STATE OF MINNESOTA

IN SUPREME COURT

C4-99-404

ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON THE PROPOSED AMENDMENTS TO THE RULES OF THE EXPEDITED CHILD SUPPORT PROCESS

The Supreme Court Advisory Committee on the Rules of the Expedited Child Support Process is requesting the Court to amend the Rules of the Expedited Child Support Process. A copy of the Final Report outlining the recommendations is annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed amendments shall submit fourteen copies in writing addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, no later than June 20, 2003.

DATED: May 22, 2003

BY THE COURT:

Kathleen A. Blatz
Chief Justice

C4-99-404

STATE OF MINNESOTA
IN SUPREME COURT

In re:

Supreme Court Advisory Committee
On the Rules of the Expedited Child Support Process

Recommendations of Minnesota Supreme Court Advisory Committee on the Rules of the Expedited Child Support Process

Final Report

March 14, 2003

Hon. James H. Gilbert, Supreme Court Liason
Hon. Gary Meyer, Chair

Hon. Beverly Anderson, Roseville
Judith Besemer, Mankato
Hon. Bruce Douglas, Buffalo
Mark Gardner, Minneapolis
Tama Hall, Saint Paul
Charlene Hatcher, Minneapolis
Hon. Gregg Johnson, Saint Paul
Dana McKenzie, Saint Paul
Hon. Jan Craig Nelson, Redwood Falls
Melissa Rossow, Saint Paul
Sandra Torgerson, West Saint Paul
Hon. Renee Worke, Waseca
Lou Anderson, Brainerd
Sue Dosal, Saint Paul
Hon. Diana Eagon, Minneapolis
Hon. Sharon Hall, Anoka
Hon. Duane Harves, Hastings
Hon. James Hoolihan, Foley
Jayne Barnard McCoy, Minneapolis
Hon. Jodie Metcalf, Saint Paul
Mark Ponsolle, Saint Paul
Ruth Sundermeyer, Aitkin
Katie Trotzky, Apple Valley
Hon. Jeannice Reding, Plymouth (Alternate)

Deanna J. Dohrmann, Saint Paul
Staff Attorney

ADVISORY COMMITTEE ON EXPEDITED CHILD SUPPORT PROCESS RULES

Summary of Committee Recommendations

The Court's Advisory Committee on the Rules of the Expedited Child Support Process met three times in 2002 and once in 2003 to discuss various issues relating to the operation of the rules. This report contains 7 recommendations for substantive rule changes and 2 recommendations for clerical rule changes.

There are three major substantive changes and four minor changes. These recommendations are briefly summarized below:

1. Expansion of parentage actions in the expedited process. The authority of the child support magistrate should be expanded to allow magistrates to capture partial agreements of the parties in paternity actions as long as the parties agree to the parent-child relationship and physical custody of the child.
2. Problems with multiple referrals between district court and the expedited process. Judicial economy is best served when court appearances are kept to a minimum. The committee was divided on the best solution to the problem of parties appearing at multiple hearings and before different judicial officers on the same action. One approach changes the rule by mandating that matters commencing in district court shall be finalized in district court with no exceptions. The other approach allows the district court discretion to take into account whether the best interests of the parties are better served in district court or the expedited process.
3. Formalization of discovery in the expedited process. The requirement of parties to obtain approval from the child support magistrate before filing a motion for discovery is eliminated.

Other Matters

The four minor substantive changes include clarification of time frames for exchanging information between parties and filing responsive motions; reference by advisory committee comment that child support magistrates have powers to hold parties in direct contempt; and clarify that the biological mother must be served in parentage actions.

In addition to the substantive changes there are two clerical changes as well, which are explained in the report.

Effective Date

The committee believes that its recommended changes to the rules can be effected by order earlier this year, with an effective date of August 1, 2003. The committee believes amendments taking place with an August 1, 2003 effective date will allow a significant lead-time for communication and training for the bench and bar. In addition, Thomson/West publishers distribute a supplement to the Minnesota Rules of Court in July, and therefore, any amendments to the rules can be published in the supplement.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY
COMMITTEE ON THE RULES OF THE
EXPEDITED CHILD SUPPORT PROCESS

Recommendation 1: **Rule 353.01 relating to types of proceedings should be amended to clarify that child support magistrates have judicial authority to issue partial determinations in paternity actions, and to add constitutional challenges to statutes and rules as a prohibited proceeding.**

Introduction

Two major parts of Rule 353 were re-visited by the committee due to feedback various members received regarding paternity cases heard in the expedited process and the referral of cases back and forth between district court judges and the magistrates, candidly referred to as the "ping-ponging of issues". Because both issues are of major significance, the rule is broken down into two parts and shall be discussed separately, starting with Rule 353.01.

The committee recommends that the authority of child support magistrates be expanded to allow magistrates to capture all issues agreed upon by the parties in parentage actions. Before a child support magistrate can approve an agreement, at a minimum, the parties must agree to the parent-child relationship and physical custody of the child. The magistrate shall issue an order that is a partial order as to the parent-child relationship, the physical custody of the child, the support amount, and any other issue or issues that the parties agree upon. The magistrate's order shall specifically state the remaining issues the district court must address, and when possible, include the next hearing date, time, and location so the matter will continue to proceed without delay.

Currently, the rule limits the authority of the magistrate to establish custody, parenting time, and the legal name of the child to only those cases when there is a full agreement between the parties on all of these particular issues, or when the pleadings specifically address these particular issues and a party failed to serve a response or appear at the hearing. Absent this, the entire matter must be referred to district court. This referral delays the paternity adjudication, even if an alleged father admits to paternity, and thus, child support is also delayed. Even with the presumption of paternity based upon blood or genetic testing, the magistrate can only issue a temporary child support order and any support paid by the presumed father must sit in escrow until the court issues a final determination of parentage. This prevents the support money from flowing directly to the child.

Many counties do not currently exercise the option of scheduling paternity cases in the expedited process, and instead automatically schedule paternity actions in district court because of this "all or nothing" approach. County child support enforcement agencies and county attorney's offices have expressed desire to expand the rule to allow magistrates to issue partial orders. Even if matters are referred to district court because parties cannot agree to parenting time, at least the parent-child relationship is established and the financial responsibility attaches. Establishing the legal relationship between a father and child and setting child support early in the process is in the best interests of the child.

Finally, the committee considered a fiscal impact to the state if the paternity rule was amended. Congress has required that each state child support program meet certain performance standards as a condition of funding of the child support and welfare programs. Failure to meet the standard will result in a loss of child support incentive funding. The two performance measures that are impacted by court actions are the adjudication of paternity measure and the

establishment of child support orders measure. In the paternity measure, the child support program must achieve and maintain an adjudication rate of 90% of the cases in the system. Until the state reaches that 90% level, it must increase by 2% each year. Currently Minnesota is at 82.06% as of 9/30/02 and must reach a minimum of 84.06% by 9/30/03 to avoid a penalty. By allowing child support magistrates to issue partial determinations, it is anticipated more counties will initiate paternity actions in the expedited process, thus increasing performance standards and maintaining federal funding.

The other proposed minor change to Rule 353.01 appears in subdivision 3. Once every so often attorneys in the private bar raise constitutional challenges before the child support magistrates. Any constitutional challenges to statutes or rules must be addressed in district court. The committee proposes to add any constitutional challenges as a prohibited proceeding, thus clarifying the forum in which these issues must be heard.

Specific Recommendation

Rule 353.01 should be amended as follows:

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 if appropriate, whether or not agreed upon by the parties.

(1) **Complete Order.** ~~When establishing parentage,~~ Notwithstanding Rule 353.01, subd. 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 ~~complaint, motion, or supporting affidavit~~ specifically addresses these particular issues and a party fails to serve a response or appear at the hearing.

If all of the otherwise prohibited issues above have been resolved on a permanent basis, the child support magistrate shall issue an order which shall be a final determination of all claims raised in the parentage action.

(2) Partial Order.

(A) Minimal 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 of 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 to 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 shall be referred to the district court. The issues referred to 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 to be 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 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 ~~written~~ consent of all parties, a child support magistrate may issue an 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 mail notice of the date, time, and location of the hearing to all parties.

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~~.~~; and

(n) the constitutionality of the statutes and rules.

Recommendation 2: **Rule 353.02 relating to matters initially scheduled before the district court should clarify when, if ever, matters may be referred to the expedited process.**

Introduction

The committee agreed that Rule 353.02, subdivision 2 needed changes. The committee did unanimously agree that the word "shall" should be substituted for the words "should attempt to" decide the issues when proceedings are commenced in district court. About half of the members proposed restricting the district court judges' discretion on referring child support issues to the expedited process. There were just as many members who did not want to restrict the discretion of the district court judges in referring the child support issue to the magistrates.

The intent behind the current rule was for judges to retain matters that come before them and issue final orders, and only in limited circumstances, refer the child support issue to the magistrate. There are instances when the parties, or their attorneys, do not have the necessary financial information at the time of the hearing so the court cannot set child support. In these instances, it may be necessary to continue the hearing so that financial information of the parties can be obtained. Unfortunately, some judges refer support issues to the magistrates even when the matter could have been resolved in its entirety by the district court judge. This requires parties to attend yet another hearing in a different forum before a different judicial officer. This is not cost-effective or user-friendly.

In addition to proposed changes in subdivision 2 of this rule, the committee agreed that subdivision 3 needed changes. If the matter is first scheduled in the expedited child support process, and if prohibited issues are raised, upon written agreement between all parties, the matter shall be referred to district court and no appearance in the expedited process is required.

Option 1

The members who proposed option 1 want to prevent any misinterpretation of the rule. Once a matter was scheduled on the district court calendar, it would stay in district court until a final order issued, thus eliminating the option of handing off cases to the magistrates. In an effort to keep the matter "expedited", any continued hearing must be conducted within 45 days. Option 1 represents this proposed change.

Option 2

Some members of the committee felt this "ping-ponging" of matters was a training issue. Merely changing the rule to restrict the district court judges from referring cases to the magistrates would not curb the problem, as the judges who are ignoring the intent of the current rule may continue to ignore a more restrictive rule. Others commented that the private bar should be educated as well and held to a higher standard of being prepared with financial information so child support can be calculated at the time of the hearing.

There are some counties where judges rotate to a particular county once a month or even less frequent, and that could mean justice may be delayed for these parties if the continued hearing must remain on the district court calendar when it possibly could be heard faster in the expedited process. The proposed change, as represented in option 2, states that the district court judge shall determine if it is in the best interests of the parties to retain the support issue or refer it to the expedited process. This allows the judge to entertain any agreement by the parties to

refer the matter to the magistrate, determine how soon the matter can be heard in either forum, and the economic impact to the parties, the attorneys, and the court.

Specific Recommendation

Rule 353.02 should be amended as follows:

OPTION 1

RULE 353. TYPES OF PROCEEDINGS
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 ~~should attempt to~~ 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 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. 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~~ retain the matter and conduct a hearing on the district court calendar within forty-five (45) days and shall not refer the pending support issue 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 five (5) days prior to 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 ~~the child support magistrate's own initiative or~~ 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 matter referred to district court shall be decided in its entirety by the district court judge and shall not be referred back to the expedited process. 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.

OPTION 2

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 ~~should attempt to~~ 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. 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 five (5) days prior to 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 ~~the child support magistrate's own initiative or~~ 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.

Recommendation 3: **Rule 355 relating to methods of service should be amended to correct a clerical error in the title of the rule.**

Introduction

When the final rules were drafted, many changes to the structure and content were made from the Interim Rules. The reference to "filings" in the title of this rule is a carryover from the Interim Rules. The final rule version of Rule 355 does not address filing procedures, as filing procedures are addressed in other areas of the rules. The committee recommends a clerical correction to remove the word from the title of the rule.

Specific Recommendation

Rule 355 should be amended as follows:

RULE 355. METHODS OF SERVICE~~; FILING~~

Rule 355.01. Generally

Subdivision 1. Service Required. Except for ex parte motions allowed by statute or these rules, every paper or 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.

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 Sunday, 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. § 518.5513 (2000), an employee of the county agency may serve documents on parties.

(c) Alternative Personal Service.

(1) Acknowledgement by Mail. As an alternative to personal service, service may be made by U.S. mail if acknowledged in writing. Any party attempting alternative personal service shall include two copies of a notice and acknowledgment of service by mail conforming substantially to Form 22 set forth in the Minnesota Rules of Civil Procedure, along with a return envelope, postage prepaid, addressed to the sender. Any person served by U.S. mail who receives a notice and acknowledgement form shall complete the acknowledgment part of the form and return one copy of the completed form to the serving party. If the serving party does not receive the acknowledgment form within twenty (20) days, service is not valid upon that party. The serving party may then serve the summons and complaint by any means authorized under this subdivision. The child support magistrate may order the costs of personal service to be paid by the person served, if such person does not complete and return the notice and acknowledgment form within twenty (20) days.

(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 three (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 U.S. Mail. Service by U.S. 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. § 518.5513 (2000), an employee of the county agency may serve documents on the parties.

Subd. 3. Service by Facsimile Transmission. Unless these rules require personal service, any document may be served by transmitting a copy by facsimile machine.

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 twenty-one (21) days after the first publication. Service by facsimile is complete upon completion of the facsimile transmission.

Rule 355.04. Proof of Service

Subdivision 1. Parties. All papers and 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.

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.

Recommendation 4: **Rule 361 relating to discovery should be amended to eliminate the requirement that a party obtain approval from the court by filing a motion to request discovery.**

Introduction

The current rule requires a party to first seek approval from the magistrate if formal discovery is wanted. Several committee members expressed frustration by the private bar and the county attorneys in obtaining financial information from pro se litigants. Because hearings are being scheduled as soon as practicable, time does not allow for motions seeking discovery to be reviewed by the magistrate prior to the hearing. There is a growing trend of self-employed obligors, or obligors whose assets/income are not readily known, and without adequate time to complete discovery before the hearing, there lies the risk of "inaccurate" orders being issued. Another problem is that county attorneys and parties may be ambushed with information right before the hearing and have no time to review the information before the hearing, thus leading to longer hearing times or continuances, neither of which are time efficient or economical. Some committee members expressed concern about opening the door to potential abuses of long, drawn out discovery requests that could jeopardize time frames. The committee acknowledges that this issue involves a balancing between speed and accuracy. The consensus of the committee was to amend portions of the rule allowing litigants and attorneys to conduct discovery without first seeking approval from the magistrate and remain hopeful that the change will not lead to abuses of the process.

Specific Recommendation

Rule 361 should be amended as follows:

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 five (5) days before the hearing, provide to the other parties and the county agency written notice of the name and address of each witness.

Rule 361.02. Exchange of Documents

~~If any party needs information to support or respond to a complaint or motion, that party should immediately notify the other parties and make arrangements for the exchange of documents between all parties. The parties shall cooperate in providing documents to each other. If the parties cannot agree on an acceptable exchange of documents, the parties shall exchange what can be agreed upon and be prepared to explain the disagreement to the child support magistrate. In addition, the parties may proceed pursuant to Rule 361.03 or Rule 361.04.~~

~~**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.~~

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 ten (10) days from the date of service of the written request.

(a) Verification of income, health/dental insurance costs and availability, child care costs, and 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.

(e) Written verification of any other court-ordered child support obligations.

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 five (5) days prior to hearing**,** or if no hearing is scheduled, within ten (10) days from 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. Redaction of Social Security Numbers. Social security numbers must be blackened out from any documents provided under this rule.

Rule ~~361.04~~ 361.03. Other Discovery

Subdivision 1. Motion for Discovery. Any additional means of discovery available under the Minnesota Rules of Civil Procedure may be allowed only by order of the child support magistrate. The party seeking discovery shall bring 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 five (5) 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 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 ten (10) days following service of the discovery request, unless otherwise ordered.

Subd. 2. Objections to discovery ~~Noncompliance with Discovery~~. If a party objects to discovery that party may serve and file a motion within five (5) days of service of discovery. The motion may be decided without a hearing unless the child support magistrate

determines that a hearing is necessary. ~~If a party fails to comply with a request for discovery, 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 be decided without a hearing unless the child support magistrate determines that a hearing is necessary.~~

~~In deciding a motion to compel, the child support magistrate shall grant the motion in whole or in part, if the child support magistrate determines that:~~

~~(a) discovery is needed;~~

~~(b) discovery is not for the purposes of delay or harassment; and~~

~~(c) the issues or amounts in dispute justify the requested discovery.~~

Rule ~~361.05~~ 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 five (5) days. The motion shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary.

Subd~~ivision~~. 2 ~~1~~. 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) ~~direct~~ 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. ~~2~~ 3. Failure to Comply with Discovery ~~Order~~. If a party fails to comply with an order issued pursuant to Rule 361.0~~4~~3, subd. 2, or Rule 361.04, ~~upon motion~~ 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.

Rule ~~361.06~~ 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.

Social Security numbers must be blackened out from any documents provided under this rule.

Rule ~~361.03~~ 361.06. Subpoenas

Subdivision 1. Written Request. Requests for subpoenas for the attendance of witnesses or for the production of documents shall be in writing and shall be submitted to the court administrator. The request 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. The court administrator shall issue a subpoena signed and sealed stating the name of the court and the title of the action, but otherwise in blank. The party requesting the subpoena shall fill out the subpoena before having it served.

Subd. 2. Service of Subpoenas Shall be by Personal Service. Except as noted in this subdivision, all subpoenas issued by the district court, 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 (2000). 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.

Subd. 3. Objection to Subpoena. Any person served with a subpoena who objects to the request shall serve upon the parties and file with the court an objection to subpoena. The party objecting shall state on the objection to subpoena why the request is unreasonable or oppressive. The objection to subpoena shall be filed promptly and no later than the time specified in the subpoena for compliance. A child support magistrate shall cancel 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.

Recommendation 5: **Rule 364 should be amended to require the parties to exchange documents and to set out an exact time frame of when the exchange of documents must take place.**

Introduction

The current rule merely encourages the parties to exchange documents at some time prior to the hearing. Originally, the committee's intent was to be less strict with time frames and requirements for pro se litigants in an effort to keep the process user-friendly. Because the rule only "encourages" the exchange, parties are interpreting this to mean they can choose not to exchange documents unless ordered by the court. Furthermore, without a specific time frame of when this exchange should take place, parties are not exchanging documents until the day of the hearing, thus opposing parties and/or counsel do not have sufficient time to review the documents before appearing before the court. The proposed rule change clarifies the exchange of documents is not optional, but mandatory, and the exchange must take place at least five days before the hearing so parties and/or counsel have adequate time to review the information.

Specific Recommendation

Rule 364 should be amended as follows:

RULE 364. HEARING PROCESS

*** * ***

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. Each party shall bring to the hearing all evidence, both oral and written, the party intends to present. Each party must have enough copies of each exhibit the party intends to offer so that a copy can be provided to all other parties and the child support magistrate at the time of the hearing. The parties shall ~~are encouraged to~~ exchange copies of documents five (5) days ~~exhibits~~ before the hearing ~~begins~~.

Recommendation 6: **Rule 367 should be amended to clarify that child support magistrates have judicial authority to find a person in direct contempt.**

Introduction

The committee believes that the power of contempt is granted to all judicial officers, and that includes child support magistrates. This issue was raised in a couple of districts, as the magistrates were not certain if they had authority to issue direct contempt orders.

Specific Recommendations

The Advisory Committee Comment should be amended as follows:

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, issuing orders of direct contempt, and issuing orders to show cause.

Recommendation 7: **Rule 371 should be amended to be consistent with Minn. Stat. § 257.60 regarding personal service upon all parties.**

Introduction

Rule 371.03, subdivision 1 requires that all parties must be personally served with the summons and complaint in a paternity action. Because the rule specifically states "each man presumed" and "each man alleged" and excludes reference to the biological mother, there are some people who interpret this rule to mean personal service is not required on the biological mother. The committee intended personal service of the summons and complaint on all parties in paternity actions and specifically listed "each man presumed" and "each man alleged" as a way to emphasize that no possible father would be excluded from the action. The committee believes it would be beneficial to clear up this misconception by amending the rule to read exactly like the statute.

Specific Recommendation

Rule 371 should be amended as follows:

RULE 371. PARENTAGE ACTIONS

* * *

Rule 371.03. Service of Summons and Complaint

Subdivision 1. Who is Served. The biological mother ~~All parties~~, each man presumed to be the father under Minn. Stat. § 257.55 (2000), each man alleged to be the biological father, and the county agency even if not a party, shall be served pursuant to subdivision 2.

Recommendation 8: Rule 372 should be amended to change the time frame of when a responsive motion must be served.

Introduction

The committee discussed the need to alter some of the timing rules to be more consistent with civil procedure timing rules, promote opportunity for settlement, and decrease costs. This rule requires the responding party to serve a responsive motion upon all parties within 14 days from the service of the motion. This creates an unknown time frame in which the responding party has to comply, as the only date the responding party has to count from is the post-marked date of when the motion was mailed. Some committee members noted that in some counties, the county attorney would not see the motion until after the 14 day time frame had expired, as paperwork typically gets delivered to the child support officer assigned to the case. The current rule is a barrier to settlement negotiations due to time constraints and may increase costs and additional work in bringing responsive or countermotions. The committee agreed that amending the rule to be consistent with Family Court Procedure Rule 303.03 was more practical. This allows more time for a responding party to respond in a more "user friendly" timeframe. Accordingly, when there is a hearing date scheduled in a motion, the rule should be changed to allow a responsive motion to be served at least 14 days before the hearing date rather than within 14 days from the date the last party was served.

Specific Recommendation

Rule 372 should be amended as follows:

RULE 372. MOTIONS TO MODIFY; MOTIONS TO SET SUPPORT; AND OTHER MOTIONS

*** * ***

Rule 372.05. Response

Subdivision 1. Hearing Date Included in the Notice of Motion. 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 ~~within~~ at least fourteen (14) days ~~of service of the notice of motion and motion~~ prior to 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.

Recommendation 9: **Rule 377 should be amended to clarify that a response to a motion to correct clerical mistakes or a motion for review is optional, and such omission from filing a response shall not be construed as an agreement to the motion.**

Introduction

Rule 377 contemplates that a responding party may agree with the motion to correct clerical or the motion for review and sets out that a response is not required in that instance. However, some members of the private bar as well as the committee expressed concern that if the decision was later appealed, they did not want the appellate court to misconstrue a responding party's non-response as an automatic agreement.

In addition, a clerical change should be made to Rule 377.04 by deleting the word "responding" in the first sentence.

Specific Recommendation

Rule 377 should be amended as follows:

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

*** * ***

Rule 377.04. Response to Motion

Subdivision 1. Timing of Response to Motion. A ~~responding~~ party may respond to a motion to correct clerical mistakes or a motion for review~~, but is not required if the party is in agreement with the motion~~. 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 ten (10) days of the date 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 thirty (30) days of the date 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 forty (40) days of the date 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 U.S. 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 papers if the appropriate fee does not accompany the papers at the time of filing.

Recommendation 10: **The format of the expedited child support rules as they appear in the General Rules of Practice for the District Courts, Rules of Family Court Procedures should be changed to be consistent with other court rules format.**

Introduction

Title IV of the General Rules of Practice, Rules of Family Court Procedures should be amended to add specific indicators that clarify that the first set of rules apply to general family court proceedings and to add another specific indicator for the expedited child support process rules.

Specific Recommendation

The format of the Rules of Family Court Procedures should be amended as follows:

Title IV. Rules of Family Court Procedures

Part A. Proceedings, Motions, and Orders

301. Applicability of Rules

* * *

313. Confidential Numbers and Tax Returns

Part B. Expedited Child Support Process

~~I~~1. General Rules

351. Scope; Purpose.

* * *

~~II~~2. Proceedings

370. Establishment of Support, Proceedings.

* * *

~~III~~3. Review and Appeal

375. Motion to Correct Clerical Mistakes.

***

~~IV~~4. Forms

379. Forms.

Frederick K Grittner
Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

June 9, 2003

RE: Proposed Amendments to the Rules of the Expedited Child Support Process

1. Rule 353.02, subd. 2 (Option 2)
Proposal: 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.
Comment: To ensure efficiency, the district court should include the date, time and location of the continued hearing when referring the matter to the child support magistrate.
Recommendation: 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.

2. Rule 355.02, subd.. 1 (c) (1).
Proposal: If the serving party does not receive the acknowledgment form within twenty (20) days, service is not valid upon that party. The serving party may then serve the summons and complaint by any means authorized under this subdivision.
Comment: It is not uncommon for the obligor to return the acknowledgment of service after the 20 days have expired. Sometimes in response to finding out the sheriff is looking for him to attempt personal service. Requiring personal service at that juncture is time consuming, costly and redundant and may require several unsuccessful attempts before service is obtained. This also makes it more difficult to meet the 90 day Federal service of process requirement.
Recommendation: If the serving party does not receive the acknowledgment form within twenty (20) days, the serving party may then serve the summons and complaint by any means authorized under this subdivision.

3. Rule 361.02, subd. 4.
Proposal: Social security numbers must be blackened out from any documents provided under this rule.
Comment: There is no clarification who has responsibility for redacting social security numbers or the procedure to follow if they are not redacted. Additionally, tax documents are maintained in a separate confidential envelope in the file and are normally exempt from this requirement.
Recommendation: The submitting party must blacken out all social security numbers from any documents provided under this rule. The remedies of subd. 2 apply for failure to comply. Tax documents are exempt from this requirement but shall be submitted in a separate envelope marked "CONFIDENTIAL TAX RETURN OF _____ for YEAR(S)_____. "

4. Rule 364.09, subd.. 3.
Proposal: Each party shall bring to the hearing all evidence, both oral and written, the party intends to present. Each party must have enough copies of each exhibit the party intends to offer so that a copy can be provided to all other parties and the child support magistrate at the time of the hearing. The parties shall exchange copies of documents five (5) days before the hearing.
Comment: The subd. is internally inconsistent. If parties must exchange documents 5 days prior to the hearing, they will not need to bring multiple copies to the hearing. Additionally, in the expedited process, when parties frequently appear without legal representation and the rules are more relaxed, it would be uncommon for the parties to exchange documents 5 days prior to the hearing or to have any knowledge how to properly accomplish the required exchange or even that such an exchange is required. If a party brings evidence to the hearing only to have it excluded by the child support magistrate under this rule, there will be a perception of injustice and an increased likelihood the order will be improperly or inequitably established.
Recommendation: The parties shall exchange copies of documents five (5) days before the hearing. If the exchange is not completed within the required time frame each party shall bring to the hearing all evidence, both oral and written, the party intends to present. Each party must have enough copies of each exhibit the party intends to offer so that a copy can be provided to all other parties and the child support magistrate at the time of the hearing. The child support magistrate shall have discretion to admit evidence that was not timely exchanged prior to the hearing.

I would like to propose an amendment to Rule 364.03. Timing of Hearing
Rule: Every effort shall be made to conduct a hearing no later than sixty (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 sixty (60) days after receipt of the genetic test results. If conducted later than sixty (60) days, the court administrator shall report that fact to the chief judge of the judicial district.
Comment: It is not uncommon to receive a "Request for Hearing" from the parties on the last day of the twenty (20) day response period. This makes it very difficult to meet the sixty (60) day hearing requirement. Court administration is then required to "squeeze in" a hearing on an already full calendar or submit a time-consuming report to the chief judge.
Proposal: Every effort shall be made to conduct a hearing no later than sixty (60) days after service of the summons and complaint or notice of motion and motion on the last person served or after receipt of a Request for Hearing in response to a summons and complaint or notice of motion and motion or, in an establishment of parentage case, no later than sixty (60) days after receipt of the genetic test results. If conducted later than sixty (60) days, the court administrator shall report that fact to the chief judge of the judicial district.

Respectfully,

Phyllis R Wohlferd

Phyllis R Wohlferd
Wright County Human Services
10 2nd St NW Room 300
Buffalo, MN 55313-1191

COUNTY OF STEARNS

Office of the County Attorney

Janelle P. Kendall, Stearns County Attorney

June 18, 2003

Mr. Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Re: Comments on the Proposed Amendments
To the Rules of the Expedited Child Support Process

Dear Mr. Grittner.

The following are my comments and observations regarding the proposed amendments to the Rules of the Expedited Child Support Process:

1. Recommendation 1:

   a. While I do believe that Child Support Magistrates should have the authority to issue partial Judgments in Ex Pro, the proposed change to Rule 353.01 does not conform to the current format of the Ex Pro Rules. For instance the reference to Rule 353.01, subd. 2(b) should be changed to read "pursuant to this rule". In addition, the reference to Rule353.01, subd. 3 should be changed to read "Notwithstanding subdivision 3," since that is how other references in these rules are indicated.
   b. Rule 353.01 subd. 2 (b) (1) (B) requires amendment to the word "addresses" by making the word singular.
   c. The new paragraph Rule 353.01 Subd. 2 referencing otherwise prohibited issues is misplaced since it refers to "prohibited issues above" when the prohibited issues follow in Subdivision 3.
   d. Regarding the minimal requirements for a partial parentage order, I believe that the only stipulation that should be needed is that the parent-child relationship has been admitted. Any other issues that can be the subject of a stipulation then should also be disposed of in Expedited Process. In any event, temporary ongoing child support should then be addressed by the magistrate who should have the authority to order that it be paid to the child's caretaker immediately. Presently parentage actions in which genetic testing shows a probability of parentage greater than 92% are transferred to District Court when even only the issue of parenting time is disputed. Parentage actions then languish in District Court for months on end while the custodial parent receives no child support since temporary support paid by the obligor must be held in escrow by the public authority. For instance, I presently have a parentage case that was begun in August of 2002 which has been

Administration Center, RM 448 • 705 Courthouse Square • St. Cloud, MN 56303-4701 • (320) 656-3880 • FAX (320) 656-6695
www.co.stearns.mn.us/departments/attorney/index.htm • e-mail: county.attorney@co.stearns.mn.us

submitted to the District Court on the issues of Summary Judgment and the application of Minn. Stat. § 518D. The District Court has given itself until August 12, 2003 to render a decision on those two issues and in the meantime no money has been received by the custodian for child support.

2. Regarding Recommendation 2:

   a. Judges must have the ability to refer cases to Ex Pro for determination of child support issues. Should the bench be barred from sending the child support issues to Ex Pro, children who desperately need support from the absent parent will suffer further delays in meeting their needs. Flexibility must be built in to the system and allowing the bench to retain this tool will help in that goal
   b. All too often the private bar, in response to a petition or motion of the county will respond with issues that require the case to be heard in District Court in hopes that the District Court proceedings will be more favorable to their client or for purposes of delay. This practice allows the child support issues to be delayed for significant periods of time during which no support is ordered. Magistrates currently have no authority to set temporary support for children when the case is transferred to District Court. Adding that requirement with cases that are transferred to District Court will go far in reducing custodial parent's reliance on public assistance and ensuring that children receive the support they need.

3. Recommendation 4:

   a. I agree with the purpose of the changes to Discovery. However, when referring to "redaction" the term should be defined and practitioners be given alternative methods of redaction rather than just "blackened out".

4. Recommendation 7:

   a. The change to Rule 371.03 must indicate that the child may also be a party so that deletion of "All parties" is not be the best choice. Perhaps the wording could be "All parties including the biological mother, each man..."

With kind regards,

Richard J. May
Assistant Stearns County Attorney

cc: Mark Ponsolle