Minn. Stat. § 518A.44, the court administrator shall place the matter on the appropriate calendar pursuant to Minn. Stat. § 518.13, subd. 5. A Certificate of Representation and Parties and documents required by Rules 306.01 shall not be required if the "Joint Petition, Agreement and Judgment and Decree" published by the state court administrator is used.

(4) The state court administrator shall develop forms that may be used by parties to file joint petitions to commence marriage dissolution proceedings.

(Amended effective July 1, 2019.)

Family Court Rules Advisory Committee Commentary*

Proceedings for dissolution, legal separation and annulment are governed by Minnesota Statutes, chapter 518. Minnesota Statutes, section 518.10 sets out the requisites for the petition. Minnesota Statutes, section 518.11 governs service by publication and precludes substitute service or service by mail under Minn. R. Civ. P. 4.05. The respondent's answer must be served within 30 days. Minnesota Statutes, section 518.12. The joint proceeding is commenced on the date when both parties have signed the petition; no summons is required. Minnesota Statutes, sections 518.09 & 518.11. In cases involving foreign nationals, see Part I, Rule 30, Code of Rules for District Court.

Custody proceedings under the Uniform Child Custody Jurisdiction Act are governed by Minnesota Statutes, chapter 518A. Interstate service and notice must be accomplished at least 20 days prior to any hearing in Minnesota. Service within the state is set forth in Minn. R. Civ. P. 4. Domestic abuse proceedings are governed by Minnesota Statutes, chapter 518B. Ex parte orders for protection must include notice of a hearing within 14 days of the issuance of the order. Personal service upon the respondent must be effected not less than five days prior to the first hearing.

Support proceedings under the revised Uniform Reciprocal Enforcement of Support Act are governed by Minnesota Statutes, chapter 518C. The time for answer is governed by the law of the responding jurisdiction.

Actions to establish parentage are governed by Minnesota Statutes, chapter 257. Actions for reimbursement for public assistance are governed by Minnesota Statutes, section 256.87. Defendant has 20 days to answer the complaint in each action.

The Petitioner must notify the public agency responsible for support enforcement of all proceedings if either party is receiving or has applied for public assistance. Minnesota Statutes, section 518.551.

A party appearing pro se shall perform the acts required by rule or statute in the same manner as an attorney representing a party. An attorney dealing with a party pro se shall proceed in the same manner, including service of process, as in dealing with an attorney.

**Original Advisory Committee Comment--Not kept current.*

Task Force Comment--1991 Adoption

Subsection (a) is derived from Rule 1.01 of the Rules of Family Court Procedure.

Subsection (b) is derived from Second District Local Rule 1.011.

Subsection (c) is derived from Second District Local Rule 1.013. See Minnesota Statutes, section 518.11 (1990). This is to protect the children and help avoid secret proceedings if the respondent is able to be located.

Advisory Committee Comment—2003 Amendments

Subsections (2), (3), and (4), and Form 12, are new in 2003 and were recommended for adoption by the Minnesota State Bar Association's Pro Se Implementation Committee.

Subsections (2) and (3) of Rule 302.01(b) intended to provide a streamlined process for marriage dissolutions without children, where the parties agree on all property issues. These rule provisions essentially create a new process, commenced with a combined petition, stipulation and judgment and decree. Although intended to facilitate handling of cases by parties appearing without an attorney, it is available to represented parties as well. A new form is provided and should be made readily available to litigants. If either party to the proceedings is receiving public assistance, a Notice to Public Authority is also required. The Joint Petition, Agreement, and Judgment and Decree includes a statement regarding non-military status and a pro se waiver of right to be represented by a lawyer, thus satisfying the requirements of Rule 306.01(c). Court Administrators shall place the matter on the default calendar for final hearing without filing of Form 10 appended to the Rules. The Joint Petition, Agreement and Judgment and Decree may be used by parties represented by attorneys or parties representing themselves. The committee believes that the Joint Petition, Agreement, and Judgment and Decree procedure will reduce costs for litigants, reduce paper handling and storage expenses for the courts, and improve access to the courts.

Attorneys should approach the use of a Joint Petition with care. The amendment of this rule to allow use of a joint petition does not modify the professional liability constraints on joint representation of parties with divergent interests.

As part of this amendment, Rule 306.01 is also amended for internal consistency.

Advisory Committee Comment—2006 Amendment

Rule 302 is amended to incorporate procedures to deal with service "by alternate means" as authorized by statute. Minn. Stat. § 518.11 expressly provides authority for service by various other means. The rule retains provision for service by publication as well, because publication is authorized for a summons and petition that may affect title to real property. See Minn. Stat. § 518.11(c) (2004).

Advisory Committee Comments—2007 Amendment

Although Rule 302 is not amended, the amendment made to Rule 308.04 creates a procedure similar to that in Rule 302.01(b)(2). The Rule 302 procedure is available only in limited circumstances to allow for a completely streamlined procedure – use of a joint petition, agreement and judgment and decree of marriage dissolution without children. The Rule 308 procedure is a more limited streamlined procedure, although it is available in any case, but it does not obviate service of a petition (or use of a separate joint petition). That procedure simply allows the parties to combine the marital termination agreement and judgment and decree into a single document. The decision to use the procedure established in Rule 308.04 may be made at any time, while the procedure in Rule 302.01(b) is, by its nature, limited to a decision prior to commencement of the proceedings.

Advisory Committee Comments—2008 Amendments

Rule 302(b) is amended to expand the availability of the streamlined procedure allowing a marriage dissolution to proceed by use of a single pleading that combines a joint petition, marital termination agreement, and judgment and decree. The prior rule allowed this procedure only in marriages with no children; the amendment allows its use in marriage dissolution proceedings with children where the parties have agreed on all issues. The combined form permits the parties to proceed more expeditiously and make it easier for the parties and the court to verify that the judgment and decree to be entered by the court conforms to the parties' agreement.

The rule also deletes the reference to the former Rule 12 as part of a transition to maintain practice forms related to practice under the rules by court administration and available on the courts' website [www. mcourts.gov] rather than as part of the rule.

Advisory Committee Comment--2012 Amendments

Family court proceedings are generally governed by statute in Minnesota, and these rules implement the statutory procedures. Proceedings for dissolution, legal separation and annulment are governed in detail by Minnesota Statutes, chapter 518. See generally Minn. Stat. § 518.10 (requirements for petition); § 518.11 (service by publication and precluding substitute service or service by mail under Minn. R. Civ. P. 4.05); § 518.12 (requiring respondent's answer to be served within 30 days). Service "by alternate means" is authorized by statute. See Minn. Stat. § 518.11 (authorizing service by various other means). The rule retains provision for service by publication because publication is authorized for a summons and petition that may affect title to real property. See Minn. Stat. § 518.11(c) (2010).

A joint proceeding is commenced on the date when both parties have signed the petition, and no summons is required. Minn. Stat. §§ 518.09 & 518.11. Rule 308.04 creates a procedure similar to that in Rule 302.01(c)(2) & (3). The Rule 302 procedure is available only in limited circumstances to allow for a completely streamlined procedure—use of a joint petition, agreement and judgment and decree of marriage dissolution without children or with children where the parties have agreed on all issues. The Rule 308 procedure is a more limited streamlined procedure, although it is available in any case, but it does not obviate service of a petition (or use of a separate joint petition). That procedure simply allows the parties to combine the marital termination agreement and judgment and decree into a single document. The decision to use the procedure established in Rule 308.04 may be made at any time, while the procedure in Rule 302.01(c) is, by its nature, limited to a decision prior to commencement of the proceedings.

Custody proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act are governed by Minnesota Statutes, chapter 518D. Interstate service and notice must be accomplished at least 20 days prior to any hearing in Minnesota. Service within the state is governed by Minn. R. Civ. P. 4.

Domestic abuse order for protection proceedings are governed by Minnesota Statutes, chapter 518B. Notice and the timing of personal service on the respondent varies according to the circumstances detailed in the statute. Support proceedings under the revised Uniform Interstate Family Support Act are governed by Minnesota Statutes, chapter 518C. The time for answer is governed by the law of the responding jurisdiction.

Statutes authorize commencement of certain Family Court Actions other than by summons and petition. Commencement of contempt proceedings under Minn. Stat. § 588.04 is addressed in Rule 309 of these rules. Court decisions set forth in Rodewald v. Taylor, 797 N.W.2d 729 (Minn. Ct. App. 2011), also permit commencement by motion following the signing of a Recognition of Parentage under Minn. Stat. § 257.75.

Actions to establish parentage are governed by Minnesota Statutes, chapter 257. Rule 314 of these rules addresses specific procedures applicable in these actions.

A child support proceeding that is not a IV-D case as defined in Rule 352.01(g)) must be commenced in district court and is subject to Rules 301-314. Actions for reimbursement for public assistance are governed by Minn. Stat. § 256.87 and are governed by the expedited process rules, Rules 351, et seq. The Petitioner must notify the public agency responsible for support enforcement of all proceedings if either party is receiving or has applied for public assistance. Minn. Stat. § 518A.44.

A party appearing pro se is required to perform the acts required by rule or statute in the same manner as an attorney representing a party. An attorney dealing with a party appearing pro se shall proceed in the same manner, including service of process, as in dealing with an attorney.

Advisory Committee Comment--2019 Amendment

Rule 302.01(a) is amended to reflect the amendment of Rule 4.05 of the Rules of Civil Procedure, effective July 1, 2018, to create a new means of obtaining waiver of service under the rule. A new subsection (5) is added to reflect that an action can be commenced by joint petition as provided in Rule 302.01(c).

Rule 302.02 Designation of Parties

(a) Petitioner and Respondent. Parties to Family Court Actions shall be designated as petitioner (joint petitioners or petitioner and co-petitioner) and respondent. After so designating the parties, it is permissible to refer to them as husband and wife, father and mother, or other designations if applicable by inserting the following in any petition, order, decree, etc.:

Petitioner is hereinafter referred to as (familial designation), and respondent as (familial designation).

(b) Guardians Ad Litem. Appointment of a guardian ad litem for minor children is governed by the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court (Rules 901-907). The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

A guardian ad litem for minor children may be designated a party to the proceedings in the order of appointment. If the child is made a party to the proceeding, then the child's guardian ad litem shall also be made a party.

(Amended effective May 1, 2012.)

Family Court Rules Advisory Committee Commentary *

A guardian appointed pursuant to Minnesota Statutes, section 257.60 becomes a party to the action if the child is made a party. The guardian then would be entitled to initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written arguments or reports and appeal on behalf of a child without the necessity of applying to the court.

A guardian appointed under Minnesota Statutes, section 518.165 is not a party to the proceeding and may only initiate and respond to motions and make oral statements and written reports on behalf of the child.

A party has the right to cross-examine as an adverse witness the author of any report or recommendation on custody and visitation of a minor child. Thompson v. Thompson, 288 Minn. 41, 55 N.W. 329 (1952) and Scheibe v. Scheibe, 308 Minn. 449, 241 N.W.2d 100 (1976).

Practice among the courts may vary with respect to appointments. Some courts maintain panels of lay guardians while other courts maintain panels of attorney guardians. If a lay guardian is appointed, an attorney for the guardian may also be appointed. Guardians may volunteer or be paid for their services. An attorney requesting appointment of a guardian should inquire into local practice.

Original Advisory Committee Comment--Not kept current.

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Second District R. 1.07.

Subdivision (b) of this rule is derived from Rule 1.02 of the Uniform Rules of Family Court Procedure. The first sentence of the subdivision is new and is intended to make it clear that practice involving guardians ad litem is also governed by another rule provision.

Advisory Committee Comment—2012 Amendments

Rule 302.02(a) specifies that the proper designation of parties in family court proceedings is as petitioner and respondent. Where a proceeding is commenced jointly, both parties may be designated as co-petitioners. The rule permits the parties, once properly designated in the appropriate pleadings, to be designated by less formal terms that indicate their relationship. The rule is amended to recognize that those designations are not limited to husband and wife, and other forms of relationships are encountered in family court proceedings. The "petitioner" and "respondent" labels are to be used in parentage cases, despite the historic use of "plaintiff" and "defendant" in these cases. There is no statutory or other requirement for the use of those labels, although at least one statute uses the term "defendant" in specifying the proper venue for these actions. See Minn. Stat. § 257.59. It is particularly helpful to use common terminology given the fact parentage proceedings may be combined with or joined with an action for dissolution, annulment, legal separation, custody under Minn. Stat. ch. 518, or reciprocal enforcement of support pursuant to Minn. Stat. § 257.59, subd. 1.

Rule 302.02(b) deals with guardians ad litem. A guardian appointed pursuant to Minnesota Statutes, section 257.60 becomes a party to the action if the child is made a party. The guardian then would be entitled to initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written arguments or reports and appeal on behalf of a child without the necessity of applying to the court. This rule applies to appointment of a guardian ad litem for minor children. Appointment of a guardian in other situations is governed by Rule 17.02 of the Minnesota Rules of Civil Procedure.

A guardian appointed under Minnesota Statutes, section 518.165 is not a party to the proceeding, but may initiate and respond to motions and make oral statements and written reports on behalf of the child. A party has the right to cross-examine as an adverse witness the author of any report or recommendation on custody and visitation of a minor child. Scheibe v. Scheibe, 308 Minn. 449, 241 N.W.2d 100 (1976); Thompson v. Thompson, 238 Minn. 41, 55 N.W.2d 329 (1952).

RULE 303. MOTIONS; EMERGENCY RELIEF; ORDERS TO SHOW CAUSE

Rule 303.01 Scheduling of Motions

(a) Notice of Obtaining Hearing Date. Except in cases in which the parties reside in the same residence and there is a possibility of abuse, a party who obtains a date and time for hearing a motion shall promptly give written notice of the hearing date and time, name of the judicial officer, if known, and the primary issue(s) to be addressed at the hearing to all parties in the action. If the parties reside in the same residence and there is a possibility of abuse, notice shall be given in accordance with the Minnesota Rules of Civil Procedure.

(b) Notice of Motion. All motions shall be accompanied by either an order to show cause in accordance with Minn. R. Gen. Prac. 303.05 or by a notice of motion which shall state, with particularity, the date, time, and place of the hearing and the name of the judicial officer if known, as assigned by the local assignment clerk.

(c) Notice of Time to Respond. All motions and orders to show cause shall contain the following statement:

The Rules establish deadlines for responding to motions. All responsive pleadings shall be served and filed with the court administrator no later than 7 days before the scheduled hearing. The court may, in its discretion, disregard any responsive pleadings served or filed with the court administrator less than 7 days before such hearing in ruling on the motion or matter in question.

(Amended effective January 1, 2020.)

Family Court Rules Advisory Committee Commentary*

The scheduling of cases and the assignment of judges, judicial officers or referees is often a situation in which local calendaring practices prevail. Effective disposition of litigation requires immediate notice of the hearing officer's identity to preclude last minute filing of notices to remove or affidavits of prejudice.

**Original Advisory Committee Comment--Not kept current.*

Task Force Comment--1991 Adoption

Subdivision (a)(1) of this rule is derived from existing Rule 2.01 of the Rules of Family Court Procedure.

Subdivision (a)(2) is from the new Minn. Gen. R. Prac. 115.02. It is intended primarily to prevent a party from obtaining a hearing date and time weeks in advance of a hearing but then delaying giving notice until shortly before the hearing. This practice appears to give an unnecessary tactical advantage to one side. Additionally, by requiring that more than the minimum notice be given in many cases, it will be possible for the responding parties to set on for hearing any additional motions they may have. This may result in the more efficient hearing of multiple motions on a single hearing date.

Subdivision (b) of this rule is derived from Second Judicial District Rule 2.011.

Advisory Committee Comment—2012 Amendments

Rule 303.01 imposes a simple burden on any party, whether or not represented by counsel: to promptly advise the other parties when a hearing date is obtained from the court. The rule codifies common courtesy, but also serves specific purposes of reducing the need to reschedule motion hearings and permitting the other side to submit motions at the same hearing, if appropriate. "Promptly" is intentionally not rigidly defined, but notice should be sent the same day the hearing date is obtained. Notice of the assignment of a judicial officer also starts the time to remove an assigned judicial officer under Minn. R. Civ. P. 63.03 and Minn. Stat. § 542.16.

The Rule exempts a party from giving prior notice if there is a "possibility of abuse" and where the two parties share the same residence. This admittedly subjective standard is retained in the rule for the protection of victims of domestic violence. The trial court retains the authority to impose sanctions for the improper use of this exception.

Rule 303.02 Form of Motion

(a) Specificity and Supporting Documents. Motions shall set out with particularity the relief requested in individually numbered paragraphs. All motions must be supported by affidavits that contain facts relevant to the issues before the court.

(b) Temporary Relief. When temporary financial relief such as child support, maintenance, payment of debt and attorney's fees is requested, the Parenting/Financial Disclosure Statement form developed by the state court administrator shall be served and filed by the moving and responding parties, along with their motions and affidavits. Sanctions for failure to comply include, but are not limited to, the striking of pleadings or hearing.

(Amended effective July 1, 2015.)

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 2.02 of Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from Second Judicial District Rule 2.021.

The local rule from which subdivision (b) is derived included a requirement that information be filed on forms, and that typewritten or word-processed documents would not be accepted for filing. The Task Force considered the desirability of requiring information to be submitted on pre-printed forms, and determined that such requirements should not be retained. Many modern law offices cannot readily prepare such documents as word processing machines have displaced the typewriters for which the forms are designed. The Task Force also believes that these requirements only increase the cost of litigation and limit access to the courts.

Rule 303.03 Motion Practice

(a) Requirements for Motions.

(1) *Moving Party, supporting documents, time limits.* No motion shall be heard unless the moving party pays any required motion filing fee, properly serves a copy of the following documents on all parties and files them with the court administrator at least 21 days before the hearing:
(i) Notice of motion and motion in the form required by Minn. Gen. R. Prac. 303.01 and 303.02;
(ii) Relevant affidavits and exhibits; and
(iii) Any memorandum of law the party intends to submit.

(2) *Motion Raising New Issues.* A responding party raising new issues other than those raised in the initial motion shall pay any required motion filing fee, properly serve a copy of the following documents on all parties and file them with the court administrator at least 14 days before the hearing:
(i) Notice of motion and motion in the form required by Minn. Gen. R. Prac. 303.01 and 303.02;
(ii) Relevant affidavits and exhibits; and
(iii) Any memorandum of law the party intends to submit.

(3) *Responding party, supporting documents, time limits.* The party responding to issues raised in the initial motion, or the party responding to a motion that raises new issues, shall pay any required motion filing fee, properly serve a copy of the following documents on all parties and file them with the court administrator at least 7 days before the hearing:
(i) Any memorandum of law the party intends to submit
(ii) Relevant affidavits and exhibits.

(4) *Computation of Time for Service.* Whenever this rule requires documents to be served and filed with the court administrator within a prescribed period of time before a specific event, service and filing must be accomplished as required by Minn. R. Civ. P. 5 and 6.

(5) *Post-Trial Motions.* The timing provisions of Section 303.03(a) do not apply to post-trial motions.

(b) Failure to Comply. In the event a moving party fails to timely serve and file documents required in this rule, the hearing may be canceled by the court. If responsive documents are not properly served and filed, the court may deem the initial motion unopposed and may issue an order without hearing. The court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may consider the matter unopposed, may allow reasonable attorney's fees, or may take other appropriate action.

(c) Settlement Efforts. Except in parentage cases when there has been no court determination of the existence of the parent and child relationship, and except in situations where a court has ordered that no contact occur between the parties, the moving party shall, within 7 days of filing a motion, initiate a settlement conference either in person, or by telephone, or in writing in an attempt to resolve the issues raised. Unless ADR is not required under Rule 310, this conference shall include consideration of an appropriate ADR process under Rule 114. The moving party shall certify to the court compliance with this rule or any reasons for not complying. The moving party shall file a Certificate of Settlement Efforts in the form developed by the state court administrator not later than 24 hours before the hearing. Unless excused by the Court for good cause, no motion shall be heard unless the parties have complied with this rule. Whenever any pending motion is settled, the moving party shall promptly advise the court.

(d) Request for Oral Testimony.

(1) *General Rule.* Motions shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel except for contempt proceedings or as otherwise provided for in these rules.

(2) *Request for Leave for Oral Testimony.* Requests for the taking of oral testimony must be made by motion served and filed not later than the filing of that party's initial motion documents. The motion shall include names of witnesses, nature and length of testimony, including cross-examination, and types of exhibits, if any.

(3) *Request for Hearing Longer Than One-Half Hour.* Requests for hearing time in excess of one-half hour must be submitted by separate written motion specifically setting forth the necessity and reason that evidence cannot be submitted by affidavit.

(4) *Conversion to Prehearing Conference.* If the matter cannot be heard adequately in the scheduled time, the hearing shall be used as a prehearing conference.

(5) *Court Discretion to Solicit Oral Testimony.* If the request required by subdivision (2) of this rule has not been made, the court shall not take oral testimony at the scheduled hearing unless the court in its discretion solicits additional evidence from the parties by oral testimony.

(6) *Order.* In the event the court permits oral testimony, it may issue an order limiting the number of witnesses each party may call, the scope of their testimony, and the total time for each party to present evidence. Each party shall be afforded an opportunity to suggest appropriate limits.

(7) *Interviews of Minor Children.* Any motion relating to custody or visitation shall additionally state whether either party desires the court to interview minor children. No child under the age of fourteen years will be allowed to testify without prior written notice to the other party and court approval.

(Amended effective January 1, 2020.)

Family Court Rules Advisory Committee Commentary*

Minnesota Statutes, section 518.131, subdivision 8 grants a party the right to present oral testimony upon the filing of a demand either in the initial application for temporary relief or in the response thereto.

The party demanding oral testimony should provide a list of the proposed witnesses, the scope of their testimony and an estimate of the required time.

**Original Advisory Committee Comment--Not kept current.*

Advisory Committee Comment--1996 Amendment

Subdivisions (a)-(d) of this rule are new. They are derived from parallel provisions in new Minn. Gen. R. Prac. 115, and are intended to make motion practice in family court matters as similar to that in other civil actions as is possible and practical given the particular needs in family court matters.

Subdivision (d) of this rule is derived from Rule 2.04 of Rules of Family Court Procedure and from Second Judicial District Rules 2.041 and 2.042.

The requirement in subsection (c) of an attempt to resolve motion disputes requires that the efforts to resolve the matter be made before the hearing, not before bringing the motion. It is permissible under the rule to bring a motion and then attempt to resolve the motion. If the motion is resolved, subsection (c) requires the parties to advise the court immediately.

Rule 303.03(a)(5) is added by amendment to be effective January 1, 1994, in order to make it clear that the stringent timing requirements of the rule need not be followed on post-trial motions. This change is made to continue the uniformity in motion practice between family court matters and general civil cases, and is patterned on the change to Minn. Gen. R. Prac. 115.01(c) made effective January 1, 1993.

Subdivision (c) of this rule is amended in 1996 to require consideration of ADR in post-decree matters. The rule specifies how ADR proceedings are commenced in post-decree matters; the procedures for court-annexed ADR in these matters is generally the same under Rule 114 as for other cases.

Advisory Committee Comment—2003 Amendments

The rule is amended in 2003 to include a reference to the requirement for paying a motion filing fee. A new statute in 2003 imposes a fee for "filing a motion or response to a motion in civil, family, excluding child support, and guardianship case." See 2003 MINN. LAWS 1st Spec. Sess., ch. 2, art. 2, § 2, to be codified at MINN. STAT. § 357.021, subd. 2(4).

Advisory Committee Comment—2012 Amendments

Motion practice in family law matters is intended to mirror, where appropriate to the needs of family law issues, the procedures followed generally in civil cases in Minnesota courts. The prevailing practice in Minnesota courts is for the submission of

evidence relating to motions by written submissions, with sworn testimony provided by affidavit, deposition, or other written submissions. Rule 303.03(d)(1) restates that rule. The balance of Rule 303.03(d) addresses the process to request leave to present oral testimony in the limited circumstances where it may be appropriate. Minn. Stat. § 518.131, subd. 8, provides for allowing oral testimony upon demand of a party in requests for a temporary order or restraining order.

Rule 303.03(a)(5) makes it clear that the stringent timing requirements of the rule need not be followed on post-trial motions, such as a motion for a new trial or for amended findings made shortly after the conclusion of trial. See Minn. R. Civ. P. 52 & 59. This change is made to continue the uniformity in motion practice between family court matters and general civil cases, and is patterned on Minn. Gen. R. Prac. 115.01(c). Support, spousal maintenance, and custody modification motions, often brought months or years later, are subject to the general timing rules for motions.

The requirement in subsection (c) of an attempt to resolve motion disputes requires that the efforts to resolve the matter be made before the hearing, not before bringing the motion. The rule requires the moving party to initiate settlement efforts. If the motion is resolved, subsection (c) requires the parties to advise the court immediately. Although mandated settlement efforts may create additional challenges for pro se parties, Rule 1.04 requires compliance with the rules by all parties, including pro se parties, subject to relief granted by the court to prevent a manifest injustice under rule 1.02.

The rule explicitly addresses the requirement for paying a motion filing fee. Since 2003, Minnesota law requires a fee for "filing a motion or response to a motion in civil, family, excluding child support, and guardianship cases." See Minn. Stat. § 357.021, subd. 2(4).

Rule 303.04 Ex Parte and Emergency Relief

(a) Governing Rules. The court may grant emergency relief if the requirements in this Rule 303.04 are met. If emergency relief is sought ex parte, the party seeking the relief must demonstrate compliance with Rule 3 of these rules.

(b) Order to Show Cause. An order to show cause shall not be used except in those cases where permitted pursuant to Minn. Gen. R. Prac. 303.05.

(c) Requirement of Motion; Form. The party seeking emergency relief must state with specificity in a motion and affidavit:

(i) Why emergency relief is required;
(ii) The relief requested;
(iii) Disclosure of any other attempts to obtain the same or similar relief and the result;
(iv) If there was a prior attempt to obtain emergency relief, the name of the judicial officer to whom the request was made;
(v) If a prior request was denied for the same or similar relief, explain what new facts are presented to support the current motion.

(d) Proposed Order. The party seeking emergency relief must present a proposed order for the court's consideration.

(e) Notice. The party seeking emergency relief must serve the motion and affidavit, including notice of the time when and the place where the motion will be heard, on the other party or counsel, unless:
(i) the party seeking emergency relief provides a written statement that the party has made a good faith effort to contact the other party or counsel and has been unsuccessful; or
(ii) the supporting documents show good cause why notice to the other party should not be required and the court waives the notice requirement.

(f) Hearing. An order granting emergency relief without notice shall include a return hearing date before the judicial officer hearing the matter. If the relief obtained affects custody or parenting time, the court shall set the matter for hearing within 14 days of the date the emergency relief is granted.

(Amended effective May 1, 2012.)

Family Court Rules Advisory Committee Commentary*

Minn. R. Civ. P. 65.01 states the notice requirements for ex parte relief. Minnesota Statutes, section 518.131 controls ex parte temporary restraining orders.

**Original Advisory Committee Comment--Not kept current.*

Task Force Comment--1991 Adoption

Subdivisions (a), (b) and (c) of this rule are derived from existing Rule 2.05 of the Rules of Family Court Procedure.

Subdivision (d) of this rule is derived from Second District Local Rule 2.051.

Parties should be aware that Minn. Gen. R. Prac. 3 applies to all ex parte orders, including those relating to family court proceedings. Minn. R. Civ. P. 65.01 also applies in family court temporary restraining order practice.

Advisory Committee Comment—2012 Amendments

Rule 303.04 is amended to make clearer the circumstances that justify seeking either emergency or ex parte relief. "Emergency" and "ex parte" are not synonymous, though sometimes both might be justified in a particular situation. Emergency relief may be appropriate where there is urgency, not caused by lack of diligence on the part of the moving party, that makes the normal deadlines in the rules unworkable. Even where exigent circumstances justify shortening the deadlines, they do not generally excuse the giving of notice—or the attempt thereof—to the other side. Rare situations may, however, permit or even demand that notice not be given to the other side before seeking relief from

the court. Where destruction of property or evidence is threatened, assets appear to be concealed or are threatened to be concealed, or the abduction of children has occurred or is threatened, or other situations exist where the giving of notice is likely to make any relief impossible to obtain, the court may consider the matter ex parte (without notice to the other side). Rule 3 of these rules provides clear guidelines on seeking ex parte relief. The standards of Rule 65.01 of the Minnesota Rules of Civil Procedure also provide guidance for relief in family law manners. See Minn. R. Civ. P. 65.01 (permitting relief without notice if "immediate and irreparable injury, loss, or damage will result.").

As is true for temporary restraining orders, any order granted without notice to all parties should be of extremely short duration and the court should hold a hearing upon notice to all parties before continuing or extending the relief. The availability of temporary relief, and the limits on that relief, are set forth in Minn. Stat. § 518.131.

Rule 303.05 Orders to Show Cause

Orders to show cause shall be obtained in the same manner specified for ex-parte relief in Rule 3 of these rules. Such orders may require production of limited financial information. An order to show cause shall be issued only where the motion seeks a finding of contempt under Rule 309 or the supporting affidavit makes an affirmative showing of:

(a) a need to require the party to appear in person at the hearing, or
(b) a need for interim support is warranted, or
(c) the production of limited financial information is deemed necessary by the court, or
(d) a need for the issuance of an order to show cause, subject to the discretion of the judge.

All orders to show cause must be appropriately signed out for service. A conformed file copy of such order shall be retained by the court administrator in the file.

(Amended effective May 1, 2012.)

Family Court Rules Advisory Committee Commentary*

The use of orders to show cause can be abused by requiring a personal appearance where none is necessary. A timely notice of motion informing a party of the time to appear, if he or she wishes, is adequate in most proceedings.

**Original Advisory Committee Comment--Not kept current.*

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 2.06 of the Rules of Family Court Procedure. The Family Law Section of the Minnesota State Bar Association recommended additional specific language limiting use of orders to show cause and the Task Force agrees that this clarification should be useful. Orders to show cause are specifically authorized, in limited circumstances, by statute. See, e.g., Minnesota Statutes, sections 256.87, subdivision 1a and 393.07, subdivision 9 (1990).

Advisory Committee Comment—2012 Amendments

Orders to show cause should be issued only when it is necessary that a party appear at a hearing. In most situations, the provision of notice of a hearing, and allowing parties to appear if they choose to contest entry of the relief sought, is sufficient. Orders to show cause are specifically authorized, in limited circumstances, by statute. See, e.g., Minn. Stat. §§ 256.87, subd. 1a; 393.07, subd. 9; 518A.73; and 543.20. It is often preferable to use a notice of motion, and if attendance is required, to issue a subpoena to a non-party. See, e.g., Stevens County Social Service Dept. ex rel. Banken v. Banken, 403 N.W.2d 693 (Minn. Ct. App. 1987). Orders to show cause are a recognized part of contempt proceedings. See, e.g., Minn. Stat. § 588.04.

Parties should be aware that improper use of an order to show cause can result in the imposition of sanctions. See, e.g., Nelson v. Quade, 413 N.W.2d 824 (Minn. Ct. App. 1987).

Former Rule 303.06 setting forth notices to be included in a final decree have largely been obviated by statutorily required notices. Notices required under statute are discussed in Rule 308.02 and its accompanying advisory committee comment.

RULE 304. SCHEDULING OF CASES

Rule 304.01 Scope

Rule 304.01 through 304.05 provide for scheduling matters for disposition and trial in all Family Court Actions, excluding only the following:

(a) Actions for reimbursement of public assistance (Minnesota Statutes, section 256.87);
(b) Contempt (Minnesota Statutes, chapter 588);
(c) Domestic abuse proceedings (Minnesota Statutes, chapter 518B);
(d) Child custody enforcement proceedings (Minnesota Statutes, chapter 518D);
(e) Support enforcement proceedings (Minnesota Statutes, chapter 518C--U.I.F.S.A.);
(f) Withholding of refunds from support debtors (Minnesota Statutes, section 289A.50, subdivision 5);
(g) Proceedings to compel payment of child support (Minnesota Statutes, section 393.07, subdivision 9);
(h) Proceedings for support, maintenance or county reimbursement judgments (Minnesota Statutes, section 548.091); and
(i) Expedited Child Support Proceedings (Minn. Gen. R. Prac. 351 through 379).

Rule 304.06 applies to all Family Court Actions.

Rule 304.02 Scheduling Statement

(a) Except where the court orders the parties to use an Initial Case Management Conference ("ICMC"), within 60 days after the initial filing in a case, or sooner if the court requires, the parties shall file a Scheduling Statement that substantially conforms to the form developed by the state court administrator.

(b) In cases where the court orders the parties to use an Initial Case Management Conference, the parties shall comply with the order issued by the court as to what form to submit, its due date, and whether it should be filed or submitted to the court without filing.

(Amended effective January 1, 2014.)

Advisory Committee Comment—2012 Amendments

Rule 304.02 is amended to reflect the more varied approaches to case management being used in Minnesota courts. The Initial Case Management Statement replaces the former Party's Information Statement form and is intended to be a more flexible device for obtaining information to be used by the court in making case-management decisions. Supplemental information regarding local programs such as Early Case Management and/or Early Neutral Evaluation addressing may require submission of separate information on a separate time deadline.

Rule 304.03 Scheduling Order

(a) When issued. Within 28 days after the expiration of the time set forth in Rule 304.02 for filing a Scheduling Statement, the court shall enter its scheduling order. The court may issue the order after either a telephone or in court conference, or without a conference or hearing if none is needed.

(b) Contents of Order. The scheduling order shall provide for alternative dispute resolution as required by Rule 114.04(c) and may establish any of the following:

(1) Deadlines or specific dates for the completion of alternative dispute resolution including but not limited to mediation and early neutral evaluations;
(2) Deadlines or specific dates for the completion of discovery or other pretrial preparation;
(3) Deadlines or specific dates for serving, filing or hearing motions;
(4) A deadline or specific date for custody, parenting time or property evaluations;
(5) A deadline or specific date for the pretrial conference; and
(6) A deadline or specific date for the trial or final hearing.

(Amended effective January 1, 2020.)

Advisory Committee Comment—2014 Amendments

The amendments to Rules 304.02 and 304.03 recognize that different districts and counties use different processes for scheduling family law matters. Rule 304.02 is amended to rename the Initial Case Management Statement (formerly known as the Informational Statement) as the Scheduling Statement. This change is intended to make clear the distinction between it and the Initial Case Management Conference (ICMC) Data Sheet used in the many counties that hold Initial Case Management Conferences (ICMCs) and find them useful tools in managing their cases. Pursuant to Judicial Branch Policy 520.1 § IV, the ICMC Data Sheet is not to be filed with the court, but is provided to the court in advance of the ICMC to assist the court in preparing for and holding the ICMC. Further information on the ICMC process, if in use in a particular court, may be obtained on the individual court's websites, which may be accessed through the state court website, www.mncourts.gov.

The Scheduling Statement is formally filed with the court within 60 days of filing of the case. The court's management of the case from and after the ICMC ensures the case is concluded in a timely manner, alleviating the necessity of filing a Scheduling Statement. In counties that do not utilize ICMCs as part of case management, the filing of the Scheduling Statement will assist the court in scheduling appropriate court appearances to conclude the case in a timely manner.

Rule 304.04 Amendment

A scheduling order pursuant to this rule may be amended at any pretrial or settlement conference, upon motion for good cause shown, or upon stipulation of the parties if approved by the court.

Rule 304.05 Collaborative Law

A scheduling order under this rule may include provision for deferral on the calendar pursuant to Rule 111.05(b) of these rules and for exemption from additional ADR requirements pursuant to Rule 111.05(c).

Rule 304.06 Continuances

(a) Trial. Minn. Gen. R. Prac. 122 governs continuances for trial settings unless the court directs otherwise.

(b) Motions and Pretrial. A request for a continuance of a motion or pretrial conference shall be in writing and set forth the basis for the request.

Advisory Committee Comment--1996 Amendment

This rule is new. It is patterned after the similar new Minn Gen. R.. Prac. 111. The Task Force believes that the scheduling information and procedures in family court and other civil matters should be made as uniform as possible, consistent with the special needs in family court matters. It is amended in 1996 to include information needed for using alternative dispute resolution in family law matters as required by Minn. Gen. R. Prac. 301.01(sic), also as amended in 1996. These amendments follow the form of similar provisions in Minn Gen. R.. Prac. 111, and should be interpreted in the same manner.

Matters not scheduled under the procedures of this rule are scheduled by motion practice under Minn. Gen. R. Prac. 303. Rule 304.02 now provides a definite time by which informational statements are required, even if a temporary hearing is contemplated and postponed. Under the prior version of the rule, informational statements might never be due because a temporary hearing might be repeatedly postponed. If the parties seek to have a case excluded from the court scheduling process, they may do so by stipulating to having the case placed on "Inactive Status." This stipulation can be revoked by either party, but removes the case from active court calendar management for up to one year. See Minnesota Conference of Chief Judges (See Exhibit A), Resolution Relating to the Adoption of Uniform Local Rules, Jan. 25, 1991.

This rule provides for a separate Form 9B for use by unrepresented parties. This form contains additional information useful to the court in managing cases where one or both parties are not represented by an attorney. This form is updated in 1996 to request information about any history or claims of domestic abuse and the views of the parties on the use (or potential use) of alternative dispute resolution in the same manner as Form 9A or represented parties.

Advisory Committee Comment—2007 Amendment

Rule 304.05 is a new provision, intended primarily to make it clear that the special scheduling procedures relating to collaborative law in Minn. Gen. R. Prac. 111.05 apply to scheduling of family law matters subject to Rule 304. The rule permits a scheduling order to include provision for collaborative law, but does not require it.

Advisory Committee Comment—2009 Amendment

Rule 304.02 is amended to include section (b)(7) adopted to implement the gathering of information about the potential need for interpreter services in a case, either for witnesses or for a party. See Minn. Gen. R. Prac. 8.13.

RULE 305. PRETRIAL CONFERENCES

Rule 305.01 Parenting/Financial Disclosure Statement

Each party shall complete a Parenting/Financial Disclosure statement in the form developed by the state court administrator which shall be served upon all parties and filed with the court at least 7 days prior to the date of the pretrial conference.

(Amended effective May 1, 2012.)

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 4.02 of the Rules of Family Court Procedure. The existing family court rule includes a requirement that information be filed on forms, and that typewritten or word-processed documents would not be accepted for filing. The Task Force considered the desirability of requiring information to be submitted on preprinted forms, and determined that such requirements should not be retained. Many modern law offices cannot readily prepare such documents as word processing machines have displaced the typewriters for which the forms are designed. The Task Force also believes that these requirements only increase the cost of litigation and limit access to the courts.

Rule 305.02 Pretrial Conference Attendance

(a) Parties and Counsel. Unless excused by the court for good cause, the parties and lawyers who will try the proceedings shall attend the pretrial conference, prepared to negotiate a final settlement. The lawyers attending the pretrial conference must have authority to settle the case. If a stipulation is reduced to writing prior to the pretrial conference, the case may be heard administratively or as a default at the time scheduled for the conference. In the event the matter will proceed as a default, then only the party obtaining the decree need appear.

(b) Failure to Appear-Sanctions. If a party fails to appear at a pretrial conference, the court may dispose of the proceedings without further notice to that party.

(c) Failure to Comply-Sanctions. Failure to comply with the rules relating to pretrial conferences may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the nonappearing party's pleadings and the hearing of the matter as a default, award of attorney fees and costs, and such other relief as the court finds appropriate, without further notice to the defaulting party.

(Amended effective May 1, 2012.)

Family Court Rules Advisory Committee Commentary*

In disposing of a proceeding, the Court may dismiss it entirely, grant relief to the party appearing, grant attorney fees, bifurcate the proceedings and grant partial relief, or grant any other relief which the court may deem appropriate. See Rule 306.2(c).

**Original Advisory Committee Comment--Not kept current.*

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from existing Rule 4.03 of the Rules of Family Court Procedure.

Subsection (b) of this rule is derived from existing Rule 4.04 of the Rules of Family Court Procedure.

Subsection (c) of this rule is derived from existing Rule 4.05 of the Rules of Family Court Procedure.

A prehearing conference without both parties and lawyers familiar with the facts of the case and the parties is rarely a worthwhile exercise and usually is a waste of resources of the parties and the court. Nonetheless, the Task Force believes there may be situations, on rare occasion, where a party or lawyer should be excused from attendance or should be allowed to participate by conference phone call.

Rule 305.03 Order for Trial or Continued Pretrial Conference

If the parties are unable to resolve the case, in whole or in part, at the pretrial conference, the court shall issue an order that schedules any remaining discovery and any contemplated motions, identifies the contested issues for trial, and provides for the exchange of witness lists and exhibits to be offered at trial. The order shall identify and describe the resolution of uncontested issues that have been placed on the record.

(Amended effective May 1, 2012.)

Cross Reference: Minn. Civ. Trialbook, section 5.

Task Force Comment--1991 Adoption

This rule is new. The Task Force believes it is useful to have an order entered to limit the issues and preserve any agreements reached at a pretrial conference. This rule is adapted from a recommendation of the Minnesota State Bar Association's Family Law Section.

RULE 306. DEFAULT

Rule 306.01 Scheduling of Final Hearing

Except when proceeding under Rule 302.01(c) by Joint Petition, Agreement and Judgment and Decree, to place a marriage dissolution matter on the default calendar for final hearing or for approval without hearing pursuant to Minnesota Statutes, section 518.13, subdivision 5, the moving party shall submit a Default Scheduling Request form developed by the state court administrator and shall comply with the following, as applicable:

(a) Without Stipulation-No Appearance. In all default proceedings where a stipulation has not been filed, an Affidavit of Default and of Nonmilitary Status of the defaulting party or a waiver by that party of any rights under the Servicemembers Civil Relief Act, as amended, shall be filed with the court.

(b) Without Stipulation-Appearance. Where the defaulting party has appeared by a pleading other than an answer, or personally without a pleading, and has not affirmatively waived notice of the other party's right to a default hearing, the moving party shall notify the defaulting party in writing at least 14 days before the final hearing of the intent to proceed to Judgment. The notice shall state:

> You are hereby notified that an application has been made for a final hearing to be held on _____, 20__, at __:__ _.m. at _____ [a date not sooner than 14 days from the date of this notice]. You are further notified that the court will be requested to grant the relief requested in the petition at the hearing. You should contact the undersigned and the District Court Administrator immediately if you have any defense to assert to this default judgment and decree.

The default hearing will not be held until the notice has been mailed to the defaulting party at the last known address and an affidavit of service by mail has been filed.

If the case is to proceed administratively without a hearing under Minn. Stat. § 518.13, subdivision 5, then the notice shall be sent after the expiration of the 30-day answer period, but at least 14 days before submission of a default scheduling request as required by this rule, and shall state:

> You are hereby notified that an application will be made for a final judgment and decree to be entered not sooner than fourteen (14) days from the date of this notice. You are further notified that the court will be requested to grant the relief requested in the Petition. You should contact the undersigned and the District Court Administrator immediately if you have any defense to assert to this default judgment and decree.

(c) Default with Stipulation. Whenever a stipulation settling all issues has been executed by the parties, the stipulation shall be filed with an affidavit of nonmilitary status of the defaulting party or a waiver of that party's rights under the Servicemembers Civil Relief Act, as amended, if not included in the stipulation.

In a stipulation where a party appears as a self-represented litigant, the following waiver shall be executed by that party:

> I know I have the right to be represented by a lawyer of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

(Amended effective March 1, 2024.)

Family Court Rules Advisory Committee Commentary*

This stipulation should establish that one of the parties may proceed as if by default, without further notice to or appearance by the other party.

The waiver of counsel should be prepared as an addendum following the parties' signatures on the stipulation.

**Original Advisory Committee Comment--Not kept current.*

Advisory Committee Comment--1992 Amendments

Subsections (a) and (b) of this rule are derived from existing Rule 5.01 of the Rules of Family Court Procedure.

Subsection (c) of this rule is derived from existing Rule 5.02 of the Rules of Family Court Procedure.

The default scheduling request required by Rule 306.01, as amended in 1992, serves the purpose of permitting the court administrator's office to schedule the case for the right type of hearing. It is not otherwise involved in the merits. The affidavit of default is a substantive document establishing entitlement to relief by default.

Advisory Committee Comment—2003 Amendment

Rule 306.01 is amended in 2003 to add a new first clause. The purpose of this change is to include in the rules an express exemption of the proceedings from the requirements of the rule when the parties proceed by Joint Petition, Agreement and Judgment and Decree as allowed by new Rule 302.01(b).

Advisory Committee Comment—2006 Amendment

Rule 306 is amended to clarify the role of the notice required to be given to parties who are in default but who have "appeared" in some way. A party is not entitled to prevent entry of judgment if that party is in default by not serving and filing a timely written answer to the Petition. Nonetheless, the court may, in its discretion, consider some appropriate measures to prevent the case from being decided on a default basis and to obviate a motion for relief from the default judgment and decree. Accordingly, the rule is amended to afford more useful notice as to the request for a default.

The rule does not define how a party might appear either by "a pleading other than an answer," or "personally without a pleading." Both conditions should be limited to some actions that approach responding to the Petition despite the fact they may be insufficient as a matter of law to stand as a response. Sending a letter that responds to a Petition might suffice for the first condition, as might a letter to the court. Appearing at a court hearing despite having not answered would certainly meet the "appeared personally" condition. When in doubt as to other circumstances, the party seeking a default should, to comply with Rule 306.01(b), provide the required notice, with the

expectation that many of these responses that fall short of an answer will not prevent entry of judgment.

The Soldiers' and Sailors' Civil Relief Act of 1940 was amended and renamed in 2003, and the rule is amended to use the new name as a matter of convenience. See Servicemembers Civil Relief Act, Pub. L. No. 108-189, § 1, 117 Stat. 2835, 2840-42 (2003) (to be codified at 50 U.S.C. app. § 521). The former rule would still apply, however, because it included the "as amended" extension of the citation.

Advisory Committee Comment—2012 Amendments

Rule 306 attempts to make clear the role of notice required to be given to parties who are in default but who have "appeared" in some way in marriage dissolution proceedings. A party is not entitled to prevent entry of judgment if that party is in default by not serving and filing a timely written answer to the Petition. Nonetheless, the court may, in its discretion, consider some appropriate measures to prevent the case from being decided on a default basis and to obviate a motion for relief from the default judgment and decree. Accordingly, the rule is amended to afford more useful notice as to the request for a default. Defaults in other types of family proceedings are governed by Rule 55 of the Minnesota Rules of Civil Procedure.

The rule does not define how a party might appear either by "a pleading other than an answer," or "personally without a pleading." Both conditions should be limited to actions that approach responding to the Petition despite the fact they may be insufficient as a matter of law to stand as a response. Sending a letter that responds to a Petition might suffice for the first condition, as might a letter to the court. Appearing at a court hearing despite having not answered would certainly meet the "appeared personally" condition. When in doubt as to other circumstances, the party seeking a default should, to comply with Rule 306.01(b), provide the required notice, with the expectation that many of these responses that fall short of an answer will not prevent entry of judgment.

Rule 306.02 Preparation of Decree [Abrogated]

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 5.03 of the Rules of Family Court Procedure.

Advisory Committee Comment—2003 Amendment

Rule 306.02 is amended in 2003 to add a new first clause. The purpose of this change is to include in the rules an express exemption of the proceedings from the requirements of the rule when the parties proceed by Joint Petition, Agreement and Judgment and Decree as allowed by new Rule 302.01(b).

Advisory Committee Comment—2012 Amendments

Rule 306.02 is abrogated because it sets forth procedures that do not need to be established by rule and in practice individual judges deal with the preparation of a decree in different ways. The court may still require the submission of proposed findings of fact,

conclusions of law, order for judgment, and judgment and decree in advance of the hearing.

RULE 307. FINAL HEARINGS

(a) Failure to Appear-Sanctions. Failure to appear at the scheduled final hearing may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the nonappearing party's pleadings and the hearing of the matter as a default, an award of attorney's fees and costs, and such other relief as the court finds appropriate, without further notice to the defaulting party.

(b) Stipulations Entered in Open Court-Preparation of Findings. Where a stipulation has been entered orally upon the record, the lawyer directed to prepare the decree shall submit it to the court with a copy to each party. Unless a written, fully executed stipulation is filed or unless the decree contains the written approval of the other party or their legal representative, a transcript of the oral stipulation shall be filed by the lawyer directed to prepare the decree. Responsibility for the cost of the transcript shall be determined by the court. Entry of the decree shall be deferred for 14 days to allow for objections unless the decree contains the written approval of the lawyer for each party, or the other party if he or she is self-represented.

(Amended effective July 1, 2015).

Task Force Comment--1991 Adoption

Subsection (a) of this rule is derived from existing Rule 6.01 of the Rules of Family Court Procedure.

Subsection (b) of this rule is derived from existing Rule 6.02 of the Rules of Family Court Procedure.

RULE 308. FINAL ORDER, JUDGMENT, OR DECREE

Rule 308.01 Notices; Service

(a) Awards of Child Support and/or Maintenance. All orders, judgments, and decrees that include awards of child support or maintenance, unless otherwise directed by the court, shall include the provisions set forth in Minnesota Statutes section 518.68 (Appendix A).

(b) Public Assistance. When a party is receiving or has applied for public assistance, the party obtaining the judgment and decree shall serve a copy on the agency responsible for child support enforcement, and the decree shall direct that all

payments of child support and spousal maintenance shall be made to the Minnesota Child Support Central Payment Center for as long as the custodial parent is receiving assistance.

(c) Child Support Enforcement. When a private party has applied for or is using the services of the local child support enforcement agency, a copy of the decree shall be served by mail or other authorized means by the party submitting the decree for execution upon the county agency involved. The party may serve the copy of the decree by electronic means if the county agency has agreed to accept service by electronic means.

(d) Supervised Parenting Time or Visitation. A copy of any judgment and decree or other order directing ongoing supervision of parenting time or visitation shall be provided to the appropriate agency by the party obtaining the decree or other order.

(Amended effective July 1, 2015.)

Family Court Rules Advisory Committee Commentary*

Minnesota Statutes, section 518.551 requires that maintenance or support must be ordered payable to the public agency so long as the obligee is receiving public assistance.

Agencies responsible for enforcement of child support in private cases also require a copy of the judgment and decree.

**Original Advisory Committee Comment--Not kept current.*

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 7.01 of the Rules of Family Court Procedure. The list of provisions is not set forth in this rule, as it was set forth in full in new Minn. Gen. R. Prac. 303.06.

Subdivision (b) is derived from Rule 7.02 of the Rules of Family Court Procedure, and also in part from Second District Local Rule 7.021.

Subdivision (c) is derived from Second District Local Rule 7.022.

Subdivision (d) of this rule, replacing existing Rule 7.03 of the Rules of Family Court Procedure, was recommended to the Task Force by the Minnesota State Bar Association Family Law Section.

Rule 308.02 Statutorily Required Notices

Where statutes require that certain subjects be addressed by notices attached to an order or decree, the notices may be set forth in an attachment and incorporated by reference. The attachment may be physically attached (e.g., by staple) if in paper form or, if in electronic form, it may be set forth in the same electronic document or in a separate electronic document that

accompanies the order or decree when filed with or distributed by the court. Notwithstanding the absence of language referencing the attachments, they shall be deemed incorporated by reference.

(Amended effective September 1, 2018.)

Family Court Rules Advisory Committee Commentary*

See Rule 10.01, Form 3, for the concept of the form of the attachment.

**Original Advisory Committee Comment--Not kept current.*

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 7.04 of the Rules of Family Court Procedure.

Advisory Committee Comment—2018 Amendments

The amendment to Rule 308.02 in 2018 establishes an electronic corollary to stapling an attachment to a signed order. When orders are signed without the attachments being included as a referenced attachment to an order or decree, the historical practice has been to simply staple the attachments to the orders when distributed by the court. When the order or decree is in electronic form, physically adding the attachments to the same document after a judge electronically signs will render the signature subject to challenge as the document will indicate that it has been changed. The electronic corollary to stapling the order to the already signed order or decree is to set it forth in a separate electronic document and add it to the case record, and send a notice to the parties that explains this.

Rule 308.03 Sensitive Matters

Whenever the findings of fact include private or sensitive matters, a party may submit a judgment and decree supported by separate documents comprising findings of fact, conclusions of law, and order for judgment.

Task Force Comment--1991 Adoption

The Task Force recommends repeal of existing Rule 7.05 of the Rules of Family Court Procedure because the requirement for findings is well established by the common law, and a rule recodifying the settled law is surplusage.

The recommended rule is patterned after Second District Rule 7.051. Its purpose is to allow sensitive factual and legal matters to be preserved in separate documents so that the need for disseminating confidential and sensitive matters can be minimized. This rule does not create a right to maintain the privacy of any portion of the findings; it allows the court to create documents that may be useful for some public purposes without including all other parts of the findings.

Rule 308.04 Joint Marital Agreement and Decree

The parties to any marital dissolution proceeding may use a combined agreement and judgment and decree. A judgment and decree that is subscribed to by each party before a notary public, or signed by each party under penalty of perjury pursuant to Minn. Stat. § 358.116, and contains a final conclusion of law with words to the effect that "the parties agree that the foregoing Findings of Fact and Conclusions of Law incorporate the complete and full agreement" shall, upon approval and entry by the court, constitute an agreement and judgment and decree for marriage dissolution for all purposes.

(Amended effective May 23, 2016).

Advisory Committee Comments—2007 Amendment

Rule 308.04 is new. The rule allows parties in any marriage dissolution proceeding, whether commenced by petition or joint petition, to use a combined marital termination agreement and judgment and decree. The primary benefit of this procedure is to reduce the risk of discrepancy between the terms of a marital termination agreement and the judgment and decree it purports to authorize. This procedure should benefit both the parties and the court in streamlining the court procedure where the parties are in agreement. The rule permits the parties to use this procedure by agreement, but does not require its use.

The procedure in Rule 308.04 is similar to the procedure for use of combined Joint Petition, Agreement and Judgment and Decree under Rule 302.01(b)(2), but it is available in all cases where the parties agree on all issues (the Rule 302 procedure may be used only in cases not involving children).

The use of this procedure will result in the marital termination agreement becoming an integral part of the judgment and decree, which will render it a public record. To the extent the parties' agreement contains confidential information, they should consider alternative methods of protecting that information, such as use of separate documents as provided for in Rule 308.03 so the agreement is not filed or the use of the confidentiality protection procedures contained in Minn. Gen. R. Prac. 11.

Advisory Committee Comment—2012 Amendment

Rule 308.02 refers to statutory notice. The legislature has established numerous forms of notice including those required by Minn. Stat. § 518.68. These requirements are met in a two-page notice form, which is known as Appendix A and labeled as FAM 301 on the state court website (www.mncourts.gov, under "Court Forms" click on "Other").

Rule 308.04 allows parties in any marriage dissolution proceeding, whether commenced by petition or joint petition, to use a combined agreement and judgment and decree. The agreement is often termed a "marital termination agreement," but that label is not required by the rule. The primary benefit of this procedure is to reduce the risk of discrepancy between the terms of a marital termination agreement and the judgment and decree it purports to authorize. This procedure should benefit both the parties and the court in streamlining the court procedure where the parties are in agreement. The rule permits the parties to use this procedure by agreement, but does not require its use.

The procedure in Rule 308.04 is similar to the procedure for use of a combined Joint Petition, Agreement and Judgment and Decree under Rule 302.01(b)(2), and is available in all cases where the parties agree on all issues.

The use of this procedure will result in the marital termination agreement becoming an integral part of the judgment and decree, which will render it a public record. To the extent the parties' agreement contains confidential information, they should consider alternative methods of protecting that information, such as use of separate documents as provided for in Rule 308.03 so the agreement is not filed or the use of the confidentiality protection procedures contained in Minn. Gen. R. Prac. 11.

Advisory Committee Comment—2016 Amendment

The Court made numerous changes to the court rules in 2015 to allow use of signature under penalty of perjury in lieu of notarization for most court documents where notarization was previously required. These changes followed the 2014 adoption of Minn. Stat. § 358.116 (2014) (codifying 2014 Minn. Laws ch. 204, § 3). The advisory committee is not aware of any good reason to require that this form be signed before a notary public, and therefore recommends adding the joint marital agreement and decree to the list of forms for which verification under penalty of perjury in accordance with the statute is sufficient.

RULE 309. CONTEMPT

Rule 309.01 Initiation

(a) Moving Documents-Service; Notice. Contempt proceedings shall be initiated by notice of motion and motion or by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits. Pursuant to Rule 303.05 an order to show cause may be issued by the court without notice to the alleged contemnor provided the support affidavits credibly raise an issue of contempt.

(b) Content of Order to Show Cause or Notice of Motion and Motion. The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested by the motion. If proceeding by notice of motion and motion, the motion may seek that relief directly.

The notice of motion and motion or the order to show cause shall contain at least the following:

(1) a reference to the specific order or judgment of the court alleged to have been violated and the date of entry or filing of the order or judgment;
(2) a quotation of the specific applicable provisions ordered;
(3) the alleged failures to comply;

(4) notice to the alleged contemnor that his or her ability to pay is a crucial issue in the contempt proceeding and that a Parenting/Financial Disclosure Statement form for submitting ability to pay information is available from the state court website, and this form should be served and filed with the court at or before the contempt hearing; and

(5) a date to appear for a Rule 309.02 hearing no later than 60 days after the issuance of the notice of motion or order to show cause.

(c) Affidavits. The supportive affidavit of the moving party shall set forth each alleged violation of the order with particularity. Where the alleged violation is a failure to pay sums of money, the affidavit shall state the kind of payments in default and shall specifically set forth the payment dates and the amounts due, paid and unpaid for each failure.

Any responsive affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. Where the alleged violation is a failure to pay sums of money, the affidavit shall set forth the nature, dates and amount of payments, if any.

(Amended effective July 1, 2015.)

Family Court Rules Advisory Committee Commentary*

Service of the order to show cause upon the person provides jurisdiction for the issuance of a writ of attachment or bench warrant, if necessary, and meets the requirement or an opportunity to be heard. See Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675 (1976); Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212 (1968).

**Original Advisory Committee Comment--Not kept current.*

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 8.01 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Rule 8.01 of the Rules of Family Court Procedure. The new language is derived from Second District Local Rule 8.011.

Advisory Committee Comment—2009 Amendment

Rule 309.01 is amended in 2009 to remove an apparent requirement that any contempt proceeding be commenced by order to show cause. Although an order to show cause is an available mechanism for initiating contempt proceedings, the authorizing statute also recognizes that these proceedings may be commenced by motion accompanied by appropriate notice. See Minn. Stat. § 588.04. The amendment to Rule 309.01 is intended simply to recognize that both mechanisms are available. In many situations, proceeding by order to show cause is preferable. Use of an order to show cause, which is court process

served with the same formality as a summons, permits the court to impose sanctions directly upon failure to comply. See Minn. Stat. § 588.04. It is the preferred means to commence a contempt proceeding if there is significant risk that the alleged contemnor is likely not to appear in response to a notice of motion.

Advisory Committee Comment—2012 Amendments

Rule 309.01 does not require that contempt proceeding be commenced by an order to show cause, even though that is the most common and most direct means of commencing the proceedings. Although an order to show cause is an available mechanism for initiating contempt proceedings, the authorizing statute also recognizes that these proceedings may be commenced by motion accompanied by appropriate notice. See Minn. Stat. § 588.04. The amendment to Rule 309.01 is intended simply to recognize that both mechanisms are available. In many situations, proceeding by order to show cause is preferable. Use of an order to show cause, which is court process served with the same formality as a summons, permits the court to impose sanctions directly upon failure to comply. See Minn. Stat. § 588.04. The order to show cause is still the preferred means to commence a contempt proceeding if there is meaningful risk that the alleged contemnor will not to appear in response to a notice of motion. Service of the order to show cause upon the person provides jurisdiction for the issuance of a writ of attachment or bench warrant, if necessary, and meets the requirement for notice of an opportunity to be heard. See Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675 (1976); Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212 (1968).

The requirement in Rule 309.01(b)(5) that a hearing be held within 60 days of issuance of an order or notice of motion is intended to create the standard rule and to underscore the importance of holding the hearing promptly so that the contempt issues may be resolved. Where exceptional circumstances are found to exist by the court, the hearing may be held later than 60 days from the order or notice, but it should still be heard by the court as promptly as possible.

Rule 309.02 Hearing

The alleged contemnor must appear in person before the court to be afforded the opportunity to respond to the motion for contempt by sworn testimony. The court shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

(Amended effective May 1, 2012.)

Family Court Rules Advisory Committee Commentary*

For the right to counsel in contempt proceedings, see Cox v. Slama, 355 N.W.2d 401 (Minn. 1984).

**Original Advisory Committee Comment--Not kept current.*

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 8.02 of the Rules of Family Court Procedure.

Rule 309.03 Sentencing

(a) Default of Conditions for Stay. Where the court has entered an order for contempt with a stay of sentence and there has been a default in the performance of the condition(s) for the stay, before a writ of attachment or a bench warrant will be issued, an affidavit of noncompliance and request for writ of attachment must be served upon the person of the defaulting party, unless the person is shown to be avoiding service.

(b) Writ of Attachment. The writ of attachment shall direct law enforcement officers to bring the defaulting party before the court for a hearing to show cause why the stay of sentence should not be revoked. A proposed order for writ of attachment shall be submitted to the court by the moving party.

Rule 309.04 Findings

An order finding contempt must be accompanied by appropriate findings of fact.

Task Force Comment--1991 Adoption

Subdivision (a) of this rule is derived from existing Rule 8.03 of the Rules of Family Court Procedure.

Subdivision (b) of this rule is derived from existing Rule 8.03 of the Rules of Family Court Procedure, with the new language added from Second District Rule 8.031.

Advisory Committee Comment—2012 Amendments

Rule 309.04 requires findings. Findings are required to permit appellate review of a contempt order. In cases where incarceration is a consequence of a contempt finding, due process may require notice to the alleged contemnor of the right to show inability to pay and findings on that issue. See Turner v. Rogers, 564 U.S. ___, 131 S. Ct. 2507, 180 L. Ed. 2d 254 (2011).

RULE 310. ALTERNATIVE DISPUTE RESOLUTION

Rule 310.01 Applicability

(a) When ADR Required. All family law matters in district court are subject to Alternative Dispute Resolution (ADR) processes as established in this rule and Rule 114, except for:

1. actions enumerated in Minnesota Statutes, § 518B.01 (Domestic Abuse Act),

2. contempt actions,
3. maintenance, support, and parentage actions when the public agency responsible for child support enforcement is a party or is providing services to a party with respect to the action, and
4. proceedings conducted by a special master appointed under Rule 53 of the Rules of Civil Procedure.

(b) ADR When There Is Domestic Abuse. The court shall not require parties to participate in any facilitative process where one of the parties claims to be the victim of domestic abuse by the other party or where the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party. In circumstances where the court is satisfied that the parties have been advised by counsel and have agreed to an ADR process established in Rule 114 that will not require face-to-face meeting of the parties, the court may direct that the ADR process be used.

(c) Exceptions for Previous ADR Efforts. The court shall not require parties to attempt ADR if they have previously engaged in an ADR process under Rule 114 and reached an impasse with respect to the current, pending issue(s).

(Amended effective January 1, 2023.)

Advisory Committee Comment--1996 Amendment

This rule is changed from a limited rule dealing only with mediation to the main family law rule governing use of ADR. All of the provisions of the existing rule are deleted because their subject matter is now governed by either the amended rule or Minn. Gen. R. Prac. 114. The committee believes that there are significant and compelling reasons to have all court-annexed ADR governed by a single rule. This will streamline the process and make it more cost-effective for litigants, and will also make the process easier to understand for ADR providers and neutrals, many of whom are not lawyers.

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.

Rule 310.02 Post-Decree Matters

The court may order ADR under Rule 114 in matters involving post-decree relief. The parties shall discuss the use of ADR as part of the conference required by Rule 303.03(c).

(Amended effective July 1, 1997.)

Advisory Committee Comment--1996 Amendment

This rule expressly provides for use of ADR in post-decree matters. This is appropriate because such matters constitute a significant portion of the litigation in family law and because these matters are often quite susceptible to successful resolution in ADR.

The committee believes the existing mechanism requiring the parties to confer before filing any motion other than a motion for temporary relief provides a suitable mechanism for considering ADR and Rule 303.03(c) is amended to remind the parties of this obligation.

Rule 310.03 Family-Law Specific ADR Procedures

(a) Early Neutral Evaluation. In family law cases, there are two types of Early Neutral Evaluation (ENE) processes, Financial Early Neutral Evaluation (FENE) and Social Early Neutral Evaluation (SENE). FENE involves financial issues. SENE involves custody and parenting time issues and is conducted by a team of no fewer than two Neutrals unless agreed otherwise by the parties.

(b) Moderated Settlement Conference (MSC). A Moderated Settlement Conference (MSC) is a process in which an experienced Neutral offers evaluative impressions to parties to assist in the settlement process in the later stages of family court matters.

(c) Parenting Time Expediting and Parenting Consulting.

(1) *Parenting Time Expediting*. Parenting Time Expediting is a process in which a Neutral is appointed by the court pursuant to Minn. Stat. § 518.1751 to serve as a Parenting Time Expeditor (PTE). A PTE is limited to addressing parenting time disputes not addressed in court orders, interpreting court orders, and determining if violations of court orders occurred. The process is a hybrid of mediation/arbitration and begins with neutral facilitation of parenting time disputes. If parties are unable to agree, the PTE will make a decision, which is binding unless modified or vacated by the court.

(2) *Parenting Consulting*. Parenting Consulting is a process defined by the agreement of the parties in which the Parenting Consultant (PC) incorporates neutral facilitation, coaching, and decision making. Terms of the process are defined by the agreement of the parties and incorporated into a court order.

(3) *Notice to Court of Parenting Time Adjustments*. If adjustments are made to the parenting time previously ordered or agreed upon, the Neutral, or if the Neutral does not do so, counsel for the parties if either party is represented, or in the case both parties who are unrepresented, one of the self-represented parties as designated by the Neutral, shall file a report with the court, limited to stating the specific adjustments to the parenting time terms.

(d) Availability of Child Custody Investigator. A Neutral serving in a confidential ADR process in a family law matter may not conduct a custody investigation/evaluation in the same matter unless (1) after full disclosure by the Neutral of the nature of the change in roles, the parties agree in writing executed after the termination of the ADR process, that the Neutral shall conduct the investigation/evaluation; (2) the court finds there is no other person reasonably available to conduct the investigation/evaluation and orders the custody investigation/evaluation; and (3) the Neutral informs the parties in writing that disclosures will not be kept confidential.

Advisory Committee Comments – 2022 Amendments

Rule 310 is amended to collect and update the provisions in these rules relating to court-annexed ADR for use in family law matters. These rules are consistent with the provisions of Rule 114, which contains more general provisions that apply in family law matters as well as other civil cases.

Rule 310.03(c) is a new rule that provides explicitly for parenting time expeditors and parenting consultants and defines their respective roles. Subdivision 3 of the rule requires that any change in parenting time or schedules must be filed by the Neutral with the court. This information is required by the court to modify child support requirements based on any change in parenting time as a result of the parenting time expediting process or the agreement of the parties working with a parenting consultant. This rule change, applicable to final resolution of parenting time adjustments, is intended to remove any confusion over the statute that protects the confidentiality of a Parenting Time Expeditor's notes and records. See *Minn. Stat. § 518.1751, subd. 4a. The change in parenting time is expressly made the basis for changing child support obligations, and must therefore be made part of the court's record by filing.* See *Minn. Stat. §§ 518A.35, .36. The rule does not authorize filing other documents.*

Rules 310.04 – 310.09 (Deleted effective July 1, 1997.)

RULE 311. FORMS

The forms developed by the state court administrator are sufficient under these rules. Forms are currently maintained on the state court website (www.mncourts.gov). Court Administrators in each Judicial District shall make the forms available to the public at reasonable cost.

(Amended effective May 1, 2012.)

Task Force Comment--1991 Adoption

This rule is derived from existing Rule 10.01 of the Rules of Family Court Procedure.

Advisory Committee Comment—2008 Amendments

The responsibility for forms development and review is being handed off to the state court administrator to permit more effective forms management and review. This process is already followed for the expedited process. Gen. R. Prac. 379.02.

Advisory Committee Comment—2012 Amendments

Rule 311 establishes that court-established forms for family matters are deemed sufficient under the rules. These specific forms are not required to be used, but they contain what is required and are therefore appropriate for use.

These rules direct the state court administrator to develop various forms: See Rules 303.02(b) (Parenting/Financial Disclosure Statement); 303.03(c) (Certificate of Settlement Efforts); 304.02(Initial Case Management Statement); 305.01(Parenting/Financial Disclosure Statement); and 306.01 (Default Scheduling Request). By maintaining the forms on the courts' website they can be readily updated and distributed to all potential users.

RULE 312. REVIEW OF REFEREE'S FINDINGS OR RECOMMENDATIONS

Review of decisions of district court referees is controlled by applicable statutes and orders of the supreme court.

(Amended May 1, 2012.)

Advisory Committee Comment—2012 Amendments

Rule 312 is amended to replace the former rule, which established now-obsolete procedures for review of the findings or recommendations of a district court referee in family law matters. Family court referees are now used in limited circumstances in two districts, and the processes followed are established by statute and supreme court orders. Under Minn. Stat. § 484.65, subd. 9, recommended orders and findings of Fourth Judicial District referees are subject to confirmation by a district court judge, and once confirmed by the district court judge the orders and findings may be appealed directly to the court of appeals. Essentially the same is true in the Second Judicial District under a series of orders establishing a pilot project that is still operating. The history of the pilot project is set forth by the Minnesota Court of Appeals in its Special Term Opinion in Culver v. Culver, 771 N.W.2d 547 (Minn. Ct. App. 2009):

> *The pilot project came into existence in the Second Judicial District in 1996. See 1996 Minn. Laws ch. 365, § 2 (allowing Second Judicial District to implement pilot project assigning related family matters to single judge or referee); In re Second Judicial Dist. Combined Family, Civil Harassment, Juvenile Probate Jurisdiction Pilot Project, No. CX–89–1863 (Minn. Apr. 10, 1996) (suspending, in light of pilot project, Minn. R. Gen. Prac. 312.01, which recites procedure for district-court review upon filing of petition for review). The suspension is still in effect. See 1998 Minn. Laws ch. 367, art. 11, § 26 (extending pilot-project legislation); 2000 Minn. Law ch. 452, § 1 (same); 2002 Minn. Law ch. 242 (same); In re Second Judicial Dist. Combined*

Family, Civil Harassment, Juvenile Probate Jurisdiction Pilot Project, No. CX–89–1863 (Minn. June 17, 1998) (extending suspension); (Minn. May 23, 2000) (same); (Minn. June 3, 2002) (extending suspension until further order of supreme court).

Id., n.1.

RULE 313. CONFIDENTIAL NUMBERS AND TAX RETURNS

The requirements of Rule 11 of these rules regarding submission of restricted identifiers (such as Social Security numbers, employer identification numbers, financial account numbers) and non-public documents, including, without limitation, financial source documents (such as tax returns, wage stubs, credit card statements) apply to all family court matters).

(Amended effective March 1, 2024.)

Advisory Committee Comment--2000 Amendments

Rule 313 is new in 2000 and is designed to facilitate confidential treatment of social security numbers and tax returns in family court proceedings. Confidentiality is required under both state and federal law. See Minnesota Statutes, section 518.146 (1999 Supplement); 2000 Minnesota Laws, chapter 403 (codified as Minnesota Statutes, section 518.5513, subdivision 3); 42 U.S.C., section 666(a)(13), (c)(2)(A); 42 U.S.C., section 405(c)(2)(C)(vii). This rule relieves court administration staff from the daunting task of assuring that social security numbers and tax returns are not inadvertently disclosed and places the primary responsibility for maintaining privacy with the persons submitting the information to the court.

State law also requires the social security number to be included in each child support order. See, e.g., Minnesota Statutes, sections 256.87, subdivision 1a; 257.66; 518.171, subdivision 1(a)(2); 518.5853, subdivision 5 (1998; 1999 Supp.). This rule contemplates that inclusion of social security numbers may appropriately be accomplished by relegating social security numbers to a separate page that is referenced in the order.

Advisory Committee Comment--2024 Amendments

Rule 313 is amended to recognize that in 2021 the filer's duty to designate non-public documents at the time of filing under Rule 11 was expanded beyond just financial source documents to include all non-public documents. Use of a new Cover Sheet for Non-Public Documents also replaced the Confidential Financial Source Documents cover sheet.

RULE 314. PARENTAGE PROCEEDINGS

In proceedings to determine parentage, the following additional rules apply:

(a) Parentage proceedings are commenced by a Summons and Complaint.

(b) The parties in parentage proceedings are one or more Petitioners and one or more Respondents, and must be so named in the initial pleadings. After so designating the parties, it is permissible to use descriptive labels as allowed by Rule 302.02(a).

(c) Upon proper demand, the parties to parentage proceedings may obtain a jury trial.

Advisory Committee Comment—2012 Amendments

Rule 314 is a new rule, included to collect in one place the special procedures followed in parentage (paternity) cases. The rule is not the source of the procedures set forth in the rule; these procedures are either dictated by statute or common law. See, e.g., Minn. Stat. §§ 257.57, 257.67 (commencement of parentage action and specifying that the proper designation of parties in family court proceedings is as petitioner and respondent). Where a proceeding is commenced jointly, both parties may be designated as co-petitioners or as petitioner and co-petitioner. The rule permits the parties, once properly designated in the appropriate pleadings, to be designated by less formal terms that indicate their relationship. See Rule 302.02(a). Parentage proceedings may be brought by a parent as well as a governmental entity, thus the provision for plural petitioners in Rule 314(b); they are commonly brought against multiple respondents.

Rule 314 provides additional rules applicable to parentage proceedings. As to a wide array of procedural matters not addressed in this rule, other rules govern their use. Rule 301.01; see, e.g., Minn. R. Civ. P. 56 (summary judgment); Minn. R. Civ. P. 55 (default).

RULE 315. THIRD-PARTY CUSTODY AND APPLICATION OF INDIAN CHILD WELFARE ACT

In third-party custody proceedings filed in family court, the following additional rules apply:

(a) **Petition.** Every petition shall contain a statement alleging whether the child is or may be an Indian child as defined in the federal Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (ICWA) or the Minnesota Indian Family Preservation Act, Minn. Stat. §§ 260.751-.835 (MIFPA), and shall describe the due diligence used to determine whether the child is an Indian child under ICWA or MIFPA. Petitioner has an ongoing obligation to notify the court of any information that provides reason to know the child is or may be an Indian Child as defined by ICWA or MIFPA.

(b) **Court Inquiry.** The court has an affirmative obligation to inquire of every participant at the commencement of the proceeding whether the participant knows or has reason to know that the child is an Indian Child under either ICWA or MIFPA. Responses to the inquiry should be on the record. If the court is unable to determine that the child is or is not an Indian child but has reason to know as defined in 25 C.F.R. § 23.107(c) that the child is an Indian child, the court shall direct the petitioner to further investigate the child's ancestry or heritage and, pending the results of the investigation, shall treat the matter as if ICWA or MIFPA applies, as applicable.

(c) **Orders and Decrees.** Every order or decree shall contain a finding that ICWA and MIFPA do or do not apply. Where there is a finding that ICWA or MIFPA does apply, the decree

or order must also contain findings that all notice, scheduling, appointment of counsel, active efforts, evidentiary requirements, consent, intervention rights, transfer obligations, and placement preference requirements under ICWA and MIFPA as applicable have been satisfied.

(d) **Public Access.** The following third-party custody proceeding records are not accessible to the public:

(1) notice of pending court proceedings provided by the petitioner pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912, and any response to that notice from an Indian tribe or the Bureau of Indian Affairs as to whether the child is eligible for tribal membership, including documents such as family ancestry charts, genograms, and tribal membership information; and

(2) records made inaccessible under other applicable law or court rule.

Advisory Committee Comment—2023 Amendments

Rule 315 is new in 2023 and applies to third-party custody proceedings in family court. Many family practitioners may be surprised to learn that the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (ICWA) and the Minnesota Indian Family Preservation Act, Minn. Stat. §§ 260.751-.835 (MIFPA) can apply to third-party custody matters.

In addition to ICWA and MIFPA applicability, note at the outset that pending child protection or permanency proceedings in juvenile court may preclude the family court from proceeding with a third-party custody petition. Stern v. Stern, *839 N.W.2d 96, 104 (Minn. App. 2013) (family court had no concurrent jurisdiction to consider third-party custody petition because of pending child protection and permanency proceedings in juvenile court); Minn. Stat. § 260C.101, subd. 1 (juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services, or neglected and in foster care). The Minnesota Court of Appeals has also suggested that it would be appropriate to file a third-party custody proceeding in juvenile court under sections 260C.151 and .152.* See Matter of the Welfare of Child of F.J.V., *A21-0522, 2021 WL 4944677, at *4 (Minn. App. Oct. 25, 2021) (holding that the matter was appropriately transferred to Tribal court under ICWA),* rev. denied *(Minn. Nov. 29, 2021);* cert. denied sub nom. Halvorson v. Hennepin Cnty. Children's Servs. Dep't, *143 S. Ct. 2683 (2023).*

Part (a) of Rule 315 requires a third-party custody petition to include important information on whether the child involved is an Indian child. If the issue is ignored and it turns out that the child is an Indian child, rulings may be subject to invalidation under 25 U.S.C. § 1914 or Minn. Stat. § 260.774, subd. 2 (effective Aug. 1, 2023; see *Act of Mar. 16, 2023, ch. 16, § 28, 2023 Minn. Laws) for noncompliance with any of the numerous requirements of ICWA or MIFPA, for example.*

ICWA and MIFPA have slightly different definitions of an Indian child. Compare *25 U.S.C. § 1903(4),* with *Minn. Stat. § 260.755, subd. 8. Both include a child who is a member of an Indian Tribe, but for a child who is eligible for membership in a Tribe, ICWA adds a requirement that the child is not only eligible for membership but must also be the biological child of a member of an Indian Tribe. The distinction may be irrelevant as MIFPA now provides that both MIFPA and ICWA are applicable without exception in any*

child placement proceeding involving an Indian child when custody is granted to someone other than a parent or an Indian custodian. Minn. Stat. § 260.752 (effective Aug. 1, 2023; see *Act of Mar. 16, 2023, ch. 16, § 1, 2023 Minn. Laws). When both MIFPA and ICWA apply, note that ICWA dictates under 25 U.S.C. § 1921 that if MIFPA provides a higher standard of protection to the rights of the parent or custodian of an Indian Child, the MIFPA standard would be applied.*

Federal regulations in 25 C.F.R. § 23.107(b) direct that the court must confirm due diligence efforts in determining whether the child is an Indian child. This regulation is the basis for the requirement in Part (a) of the rule directing that the petitioner must include a description of their due diligence in the petition. The petitioner's ongoing obligation to keep the court informed regarding the child's status as an Indian child is derived from the directive in 25 C.F.R. § 23.107(a) that "[s]tate courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child," and from the statement in Minn. Stat. § 260.761, subd. 1 (effective Aug. 1, 2023, see *Act of Mar. 16, 2023, ch. 16, § 16, 2023 Minn. Laws), that the petitioner's duty to inquire is ongoing.*

Part (b) of Rule 315 recognizes that both case law and ICWA place a duty on the court to inquire of every participant at the commencement of the proceeding whether the participant knows or has reason to know that the child is an Indian child under either ICWA or MIFPA. See In re M.R.P.-C., *794 N.W.2d 373, 379 (Minn. App. 2011). See 25 C.F.R. § 23.107 for details about how the in-court inquiry should be made, what it means for the court to have "reason to know" that a child is an Indian child, and details about how the court should proceed if there is "reason to know" the child is an Indian child but the court does not have sufficient evidence to determine whether the child is or is not an Indian child.*

A continued inquiry by the court at subsequent proceedings can provide additional information about whether ICWA or MIFPA applies, especially from parties or participants who did not attend the initial hearing.

Part (c) of Rule 315 recognizes that there are numerous obligations imposed by ICWA and MIFPA on the parties and the court.

Notice under ICWA is extremely important. Under 25 U.S.C. § 1912(a) and 25 C.F.R. §§ 23.11 and 23.111, in any involuntary third-party custody proceeding when the court knows or has reason to know that an Indian child is involved, and when the identity and location of the child's parent or Indian custodian or Tribe is known, the petitioner seeking third-party custody must notify the child's parents, Indian custodian, and Tribe of the pending proceeding. 25 U.S.C. § 1912(a). Notice must be by registered or certified mail with return receipt requested. Copies of the notices must also be sent to the Bureau of Indian Affairs Regional Director in like manner. In addition to but not as a replacement for such mailed notice, the court may direct personal service on the parents and Indian custodian. If the identity or location of the parent or Indian custodian and the Tribe cannot be determined, notice must be given to the Bureau of Indian Affairs Regional Director in like manner, and the Bureau then has 15 days after receipt of the notice to make reasonable documented efforts to locate and notify the child's Tribe and the child's parent or Indian custodian. The required content of the notice is extensive and is included in the federal regulations cited above. Address and other information about the Bureau of Indian Affairs (BIA) Midwest Regional Office can be found on its website (https://www.bia.gov/regional-

offices/midwest-region). Petitioners will want to file copies of the notices and receipts with the court to support findings under Rule 315(c).

Notice under MIFPA as applicable to third-party custody matters is less clear. Minn. Stat. § 260.761, subd. 1, 2(a), (b), places Tribal notice obligations on the local social service agency or private child-placing agency, which may not be involved in a third-party custody proceeding. MIFPA requires an individual petitioner to provide notice related to an admit/deny hearing or potential preadoptive or adoptive placement, neither of which appears to apply to a third-party custody proceeding. Minn. Stat. § 260.761, subd. 2(d) (effective Aug. 1, 2023, see *Act of Mar. 16, 2023, ch. 16, § 16, 2023 Minn. Laws). Nevertheless, MIFPA provides a general directive that sections 260.751 to 260.835 and ICWA are applicable without exception in any child placement proceeding involving an Indian child when custody is granted to someone other than a parent or an Indian custodian. Minn. Stat. § 260.752 (effective Aug. 1, 2023,* see *Act of Mar. 16, 2023, ch. 16, § 1, 2023 Minn. Laws). MIFPA also provides that the notice provisions in section 260.761 apply to involuntary child placement proceedings, and that an Indian child ten years of age or older, the Indian child's parents, the Indian custodian, and the Indian child's Tribe shall have notice of the right to participate in all hearings regarding the Indian child. Minn. Stat. § 260.771, subd. 1d (effective Aug. 1, 2023,* see *Act of Mar. 16, 2023 ch. 16, § 27, 2023 Minn. Laws).*

Scheduling can be impacted under ICWA. Under 25 C.F.R. § 23.11(c), when notice is given to the Bureau of Indian Affairs Regional Director, the Department of the Interior has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the Tribe. Further, under 25 U.S.C. § 1912(a) and 25 C.F.R. § 23.112(a), no involuntary third-party custody proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the Tribe, provided that the parent or Indian custodian or the Tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding.

Appointment of counsel is required by ICWA under 25 U.S.C. § 1912(b), in cases of indigency, for the child's parent or Indian custodian, and discretionary appointment of counsel for the child can also be made upon a finding that such appointment is in the best interests of the child. Although ICWA provides that the Secretary of the Interior pays reasonable fees and expenses when state law makes no provision for appointment of counsel in such proceedings, that is subject to availability of funds, which have not to date been made available to the Secretary. MIFPA requires appointment of counsel for the parent or parents of an Indian child or the Indian custodian who meets the requirements of section 611.17, and for any Indian child 10 years of age or older. Minn. Stat. § 260.771, subd. 2b (effective Aug. 1, 2023, see *Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws).*

"Active Efforts" are required by ICWA. Under 25 U.S.C. § 1912(d), a party seeking third-party custody of an Indian child must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful. The petitioner's requirement to "satisfy" the court implies that the court must make findings regarding active efforts. 25 C.F.R. § 23.2 defines active efforts and includes examples of active efforts in the context of child protection proceedings. There is currently little guidance available regarding application of the ICWA active efforts requirement to third-party custody proceedings, where a social services agency is not typically a party to the

case. One commentator suggests that examples of "active efforts" that can be utilized in private custody actions are:

1) *Reintegration therapy with the child;*
2) *Drug and/or alcohol evaluations and/or rehabilitation services, including drug testing;*
3) *Mental health evaluations and subsequently recommended treatment or services;*
4) *Transportation of the parent or Indian custodian (or transportation of the child) if transportation is an issue for the parent or Indian custodian so that visits can occur during the pending of the proceeding;*
5) *Vocational rehabilitation services if obtaining or maintaining steady employment is an issue for the parent or Indian custodian;*
6) *Domestic violence classes for perpetrators; or*
7) *Domestic violence services for victims.*

Lisa A. Schellenberger, An Overview of the Applicability of ICWA in Colorado's Private Legal Actions Involving Non-Parents: A Guideline on Arguing for and Complying with the ICWA *6,* https://www.denbar.org/LinkClick.aspx?fileticket=qqOZVIEFY_8%3D&portalid=18 *(undated). The commentator adds that any services provided should be offered, arranged, and paid for by the petitioning non-parent.* Id.

MIFPA under Minn. Stat. §§ 260.762, subds. 1-3 (effective Aug. 1, 2023, see *Act of Mar. 16, 2023, ch. 16, § 18, 2023 Minn. Laws), 260.771, subd. 1d (effective Aug. 1, 2023,* see *Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws), and 260.755, subd. 1a (effective Aug. 1, 2023,* see *Act of Mar. 16, 2023, ch. 16, § 4, 2023 Minn. Laws), has a slightly different definition of active efforts (including pointing out that "active efforts" sets a higher standard than reasonable efforts), and places the burden on the petitioner to satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.*

The evidentiary standard in ICWA under 25 U.S.C. § 1912(e) and 25 C.F.R. § 23.121(a) for third-party custody is clear and convincing evidence, including required testimony of a qualified expert witness that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Federal regulations in 25 C.F.R. §§ 23.121(c), (d) and 23.122 address the causal relationship of particular conditions in the home, and the qualifications of the required expert witness. MIFPA essentially repeats the ICWA standard in 25 U.S.C. § 1912(e). Minn. Stat. § 260.771, subd. 6 (effective Aug. 1, 2023, see *Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws). Although ICWA and MIFPA under 25 U.S.C. § 1922, 25 C.F.R. § 23.113, and Minn. Stat. § 260.758 (effective Aug. 1, 2023,* see *Act of Mar. 16, 2023, ch. 16, § 15, 2023 Minn. Laws) allow an emergency removal or placement of an Indian child without a requirement of a qualified expert witness when removal is necessary to prevent imminent physical damage or harm to the child, the removal or placement must terminate immediately when it is no longer necessary to prevent the imminent damage or harm, and the court must promptly hold a hearing on whether the emergency removal continues to be necessary. MIFPA also directs that no such emergency removal or placement can extend beyond 30 days unless the court finds by a showing of clear and convincing evidence that: (1) continued emergency removal or placement is necessary to prevent imminent physical damage or harm to the Indian child; (2) the court has been unable to transfer the proceeding to the jurisdiction of the Indian child's Tribal court; and (3) it has not been*

possible to initiate a child placement proceeding with all of the protections of MIFPA including obtaining the testimony of a qualified expert witness. Id.

In evaluating the best interests of the child to determine issues of custody and parenting time, Minn. Stat. § 518.17 requires the court to consider and evaluate all relevant factors. If a child is an Indian child as defined by ICWA, in addition to evidentiary standards (including expert witnesses) and placement preferences, policy statements in 25 U.S.C. § 1902 explain that "it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." If a child is an Indian child as defined by MIFPA, the "best interests of an Indian child" is defined in Minn. Stat. § 260.755, subd. 2a, to mean: "compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act to preserve and maintain an Indian child's family. The best interests of an Indian child support the child's sense of belonging to family, extended family, and tribe. The best interests of an Indian child are interwoven with the best interests of the Indian child's tribe." Policy statements in MIFPA also include that the state of Minnesota has long recognized the importance of Indian children to their Tribes, not only as members of Tribal families and communities, but also as the Tribe's greatest resource as future members and leaders of the Tribe. Minn. Stat. § 260.754 (effective Aug. 1, 2023, see *Act of Mar. 16, 2023, ch. 16, § 3, 2023 Minn. Laws). MIFPA declares that the vitality of Indian children in the state of Minnesota is essential to the health and welfare of both the state and the Tribes and is essential to the future welfare and continued existence of the child's Tribe.* Id.

Consent of any parent or Indian custodian to third-party custody under ICWA, 25 U.S.C. § 1913(a), or MIFPA, Minn. Stat. § 260.765, subd. 3a (effective Aug. 1, 2023, see *Act of Mar. 16, 2023, ch. 16, § 23, 2023 Minn. Laws), shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction. In addition, the presiding judge must find that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also find that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given before, or within ten days after, the birth of the Indian child shall not be valid. Pursuant to ICWA, 25 U.S.C. § 1913(b), and MIFPA, Minn. Stat. § 260.765, subd. 4 (effective Aug. 1, 2023,* see *Act of Mar. 16, 2023, ch. 16, § 24, 2023 Minn. Laws), any parent or Indian custodian may withdraw consent at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.*

Placement preferences under ICWA are set forth in 25 U.S.C. § 1915(b)-(d) and in MIFPA in Minn. Stat. § 260.771, subds. 1b, 7(a) (effective Aug. 1, 2023, see *Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws). Both ICWA regulations and MIFPA limit the factors to consider in deciding whether good cause exists to deviate from the placement preference order, with considerable overlap between the two legal sources.* Compare *25 C.F.R. § 23.132,* with *Minn. Stat. § 260.771, subd. 7(j)(2) (effective Aug. 1, 2023,* see *Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws).*

Intervention as of right at any point in the third-party custody proceedings is provided under ICWA, 25 U.S.C. § 1911(c), to the Indian custodian of the child and the

Indian child's Tribe. MIFPA's intervention rights apply to the Indian child's Tribe, parent or parents, and Indian custodian under Minn. Stat. § 260.771, subd. 2a (effective Aug. 1, 2023, see *Act of Mar. 16, 2023, ch. 16, § 27, 2023 Minn. Laws).*

Transfer obligations differ under ICWA depending on whether the child resides or is domiciled within the reservation of the Tribe. Under 25 U.S.C. § 1911(a), jurisdiction is exclusive with the Tribe (unless other federal law provides otherwise) when the child resides or is domiciled within the reservation, or is a ward of the Tribal court. Under 25 U.S.C. § 1911(b), when the Indian child's residence or domicile is not within the reservation, in the absence of good cause to the contrary, the court shall transfer the proceeding to the jurisdiction of the Tribe, absent objection by either parent, upon petition of either parent or the Indian custodian or the Tribe. Under 25 C.F.R. § 23.115, an Indian child's parent, Indian custodian, or Tribe may request, at any time, either orally on the record or in writing, that the court transfer the third-party custody proceeding to Tribal court. MIFPA essentially repeats these same provisions. Minn. Stat. § 260.771, subds. 1, 3.

Part (d)(1) of Rule 315 is meant to provide consistent access to notices provided by the petitioner to, and the responses from, Indian Tribes regarding membership or eligibility for membership in an Indian Tribe. These records are not public in juvenile child protection proceedings. Minn. R. Juv. Prot. P. 8.04, subd. 2(k). Parties must submit the notice and the response from the Tribe as non-public documents under a separate Form 11.2 Cover Sheet for Non-Public Documents or, if electronically filed using the E-Filing System, using a specific filing code in the E-Filing System which defaults the document to Confidential or Sealed, and designating the documents as confidential or sealed in the E-Filing System before transmitting it to the court as required by Minn. Gen. R. Prac. 11.03(a) and 14.06(a). This does not mean that a third-party custody petition discussing whether the child is an Indian child is itself non-public as Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court ("Access Rules") allow the parties and the court to mention the contents of certain otherwise non-public documents in their publicly accessible pleadings or documents such as motions and orders. Minn. R. Pub. Access 4, subd. 4. Under the Access Rules, notices to, and responses from, Indian Tribes also become accessible to the public upon formal admission into evidence in a testimonial-type proceeding that is open to the public. Minn. R. Pub. Access 8, subd. 5(a).

Part (d)(2) of Rule 315 is a catch-all intended to remind litigants that public access to judicial branch records is governed by the Access Rules. A table identifying non-public case records is posted on the main judicial branch website (www.mncourts.gov) alongside the Access Rules under the Court Rules tab.

PART B. EXPEDITED CHILD SUPPORT PROCESS

1. GENERAL RULES

RULE 351. SCOPE; PURPOSE

Rule 351.01 Scope

These rules govern the procedure for all proceedings conducted in the expedited process, regardless of whether the presiding officer is a child support magistrate, family court referee, or district court judge. The Minnesota Rules of Civil Procedure, Minnesota Rules of Evidence, and other provisions of the Minnesota General Rules of Practice for the District Courts shall apply to proceedings in the expedited process unless inconsistent with these rules. These rules do not apply to matters commenced in or referred to district court.

Rule 351.02 Purposes and Goals of the Expedited Child Support Process

Subdivision 1. Purposes. The purposes of these rules are to establish an expedited process that:

(a) is streamlined;
(b) is uniform across the state;
(c) is easily accessible to the parties; and
(d) results in timely and consistent issuance of orders.

Subd. 2. Goals. These rules should be construed to:

(a) be a constitutional system;
(b) be an expedited process;
(c) be family and user friendly;
(d) be fair to the parties;
(e) be a cost-effective system;
(f) address local administration and implementation concerns;
(g) maintain simple administrative procedures and focus on problem cases;
(h) comply with federal and state laws;
(i) maximize federal financial participation;
(j) ensure consistent decisions statewide; and
(k) have adequate financial and personnel resources.

RULE 352. DEFINITIONS

Rule 352.01 Definitions

For purposes of these rules, the following terms have the following meanings:

(a) **"Answer"** means a written document responding to the allegations of a complaint or motion.

(b) **"Child Support"** means basic support; child care support; and medical support. Medical support includes the obligation to carry health care coverage, costs for health care coverage, and unreimbursed/uninsured medical expenses.

(c) **"Child support magistrate"** means an individual appointed by the chief judge of the judicial district to preside over matters in the expedited process. "Child support magistrate" also means any family court referee or district court judge presiding over matters in the expedited process.

(d) **"County agency"** means the local public authority responsible for child support enforcement.

(e) **"County attorney"** means the attorney who represents the county agency, whether that person is employed by the office of the county attorney or under contract with the office of the county attorney.

(f) **"Initiating party"** means a person or county agency starting the proceeding in the expedited process by serving and filing a complaint or motion.

(g) **"IV-D case"** means any proceeding where a party has either (1) assigned to the State rights to child support because of the receipt of public assistance as defined in Minn. Stat. § 256.741, subd. 1(b), or (2) applied for child support services under Title IV-D of the Social Security Act, 42 U.S.C. § 654(4). "IV-D case" does not include proceedings where income withholding is the only service applied for or received under Minn. Stat. § 518A.53. Pursuant to 45 CFR § 302.33(a)(4), a case remains a IV-D case when assigned public assistance closes unless the applicant requests closure of the child support case.

(h) **"Noninitiating party"** means a person or county agency responding to a complaint or motion, including any person who assigned to the State rights to child support because of the receipt of public assistance or applied-for child support services.

(i) **"Parentage"** means the establishment of the existence or non-existence of the parent-child relationship.

(j) **"Parenting time"** means the time a parent spends with a child regardless of the custodial designation regarding the child. "Parenting time" previously was known as "visitation."

(k) **"Party"** means any person or county agency with a legal right to participate in the proceedings.

(l) **"Response"** means a written answer to the complaint or motion, a "request for hearing" form, or, in a parentage matter, a "request for blood or genetic testing" form.

(m) **"Support"** means child support, as defined in this rule; expenses for confinement and pregnancy; arrearages; reimbursement; past support; related costs and fees; and interest and penalties. "Support" also means the enforcement of spousal maintenance when combined with basic support, child care support, or medical support.

(Amended effective November 22, 2023.)

Advisory Committee Comment—2008 Amendment

Rule 352.01 is amended to reflect the recodification, effective on January 1, 2007, of portions of the relevant statutes, that became part of Minn. Stat. ch. 518A. Rule 352.01(b) provides a new definition for "child support," replacing the definition of "support" formerly set forth in Rule 352.01(1).

Advisory Committee Comment—2023 Amendment

Rule 352.01(g) is modified in 2023 to include the federal requirement to clarify that a case remains IV-D after the assigned public assistance closes unless the applicant requests case closure.

RULE 353. TYPES OF PROCEEDINGS

Rule 353.01 Types of Proceedings

Subdivision 1. Mandatory Proceedings. Proceedings to establish, modify, and enforce support shall be conducted in the expedited process if the case is a IV-D case, except as provided in subdivision 2 and Rule 353.02. Proceedings to enforce spousal maintenance, including spousal maintenance cost-of-living adjustment proceedings, shall, if combined with a support issue, be conducted in the expedited process if the case is a IV-D case, except as provided in subdivision 2 and Rule 353.02.

Subd. 2. Permissive Proceedings.

(a) County Option. At the option of each county, the following proceedings may be initiated in the expedited process if the case is a IV-D case, except to the extent prohibited by subdivision 3:

(1) parentage actions; and

(2) civil contempt matters.

(b) Parentage Actions. Any order issued pursuant to Rule 353.01, subd. 2(b) shall address the financial issues is appropriate, whether or not agreed upon by the parties.

(1) Complete Order. Notwithstanding subdivision 3, a child support magistrate has the authority to establish the parent-child relationship, legal and physical custody, parenting time, and the legal name of the child when:

(A) the parties agree or stipulate to all of these particular issues; or

(B) if the pleadings specifically address these particular issues and a party fails to serve a response or appear at the hearing.

(2) Partial Order.

(A) Minimum Requirements. If the parties at least agree to the parent-child relationship and temporary or permanent physical custody, the child support magistrate shall issue an order:

(1) establishing the parent-child relationship; and

(2) establishing temporary or permanent physical custody.

(B) Further Agreed Upon Issues. The order the child support magistrate shall also establish parenting time and the legal name of the child if the parties so agree.

The order is final as the parent-child relationship. The order is also final as to any agreement concerning permanent legal or physical custody, parenting time, name of the child, and any financial issues decided by the child support magistrate. If there is no agreement concerning permanent legal and/or physical custody, parenting time, or the legal name of the child, those issues hall be referred to the district court. The issues referred to the district court are considered pending before the district court and are not final until the district court issues an order deciding those issues. The order of the child support magistrate referring the remaining issues to district court is not appealable pursuant to Rule 378. This rule shall not limit the right to appeal the district court's order. When one or more issues are referred to district court, service of the summons and complaint in the expedited process is sufficient for the matter to proceed in district court.

(3) Order When Parent-Child Relationship Not Resolved. In an action to establish parentage, if the parties do not agree to the parent-child relationship and the temporary or permanent physical custody, the child support magistrate shall make findings and issue an order as follows:

(A) Blood or Genetic Testing Not Completed. When the issue of the parent-child relationship is not resolved and genetic testing has not been completed, the child support magistrate shall order genetic testing and shall continue the hearing in the expedited process to allow the tests to be completed and the results received.

(B) Blood or Genetic Testing Completed. When genetic testing has been completed, if the parties still disagree about the parent-child relationship, the child support magistrate shall refer the entire matter to the district court for further proceedings. The child support magistrate may set temporary support pursuant to Rule 371.11, subd. 2.

(c) Change of Venue. Upon motion by a party for a change of venue, a child support magistrate shall issue the following order:

(1) Upon consent of all parties, or the failure of any party to file a timely objection, a child support magistrate may issue an order changing venue or may sign a proposed default order changing venue. The court administrator shall forward the court file to the county that has been granted venue.

(2) If any party disputes a motion to change venue, the child support magistrate shall issue an order referring the matter to district court and the court administrator shall schedule the matter for hearing. The court administrator shall transmit notice of the date, time, and location of the hearing to all parties. Notice shall be sent in accordance with Rule 14 to all parties who have agreed to or are required to accept electronic service, and to all other parties in accordance with Rule 13 of these Rules and Rule 77.04 of the Rules of Civil Procedure.

Subd. 3. Prohibited Proceedings and Issues. The following proceedings and issues shall not be conducted or decided in the expedited process:

(a) non-IV-D cases;

(b) establishment, modification, or enforcement of custody or parenting time under Minn. Stat. ch. 518 (2000), unless authorized in subdivision 2;
(c) establishment or modification of spousal maintenance;
(d) issuance, modification, or enforcement of orders for protection under Minn. Stat. ch. 518B;
(e) division of marital property;
(f) determination of parentage, except as permitted by subdivision 2(b);
(g) evidentiary hearings to establish custody, parenting time, or the legal name of the child under Minn. Stat. ch. 257 (2000);
(h) evidentiary hearings in contempt matters;
(i) matters of criminal contempt;
(j) motions to change venue, except as permitted in subdivision 2;
(k) enforcement proceedings prohibited in Rule 373.01;
(l) matters of criminal non-support; and
(m) motions to vacate a recognition of paternity or paternity adjudication.
(n) the constitutionality of the statutes and rules.

(Amended effective November 22, 2023.)

Advisory Committee Comment—2019 Amendment

Rule 353.01, subd. 2(c), is amended in 2019 to clarify that unopposed motions for change of venue do not need to be referred for hearing before a district court judge but may be granted by the child support magistrate.

Advisory Committee Comment—2023 Amendment

Rule 353.01, subd. 2(c), is modified in 2023 to allow magistrates to approve default orders for uncontested change of venue motions, without scheduling these matters for hearing.

Rule 353.02 Procedure When Prohibited Issues

Subdivision 1. Generally. These rules do not prevent a party, upon timely notice to all parties and to the county agency, from commencing a proceeding or bringing a motion in district court if the proceeding or motion involves one or more issues identified in Rule 353.01, subd. 1, and one or more issues identified in Rule 353.01, subd. 3.

Subd. 2. Multiple Issues in District Court. If a proceeding is commenced in district court, the district court judge shall decide all issues before the court. If the district court judge cannot decide the support issues without an additional hearing, the district court judge shall determine whether it is in the best interests of the parties to retain the support issues or refer them to the expedited process for decision by a magistrate. If the district court judge refers the support issues to the magistrate, the referral shall include a clear statement of the issues referred and a description of the additional information needed, and shall provide the date, time, and location of

the continued hearing. If possible at the time of the referral, the district court judge shall decide temporary support. A matter referred to district court pursuant to subdivision 3 shall be decided in its entirety by the district court judge and shall not be referred back to the expedited process. After the district court judge has issued a final order in the matter, subsequent review or motions may be heard in the expedited process.

Subd. 3. Prohibited Issues in Expedited Child Support Process. If a proceeding is commenced in the expedited process and the complaint, motion, answer, responsive motion, or counter motion raises one or more issues identified in Rule 353.01, subd. 3, all parties, including the county agency, may agree in writing to refer the entire matter to district court without first appearing before the child support magistrate. Notice of the agreement must be filed with the court at least 7 days before the scheduled hearing in the expedited process. The child support magistrate shall issue an order referring the entire matter to district court. Absent an agreement by all parties and upon motion of a party or upon the child support magistrate's own initiative, the child support magistrate assigned to the matter shall, either before or at the time of the hearing, decide whether to:

(a) refer the entire matter to district court; or

(b) determine the temporary support amount and refer all issues to district court. The district court judge shall issue an order addressing all issues and, with respect to support, may adopt and incorporate by reference the findings and order of the child support magistrate. If the district court judge does not adopt the findings and order of the child support magistrate, the judge shall make the necessary findings and order regarding permanent support. In the alternative, the order for temporary support shall become permanent upon the dismissal or withdrawal of the prohibited issue referred to district court. If the district court order fails to address the issue of permanent support, the order for temporary support shall become permanent and shall be deemed incorporated upon issuance of the district court order. If the district court judge fails to issue an order, on the 180th day after service of the notice of filing of the order for temporary support, the order for temporary support shall become permanent.

When a matter is referred to district court, service of the summons and complaint or notice of motion and motion in the expedited process is sufficient for the matter to proceed in district court. A child support magistrate's order that refers a matter to the district court calendar shall provide the date, time, and location of the continued hearing.

(Amended effective January 1, 2020.)

RULE 354. COMPUTATION OF TIME

Rule 354.01. Generally

The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(a) Period Stated in Days or a Longer Unit of Time.

When the period is stated in days or a longer unit of time:

(1) exclude the day of the event that triggers the period;

(2) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(3) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) Periods Shorter than 7 Days.
Only if expressly so provided by any other rule or statute, a time period that is less than 7 days may exclude intermediate Saturdays, Sundays, and legal holidays. Otherwise, all time periods include Saturdays, Sundays, and legal holidays.

(c) Period Stated in Hours.
When the period is stated in hours:
(1) begin counting immediately on the occurrence of the event that triggers the period;
(2) count every hour, including hours occurring during intermediate Saturdays, Sundays, and legal holidays; and
(3) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(d) Inaccessibility of the Court Administrator's Office. Unless the court orders otherwise, if the court administrator's office is inaccessible:
(1) on the last day for filing or service under Rule 354.01(a) and (b), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or
(2) during the last hour for filing under Rule 354.01(b) and (c), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(e) "Last Day" Defined Unless a different time is set by a statute, local rule, or court order, the last day ends:
(1) for electronic filing, at 11:59 p.m. local Minnesota time; and
(2) for filing by other means, when the Court Administrator's office is scheduled to close.

(f) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(Amended effective January 1, 2020.)

Rule 354.02. Definition of Legal Holiday
As used in these rules, "legal holiday" includes any holiday designated in Minn. Stat. § 645.44, subd. 5, as a holiday for the state or any state-wide branch of government and any day that the United States Mail does not operate.

(Amended effective January 1, 2020.)

Rule 354.03. Additional Time After Service by Mail or Service Late in Day
Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party, and the

notice or document is served upon the party by United States Mail, 3 days shall be added to the prescribed period.

If service is made by any means other than United States Mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, 1 additional day shall be added to the prescribed period.

(Amended effective January 1, 2020.)

Advisory Committee Comment – 2008 Amendment

In 2006 the Minnesota Supreme Court addressed the ambiguity in the rules and the ambiguity between the rules and statutes over how Columbus Day should be treated. Columbus Day is only optionally a state holiday (by statute the different branches can elect to treat it as a holiday) but is uniformly a federal and U.S. Mail holiday. Because the rules generally allow service by mail, the Court in Commandeur LLC v. Howard Hartry, Inc., 724 N.W.2d 508 (Minn. 2006), ruled that where the last day of a time period occurred on Columbus Day, service by mail permitted by the rules was timely if mailed on the following day on which mail service was available. The amendment to Rule 354.03 makes it clear that Columbus Day is a "legal holiday" for all purposes in these rules, even if that is not necessarily so by the statutory definition. Minn. Stat. § 645.44, subd. 5 (2008).

Advisory Committee Comment

State-Level Judicial-Branch Holidays. The legal holidays listed in Rule 354.03 are based upon Minn. Stat. § 645.44, subd. 5 (2000), which defines state-level judicial-branch holidays. The statute further provides that when New Year's Day (January 1), Independence Day (July 4), Veteran's Day (November 11), or Christmas Day (December 25) falls on a Sunday, the following day (Monday) shall be a holiday, and that when New Year's Day, Independence Day, Veteran's Day, or Christmas Day falls on a Saturday, the preceding day (Friday) shall be a holiday. Minn. Stat. § 645.44, subd. 5, also authorizes the judicial branch to designate certain other days as holidays. The Judicial Branch Personnel Plan designates the Friday after Thanksgiving as a holiday.

County Holidays. Counties are authorized to close county offices on certain days under Minn. Stat. § 373.052 (2000). Thus, if a county closes its offices under Minn. Stat. § 373.052 on a day that is not a state-level judicial-branch holiday, such as Christopher Columbus Day (the second Monday in October), the court in that county would nevertheless include that day as a holiday for the purpose of computing time under Rule 354.03. See Mittelstadt v. Breider, 286 Minn. 211, 212, 175 N.W.2d 191, 192 (1970) (applying Minn. Stat. § 373.052 to filing of notice of election contest with district court). If a county does not close its offices on a day that is a state-level judicial-branch holiday, such as the Friday after Thanksgiving, the court in that county must still include that day as a holiday for the purpose of computing time under Rule 354.03.

Advisory Committee Comment—2020 Amendments

This amended Rule 354 is drawn directly to Rule 6.01 as amended as part of the extensive revamping of the timing rules for all civil matters. These amendments implement the adoption of a standard "day" for counting deadlines under the rules—counting all

days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The most important establishes "a day is a day"—all days during a period under the rules, regardless of length, are included, including weekends and legal holidays. This change mirrors a set of changes made in the Federal Rules of Civil Procedure, and is intended to create substantial similarity between "state days" and "federal days." The amended rule also adopts the same definition of "legal holidays" as used in Minn. R. Civ. P. 6.

Rule 354.01(f) is an important provision that will affect many deadlines. It establishes an explicit rule for how days are counted when counting "backwards" from a deadline. The rule requires that, when counting backwards from an event, and the last day falls on a weekend or holiday, the counting continues to the next earlier date that is not a weekend or holiday. This rule is modeled on its federal counterpart and is intended to create greater uniformity in timing between all state and federal court matters.

RULE 355. METHODS OF SERVICE

Rule 355.01 Generally

Subdivision 1. Service Required. Except for ex parte motions allowed by statute or these rules, every document filed with the court shall be served on all parties and the county agency.

Subd. 2. Service Upon Attorney for Party. If a party, other than the county agency, is represented by an attorney as shown by a certificate of representation in the court file, service shall be made upon the party's attorney, unless personal service upon the represented party is required under these rules. Except where personal service upon the county agency is required under these rules, service upon the county agency shall be accomplished by serving the county attorney.

(Amended effective July 1, 2015.)

Rule 355.02 Types of Service

Subdivision 1. Personal Service.

(a) Upon Whom.

(1) Upon an Individual. Personal service upon an individual in the state shall be accomplished by delivering a copy of the summons and complaint, notice, motion, or other document to the individual personally or by leaving a copy at the individual's house or usual place of residence with some person of suitable age and discretion who presently lives at that location. If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service, or if a statute designates a state official to receive service, service may be made in the manner provided by such statute. If the individual is confined to a state institution, personal service shall be accomplished by also serving a copy of the document upon the chief executive officer at the institution. Personal service upon an individual outside the state shall be accomplished according to the provisions of Minn. Stat. ch. 518C (2000) and Minn. Stat. § 543.19 (2000). Personal service may not be made on a legal holiday or election day.

(2) Upon the County Agency. Personal service upon the county agency shall be accomplished by serving the director of the county human services department or the director's designee.

(b) By Whom Served. Unless otherwise ordered by the child support magistrate, personal service shall be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minn. Stat. § 518A.46, subd. 2(c)(4) (2006), an employee of the county agency may serve documents on parties.

(c) Alternative Personal Service.

(1) Admission or Acknowledgement or Waiver of Service. Service may be accomplished when the party to be served signs an admission or waives service as provided in Minn. R. Civ. P. 4.05.

(2) Service by Publication.

(A) Service. Service by publication means the publication of the entire summons or notice in the regular issue of a qualified newspaper, once each week for 3 weeks. Service by publication shall be permitted only upon order of a child support magistrate. The child support magistrate may order service by publication upon the filing of an affidavit by the serving party or the serving party's attorney stating that the person to be served is not a resident of the state or cannot be found within the state, the efforts that have been made to locate the other party, and either that the serving party has mailed a copy of the summons or notice to the other party's place of residence or that such residence is not known to the serving party. When the person to be served is not a resident of the state, statutory requirements regarding long-arm jurisdiction shall be met.

(B) Defense by Noninitiating Party. If the summons or notice is served by publication and the noninitiating party receives no actual notification of the proceeding, either before judgment or within one year of entry of judgment the noninitiating party may seek relief pursuant to Minn. R. Civ. P. 4.043.

Subd. 2. Service by United States Mail. Service by United States mail means mailing a copy of the document by first-class mail, postage prepaid, addressed to the person to be served at the person's last known address. Service by mail shall be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minn. Stat. § 518A.46, subd. 2(c)(4) (2006), an employee of the county agency may serve documents on the parties.

Subd. 3. Service by Electronic Means. Unless these rules require personal service, any document may be served by electronic means under Rule 14 upon any party who has agreed to or is required to accept service by electronic means.

(Amended effective July 1, 2019.)

Advisory Committee Comment–2008 Amendment

Rule 355.02, subds. 1 & 2, are amended to reflect the recodification, effective on January 1, 2007, of portions of the relevant statutes, that became part of Minn. Stat. ch. 518A.

Advisory Committee Comment–2019 Amendment

Rule 355.02, subd. 1(c)(1), is amended to reflect the amendment of Rule 4.05 of the Rules of Civil Procedure, effective July 1, 2018, to create a new means of obtaining consent to service under the rule. The former rule's reference to "service by mail" is potentially misleading, as the procedure set forth in the rule only accomplished service if the party to be served returned the acknowledgment of service.

Rule 355.03 Completion of Service

Personal service is complete upon delivery of the document. Service by U.S. mail is complete upon mailing. Service by publication is complete 21 days after the first publication. Completion of service by electronic means under Rule 14 is governed by Rule 14 of these rules.

(Amended effective July 1, 2015.)

Rule 355.04 Proof of Service

Subdivision 1. Parties. All documents filed with the court shall be accompanied by an affidavit of service, an acknowledgment of service by the party or party's attorney if served by alternative service, or, if served by publication, by the affidavit of the printer or the printer's designee. An affidavit of service shall describe what was served, state how the document was served, upon whom it was served, and the date, time, and place of service. When a document has been served through the E-Filing System in accordance with Rule 14, the record of service on the E-Filing System shall constitute proof of service.

Subd. 2. Court Administrator. If the court administrator is required or permitted under these rules to serve a document, service may be proved by filing an affidavit of service, by filing a copy of the written notice, or by making a notation in the court's computerized records that service was made.

(Amended effective July 1, 2015.)

Advisory Committee Comment–2015 Amendment

Rule 355.03 is amended to provide a cross-reference to Rule 14, governing electronic service generally. Additionally, the former provision relating to the completion of service by facsimile is deleted because that subject is now governed by Rule 14. The E-Filing System provides proof of service for any service made with it; if a document is served by other means, such as personally, by mail, or other agreed-upon means, separate proof of service must be prepared and filed.

RULE 356. FEES

Rule 356.01 Collection of Fees

The court administrator shall charge and collect fees pursuant to Minnesota Statutes. Fees must be paid, or a fee waiver granted, 7 days in advance of the scheduled hearing.

(Amended effective November 22, 2023.)

Advisory Committee Comment

Minnesota Statutes § 357.021, subdivision 2 (2000), establishes the various fees that must be charged and collected by court administrators. Specifically included is a filing fee, which is to be charged and collected from a party upon the filing of that party's first paper in the proceeding. Also included is a modification fee, which is to be paid upon the filing of a motion to modify support and upon the filing of a response to such a motion.

Advisory Committee Comment – 2023 Amendments

Rule 356.01 is modified in 2023 to require an approved fee waiver or payment of fees 7 days prior to a hearing to allow court staff time to remove cases from the calendar that are not going to be able to proceed due to failure of payment.

Rule 356.02 Waiver of Fees

If a party indicates an inability to pay any fee required under Rule 356.01, the court administrator shall explain that the party may apply for permission to proceed without payment of the fee. Upon request, the court administrator shall provide to such a party an application to proceed in forma pauperis. If a party signs and submits to the court administrator an application to proceed without payment of the fee, and such a request to waive the fee is approved by a child support magistrate or other judicial officer, the court administrator shall not charge and collect the fee.

(Amended effective November 22, 2023.)

Advisory Committee Comment

Minnesota Statutes § 563.01, subdivision 3 (2000), provides that "the court shall allow the person to proceed in forma pauperis" if the court makes certain findings. Under this statute, only judicial officers, and not court administrators, are authorized to issue orders granting in forma pauperis status.

Advisory Committee Comment – 2023 Amendments

Rule 356.02 is modified in 2023 to recognize that under local practice in forma pauperis requests may be reviewed and signed by either a magistrate, a referee, or a judge.

RULE 357. LEGAL REPRESENTATION AND APPOINTMENT OF GUARDIAN AD LITEM

Rule 357.01 Right to Representation

Each party appearing in the expedited process has a right to be represented by an attorney. A party, however, does not necessarily have the right to appointment of an attorney at public expense as provided in Rule 357.03.

Rule 357.02 Certificate of Representation

An attorney representing a party in the expedited process, other than a public defender or county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.

Rule 357.03 Appointment of Attorney at Public Expense

Unless a party voluntarily waives the right to counsel, the child support magistrate shall appoint an attorney at public expense for a party who requests an attorney and who cannot afford to retain an attorney when the case involves:

(a) establishment of parentage; or

(b) contempt proceedings in which incarceration of the party is a possible outcome of the proceeding.

Pursuant to Minn. Stat. § 257.69, subd. 1, a court-appointed attorney shall represent a party only with respect to issues necessary for the initial establishment of parentage.

(Amended effective November 22, 2023.)

Advisory Committee Comment

Parentage. *The Minnesota Parentage Act, codified as Minn. Stat. §§ 257.51 – .74 (2000), provides that "the court shall appoint counsel for a party who is unable to pay timely for counsel in proceedings under sections 257.51 to 257.74." Minn. Stat. § 257.69, subd. 1 (2000). A party has a right to appointed counsel for all matters brought under the Parentage Act. See M.T.L. v. Dempsey, 504 N.W.2d 529, 531 (Minn. App. 1993).*

Contempt. *In Cox v. Slama, 355 N.W.2d 401, 403 (Minn. 1984), the court established the right to counsel for persons facing civil contempt for failure to pay child support when incarceration is a real possibility.*

Advisory Committee Comment-2019 Amendment

Rule 357.03 is amended to reflect the 2012 amendment of Minn. Stat. § 257.69, to limit appointments of counsel to the initial establishment of parentage. Custody, parenting

time, and name of child, to the extent agreed upon or defaulted, can be included in the initial establishment of parentage. Otherwise, under Rule 353.01, subd. 3(g), evidentiary hearings to establish custody, parenting time, or name of the child under Minn. Stat. chapter 257 must be held outside the expedited process.

Advisory Committee Comment-2023 Amendments

Rule 357.03 is modified in 2023 to narrow the statutory reference to subdivision 1 as other parts of the statute address different issues.

Rule 357.04 Appointment of Guardian Ad Litem

A child support magistrate may appoint a guardian ad litem for a child or minor parent who is a party in any proceeding commenced in the expedited child support process solely for purposes of having the guardian ad litem serve as a representative of that person as authorized under Rule 17.02 of the Minnesota Rules of Civil Procedure. The appointment shall be made pursuant to Rule 17.02 of the Minnesota Rules of Civil Procedure.

RULE 358. COURT INTERPRETERS

Rule 358.01 Appointment Mandatory

The child support magistrate shall appoint a qualified interpreter in any proceeding conducted in the expedited process in which a person disabled in communication is a party or witness. Such appointment shall be made according to the provisions of Minn. Gen. R. Prac. 8.

Rule 358.02 "Person Disabled in Communication" Defined

For the purpose of Rule 358.01, a "person disabled in communication" is one who, because of a hearing, speech, or other communication disorder, or because of difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings in which the person is required to participate, or when named as a party to a legal proceeding is unable by reason of the disability to obtain due process of law.

(Amended effective November 22, 2023.)

Advisory Committee Comment

Rules 358.01 and 358.02 are based upon the provisions of Minn. Stat. §§ 546.42 and 546.43 (2000) which set forth the types of proceedings in which qualified interpreters must be appointed.

Advisory Committee Comment – 2023 Amendments

Rules 358.01-.02 are modified in 2023 to adopt terminology that is consistent with Minn. Stat. § 546.42.

RULE 359. TELEPHONE AND INTERACTIVE VIDEO

Rule 359.01 Telephone and Interactive Video Permitted

A child support magistrate may on the magistrate's own initiative conduct a hearing by telephone or, where available, interactive video. Any party may make a written or oral request to the court administrator or the court administrator's designee to appear at a scheduled hearing by telephone or, where available, interactive video. In the event the request is for interactive video, the request shall be made at least 7 days before the date of the scheduled hearing. A child support magistrate may deny any request to appear at a hearing by telephone or interactive video.

(Amended effective January 1, 2020.)

Advisory Committee Comment

The Advisory Committee encourages the use of telephone and, where available, interactive video, to conduct proceedings in the expedited process.

Rule 359.02 Procedure

The court administrator or court administrator's designee shall arrange remote participation in a hearing by telephone or other remote video means, as approved by the child support magistrate. When conducting a remote proceeding with a party or witness that resides out of state, the child support magistrate shall ensure that the requirements of Minn. Stat. § 518C.316 are met. Court Administration shall make adequate provision for a record of any remote proceeding. No recording may be made of any remote proceeding except the recording made as the official court record.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 359.02 is modified in 2023 to recognize broader use of remote hearing technology and that court staff make arrangements for recording such proceedings.

Rule 359.03 In-Court Appearance Not Precluded

Rule 359.01 does not preclude any party or the county attorney from being present in person before the child support magistrate at any motion or hearing.

RULE 360. INTERVENTION

Rule 360.01 County Agency

Subdivision 1. Intervention as a Matter of Right. To the extent allowed by law, the county agency may, as a matter of right, intervene as a party in any matter conducted in the expedited process. Intervention is accomplished by serving upon all parties a notice of intervention by U.S. mail, or by electronic service under Rule 14 upon parties who have agreed to or are required to accept electronic service under Rule 14. The notice of intervention and affidavit of service shall be filed with the court. No affidavit of service is required for electronic service upon parties who have agreed to accept electronic service under Rule 14.

Subd. 2. Effective Date. Intervention by the county agency is effective when the last person is served with the notice of intervention.

(Amended effective July 1, 2015.)

Rule 360.02 Other Individuals

Subdivision 1. Permissive Intervention. Any person may be permitted to intervene as a party at any point in the proceeding if the child support magistrate finds that the person's legal rights, duties, or privileges will be determined or affected by the case.

Subd. 2. Procedure. A person seeking permissive intervention under subdivision 1 shall file with the court and serve upon all parties a motion to intervene. The motion shall state:

(a) how the person's legal rights, duties, or privileges will be determined or affected by the case;
(b) how the person will be directly affected by the outcome of the case;
(c) the purpose for which intervention is sought; and
(d) any statutory grounds authorizing the person to intervene.

Subd. 3. Objection to Permissive Intervention. Any existing party may file with the court and serve upon all parties and the intervenor a written objection within 14 days of service of the motion to intervene.

Subd. 4. Effective Date; Hearing. If a written objection is not timely served and filed and the requesting party meets the requirements of subdivisions 1 and 2, the child support magistrate may grant the motion to intervene after considering the factors set forth in subdivision 2. If written objection is timely served and filed, the child support magistrate may hold a hearing on the matter or may decide the issue without a hearing. Intervention is effective as of the date granted.

(Amended effective January 1, 2020.)

Rule 360.03 Effect of Intervention

The child support magistrate may conduct hearings, make findings, and issue orders at any time prior to intervention being accomplished or denied. Prior proceedings and decisions of the child support magistrate are not affected by intervention. Upon effective intervention the caption of the case shall be amended to include the name of the intervening party, which shall appear after the initial parties' names.

RULE 361. DISCOVERY

Rule 361.01 Witnesses

Any party may call witnesses to testify at any hearing. Any party intending to call a witness other than an employee of the county agency or any party to the proceeding shall, at least 7 days before the hearing, provide to the other parties and the county agency written notice of the name and address of each witness. The proposed witness list must be served on the other parties and filed with the court at least 7 days before the hearing.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 361.01 is modified in 2023 to require serving and filing the witness list 7 days before the hearing to prevent unfair surprise and allow for better calendar management. Expedited process hearings are typically scheduled for 30-45 minutes each, and without advance notice of additional witnesses, the matter risks being continued or rescheduled.

Rule 361.02 Exchange of Documents

Subdivision 1. Documents Required to be Provided Upon Request. If a complaint or motion has been served and filed in the expedited process, a party may request any of the documents listed below. The request must be in writing and served upon the appropriate party. The request may be served along with the pleadings. A party shall provide the following documents to the requesting party no later than 14 days from the date of service of the written request.

(a) Verification of income, costs and availability of dependent health coverage, child care costs, monthly living expenses, and, if self-employed, monthly business expenses.

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

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

(d) Written verification of any voluntary payments made for support of a joint child.
(e) Written verification of any other court-ordered child support obligations for a nonjoint child
(f) Written verification of any court-ordered spousal maintenance obligation.

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

Subd. 3. Financial Statement. If a complaint or motion has been served, any party may request in writing that a financial statement be completed by a party, other than a county agency, and submitted 7 days before a hearing, or if no hearing is scheduled, within 14 days after the request being served. Failure to comply is subject to remedies under Rule 361.04. Where a financial statement requests supporting documentation, it shall be attached.

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

(Amended effective November 22, 2023.)

Advisory Committee Comment

Examples of documents that may be requested and exchanged include pay stubs, W-2 forms, signed tax returns, bank statements, utility bills, rental statement bills, loan payment statements, medical and dental bills, proof of medical insurance for dependents, child care expense statements from child care providers, and other documents relating to income, assets, or expenses.

Advisory Committee Comment – 2023 Amendments

Rule 361.02, subd. 1, is modified in 2023 to clarify the types of expenses that should be disclosed during informal discovery.

Rule 361.03 Other Discovery

Subdivision 1. Motion for Discovery. Any additional means of discovery available under the Minnesota Rules of Civil Procedure, including requests for subpoenas for the attendance of witnesses or for the production of documents, may be allowed only by order of the child support magistrate. The party seeking discovery shall serve and file a motion before the child support

magistrate for an order permitting additional means of discovery. The motion shall include the reason for the request and shall notify the other parties of the opportunity to respond within 7 days. The party seeking discovery has the burden of showing that the discovery is needed for the party's case, is not for purposes of delay or harassment, and that the issues or amounts in dispute justify the requested discovery. The motion for discovery shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary. The child support magistrate shall issue an order granting or denying the discovery motion. If the discovery motion is granted, the requesting party must serve the approved discovery requests upon the responding party and the discovery responses are due 14 days following service of the discovery request, unless otherwise ordered.

Subd. 2. Subpoenas.

(a) The motion for a subpoena shall specifically identify any documents requested, include the full name and home or business address of all persons to be subpoenaed, and specify the date, time, and place for responding to the subpoena.

(b) The motion for a subpoena shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary. The child support magistrate shall issue an order approving or denying the motion.

(c) If the order approves the motion, the court administrator shall issue a subpoena in accordance with Minn. R. Civ. P. 45. The party requesting the subpoena shall fill out the subpoena before having it served. An attorney as officer of the court may also issue and sign a subpoena on behalf of the court where the action is pending.

(d) All subpoenas shall be personally served by the sheriff or by any other person who is at least 18 years of age who is not a party to the action. Employees of the county agency may personally serve subpoenas. The person being served shall, at the time of service, be given the fees and mileage allowed by Minn. Stat. § 357.22. When the subpoena is requested by the county agency, fees and mileage need not be paid. The cost of service, fees, and expenses of any witnesses who have been served subpoenas shall be paid by the party at whose request the witness appears. The person serving the subpoena shall provide proof of service by filing the original subpoena with the court, along with an affidavit of personal service.

(e) A child support magistrate shall deny or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence requested, and whether there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

Subd. 3. Objections to Discovery or Subpoena.

(a) **Objection to Discovery.** If a party objects to discovery, that party may serve and file a motion within 7 days of service of the discovery request. The motion may be decided without a hearing unless the child support magistrate determines that a hearing is necessary.

(b) **Objection to Subpoena.** Any person served with a subpoena who objects to the request shall serve upon the parties and file with the court a motion objecting to the subpoena. The motion shall indicate why the request is unreasonable or oppressive. The motion shall be served and filed promptly and no later than the time specified in the subpoena for compliance.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 361.03 is modified in 2023 to make subpoenas a part of the formal discovery process, which requires judicial officer permission in the expedited process. This ensures that subpoenas for documents remain within the allowable scope of Rule 361.02. Any person being served with a subpoena may waive the personal service requirement and consent to an alternate means of service, such as service by U.S. Mail or e-mail. These changes replace former Rule 361.06 which is deleted. A motion objecting to discovery or a subpoena is also commonly titled a motion for protective order.

Rule 361.04 Discovery Remedies

Subdivision 1. Motions to Compel. If a party fails to comply with an approved request for discovery or a request for documents under Rule 361.02, the party requesting the discovery may serve and file a motion for an order compelling an answer or compliance with the discovery request. The motion shall notify the other parties of the opportunity to respond within 7 days. The motion shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary.

Subd. 2. Options Available to the Child Support Magistrate. When deciding a discovery related motion or issue, or in the event a party fails to provide documents requested under Rule 361.02, the child support magistrate may:

(a) order the parties to exchange specified documents or information;
(b) deny the discovery request;
(c) affirm, modify, or quash the subpoena;
(d) issue a protective order;
(e) set or continue the hearing;
(f) conduct a hearing and keep the record open to allow for further exchange of information or response to the information provided at the hearing; or
(g) order other discovery allowable under the Minnesota Rules of Civil Procedure, if appropriate.

Subd. 3. Failure to Comply with Discovery. If a party fails to comply with an order issued pursuant to Rule 361.03, subd. 2, or Rule 361.04, the child support magistrate may:

(a) find that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order;
(b) prohibit the non-compliant party from supporting or opposing designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or
(c) issue any other order that is appropriate in the interests of justice, including attorney fees or other sanctions.

(Amended effective January 1, 2020.)

Rule 361.05 Filing of Discovery Requests and Responses Precluded

Copies of a party's request for discovery and any responses to those requests shall not be filed with the court unless:
(a) ordered by the child support magistrate;
(b) filed in support of any motion;
(c) introduced as evidence in a hearing; or
(d) relied upon by the magistrate when approving a stipulated or default order.

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

(Amended effective September 1, 2018.)

Rule 361.06 [Deleted effective November 22, 2023.]

RULE 362. SETTLEMENT

Rule 362.01 Procedure

The parties may settle the case at any time before a hearing or, if no hearing is scheduled, before an order is issued. Alternative dispute resolution, as provided in Minn. Gen. R. Prac. 310, and settlement efforts, as provided in Minn. Gen. R. Prac. 303, do not apply to cases brought in the expedited process.

Rule 362.02 Signing of Order

Subdivision 1. Preparation and Signing. If the parties reach an agreement resolving all issues, one of the parties shall prepare an order setting forth the terms of the agreement. If the parties are self-represented litigants and the county agency is a party, the county agency shall prepare the order. All parties to the agreement, including the county agency, shall sign the original order. The order shall state that the parties have:

(a) waived the right to a hearing;
(b) waived the right to counsel where a party is a self-represented litigant; and
(c) received and reviewed all documents used to prepare the order.

Subd. 2. Filing. The original order signed by all parties shall be filed with the court, who shall submit it to the child support magistrate for review and signature.

(Amended effective July 1, 2015.)

Rule 362.03 Order Accepted

The child support magistrate may sign an order filed pursuant to Rule 362.02 if it is supported by law, and is reasonable and fair.

Rule 362.04 Order Not Accepted

The child support magistrate may reject an order filed pursuant to Rule 362.02 if the child support magistrate finds that it is contrary to law, or is unreasonable and unfair. If the child support magistrate rejects the order, the child support magistrate shall prepare a notice of deficiency, stating the reason(s) why the order cannot be signed. The notice of deficiency shall inform the parties of the following options:

(a) to file and serve any missing documents;
(b) to file and serve a revised order;
(c) to file and serve a revised order and attach any missing or additional documents;
(d) to appear at a hearing, notice of which shall be issued by the court administrator;
(e) to appear at the previously scheduled hearing; or
(f) to withdraw the matter without prejudice.

The court administrator shall transmit the notice of deficiency to the parties. The parties shall either correct the deficiency or set the case on for a hearing and serve notice of the date, time, and location of the hearing pursuant to Rule 364. In matters that are pending before the court, if the parties fail to comply with the notice of deficiency within 45 days of the date the notice was transmitted, the child support magistrate shall dismiss the matter without prejudice.

A stipulation or agreement shall be rejected where no underlying file exists. Neither the parties nor the child support magistrate may schedule a hearing without a party first serving and filing a summons and complaint or notice of motion and motion.

(Amended effective July 1, 2015.)

Advisory Committee Comment

After an order or a judgment and decree is issued, at a later date parties sometimes amicably agree to modify the order. These agreements are often reached without the serving and filing of any papers. Under such circumstances, the parties are required to reduce the agreement to writing in the form of a stipulation and order which a child support magistrate may accept or reject. If the stipulation and order is rejected, and there is no underlying file, the matter may not be set for hearing until such time as a complaint is filed thus giving the court jurisdiction over the parties.

RULE 363. DEFAULT

Rule 363.01 Scope

The default procedure set forth in this rule applies to actions to establish support under Minn. Stat. § 256.87 (Rule 370), proceedings to modify support or set support (Rule 372), proceedings to change venue under Rule 353.01, subd. 2(c), and proceedings to reinstate a recreational license under Minn. Stat. § 518A.68(c).

(Amended effective November 22, 2023.)

Advisory Committee Comment

Rule 363.01 is modified in 2023 to recognize that magistrates can process default proceedings under Rule 353.01 and default proceedings to reinstate a recreational license under Minn. Stat. § 518A.68(c). Reinstatements of a recreational license are required under the statute if the obligor is compliant with a payment agreement or subpoena or the IV-D case is closing. These reinstatements are usually not contested and it wastes court hearing time slots to require these cases on the Ex Pro calendar. A party retains the ability to request a hearing if they disagree with the reinstatement.

Rule 363.02 Procedure

The initiating party may proceed by default if:

(a) all non-initiating parties have been properly served with the summons or notice of motion;

(b) the summons or notice of motion did not contain a hearing date; and

(c) there has been no written answer or return of the request for hearing form from any party within 21 days from the date the last party was served.

The initiating party shall file an order with the court within 45 days from the date the last non-initiating party was served with the summons and complaint or notice of motion and motion. The initiating party shall also file with the court a separate current affidavit of default and a current affidavit of non-military status regarding each non-initiating party. If an order is not filed with the court within 45 days, the court administrator shall mail a notice to all parties that the matter shall be scheduled for hearing unless the initiating party files an order along with all necessary documents within 14 days from the date notice was mailed. If the initiating party fails to file the

necessary documents within the allotted 14 days, the court administrator shall set the matter on for hearing and serve upon all parties and the county agency by U.S. mail at least 14 days before the scheduled hearing, notice of the date, time, and location of the hearing. The notices shall be sent by electronic means in accordance with Rule 14 to any party who has agreed to or is required to accept electronic service under Rule 14.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2019 Amendment

Rules 372.05 and 363.02 and .03 are amended in 2019 to harmonize the rules and create a uniform 21-day period for responding to motions for child support.

Advisory Committee Comment – 2023 Amendments

Rule 363.02 is modified in 2023 to require a separate affidavit for each defaulting party, which results in a clear record with separate case events in the court's case management system.

Rule 363.03 Order Accepted

The child support magistrate may sign an order filed pursuant to Rule 363.02 if the child support magistrate finds that it is supported by law, is reasonable and fair, and that each noninitiating party:

(a) was properly served with the summons and complaint or notice of motion and motion;

(b) was notified of the requirement to either serve and file a written answer or return the request for hearing form within 21 days of service of the summons and complaint or notice of motion and motion; and

(c) failed to serve and file a written answer or return the request for hearing form within 21 days from the date of service.

(Amended effective July 1, 2019.)

Advisory Committee Comment – 2019 Amendment

Rules 372.05 and 363.02 and .03 are amended in 2019 to harmonize the rules and create a uniform 21-day period for responding to motions for child support.

Rule 363.04 Order Not Accepted

The child support magistrate may reject an order filed pursuant to Rule 363.02 if the child support magistrate finds the order contrary to law, or unreasonable and unfair. If the child support magistrate rejects the order, the child support magistrate shall prepare a notice of deficiency, stating the reason(s) why the order cannot be signed. The notice of deficiency shall inform the initiating party of the following options:

(a) to file and serve any missing documents;
(b) to file a revised order;
(c) to file a revised order and attach any missing or additional documents;
(d) to appear at a hearing, notice of which shall be issued by the court administrator to all parties;
(e) to appear at any previously scheduled hearing; or
(f) to withdraw the matter without prejudice.

The court administrator shall transmit the notice of deficiency to the initiating party. The initiating party shall either correct the deficiency or set the case on for a hearing and serve notice of the date, time, and location of the hearing upon all parties pursuant to Rule 364. If the initiating party submits a revised order that raises new issues beyond the scope of the complaint or motion, amended pleadings shall be served on all parties and filed within 14 days from the date the notice of deficiency was transmitted. If the noninitiating party chooses to respond to the amended pleadings, the response must be served and filed within 14 days from service of the amended pleadings. If the initiating party fails to schedule a hearing or comply with the notice of deficiency within 30 days of the date the notice was transmitted, the child support magistrate shall dismiss the matter without prejudice.

(Amended effective January 1, 2020.)

Advisory Committee Comment–2008 Amendment

Rule 363.04 is amended to create specific time limits for setting a case on for hearing following receipt of a notice of deficiency in an order proposed by an initiating agency or to serve amended pleadings. The amendment also establishes a specific time limit for responding to an amended pleading that may be served.

RULE 364. HEARING PROCESS

Rule 364.01 Right to Hearing

Any party has a right to a hearing unless otherwise stated in these rules.

Rule 364.02 Scheduling of Hearing

The initiating party shall schedule a hearing if a written answer or a request for hearing form is received. The initiating party shall contact the court administrator or the court administrator's designee to obtain a hearing date and shall serve upon all parties and the county agency by United States mail at least 14 days before the scheduled hearing, notice of the date, time, and location of the hearing. If the initiating party has agreed to or is required to accept electronic service under Rule 14, then the notice shall be served electronically upon all other parties who have agreed to or are required to accept electronic service under Rule 14.

(Amended effective July 1, 2015.)

Rule 364.03 Timing of Hearing

In the event the parties are unable to resolve the matter, a hearing shall be held no sooner than 21 days after service of the summons and complaint or notice of motion and motion, unless the time period is waived by the parties. Every effort shall be made to conduct the hearing no later than 60 days after service of the summons and complaint or notice of motion and motion on the last person served or, in an establishment of parentage case, no later than 60 days after receipt of the genetic test results. Conducting a hearing later than 60 days after service or receipt of blood or genetic test results does not deprive the child support magistrate of jurisdiction.

(Amended effective November 22, 2023.)

Advisory Committee Comment

Federal law requires 75% of cases commenced in the Expedited Process to be completed within 6 months from the date of service of process and 90% of the cases to be completed within 12 months from the date of service of process. 45 C.F.R. § 303.101 (2000). If the hearing is initially scheduled within 60 days under Rule 364.03 and is later continued to beyond 60 days, that fact must be reported to the chief judge of the judicial district.

Advisory Committee Comment – 2023 Amendments

Rule 364.03 is modified in 2023 to remove notice to the chief judge, which has fallen out of practice and will minimize burdens on court staff.

Rule 364.04 Notice of Hearing

A notice of the hearing shall:

(a) state the name of the court;
(b) state the names of the parties;
(c) state the date, time, and location of the hearing;
(d) state that the parties shall appear at the hearing, unless otherwise provided in these rules;
(e) inform the parties of the requirement to submit paper or electronic copies of documents to all other parties and the court that they intend to present as evidence at least 7 days before the hearing. The court has discretion to disregard the documents if they are not received at least 7 days before the hearing; and
(f) if possible, include the name of the child support magistrate assigned to the case.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 364.04 is modified in 2023 to recognize that in remote proceedings parties will not bring evidentiary documents to the hearing as they would for an in-person hearing, but parties are required to submit them to the court and other parties at least 7 days in

advance of the hearing in the manner directed by applicable court order or notice. The Minnesota Digital Exhibit System (MNDES), to the extent that it is available in a particular county, was designed for submission of evidentiary documents to the court. Details regarding MNDES are available on the main judicial branch website (www.mncourts.gov).

Rule 364.05 Continuance of Hearing

Upon agreement of the parties or a showing of good cause, the child support magistrate may grant a request for continuance of a hearing. An order granting a continuance may be stated orally on the record or may be in writing. Unless time does not permit, a request for continuance shall be made in writing, and shall be filed with the court and served upon all parties at least 7 days before the hearing. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

(Amended effective January 1, 2020.)

Advisory Committee Comment

Rule 364.05 provides that a continuance may be granted for good cause. Examples of good cause include: death or incapacitating illness of a party or attorney of a party; lack of proper notice of the hearing; a substitution of the attorney of a party; a change in the parties or pleadings requiring postponement; an agreement for a continuance by all parties provided that it is shown that more time is clearly necessary. Good cause does not include: intentional delay; unavailability of counsel due to engagement in another judicial or administrative proceeding unless all other members of the attorney's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received prior to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; and failure of the attorney to properly utilize the statutory notice period to prepare for the hearing.

Rule 364.06 Explanation of Hearing Purpose and Procedure

At the beginning of each hearing the child support magistrate shall explain the purpose of the hearing and the process and procedures to be used during the hearing.

Rule 364.07 Hearings Open to Public

All hearings are open to the public, except as otherwise provided in these rules or by statute. For good cause shown, a child support magistrate may exclude members of the public from attending a hearing.

Advisory Committee Comment

Under Minn. Stat. § 257.70 (2000), hearings regarding the establishment of parentage are closed to the public. Other proceedings identified in Rule 353.01 are generally open to the public.

Rule 364.08 Record of Hearing

The child support magistrate shall be in complete charge of the hearing at all times and shall see to it that everything is done to obtain a clear and accurate record of the hearing. It is a duty to see that the witnesses testify clearly so that a correct record of the hearing is obtained.

(Amended effective November 22, 2023.)

Advisory Committee Comment

Under Minn. Stat. § 484.72, subds. 1, 6 (2000), records of hearings and other proceedings in the expedited process may be made either by competent stenographers or by use of electronic recording equipment. (1999 Minn. Laws 196, art. 1, § 3.) If electronic recording equipment is used, it must meet the minimum standards promulgated by the state court administrator and must be operated and monitored by a person who meets the minimum qualifications promulgated by the state court administrator. The minimum standards are set forth in Minnesota State Court System Administrative Policy, dated June 29, 1999.

Advisory Committee Comment – 2023 Amendments

Rule 364.08 is modified in 2023 to make it consistent with Rule 2.02(f).

Rule 364.09 Right to Present Evidence

Subdivision 1. Generally. Each party may present evidence, rebuttal testimony, and argument with respect to the issues.

Subd. 2. Testimony and Documents Permitted. Evidence may be presented through documents and testimony of the parties or other witnesses. Testimony may be given in narrative fashion by witnesses or by question and answer. Any party may be a witness and may present witnesses. All oral testimony shall be under oath or affirmation. The child support magistrate may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses. In any proceeding, a sworn written affidavit of any party or witness may be offered in lieu of oral testimony.

Subd. 3. Necessary Preparation Required. At least 7 days before the hearing the parties shall submit to all other parties and the court paper or electronic copies of any documents they intend to present as evidence. The child support magistrate shall have discretion in determining whether evidence that was not timely exchanged before the hearing should or should not be admitted into evidence.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 364.09, subd. 3 is modified in 2023 to recognize that in remote proceedings parties will not bring evidentiary documents to the hearings as they would for an in-person hearing, but parties are required to submit them to the court and other parties at least 7 days in advance of the hearing as directed by applicable court order or notice. The Minnesota Digital Exhibit System (MNDES), to the extent that is available in a particular county, was designed for submission of evidentiary documents to the court. Details regarding MNDES are available on the main judicial branch website (www.mncourts.gov).

Rule 364.10 Evidence

Subdivision 1. Type of Evidence Admissible. The child support magistrate may admit any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The child support magistrate shall give effect to the rules of privilege recognized by law.

Subd. 2. Evidence Part of Record.

In rendering a decision, a child support magistrate may consider:

(a) All pleadings and supporting documentation previously served upon the parties and filed with the court, unless objected to;

(b) Evidence that is offered and received during the hearing;

(c) Evidence that is timely submitted following the hearing with the permission of the child support magistrate; and

(d) Testimony, affidavits, exhibits, financial information, and anything additional that is related to the issue of support or is important to the issue before the child support magistrate.

Evidence that is unrelated to the issue of support, is unimportant to the issue before the child support magistrate, or that repeats evidence that has already been provided shall not be allowed.

Subd. 3. Documents. Ordinarily, copies or excerpts of documents instead of originals may be received or incorporated by reference. The child support magistrate may require the original or the complete document if the copy is not legible, there is a genuine question of accuracy or authenticity, or if it would be unfair to admit the copy instead of the original. Any financial documents prepared by the employee of the county agency are admissible without requiring foundation testimony or appearance of the employee of the county agency.

Subd. 4. Notice of Facts. The child support magistrate may take judicial notice of facts not subject to reasonable dispute, but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 364.10 is modified in 2023 to clarify the types of evidence that may be considered by the magistrate.

Rule 364.11 Burden of Proof

The party proposing that certain action be taken shall prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard. A party asserting an affirmative defense has the burden of proving the existence of the defense by a preponderance of the evidence.

Rule 364.12 Examination of Adverse Party

A party may call an adverse party or any witness for an adverse party, and may ask leading questions, cross-examine, and impeach that adverse party or witness.

Rule 364.13 Role of Child Support Magistrate

A child support magistrate may ask questions of witnesses when needed to ensure sufficient evidence to make the required findings.

Rule 364.14 Discretion to Leave Record Open

At the conclusion of a hearing, the child support magistrate may leave the record open and request or permit submission of additional documentation. Unless otherwise ordered by the child support magistrate, such additional documentation shall be submitted to the court within 14 days after the conclusion of the hearing. Documents submitted after the due date or without permission of the child support magistrate shall not be considered by the child support magistrate when deciding the case and if submitted in person or by mail, court administration shall return the documents to the sender.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 364.14 is modified in 2023 to recognize that documents submitted electronically after the deadline for a remote proceeding are not physically returned.

Rule 364.15 Close of Record

The record shall be considered closed either at the conclusion of the hearing or upon the expiration date for submission by the parties of any additional documentation authorized or requested by the child support magistrate, whichever is later. At the close of the record, the child support magistrate shall issue a decision and order pursuant to Rule 365.

RULE 365. DECISION AND ORDER OF CHILD SUPPORT MAGISTRATE

Rule 365.01 Failure to Attend Hearing

If a party fails to appear at a hearing for which notice was properly served, the child support magistrate may:

(a) decide all issues and issue an order without further notice or hearing;
(b) dismiss the matter without prejudice; or
(c) continue the hearing.

Rule 365.02 Timing

Within 30 days of the close of the record the child support magistrate shall file with the court a decision and order. Court administration may serve the order upon the parties at the hearing.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 365.02 is modified in 2023 to recognize that court staff serve the orders that the magistrates sign and file.

Rule 365.03 Effective Date; Final Order

Except as otherwise provided in these rules, the decision and order of the child support magistrate is effective and final when signed by the child support magistrate.

Rule 365.04 Notice of Filing of Order or Notice of Entry of Judgment

Subdivision 1. Service by Court Administrator. Within 7 days of receipt of the decision and order of the child support magistrate the court administrator shall serve a notice of filing of order or notice of entry of judgment upon each party by U.S. mail, together with a copy of the order or judgment if a copy of the order was not served at the hearing. The court administrator shall use the notice of filing form prepared by the state court administrator which shall set forth the information required in subdivision 2. The notices shall be sent by electronic means in accordance with Rule 14 to any party who has agreed to or is required to accept electronic service under Rule 14.

Subd. 2. Content of Notice. The notice required in subdivision 1 shall include information regarding the:

(a) right to bring a motion to correct clerical mistakes pursuant to Rule 375;
(b) right to bring a motion for review of the decision and order of the child support magistrate pursuant to Rule 376;
(c) right to appeal a final order or judgment of the child support magistrate directly to the court of appeals pursuant to Rule 378;

(d) right of other parties to respond to motions to correct clerical mistakes, motions for review, and appeals pursuant to Rules 377 and 378; and

(e) authority of the child support magistrate to award costs and fees if the magistrate determines that a motion to correct clerical mistakes or a motion for review is not made in good faith or is brought for purposes of delay or harassment pursuant to Rule 377.09, subd. 6.

Subd. 3. Court Administrator Computes Dates. The court administrator shall compute, and set forth in the notice required in subdivision 1, the last day for bringing a motion for review and the last day for bringing any response to such motion.

(Amended effective January 1, 2020.)

Advisory Committee Comment

Timing and Procedure for Bringing Motions. *The timing for bringing a motion for review differs from the timing for bringing an appeal to the court of appeals. Under Rule 377.02, the time within which to bring a motion for review is twenty (20) days, which begins to run on the date the court administrator serves the notice of filing of order or notice of entry of judgment.*

Timing and Procedure for Bringing an Appeal to Court of Appeals. *Rule 104.01 of the Minnesota Rules of Civil Appellate Procedure provides that the time within which to bring an appeal to the court of appeals is sixty (60) days which begins to run on the date of service by any party upon any other party of written notice of the filing of the order or entry of the judgment. The Advisory Committee intends that Rule 378.01 supersede Minn. R. Civ. App. P. 104.01 to provide that the sixty (60) days begins to run on the date the court administrator serves the written notice of filing of the order or notice of entry of judgment.*

Options For Review and Appeal. *A party may choose to bring a motion to correct clerical mistakes, a motion for review, or a combined motion, or may choose to appeal directly to the court of appeals thus bypassing the first two options. However, if a party chooses the option of appealing directly to the court of appeals without first bringing a motion for review, such an appeal will be limited to determining whether the evidence sustains the findings of fact (to which the "clearly erroneous" standard of review applies) and whether the findings support the conclusions of law and the judgment. Kahn v. Tronnier, 547 N.W.2d 425, 428 (Minn. App.), rev. denied (Minn. July 10, 1996). Thus, although a motion for review is very important to obtaining the broadest possible appellate review, it is not an absolute prerequisite to appeal; a litigant can choose to file a direct appeal from the order of the child support magistrate, but the appeal will be limited to issues within that narrower scope of review.*

RULE 366. TRANSCRIPT

Rule 366.01 Ordering of Transcript

Subdivision 1. Informational Request. Any person may request a transcript of any proceeding held before a child support magistrate, except as prohibited by statute or rule, by filing a request for transcript form with the court. The person requesting the transcript must make satisfactory arrangements for payment with the transcriber within 28 days after ordering the transcript or the request for the transcript shall be deemed cancelled. The person requesting the transcript may withdraw the request any time before the time transcription has begun. The transcriber shall file the original with the court and serve a copy upon the requesting person. The transcriber shall also file with the court an affidavit of service verifying that service has been made upon the requesting person.

Subd. 2. Clerical or Review Requests. If a party chooses to request a transcript for purposes of bringing or responding to a motion to correct clerical mistakes, a motion for review, or a combined motion, a request for transcript form shall be filed with the court within the time required under Rule 377.02 and 377.04. The party requesting the transcript must make satisfactory arrangements for payment with the transcriber within 28 days of ordering the transcript or the request for the transcript shall be deemed cancelled. The requesting party may withdraw that party's request for a transcript any time before transcription has begun. The transcriber shall file the original with the court and serve each party, including the county agency if a party, with a copy. The transcriber shall also file with the court an affidavit of service verifying that service has been made upon all parties. Ordering and filing of a transcript does not delay the due dates for the submissions described in Rule 377.02 and Rule 377.04. Filing of the transcript with the court closes the record for purposes of Rule 377.09, subd. 1.

Subd. 3. Appellate Request. If the transcript request is for appellate review, the transcriber shall comply with all appellate rules.

(Amended effective January 1, 2020.)

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

Rule 367.01 Administration of Expedited Process

The chief judge of each judicial district shall determine whether the district will administer the expedited process within the judicial district in whole or in part, or request that the state court administrator administer the expedited process in whole or in part for the district.

Advisory Committee Comment

Rule 367.01 does not permit a judicial district to opt out of the expedited process. Rather, Rule 367.01 simply indicates that the chief judge of the district must decide who will be responsible for administering the expedited process within each judicial district.

Rule 367.02 Use and Appointment of Child Support Magistrates

The chief judge of each judicial district shall determine whether the district will use child support magistrates, family court referees, district court judges, or a combination of these individuals to preside over proceedings in the expedited process. The chief judge of each judicial district, with the advice and consent of the judges of the district, shall appoint each child support magistrate, except family court referees and district court judges, subject to confirmation by the Supreme Court. Each child support magistrate serves at the pleasure of the judges of the judicial district. Child support magistrates may be appointed on a full-time or less than full-time basis.

(Amended effective November 22, 2023.)

Advisory Committee Comment

Nothing in these rules precludes a family court referee or district court judge from serving in the capacity of a child support magistrate.

Advisory Committee Comment – 2023 Amendments

Rule 367.02 is modified in 2023 to recognize that all child support magistrates are now judicial branch employees.

Rule 367.03 Powers and Authority

Child support magistrates shall have the powers and authority necessary to perform their duties in the expedited process pursuant to statute and rule.

Advisory Committee Comment

It is the intent of the Committee that child support magistrates have the authority to decide all issues permitted in the expedited process, including, but not limited to, awarding and modifying tax dependency exemptions, awarding costs and attorneys fees, and issuing orders or direct contempt, and issuing orders to show cause.

Rule 367.04 Conflict of Interest

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

(a) a practicing attorney;

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

(c) a mediator unless they receive written permission from the appointing authority to do so.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 367.04 is modified in 2023 to recognize that all child support magistrates are now judicial branch employees and may not practice law, even if employed on a less than full-time basis. The rule is also modified to allow magistrates to serve as a mediator, but only if approved by the appointment authority, which will reduce any potential conflicts of interest.

Rule 367.05 Code of Judicial Conduct

Each child support magistrate is bound by the Minnesota Code of Judicial Conduct. The exceptions set forth in the Application of the Minnesota Code of Judicial Conduct relating to part-time judges apply to child support magistrates appointed on a less than full-time basis.

(Amended effective November 22, 2023.)

Advisory Committee Comment

A comment to the Application Section of the Minnesota Code of Judicial Conduct provides that "anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a referee, special master or magistrate" is a judge within the meaning of the Minnesota Code of Judicial Conduct.

Advisory Committee Comment – 2023 Amendments

Rule 367.05 is modified in 2023 to recognize that all child support magistrates are now judicial branch employees.

Rule 367.06 Impartiality

Each child support magistrate shall conduct each hearing in an impartial manner and shall serve only in those matters in which the magistrate can remain impartial and evenhanded. If at any time a child support magistrate is unable to conduct any proceeding in an impartial manner, the magistrate shall withdraw.

RULE 368. REMOVAL OF A PARTICULAR CHILD SUPPORT MAGISTRATE

Rule 368.01 Automatic Right to Remove Precluded

No party has an automatic right to remove a child support magistrate, family court referee, or district court judge presiding over matters in the expedited process, including motions to correct clerical mistakes under Rule 375 and motions for review under Rule 376.

Rule 368.02 Removal for Cause

Subdivision 1. Procedure. To effect removal, a party shall serve upon the other parties and file with the court a request to remove the child support magistrate for cause within ten (10) days of service of notice of the name of the magistrate assigned to hear the matter or within ten (10) days of discovery of prejudice. If assignment of a child support magistrate is made less than ten (10) days before the hearing, the request to remove shall be made as soon as practicable after notice of assignment is given.

Subd. 2. Grounds to Remove. Removal of a child support magistrate requires an affirmative showing of prejudice. A showing that the child support magistrate might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

Subd. 3. Review of Denial of Removal. If the child support magistrate denies the request to remove, upon written request filed with the Court Administrator in that district, a district judge assigned to or chambered in the district shall determine whether cause exists. If that judge is the child support magistrate, the request for removal for cause shall be heard by a different judge in the district.

Advisory Committee Comment – 2008 Amendment

Rule 368.02, subd. 1, is amended to clarify the procedure for removal of an assigned child support magistrate from hearing a matter. Subdivision 3 is a new provision, designed to provide a more streamlined mechanism for review of a magistrate's decision not to order removal. The review of that decision is to be heard by a district judge who either had chambers in the county where the expedited child support case is pending or to a judge assigned to that county. This procedure obviates submission of the matter to the Chief Judge, recognizing that the Chief Judge may be far removed from the county where the case is pending.

RULE 369. ROLE OF COUNTY ATTORNEY AND EMPLOYEES OF THE COUNTY AGENCY

Rule 369.01 Role of County Attorney

Subdivision 1. Approval as to Form and Content. The county attorney shall review and approve as to form and content all legal documents prepared by employees of the county agency for use in the expedited process or in district court.

Subd. 2. Attendance at Hearings. The county agency shall appear through counsel. However, the county attorney may authorize an employee of the county agency to appear on behalf of the county attorney to present an agreement or stipulation reached by all the parties. An employee of the county agency shall not advocate a position on behalf of any party. The county attorney is not required to be present at any hearing to which the county agency is not a party.

Rule 369.02 Role of Employees of County Agency

Subdivision 1. County Attorney Direction. Under the direction of, and in consultation with, the county attorney, and consistent with Rules 5.3 and 5.5 of the Minnesota Rules of Professional Conduct, employees of the county agency may perform the following duties:

(a) meet and confer with parties by mail, telephone, electronic, or other means regarding legal issues;
(b) explain to parties the purpose, procedure, and function of the expedited child support process and the role and authority of nonattorney employees of the county agency regarding legal issues;
(c) prepare pleadings, subject to review and approval of the county attorney, including, but not limited to, summonses and complaints, notices, motions, subpoenas, orders to show cause, proposed orders, administrative orders, and stipulations and agreements;
(d) issue administrative subpoenas;
(e) prepare judicial notices;
(f) negotiate settlement agreements;
(g) attend and participate as witnesses in hearings and other proceedings, and if requested by the child support magistrate, present evidence, agreements and stipulations of the parties, and any other information deemed appropriate by the magistrate;
(h) participate in such other activities and perform such other duties as delegated by the county attorney; and
(i) exercise other powers and perform other duties as permitted by statute or these rules.

Employees of the county agency shall not represent the county agency at hearings conducted in the expedited process.

Subd. 2. Support Recommendations Precluded. Employees of the county agency may not offer recommendations regarding support at the hearing unless called as a witness at the hearing. Computation and presentation of support calculations are not considered recommendations as to support.

Subd. 3. County Attorney Direction Not Required. Without direction from the county attorney, employees of the county agency may perform the duties listed under Minn. Stat. § 518A.46, subd. 2(c) (2006). In addition, employees of the county agency may testify at hearings at the request of a party or the child support magistrate.

Subd. 4. Performance of Duties Not Practice of Law. Performance of the duties identified in Rule 369.02 by employees of the county agency does not constitute the unauthorized practice of law for purposes of these rules or Minn. Stat. § 481.02 (2000).

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2008 Amendment

Rule 369.02, subd. 3, is amended to update the statutory references to reflect the recodification, effective January 1, 2007, of portions of the relevant statutes, that became part of Minn. Stat. ch. 518A.

Advisory Committee Comment – 2023 Amendments

Rule 369.02, subd. 1 is modified in 2023 to make it consistent with Minn. Stat. § 518A.46, subd. 2.

2. PROCEEDINGS

RULE 370. ESTABLISHMENT OF SUPPORT PROCEEDINGS

Rule 370.01 Commencement

An initial proceeding to establish support shall be commenced in the expedited process by service of a summons and complaint pursuant to Rule 370.03. If the summons does not contain a hearing date, a request for hearing form and a supporting affidavit shall be attached to the summons and complaint. In addition to service of the summons and complaint, an order to show cause may be issued pursuant to Minn. Gen. R. Prac. 303.05. Service shall be made at least 21 days before any scheduled hearing.

(Amended effective January 1, 2020.)

Rule 370.02 Content of Summons, Complaint, Motion, Supporting Affidavit, and Request for Hearing Form

Subdivision 1. Content of Summons. A summons shall:

(a) state the name of the court;
(b) state the names of the parties;
(c) state an address where the initiating party may be served;
(d) state that the purpose of the action is to establish support;
(e) either set a hearing date or attach a request for hearing form;
(f) provide information about serving and filing a written response pursuant to Rule 370.04 and Rule 370.05;
(g) state that all parties shall appear at the hearing if one is scheduled, and state that if any party fails to appear at the hearing the child support magistrate shall proceed pursuant to Rule 365.01;
(h) state that the child support magistrate may sign a default order pursuant to Rule 363.03;
(i) state that a party has the right to representation pursuant to Rule 357;
(j) state that the case may be settled informally by contacting the initiating party, and include the name, address, and telephone number of the person to contact to discuss settlement; and
(k) be signed by the initiating party or that party's attorney.

If there is reason to believe that domestic violence exists or if an order for protection has been issued, the party may provide an alternative address and telephone number. Pursuant to Minn. Stat. § 518.005, subd. 5, in all actions in which public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to any other party if the county agency has knowledge that one party is currently subject to a protective order with respect to the other party or the joint child, and disclosure has not been authorized, or has reason to believe that the release of the information may result in physical or emotional harm to a party or the joint child.

Subd. 2. Content of Complaint. A complaint shall:

(a) state the relief the initiating party wants the child support magistrate to order;
(b) state the facts and grounds supporting the request for relief;
(c) set forth the acknowledgement required under Rule 379.04; and
(d) be signed by the initiating party or that party's attorney.

Subd. 3. Content of Motion. A motion shall:

(a) state the specific relief being requested from the court;
(b) provide information about the right to respond and the timing requirements; and
(c) set forth the acknowledgement required under Rule 379.04.

Subd. 4. Content of Supporting Affidavit. A supporting affidavit is required when the summons does not contain a hearing date. The supporting affidavit shall:

(a) state detailed facts supporting the request for relief;
(b) provide all information required by Minn. Stat. § 518.46, subd. 3, paragraph (a), and subd. 3a, paragraph (a), as applicable and if known; and
(c) be either:
    (1) signed and sworn to under oath; or
    (2) signed under penalty of perjury pursuant to Minn. Stat. § 358.116, provided that the signature is affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.

Subd. 5. Content of Request for Hearing Form. A request for hearing form shall contain the name and address of the initiating party and a short, concise statement that a non-initiating party requests a hearing.

(Amended effective November 22, 2023.)

Advisory Committee Comment—2008 Amendment

Rule 370.02, subd. 3, is amended to update the statutory reference to reflect the recodification, effective on January 1, 2007, of portions of the relevant statutes that became part of Minn. Stat. ch. 518A. Pursuant to Minn. Stat. § 518.46, subd. 2(c), for all cases

involving establishment or modification of support, the pleadings are to contain specific information. At times, it may be necessary to attach additional supporting documents. Each county should establish its own local policy regarding the attachment of supporting documents.

Advisory Committee Comment – 2023 Amendments

Rule 370.02 is modified in 2023 to require a motion to commence a support proceeding and to recognize the statutory limits on the public authority's disclosure of address information pursuant to Minn. Stat. §§ 518.005, subd. 5, and 257.70(b).

Rule 370.03 Service of Summons and Complaint

Subdivision 1. Who is Served. All parties, and the county agency even if not a party, shall be served pursuant to subdivision 2.

Subd. 2. How Served. The summons, complaint, and motion, and if required the supporting affidavit and request for hearing form, shall be served upon the parties by personal service, or alternative personal service, pursuant to Rule 355.02, unless personal service has been waived in writing. Where the county agency is the initiating party, a non-parent who is receiving assistance from the county or who has applied for child support services from the county may be served by any means permitted under Rule 355.02.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 370.03, subd. 2 is modified in 2023 to require a motion to commence a support proceeding.

Rule 370.04 Filing Requirements

Subdivision 1. Initiating Party. No later than 14 days before any scheduled hearing or after the last party was served, the initiating party shall file the following with the court:

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

Subd. 2. Responding Party. If a noninitiating party responds with a written answer pursuant to Rule 370.05, the following shall be filed with the court no later than 7 days before any scheduled hearing or, if no hearing is scheduled, within 14 days after the last party was served:

(a) the original written answer;
(b) a financial affidavit pursuant to Minn. Stat. § 518A.28 (2006); and
(c) proof of service upon each party pursuant to Rule 355.04.

Subd. 3. Electronic Filing. Where authorized or required by Rule 14 of these rules, documents may, and where required shall, be filed by electronic means by following the procedures of Rule 14.

Subd. 4. Treatment of Confidential Information. To retain privacy, restricted identifiers as defined in Rule 11 (such as Social Security numbers, employer identification numbers, financial account numbers) must be removed from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11. In addition, non-public documents including, without limitation, financial source documents as defined in Rule 11 (such as tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Cover Sheet for Non-Public Documents" as required in Rule 11.

(Amended effective March 1, 2024.)

Advisory Committee Comment – 2023 Amendments

Rule 370.04, subd. 1 is modified in 2023 to require a motion to commence a support proceeding and to require earlier filing of the required documents to allow court staff adequate time to open a case in MNCIS and schedule the hearing. The filing requirement changes from 7 days to 14 days in advance of the hearing.

Advisory Committee Comment – 2024 Amendments

Rule 370.04, subd. 4, is amended to recognize that in 2021 the filer's duty to designate non-public documents at the time of filing under Rule 11 was expanded beyond just financial source documents to include all non-public documents. Use of a new Cover Sheet for Non-Public Documents also replaced the Confidential Financial Source Documents cover sheet.

Rule 370.05 Response

Subdivision 1. Hearing Date in Summons. Inclusion of a hearing date does not preclude a noninitiating party from serving and filing a written answer. Within 21 days from service of the summons and complaint, a noninitiating party may serve upon all parties a written answer to the complaint. The service and filing of a written answer or the failure of a noninitiating party to appear at a hearing does not preclude the hearing from going forward**,** and the child support magistrate may issue an order based upon the information in the file or evidence presented at the hearing.

Subd. 2. Hearing Date Not in Summons. If the summons does not contain a hearing date, within 21 days from service of the summons and complaint, a noninitiating party shall either:

(a) request a hearing by returning the request for hearing form to the initiating party; or

(b) serve upon all other parties and file with the court a written answer to the complaint.

The initiating party shall schedule a hearing upon receipt of the request for hearing form or the service of a written answer.

(Amended effective January 1, 2020.)

Rule 370.06 Amended Pleadings

Subdivision 1. Service. At any time up to 14 days before a scheduled hearing, the initiating party may serve and file amended pleadings. If no hearing date has been scheduled, the initiating party may serve and file amended pleadings within the time remaining for response.

Subd. 2. Response. If the noninitiating party chooses to respond to amended pleadings, the response must be made within the time remaining for response to the original pleading or within 14 days after service of the amended pleadings, whichever period is longer, unless the court otherwise orders.

(Amended effective January 1, 2020.)

Rule 370.07 Fees

A filing fee shall be paid pursuant to Rule 356 upon the filing of:

(a) the summons, complaint, and motion; and
(b) the written answer, if any.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 370.07 is modified in 2023 to require a motion to commence a support proceeding.

Rule 370.08 Settlement Procedure

The parties may settle the case at any time pursuant to Rule 362.

Rule 370.09 Default Procedure

An action to establish support may proceed by default pursuant to Rule 363.

Rule 370.10 Hearing Procedure

Any hearing shall proceed pursuant to Rule 364. If the summons contains a hearing date, all parties shall appear at the hearing. If a party fails to appear at a hearing for which notice was properly served, the child support magistrate shall proceed pursuant to Rule 365.01.

Rule 370.11 Decision and Order

The decision and order of the court shall be issued pursuant to Rule 365.

Rule 370.12 Review and Appeal

Motions to correct clerical mistakes, if any, shall proceed pursuant to Rule 375. Review, if any, shall proceed pursuant to Rule 376. Appeal, if any, shall proceed pursuant to Rule 378.

RULE 371. PARENTAGE ACTIONS

Rule 371.01 Commencement

A proceeding to establish parentage shall be commenced in the expedited process by service of a summons, complaint, and motion pursuant to Rule 371.03. A supporting affidavit may also be served. Unless blood or genetic testing has already been completed, a request for blood or genetic testing shall be served with the summons and complaint. In addition to service of the summons and complaint, an order to show cause may be issued pursuant to Minn. Gen. R. Prac. 303.05. Service shall be completed at least 21 days before any scheduled hearing.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 371.01 is modified in 2023 to require a motion to commence a parentage action.

Rule 371.02 Content of Summons, Complaint, Motion, and Supporting Affidavit

Subdivision 1. Content of Summons. A summons shall:

(a) state the name of the court;
(b) state the names of the parties;
(c) state an address where the initiating party may be served;
(d) state that the purpose of the action is to establish parentage;
(e) state the date, time, and location of the hearing;
(f) provide information about serving and filing a written response pursuant to Rule 371.04 and Rule 371.05;
(g) state that all parties shall appear at the hearing, and if any party fails to appear at the hearing the child support magistrate shall proceed pursuant to Rule 365.01;
(h) state that a party has the right to representation pursuant to Rule 357;
(i) state that the case may be settled informally by contacting the initiating party and include the name, address, and telephone number of the person to contact to discuss settlement; and
(j) be signed by the initiating party or that party's attorney.

If there is reason to believe that domestic violence exists or if an order for protection has been issued, a party may provide an alternative address and telephone number. Pursuant to Minn.

Stat. § 257.70(b), in all actions in which public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to any other party if the county agency has knowledge that one party is currently subject to a protective order with respect to the other party or the joint child, and disclosure has not been authorized, or has reason to believe that the release of the information may result in physical or emotional harm to a party or joint child.

Subd. 2. Content of Complaint. A complaint shall:

(a) state the specific relief the initiating party wants the child support magistrate to order, including all of the required elements listed in Minn. Stat. § 257.66, subd. 3;
(b) state the facts and grounds supporting the request for relief;
(c) set forth the acknowledgement required under Rule 379.04; and
(d) be signed by the initiating party or that party's attorney.

Subd. 3. Content of motion. A motion shall:

(a) state the specific relief being requested from the court, including a determination of parentage, the child's legal name, legal and physical custody, parenting time, and child support;
(b) provide information about the right to respond and the timing requirements; and
(c) set forth the acknowledgement required under Rule 379.04.

Subd. 4. Content of Supporting Affidavit. A supporting affidavit shall:

(a) state detailed facts supporting the request for relief, including the facts establishing parentage;
(b) provide all information required by Minn. Stat. § 518A.46, subd. 3, paragraph (a), and subd. 3a, paragraph (a), as applicable and if known; and
(c) be either:
(1) signed and sworn to under oath; or
(2) signed under penalty of perjury pursuant to Minn. Stat. § 358.116, provided that the signature is affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.

(Amended effective November 22, 2023.)

Advisory Committee Comment—2008 Amendment

Pursuant to Minn. Stat. § 518A.46, subd. 3(a) (2006), for all cases involving establishment or modification of support, the pleadings are to contain specific information. At times, it may be necessary to attach additional supporting documents. Each county should establish its own local policy regarding the attachment of supporting documents.

Advisory Committee Comment – 2023 Amendments

Rule 371.02 is modified in 2023 to require a motion to commence a support proceeding and to recognize the statutory limits on the public authority's disclosure of address information pursuant to Minn. Stat. §§ 518.005, subd. 5, and 257.70(b). Changes also recognize that pleading the issues of custody and parenting time is required by statute (Minn. Stat. § 257.66, subd. 3) as well as case law (Morey v. Peppin, 375 N.W.2d 19 (Minn. 1985)).

Rule 371.03 Service of Summons and Complaint

Subdivision 1. Who is Served. The biological mother, each man presumed to be the father under Minn. Stat. § 257.55, each man alleged to be the biological father, and the county agency even if not a party, shall be served pursuant to subdivision 2.

Subd. 2. How Served. The summons, complaint, motion, and any supporting affidavit, and if required, a request for blood or genetic testing, shall be served upon the parties by personal service, or alternative personal service, pursuant to Rule 355.02, unless personal service has been waived in writing.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 371.03 is modified in 2023 to require a motion to commence a parentage action.

Rule 371.04 Filing Requirements

Subdivision 1. Initiating Party. No later than 14 days before any scheduled hearing the initiating party shall file the following with the court:

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

Subd. 2. Responding Party. If a noninitiating party responds with a written response pursuant to Rule 371.05, the following, if served, shall be filed with the court no later than 7 days before any scheduled hearing:

(a) the original written answer along with a financial affidavit pursuant to Minn. Stat. § 518A.28 (2006); or
(b) a request for blood or genetic testing; and
(c) proof of service upon each party pursuant to Rule 355.04.

Subd. 3. Electronic Filing. Where authorized or required by Rule 14 of these rules, documents may, and where required shall, be filed by electronic means by following the procedures of Rule 14.

Subd. 4. Treatment of Confidential Information. To retain privacy, restricted identifiers as defined in Rule 11 (such as Social Security numbers, employer identification numbers, financial account numbers) must be removed from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11. In addition, non-public documents including, without limitation, financial source documents as defined in Rule 11 (such as tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Cover Sheet for Non-Public Documents" as required in Rule 11.

(Amended effective March 1, 2024.)

Advisory Committee Comment – 2023 Amendments

Rule 371.04, subd. 1 is modified in 2023 to require a motion to commence a parentage action and to require earlier filing of the required documents to allow court staff adequate time to open a case in MNCIS and schedule the hearing. The filing requirement changes from 7 days to 14 days in advance of the hearing.

Advisory Committee Comment – 2024 Amendments

Rule 371.04, subd. 4, is amended to recognize that in 2021 the filer's duty to designate non-public documents at the time of filing under Rule 11 was expanded beyond just financial source documents to include all non-public documents. Use of a newer Cover Sheet for Non-Public Documents also replaced the Confidential Financial Source Documents cover sheet.

Rule 371.05 Response

Subdivision 1. Response Options. In addition to appearing at the hearing as required under Rule 371.10, subd. 1, a noninitiating party may do one or more of the following:

(a) contact the initiating party to discuss settlement; or

(b) within 21 days of service of the summons and complaint, serve upon all parties one or more of the written responses pursuant to subdivision 2.

Subd. 2. Types of Written Response.

(a) Request for Blood or Genetic Test. A noninitiating party may serve and file a request for blood or genetic testing either alleging or denying paternity. Filing of a request for blood or genetic testing shall, with the consent of the parties, extend the time for filing and serving a written answer until the blood or genetic test results have been mailed to the parties. In this event, the alleged parent shall have 14 days from the day the test results are mailed to the alleged parent in which to file and serve a written answer to the complaint.

(b) Written Answer. A noninitiating party may serve and file a written answer responding to all allegations set forth in the complaint. The matter shall proceed pursuant to Rule 353.02, subd. 3, if the written answer raises one or more of the following issues: parentage, custody, parenting time, or the legal name of the child.

(Amended effective January 1, 2020.)

Rule 371.06 Blood or Genetic Testing Requested Before Hearing

When a request for blood or genetic testing is made prior to the hearing pursuant to Rule 371.05, the child support magistrate shall issue an order for blood or genetic testing and shall continue the hearing to allow the tests to be completed and the results to be received.

Rule 371.07 Amended Pleadings

Subdivision 1. Service. At any time up to 14 days before a scheduled hearing, the initiating party may serve and file amended pleadings.

Subd. 2. Response. If the noninitiating party chooses to respond to amended pleadings, the response must be made within the time remaining for response to the original pleading or within 14 days after service of the amended pleadings, whichever period is longer, unless the court otherwise orders.

(Amended effective January 1, 2020.)

Rule 371.08 Fees

A filing fee shall be paid pursuant to Rule 356 upon the filing of:
(a) the summons, complaint, and motion; and
(b) the written answer or the request for blood or genetic testing, if any.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 371.08 is modified in 2023 to require a motion to commence a parentage action.

Rule 371.09 Settlement Procedure

The parties may settle the case at any time pursuant to Rule 362.

Rule 371.10 Hearing Procedure

Subdivision 1. Hearing Mandatory. A hearing shall be held to determine parentage, except as provided in subdivision 2. All parties shall appear at the hearing. If a party fails to appear at a hearing for which notice was properly served, the child support magistrate shall either refer the matter to district court or proceed pursuant to Rule 365.01. The hearing shall proceed pursuant to Rule 364, except that paternity hearings from commencement through adjudication shall be closed to the public. All hearings following entry of the order determining the parent and child relationship are open to the public.

Subd. 2. Exception. If all parties, including the county agency, sign an agreement that contains all statutory requirements for a parentage adjudication, including a statement that the parties waive their right to a hearing, the hearing may be stricken. The matter shall not be stricken from the court calendar until after the child support magistrate reviews and signs the agreement. The court administrator shall strike the hearing upon receipt of the agreement signed by the child support magistrate.

Rule 371.11 Procedure When Blood or Genetic Testing Requested

Subdivision 1. Blood or Genetic Testing Requested at Hearing. When blood or genetic testing is requested at the hearing, the child support magistrate shall issue an order for blood or genetic testing and shall continue the hearing to allow the tests to be completed and the results to be received.

Subd. 2. Blood or Genetic Testing Requested and Conducted Prior to Hearing. When blood or genetic testing is completed prior to the hearing and parentage is contested, the child support magistrate may upon motion set temporary child support pursuant to Minn. Stat. § 257.62, subd. 5 (2000), and shall refer the matter to district court pursuant to Rule 353.02, subd. 3.

Rule 371.12 Procedure When Written Answer Filed

Subdivision 1. Objections under the Parentage Act. The matter shall proceed pursuant to Rule 353.02, subd. 3, if the written answer contains an objection to one or more of the following issues: parentage, custody, parenting time, or the legal name of the child.

Subd. 2. Genetic Tests Received. When blood or genetic test results have been received and the results indicate a likelihood of paternity of ninety-two (92) percent or greater and a motion to set temporary support has been served and filed, the issue of temporary support shall be decided by the child support magistrate and the matter shall be referred to district court for further proceedings. Failure of a party to appear at the hearing shall not preclude the child support magistrate from issuing an order for temporary support.

Subd. 3. Objection to Support. A written answer objecting to any issue other than parentage, custody, parenting time, or the legal name of the child shall not prevent the hearing from proceeding. Failure of a party to appear at the hearing shall not preclude the child support magistrate from determining paternity and issuing an order for support.

Rule 371.13 Procedure When Written Answer Not Filed

If a written answer has not been served and filed by a noninitiating party and that party fails to appear at the hearing, the matter shall be heard and an order shall be issued by the child support magistrate. When the complaint, motion, or supporting affidavit contains specific requests for relief on the issue of custody, parenting time, or the legal name of the child, and proper service has been made upon all parties, the child support magistrate may grant such relief when a noninitiating party fails to appear at the hearing.

Advisory Committee Comment

Minnesota Statues § 257.651 (2000) provides that if the alleged father fails to appear at a hearing after service duly made and proved, the court may issue an order. The Committee also intends that the court may issue an order if the mother fails to appear after service duly made and proved.

Rule 371.14 Decision and Order

The decision and order of the court shall be issued pursuant to Rule 365.

Rule 371.15 Review and Appeal

Motions to correct clerical mistakes, if any, shall proceed pursuant to Rule 375. Review, if any, shall proceed pursuant to Rule 376. Appeal, if any, shall proceed pursuant to Rule 378.

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

Rule 372.01 Commencement

Subdivision 1. Motions to Modify and Motions to Set Support. A proceeding to modify an existing support order shall be commenced in the expedited process by service of a notice of motion, motion, and supporting affidavit pursuant to Rule 372.03. A proceeding to set support where a prior order reserved support may be commenced in the expedited process by service of a notice of motion and motion and supporting affidavit pursuant to Rule 372.03. If the notice of motion does not contain a hearing date, a request for hearing form shall be attached to the notice of motion. In addition to service of the notice of motion and motion, an order to show cause may be issued pursuant to Minn. Gen. R. Prac. 303.05. Service shall be made at least 21 days before any scheduled hearing.

Subd. 2. Other Motions. Except as otherwise provided in these rules, all proceedings shall be commenced in the expedited process by service of a notice of motion, motion, and supporting affidavit. Service shall be made at least 14 days before the scheduled hearing.

(Amended effective January 1, 2020.)

Rule 372.02 Content of Notice of Motion, Motion, Supporting Affidavit, and Request for Hearing Form

Subdivision 1. Content of Notice. A notice of motion shall:

(a) state the name of the court;

(b) state the names of the parties as set forth in the summons and complaint, or summons and petition, unless amended by order of the court;

(c) state an address where the initiating party may be served;
(d) state the purpose of the action;
(e) for motions brought pursuant to Rule 372.01, subd. 2, state the date, time, and location of the hearing;
(f) for motions brought pursuant to Rule 372.01, subd. 1, either state the date, time, and location of the hearing if one is scheduled or, if no hearing is scheduled, state that any party has a right to a hearing and attach a request for hearing form;
(g) provide information about serving and filing a written response pursuant to Rule 372.04 and Rule 372.05;
(h) state that all parties shall appear at the hearing if one is scheduled, and if any party fails to appear at the hearing, the child support magistrate shall proceed pursuant to Rule 365.01;
(i) state that a party has a right to representation pursuant to Rule 357;
(j) state that the case may be settled informally by contacting the initiating party and include the name, address, and telephone number of the person to contact to discuss settlement; and
(k) be signed by the initiating party or that party's attorney.

If there is reason to believe that domestic violence exists or if an order for protection has been issued, the party may provide an alternative address and telephone number. Pursuant to Minn. Stat. § 518.005, subd. 5, in all actions in which public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to the other party if the county agency has knowledge that one party is currently subject to a protective order with respect to the other party or the joint child, and disclosure has not been authorized, or has reason to believe that the release of the information may result in physical or emotional harm to a party or joint child.

Subd. 2. Content of Motion. A motion shall:
(a) state the relief the initiating party wants the child support magistrate to order;
(b) state the specific support that the initiating party wants the child support magistrate to order if the notice of motion does not contain a hearing date;
(c) state the facts and grounds supporting the request for relief;
(d) set forth the acknowledgement under Rule 379.04; and
(e) be signed by the initiating party or that party's attorney.

Subd. 3. Content of Supporting Affidavit. A supporting affidavit shall:
(a) state detailed facts supporting the request for relief;
(b) for motions to modify support and motions to set support, provide all information required by Minn. Stat. § 518A.46, subd. 3(a) (2006), if known; and
(c) be either:
(1) signed and sworn to under oath; or
(2) signed under penalty of perjury pursuant to Minn. Stat. § 358.116, provided that the signature is affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to

the signature, the date of signing and the county and state where the document was signed shall be noted on the document.

Subd. 4. Content of Request for Hearing Form. A request for hearing form shall contain the name and address of the initiating party, and a short and concise statement that a noninitiating party requests a hearing.

(Amended effective November 22, 2023.)

Advisory Committee Comment—2008 Amendment

Pursuant to Minn. Stat. § 518A.46, subd. 3(a) (2006), for all cases involving establishment or modification of support, the pleadings are to contain specific information. At times, it may be necessary to attach additional supporting documents. Each county should establish its own local policy regarding the attachment of supporting documents.

Advisory Committee Comment – 2023 Amendments

Rule 372.02 is modified in 2023 to recognize the statutory limits on the public authority's disclosure of address information pursuant to Minn. Stat. §§ 518.005, subd. 5, and 257.70(b).

Rule 372.03 Service of Notice of Motion and Motion

Subdivision 1. Who is Served. All parties, and the county agency even if not a party, shall be served pursuant to subdivision 2.

Subd. 2. How Served. The notice of motion, motion, supporting affidavit, and if required, the request for hearing form, may be served by electronic means upon parties who have agreed to or are required to accept service by electronic means under Rule 14 of these rules, by U.S. mail, or by personal service pursuant to Rule 355.02.

(Amended effective July 1, 2015.)

Rule 372.04 Filing Requirements

Subdivision 1. Initiating Party. No later than 7 days before any scheduled hearing or, if no hearing is scheduled, within 14 days after the last party was served, the initiating party shall file the following with the court:

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

Subd. 2. Responding Party. If a noninitiating party responds with a responsive motion or counter motion pursuant to Rule 372.05, the following shall be filed with the court no later than

7 days before any scheduled hearing or, if no hearing is scheduled, within 21 days after the last party was served:

(a) the original responsive motion or counter motion; and

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

Subd. 3. Electronic Filing. Where authorized or required by Rule 14 of these rules, documents may, and where required shall, be filed by electronic means by following the procedures of Rule 14.

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

(Amended effective January 1, 2020.)

Rule 372.05 Response

Subdivision 1. Hearing Date Included in the Notice of Motions to Modify and Motions to Set Support. Inclusion of a hearing date does not preclude a noninitiating party from serving and filing a responsive motion or counter motion. A noninitiating party may serve upon all parties a responsive motion or counter motion along with a supporting affidavit at least 14 days before the hearing. The service and filing of a responsive motion or counter motion does not preclude the hearing from going forward and the child support magistrate may issue an order based upon the information in the file or evidence presented at the hearing if a noninitiating party fails to appear at the hearing.

Subd. 2. Hearing Date Not Included in the Notice of Motions to Modify and Motions to Set Support. If the notice of motion does not contain a hearing date, within 21 days from service of the motion, a noninitiating party shall either:

(a) request a hearing by returning the request for hearing form to the initiating party; or

(b) serve upon all other parties a responsive motion or counter motion.

The initiating party shall schedule a hearing upon receipt of a request for hearing form, a responsive motion, or counter motion. Failure of the noninitiating party to request a hearing, to serve a responsive motion, or to appear at a scheduled hearing shall not preclude the matter from going forward, and the child support magistrate may issue an order based upon the information in the file or the evidence presented at the hearing.

Subd. 3. Other Motions. Except as otherwise provided in these rules, all responsive motions shall be served upon all parties at least 7 days before the hearing. A responsive motion raising new issue shall be served upon all parties at least 14 days before the hearing.

(Amended effective July 1, 2019.)

Advisory Committee Comment–2008 Amendment

Rule 372.05, subd. 2, is amended to apply the 14-day deadline for responding to a motion to either of the permitted responses; to request a hearing or to file a responsive motion or counter-motion. Rule 372.05, subd. 3 is added to clarify the deadlines for submitting responsive motions.

Advisory Committee Comment – 2019 Amendment

Rules 372.05 and 363.02 and .03 are amended in 2019 to harmonize the rules and create a uniform 21-day period for responding to motions for child support.

Rule 372.06 Amended Motions

Subdivision 1. Service. At any time up to 14 days before a scheduled hearing, the initiating party may serve and file an amended motion. If no hearing date has been scheduled, the initiating party may serve and file an amended motion within the time remaining for response.

Subd. 2. Response. If the noninitiating party chooses to respond to an amended motion, the response must be made within the time remaining for response to the original motion or within 14 days after service of the amended motion, whichever period is longer, unless the court otherwise orders.

(Amended effective January 1, 2020.)

Rule 372.07 Fees

Subdivision 1. Filing Fee. A filing fee shall be paid pursuant to Rule 356 upon the filing of:

(a) the notice of motion and motion; and
(b) the responsive motion or counter motion.

Subd. 2. Modification Fee. Pursuant to Minn. Stat. § 357.021, subd. 2(13), a separate fee shall also be collected upon the filing of the motion to modify and a responsive motion or counter motion.

Advisory Committee Comment - 2006

Rule 372.07, subd. 2, is amended to correct the statutory reference. In 2005, the legislature set the modification fee to be collected under Rule 372.07 at $55.00. Act of June 3, 2005, ch. 164, § 2, 2005 Minn. Laws 1878, 1879-80 (to be codified at Minn. Stat. § 357.021). Litigants are advised to review the statute or contact the court administrator for current fee amounts.

Rule 372.08 Settlement Procedure

The parties may settle the case at any time pursuant to Rule 362.

Rule 372.09 Default Procedure

An action to modify or set support may proceed by default pursuant to Rule 363.

Rule 372.10 Hearing Procedure

Any hearing shall proceed pursuant to Rule 364. If the notice of motion contains a hearing date, all parties shall appear at the hearing. If a party fails to appear at a hearing for which notice was properly served, the child support magistrate shall proceed pursuant to Rule 365.01.

Rule 372.11 Decision and Order

The decision and order of the court shall be issued pursuant to Rule 365.

Rule 372.12 Review and Appeal

Motions to correct clerical mistakes, if any, shall proceed pursuant to Rule 375. Review, if any, shall proceed pursuant to Rule 376. Appeal, if any, shall proceed pursuant to Rule 378.

RULE 373. ENFORCEMENT PROCEEDINGS

Rule 373.01 Types of Proceedings

All proceedings seeking statutory remedies shall be heard in the expedited process except as prohibited by statute or as follows:

(a) evidentiary hearings for contempt;
(b) matters of criminal non-support;
(c) motions to vacate a recognition of paternity or paternity adjudication; and
(d) matters of criminal contempt.

Civil contempt proceedings are permitted pursuant to Rule 353.01, subd. 2.

Rule 373.02 Commencement

Subdivision 1. Procedure Provided. When an enforcement proceeding is initiated pursuant to procedures set forth in statute, and a hearing is requested as permitted by statute, the matter shall be commenced in the expedited process by service of a notice of hearing. The hearing shall proceed pursuant to Rule 364.

Subd. 2. Procedure Not Provided. Any enforcement proceeding where the statute does not provide a procedure to obtain a hearing shall be commenced in the expedited process pursuant to Rule 372.

Subd. 3. Civil Contempt. Civil contempt proceedings shall be commenced pursuant to Rule 374.

RULE 374. CIVIL CONTEMPT

Rule 374.01 Initiation

Civil contempt proceedings initiated in the expedited process shall be brought according to the procedure set forth in Minn. Gen. R. Prac. 309.

Rule 374.02 Resolution of Contempt Matter

If the parties reach agreement at the initial appearance, the agreement may be stated orally on the record or the county attorney may prepare an order that shall be signed by all parties and submitted to the child support magistrate for approval. If approved, the order shall be forwarded to the court administrator for signing by a district court judge. The order is effective upon signing by a district court judge.

Rule 374.03 Evidentiary Hearing

If the parties do not reach agreement at the initial appearance, the child support magistrate shall refer the matter for an evidentiary hearing before a district court judge or a family court referee. A child support magistrate shall not consider or decide a contempt matter, except as provided in Rule 353.01, subd. 2.

(Amended effective November 22, 2023.)

Advisory Committee Comment – 2023 Amendments

Rule 374.03 is modified in 2023 to make clear that the matter is referred to the district court for an evidentiary hearing and not to court administration to schedule a hearing on a contested contempt proceeding.

Rule 374.04 Failure to Appear

If the alleged contemnor fails to appear at the initial appearance, the child support magistrate may certify to a district court judge that the alleged contemnor failed to appear and may recommend issuance of a warrant for the person's arrest. Only a district court judge may issue arrest warrants.

3. REVIEW AND APPEAL

RULE 375. MOTION TO CORRECT CLERICAL MISTAKES

Rule 375.01 Initiation

Clerical mistakes, typographical errors, and errors in mathematical calculations in orders, including orders for temporary support, arising from oversight or omission may be corrected by the child support magistrate at any time upon the magistrate's own initiative or upon motion of any party after notice to all parties.

Rule 375.02 Procedure

A motion to correct clerical mistakes shall be brought pursuant to Rule 377 and shall be made in good faith and not for purposes of delay or harassment.

Rule 375.03 Decision

A motion to correct clerical mistakes shall be decided by the child support magistrate who issued the decision and order. If the child support magistrate who issued the order is unavailable, the motion to correct clerical mistakes may be assigned by the court administrator to another child support magistrate in the judicial district. If an appeal has been made to the court of appeals pursuant to Rule 378, a child support magistrate may correct clerical mistakes, typographical errors, and errors in mathematical calculations only upon order of the appellate court.

Rule 375.04 Combined Motions

A motion to correct clerical mistakes may be combined with a motion for review. If a party intends to bring both a motion to correct clerical mistakes under this rule and a motion for review under Rule 376.01, the combined motion shall be brought within the time prescribed by Rule 377.02. A combined motion may be decided either by the child support magistrate who issued the decision and order or, at the request of any party, by a district court judge.

RULE 376. MOTION FOR REVIEW

Rule 376.01 Initiation

Any party may bring a motion for review of the decision and order or judgment of the child support magistrate. An order for temporary support is not subject to a motion for review.

Advisory Committee Comment

A party may make a motion for review regarding an order, regardless of whether it was issued as a result of default, based upon a stipulation or agreement of the parties, or issued following a hearing.

Rule 376.02 Procedure

A motion for review or a combined motion shall be brought pursuant to Rule 377 and shall be made in good faith and not for purposes of delay or harassment.

Rule 376.03 Decision

A motion for review may be decided either by the child support magistrate who issued the decision and order or, at the request of any party, a district court judge. If the child support magistrate who issued the order is unavailable, the motion for review may be assigned by the court administrator to another child support magistrate in the judicial district. If a district court judge issued the order in question, that judge shall also decide the motion for review. If an appeal has been made to the court of appeals pursuant to Rule 378, a child support magistrate may decide a motion for review or a combined motion only upon order of the appellate court.

RULE 377. PROCEDURE ON A MOTION TO CORRECT CLERICAL MISTAKES, MOTION FOR REVIEW, OR COMBINED MOTION

Rule 377.01 Other Motions Precluded

Except for motions to correct clerical mistakes, motions for review, or motions alleging fraud, all other motions for post-decision relief are precluded, including those under Minn. R. Civ. P. 59 and 60 and Minn. Stat. § 518.145 (2000).

Rule 377.02 Timing of Motion

To bring a motion to correct clerical mistakes, the aggrieved party shall perform items (a) through (e) as soon as practicable after discovery of the error. To bring a motion for review or a combined motion, the aggrieved party shall perform items (a) through (f) within 21 days of the date the court administrator served that party with the notice form as required by Rule 365.04.

(a) Complete the motion to correct clerical mistakes form, motion for review form, or combined motion form.

(b) Serve the completed motion for clerical mistakes form, motion for review form, or combined motion form upon all other parties and the county agency. Service may be made by personal service or by U.S. mail pursuant to Rule 355.02. If the moving party has agreed to or is required to accept electronic service under Rule 14, service must be made by electronic means upon any other parties that have agreed to or are required to accept electronic service under Rule 14.

(c) File the original motion with the court. If the filing is accomplished by mail, the motion shall be postmarked on or before the due date set forth in the notice of filing.

(d) File the affidavit of service with the court. The affidavit of service shall be filed at the time the original motion is filed.

(e) Order a transcript of the hearing under Rule 366, if the party desires to submit a transcript.

(f) For a motion for review or combined motion, pay to the court administrator the filing fee required by Rule 356.01, if the party has not already done so. The court

administrator may reject the motion documents if the appropriate fee does not accompany the documents at the time of filing.

(Amended effective January 1, 2020.)

Rule 377.03 Content of Motion

Subdivision 1. Motion to Correct Clerical Mistakes. A motion to correct clerical mistakes shall:

(a) identify by page and paragraph the clerical mistake(s) and state the correct language;
(b) include the acknowledgement as required pursuant to Rule 379.04; and
(c) be signed by the party or that party's attorney.

Subd. 2. Motion for Review or Combined Motion. A motion for review or combined motion shall:

(a) state the reason(s) the review is requested;
(b) state the specific change(s) requested;
(c) specify the evidence or law that supports the requested change(s);
(d) state whether the party is requesting that the review be by the child support magistrate that issued the order being reviewed or by a district court judge;
(e) state whether the party is requesting an order authorizing the party to submit new evidence;
(f) state whether the party requests an order granting a new hearing;
(g) include the acknowledgement as required pursuant to Rule 379.04; and
(h) be signed by the initiating party or that party's attorney.

Rule 377.04 Response to Motion

Subdivision. 1. Timing of Response to Motion. A party may respond to a motion to correct clerical mistakes or a motion for review. Any response shall state why the relief requested in the motion should or should not be granted. If a responding party wishes to raise other issues, the responding party must set forth those issues as a counter motion in the response. To respond to a motion to correct clerical mistakes the party shall perform items (a) through (e) within 14 days after the party was served with the motion. To respond to a motion for review or a combined motion the party shall perform (a) through (f) within 28 days after the party was served with the notice under Rule 365.04. To respond to a counter motion, the party shall perform items (a) through (f) within 40 days after the party was served with the notice under Rule 365.04.

(a) Complete the response to motion to correct clerical mistakes form, response to motion for review form, or response to combined motion form.
(b) Serve the completed response to motion for clerical mistakes form, response to motion for review form, or response to combined motion form upon all other parties and the county agency. Service may be made by personal service or by United States mail pursuant to Rule 355.02.

(c) File the original response to motion with the court. If the filing is accomplished by mail, the response to motion shall be postmarked on or before the due date set forth in the notice of filing.

(d) File the affidavit of service with the court. The affidavit of service shall be filed at the time the original response to motion is filed.

(e) Order a transcript of the hearing under Rule 366, if the party desires to submit a transcript.

(f) For a responsive motion for review or combined motion, pay to the court administrator the filing fee required by Rule 356.01, if the party has not already done so. The court administrator may reject the responsive documents if the appropriate fee does not accompany the documents at the time of filing.

Subd. 2. Content of Response to Motion

(a) Content of Response to Motion to Correct Clerical Mistakes. A response to a motion to correct clerical mistakes shall:

(1) identify by page and paragraph the clerical mistake(s) alleged by the moving party and state whether responding party agrees or opposes the corrections;
(2) include an acknowledgement as required pursuant to Rule 379.04; and
(3) be signed by the responding party or that party's attorney.

(b) Content of Response to Motion for Review, Combined Motion, or Counter Motion. A response to a motion for review, combined motion, or counter motion shall:

(1) state why the relief requested should or should not be granted;
(2) if new issues are raised, state the specific change(s) requested;
(3) if new issues are raised, specify the evidence or law that supports the requested change(s);
(4) state whether the party is requesting that the review be by the child support magistrate who issued the order being reviewed or by a district court judge;
(5) state whether the party is requesting an order authorizing the party to submit new evidence;
(6) state whether the party requests an order granting a new hearing;
(7) include an acknowledgement as required pursuant to Rule 379.04; and
(8) be signed by the responding party or that party's attorney.

(Amended effective January 1, 2020.)

Rule 377.05 Calculation of Time

Subdivision 1. Timing for Response to Motion to Correct Clerical Mistakes. To calculate the time to respond to a motion to correct clerical mistakes, 3 days shall be added to the 14 days for a total of 17 days within which to respond when the motion is served by mail.

Subd. 2. Timing for Service of Motion for Review or Combined Motion. To calculate the time to serve a motion for review or combined motion, 3 days shall be added to the 21 days for a total of 24 days within which to serve a motion when the notice form as required by Rule 365.04 is served by mail.

Subd. 3. Timing for Response to Motion for Review or Combined Motion. To calculate the time to serve a response to a motion for review or combined motion, 3 days shall be added to the 28 days for a total of 31 days within which to respond when the notice form as required under Rule 365.04 is served by mail. If the motion for review or combined motion is served by mail, an additional 3 days shall be added to the 31 days for a total of 34 days within which to respond.

Subd. 4. Timing for Response to Counter Motion. To calculate the time to serve a response to a counter motion, 3 days shall be added to the 40 days for a total of 43 days within which to respond when the notice form as required under Rule 365.04 is served by mail. If the counter motion to the motion for review or combined motion is served by mail, an additional 3 days shall be added to the 43 days for a total of 46 days within which to respond.

(Amended effective January 1, 2020.)

Rule 377.06 Review When Multiple Motions Filed–Motion for Review

If in a motion for review a party requests review by the child support magistrate and any other party requests review by a district court judge, all motions shall be assigned to a district court judge who shall either decide all issues or remand one or more issues to the child support magistrate with instructions.

Rule 377.07 Notice of Assignment of District Court Judge–Motion for Review

If a party requests that a motion for review be decided by a district court judge, upon the filing of a motion containing such a request the court administrator shall as soon as practicable notify the parties of the name of the judge to whom the motion has been assigned.

Rule 377.08 Decision and Order Not Stayed

The decision and order of the child support magistrate or district court judge remains in full force and effect and is not stayed pending a motion to correct clerical mistakes, a motion for review, or a combined motion.

Rule 377.09 Basis of Decision and Order

Subdivision 1. Timing. Within 30 days of the close of the record, the child support magistrate or district court judge shall file with the court an order deciding the motion. In the event a notice to remove is granted pursuant to Rule 368, the 30 days begins on the date the substitute child support magistrate or district court judge is assigned. The record shall be deemed closed upon occurrence of one of the following, whichever occurs later:

(a) filing of a response pursuant to Rule 377.04;
(b) filing of a transcript pursuant to Rule 366;
(c) withdrawal or cancellation of a request for transcript pursuant to Rule 366; or
(d) submission of new evidence under subdivision 4.

If none of the above events occur, the record on a motion for review or combined motion shall be deemed closed forty-six (46) days after service of the notice of filing as required by Rule 365.04, despite the requirements of Rule 354.03. For a motion to correct clerical mistakes and none of the above events occur, the record shall be deemed closed upon expiration of the time to respond to the motion to correct clerical mistakes.

Subd. 2. Decision.

(a) Motion to Correct Clerical Mistakes. The child support magistrate or district court judge may issue an order denying the motion to correct clerical mistakes or may issue an order making such corrections as deemed appropriate. If the motion is denied, the child support magistrate or district court judge shall specifically state in the order that the findings, decision, and order are affirmed.

(b) Motion for Review. The child support magistrate or district court judge shall make an independent review of any findings or other provisions of the underlying decision and order for which specific changes are requested in the motion. The child support magistrate or district court judge may affirm the order without making additional findings. If the court determines that the findings and order are not supported by the record or the decision is contrary to law, the child support magistrate or district court judge may issue an order:

(1) denying in whole or in part the motion for review;
(2) approving, modifying, or vacating in whole or in part, the decision and order of the child support magistrate; or
(3) scheduling the matter for hearing and directing the court administrator to serve notice of the date, time, and location of the hearing upon the parties.

In addition, the district court judge may remand one or more issues back to the child support magistrate with instructions. If the child support magistrate who issued the order is unavailable, the motion may be assigned by the court administrator to another child support magistrate serving in the judicial district. If any findings or other provisions of the child support magistrate's or district court judge's decision and order are approved without change, the child support magistrate or district court judge shall specifically state in the order that those findings and other provisions are affirmed but need not make specific findings or conclusions as to each point raised in the motion. If any findings or other provisions of the child support magistrate's or district court judge's decision and order are modified, the child support magistrate or district court judge need only make specific findings or conclusions with respect to the provisions that are modified.

Subd. 3. Record on Review. The review by the child support magistrate or district court judge shall be based upon the decision of the child support magistrate or district court judge and any exhibits and affidavits filed, and, where a transcript has not been filed, may be based upon all or part of the audio or video recording of the hearing.

Subd. 4. Additional Evidence Discretionary. When bringing or responding to a motion to correct clerical mistakes, a motion for review, or a combined motion, the parties shall not submit any new evidence unless the child support magistrate or district court judge, upon written or oral notice to all parties, requests additional evidence.

Subd. 5. No Right to Hearing. A hearing shall not be held unless ordered by the child support magistrate or district court judge. The child support magistrate or district court judge may order a hearing upon motion of a party or on the court's own initiative. A party's motion shall be granted only upon a showing of good cause. In the event the child support magistrate or district court judge decides to conduct a hearing, the child support magistrate or the district court judge shall direct the court administrator to schedule a hearing date and to serve notice of the date, time, and location of the hearing upon all parties and the county agency.

Subd. 6. Costs and Fees. The child support magistrate or district court judge may award costs and fees incurred in responding to a motion to correct clerical mistakes, motion for review, or combined motion if the child support magistrate or district court judge determines that the motion is not made in good faith or is brought for purposes of delay or harassment.

(Amended effective September 1, 2020.)

Advisory Committee Comment–2008 Amendment

Rule 377.09, subd. 2(b) is amended to correct language of the existing Rule that could be interpreted to have a mandatory meaning not intended by the Drafters. The revised rule allows the child support magistrate to affirm an order without findings, but does not require that. The rule is intended to adopt expressly a de novo standard of review. The reviewing court need not make findings if the decision is to affirm. De novo review is consistent with the reported decisions construing the former rule. See, e.g. Kilpatrick v. Kilpatrick, 673 N.W.2d 528, 530 n.2 (Minn. Ct. App. 2004); Davis v. Davis, 631 N.W.2d 822, 825 (Minn. Ct. App. 2001); Blonigen v. Blonigen, 621 N.W. 2d 276, 280 (Minn. Ct. App. 2001), review denied (Minn. Mar. 13, 2001).

Rule 377.10 Notice of Order or Judgment

Within 7 days of receipt of an order issued as a result of a motion to correct clerical mistakes, a motion for review, or a combined motion, the court administrator shall serve a notice of filing of order or notice of entry of judgment upon each party by United States mail, along with a copy of the order or judgment. The notice shall state that the parties have a right to appeal to the court of appeals under Rule 378. If the order was issued by a district court judge, the court administrator shall provide a copy of the order to the child support magistrate.

(Amended effective January 1, 2020.)

Rule 377.11 Effective Date; Final Order

The order issued following a motion to correct clerical mistakes, a motion for review, or a combined motion is effective and final when signed by the child support magistrate or district court judge.

RULE 378. APPEAL TO COURT OF APPEALS

Rule 378.01 Generally

An appeal may be taken to the court of appeals from a final order or judgment of a child support magistrate or from a final order deciding a motion for review under Rule 376. Such an appeal shall be taken in accordance with the procedures set forth in the Minnesota Rules of Civil Appellate Procedure within 60 days of the date the court administrator serves upon the parties the notice of filing of order or notice of entry of judgment. If any party brings a timely motion to correct clerical mistakes under Rule 375 or a timely motion for review under Rule 376, the time for appeal is extended for all parties while that motion is pending. Once the last such pending motion is decided by the child support magistrate or district court judge, the 60 days to appeal from the final order or judgment of a child support magistrate or from a final order deciding a motion to correct clerical mistakes or a motion for review runs for all parties from the date the court administrator serves upon the parties the notice of filing of order or notice of entry of judgment disposing of that motion. A notice of appeal filed before the disposition of a timely motion to correct clerical mistakes or for review is premature and of no effect, and it does not divest the child support magistrate of jurisdiction to dispose of the motion. Except as otherwise provided in these rules, the Minnesota Rules of Civil Appellate Procedure shall govern the taking and processing of such appeals.

(Amended effective January 1, 2020.)

Advisory Committee Comment

Timing. *Under Minn. R. Civ. App. P. 104.01, the sixty (60) days in which to bring an appeal to the court of appeals begins to run on the date of service by any party of written notice of filing of an appealable order or on the date on which an appealable judgment is entered. The Advisory Committee intends that Rule 378 supersede the appellate rule to provide that the sixty (60) days to appeal begins to run from the time the court administrator serves the written notice of filing of order or notice of entry of judgment.*

Scope of Review. *A party may choose to bring a motion to correct clerical mistakes, or a motion for review, or to appeal directly to the court of appeals thus bypassing the first two options. However, if a party chooses the option of appealing directly to the court of appeals without first bringing a motion for review, such an appeal will be limited to determining whether the evidence sustains the findings of fact (to which the "clearly erroneous" standard of review applies) and whether the findings support the conclusions of law and the judgment. Kahn v. Tronnier, 547 N.W.2d at 428 , rev. denied (Minn. July 10, 1996). Thus, although a motion for review is very important to obtaining the broadest possible appellate review, it is not an absolute prerequisite to appeal--a litigant can choose to file a direct appeal from the order of the child support magistrate, but the appeal will be limited to issues within that narrower scope of review.*

4. FORMS

RULE 379. FORMS

Rule 379.01 Court Administrator to Provide Forms

Whenever a court administrator is required to provide forms under these rules, those forms shall be provided to the parties in the most accessible method for the parties, including fax, electronic mail, in person, by United States mail, or in alternate formats.

Rule 379.02 Substantial Compliance

The forms developed by the state court administrator and by the department of human services for use in the expedited process, or forms substantially in compliance with such forms, are sufficient for purposes of these rules.

Advisory Committee Comment

The Advisory Committee encourages use of the standardized forms developed by the state court administrator and department of human services. However, regardless of such standardized forms, attorneys representing the parties and the county attorney representing the interests of the county agency retain professional responsibility for the form and content of pleadings and other legal documents used in the expedited process.

Rule 379.03 Modification of Forms

Except as otherwise provided in these rules, a party has discretion to modify the standardized forms to address the factual and legal issues that cannot be adequately covered by standardized forms.

Rule 379.04 Acknowledgement

Subdivision 1. Generally. Each complaint or motion served and filed in the expedited process shall set forth an acknowledgement by the party or the party's attorney. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other document, an attorney or self-represented litigant is certifying that to the best of the person's knowledge, information, and belief:

(a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

(d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief; and

(e) the court may impose an appropriate sanction upon the attorneys, law firms, or parties that violate the above stated representations to the court, or are responsible for the violation.

Subd. 2. Motions to Correct Clerical Mistakes and Motions for Review. In motions to correct clerical mistakes, motions for review, or combined motions, the acknowledgement shall also include the following:

(a) a statement that the existing order remains in full force and effect and the parties must continue to comply with that order until a new order is issued; and

(b) a statement that the party understands that the child support magistrate or judge will decide whether the party may submit new information or whether the party may have a hearing, and that the parties will be notified if the party's request is granted.

(Amended effective September 1, 2018.)

APPENDIX OF FORMS

Effective January 1, 2008, all forms in Title IV have been deleted from the rules. Dissolution forms are currently maintained on the state court website (www.mncourts.gov).