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IN MINNESOTA SUPREME COURT
C4-99-404

OFFICE OF
APPELLATE COURTS

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ADVISORY COMMITTEE ON THE RULES OF THE EXPEDITED CHILD SUPPORT PROCESS

FINAL REPORT AND PROPOSED RULES

JUNE 4, 1999

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COMMITTEE MEMBERS
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Judith Besemer, Brown County Court Administrator, Fifth Judicial District
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THE ADMINISTRATIVE CHILD SUPPORT PROCESS AND THE *HOLMBERG* DECISION

In 1995, the Minnesota Legislature enacted Minnesota Statutes § 518.5511 and § 518.5112 requiring implementation in each county of an administrative child support process to resolve child support matters involving the public authority.

On January 28, 1999, the Minnesota Supreme Court issued its decision in *Holmberg v. Holmberg*, 588 N.W.2d 720 (Minn. 1999), holding that the structure of the administrative child support process violates the constitutional constraints on the separation of powers in three ways:

- The administrative process infringes on the district court's jurisdiction in contravention of Minnesota Constitution article VI, section 1;
- Administrative law judge jurisdiction is not inferior to the district court's jurisdiction as mandated by Minnesota Constitution article VI, section 3; and
- The administrative process empowers non-attorneys to engage in the practice of law thereby infringing on the court's exclusive power to supervise the practice of law.

Id. at 721.

In an effort to allow the Legislature and the judicial system sufficient time to establish a new child support system, the Supreme Court established a prospective effective date ruling that the administrative law system was unconstitutional effective of July 1, 1999.

TRANSITION TO NEW CHILD SUPPORT SYSTEM

As a result of *Holmberg's* prospective effective date of July 1, 1999, confusion arose as to whether child support cases should continue to be heard in the administrative process or proceed in district court. In response, in March 1999 the Conference of Chief Judges, the policy making body for Minnesota's trial courts, released the following policy statement:

> *Until further notice, new and pending child support cases, as well as requests for further review, shall continue to be heard in the same forum and same manner as these matters were heard prior to the Holmberg decision.*

CHILD SUPPORT WORKGROUP

In October 1998, in anticipation of probable legislative action irrespective of the Supreme Court's decision in *Holmberg*, the State Court Administrator convened a multidisciplinary Child Support Workgroup for the purpose of identifying the various fiscal, systemic, and operational impacts of potential executive branch and judicial branch options for modifying the current administrative child support system. Key child support system stakeholders participated in the Workgroup, including legislators, judges, state court administration personnel, district administrators, Department of Human Services (DHS) personnel, Office of Administrative Hearings (OAH) personnel, county attorneys, and private attorneys. Four subcommittees were established:

- *Child Support Officer/County Attorney Subcommittee*: Discussed ways to resolve the unauthorized practice of law issue raised in *Holmberg* and other transitional and long-term issues affecting child support officers and county attorneys.
- *Uncontested Process Subcommittee*: Identified ways to maintain the best parts of the administrative process, including the user friendly uncontested process.

- *Contested Hearings Process Subcommittee*: Considered ways to maintain the best parts of the contested hearing process and ways to make changes to correct for deficiencies.
- *Fiscal Impact Subcommittee*: Studied the overall fiscal impact of the change from the administrative process to the judicial branch process as it affects each of the stakeholders.

Information obtained by the Child Support Workgroup was provided to the Advisory Rules Committee as a basis for the Committee's deliberations.

ESTABLISHMENT OF SUPREME COURT RULES COMMITTEE

Supreme Court Order

During the 1999 legislative session, it became clear that the Minnesota Legislature intended to enact legislation revising the child support process to place it within the judicial branch. On March 12, 1999, in anticipation of the placement of the child support process within the judicial branch, the Supreme Court issued an order establishing the Advisory Committee on the Rules of Child Support Procedure. The order directed the Advisory Committee to:

- review all relevant federal and state constitutions, statutes, rules, regulations, and case law;
- draft for consideration by the Supreme Court proposed rules of child support procedure; and
- submit the proposed rules of child support procedure to the Court on or before June 1, 1999.

Rules Committee Meetings and Subcommittees

During the eight-week period from April 7 through May 27, 1999, the Advisory Rules Committee held weekly, day-long meetings. At the initial meeting, Committee members discussed the objectives of the Committee, as well as the members' general questions and concerns regarding development of rules governing an expedited child support process.

To efficiently carry out the Committee's task of drafting proposed rules, six subcommittees were formed: the Transition Subcommittee, the Forms Subcommittee, the Unauthorized Practice of Law Subcommittee, the Uncontested Process Subcommittee, the Hearings Process Subcommittee, and the Review and Appeal Subcommittee. Each subcommittee met for the first two meetings in April to draft rules relating to its specific area of the rules, and ultimately submitted to the full Committee initial drafts of proposed rules.

Distribution of Proposed Rules for Public Comment

The full Committee reconvened in late April, to begin discussing and revising the rules proposed by the subcommittees. On May 14, the First Draft of Proposed Rules was distributed for review and comment to nearly 500 individuals and advocacy groups throughout Minnesota, including all district court judges, district administrators, and court administrators, as well as county attorneys, private attorneys, child support officers, administrative law judges, department of human services personnel, office of administrative hearings personnel, and others who expressed an interest in the Committee's work. Despite the unusually short comment period that was necessitated by the Committee's deadline, the Committee received nearly 100 pages of written comments.

Finalization of Proposed Rules

During their final two meetings, the Committee members carefully considered the comments of the public as they continued to debate the issues surrounding establishment of the expedited child

support process. Through this process, the Committee members refined and finalized their recommendations and proposed rules.

The Committee's recommendations are set forth in part III of this report, and the Proposed Rules are set forth in Part IV of this report.

III. RECOMMENDATIONS

The Advisory Committee respectfully makes the following recommendations to the Minnesota Supreme Court and the State Court Administrator:

1. The Minnesota Supreme Court should promulgate the proposed Expedited Child Support Process Rules set forth in Part IV of this report.

2. The Minnesota Supreme Court Order promulgating the Expedited Child Support Process Rules should include the following provision:

   > Rules 10.02 through 10.11 of the Expedited Child Support Process Rules regarding child support magistrates shall be effective October 1, 1999, and shall not be applicable during the transition period from July 1, 1999, through September 30, 1999.

3. The Minnesota Supreme Court should amend Canon 5 of the Code of Judicial Conduct to define "judicial officer" to include child support magistrates.

4. Pursuant to Rule 10.05 of the proposed Expedited Child Support Process Rules, the State Court Administrator should develop a child support magistrate application form for statewide use which, at a minimum, should:
   (a) address the minimum qualifications set forth in Rule 10.03 of the Expedited Child Support Process Rules;
   (b) provide a space for the applicant to identify the judicial district(s) in which the applicant is willing to serve; and
   (c) specify whether the applicant wants to serve on a full time, part time, or contract basis.

5. The State Court Administrator should develop a child support magistrate application process which, at a minimum, should provide for:
   (a) statewide advertising for child support magistrates;
   (b) screening of all applications by the State Court Administrator to ensure that each applicant satisfies the minimum qualifications set forth in Rule 10.03 of the Expedited Child Support Process Rules and return of all applications that do not satisfy the minimum qualifications;
   (c) forwarding to the chief judge of each judicial district the applications of eligible applicants who seek appointment in that judicial district;
   (d) review of the applications by the chief judge of each judicial district to determine which applicants should be interviewed;
   (e) development of a written test by the State Court Administrator;
   (f) completion by each eligible applicant of the written test prior to any interview;
   (g) interviewing of those applicants who successfully pass the test;
   (h) appointment by the chief judge of each judicial district of one or more individuals to serve as child support magistrates in the district;
   (i) submission to the State Court Administrator of the names of individuals appointed as child support magistrates by the chief judge of each judicial district; and

(j) forwarding to the Supreme Court for confirmation the names of the appointed child support magistrates.

6. The State Court Administrator should develop a judicial education program for child support magistrates, family court referees, and district court judges regarding the Expedited Child Support Process.

7. The State Court Administrator should adopt a policy recommending the wearing of robes by child support magistrates.

8. The State Court Administrator should adopt a policy for processing complaints regarding child support magistrates.

9. The State Court Administrator should adopt a process for developing, evaluating, reviewing, and updating the forms used in the Expedited Child Support Process.

10. Evaluation of the Expedited Child Support Process should include a study of and recommendations for improving the forms and technology used in the Expedited Child Support Process.

11. The Supreme Court should convene a committee to monitor implementation of the Expedited Child Support Process Rules, to assist in evaluation of the Expedited Child Support Process, and to advise the Court with respect to revision of the Expedited Child Support Process Rules.

Respectfully Submitted,

Advisory Committee on the Rules of the
Expedited Child Support Process

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PROPOSED EXPEDITED CHILD SUPPORT PROCESS RULES

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RULE 1. SCOPE; PURPOSE; TYPES OF PROCEEDINGS

Rule 1.01. Scope

These rules govern the procedure for all proceedings conducted in the expedited child support process, regardless of whether the presiding officer is a child support magistrate, family court referee, or district court judge. To the extent that other rules of court are inconsistent with these rules, these rules supersede such inconsistent provisions.

Advisory Committee Comment

Applicability of Other Rules of Court. Other rules of court, such as the Rules of Civil Procedure, the Rules of Evidence, and the Rules of General Practice, are not binding on the expedited child support process. However, child support magistrates, court administrators, parties, and attorneys should look to such other court rules for guidance. In doing so, such other rules of court should be applied so as to further the purposes and goals of the expedited child support process as set forth in Rule 1.02 and the accompanying Advisory Committee Comment.

Applicability of Other Timelines and Pleadings. Nothing in these rules is intended to alter the timelines or pleadings specifically required in statutes concerning enforcement of support including, but not limited to: professional license suspension under Minnesota Statutes § 518.511, subdivision 12; driver's license suspension under Minnesota Statutes § 518.511, subdivision 13; motor vehicle lien under Minnesota Statutes § 518.511, subdivision 14; income withholding under Minnesota Statutes § 518.6111, subdivision 8; summary execution of support judgment debts under Minnesota Statutes chapter 552; or cost-of-living adjustment under Minnesota Statutes § 518.641.

Rule 1.02. Purpose of Expedited Child Support Process

The purpose of the expedited child support process is to establish a 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.

Advisory Committee Comment

Rule 1.02 is consistent with the purposes set forth in the legislation establishing the expedited child support process. 1999 Minn. Laws ch. 196, art. 1, § 2(e). However, in addition to the purposes set forth in legislation, the Advisory Committee believes that these rules should be also construed to meet the following goals: be a constitutional system, be an expedited process, be family and user friendly, be fair to the parties, be a cost-effective system, address local concerns, maintain the simple administrative procedures and focus on problem cases, comply with federal and state laws, maximize federal financial participation, ensure consistent decisions statewide, and have adequate financial and personnel resources.

Rule 1.03. Types of Proceedings

Subdivision 1. Mandatory Proceedings. Except as provided in Rule 1.04, the following proceedings must be conducted in the expedited child support process if the case is a IV-D case:

(a) establishment, modification, and enforcement of child support;
(b) establishment, modification, and enforcement of medical support;
(c) establishment, modification, and enforcement of child care support; and
(d) enforcement of spousal maintenance, if combined with child support.

Subd. 2. Permissive Proceedings. Except as provided in Rule 1.04, at the option of the county the following proceedings may be conducted in the expedited child support process if the case is a IV-D case:

(a) establishment of parentage, when uncontested; and

(b) contempt proceedings, when uncontested.

Subd. 3. Prohibited Proceedings. The following proceedings must not be conducted in the expedited child support process:

(a) cases that are not IV-D cases;

(b) establishment, modification, or enforcement of custody or visitation;

(c) establishment or modification of spousal maintenance;

(d) issuance, modification, or enforcement of orders for protection under Minnesota Statutes Chapter 518B;

(e) resolution of property issues;

(f) establishment of parentage, when contested; and

(g) contempt proceedings, when contested.

Advisory Committee Comment

Contested and Uncontested Parentage and Contempt Proceedings. Rule 1.03, subdivisions 2 and 3, both relate to parentage and contempt proceedings. Minnesota Statutes § 484.702, subdivision 1(d) (Supp. 1999), provides that "At the option of the county, the expedited process may include contempt actions or actions to establish parentage." 1999 Minn. Laws ch. 196, art. 1, § 1(d). While the legislation does not distinguish between contested and uncontested parentage and contempt proceedings, the Advisory Committee believes that the Legislature did not intend for jury trials and contested parentage or contempt proceedings to be conducted in the expedited child support process. For that reason, Rule 1.03, subdivision 3, prohibits *contested* parentage and contempt proceedings, while subdivision 2 permits *uncontested* contempt and parentage proceedings at the option of the county. Nothing in these rules precludes the complete resolution of uncontested parentage proceedings in the expedited child support process.

County Option Regarding Uncontested Parentage and Contempt Proceedings. Rule 1.03, subdivision 2, provides that uncontested parentage and contempt proceedings may be conducted in the expedited child support process "at the option of the county." In an effort to establish certainty for parties and attorneys, each county should, as soon as possible, develop a policy regarding such proceedings.

Rule 1.04. Procedure When Multiple Issues

Subdivision 1. Generally. These rules do not prevent a party, upon timely notice to all parties and the county agency, from commencing a proceeding or bringing a motion in district court if the proceeding involves one or more issues identified in Rule 1.03, subdivision 1, and one or more issues identified in Rule 1.03, subdivision 3.

Subd. 2. Multiple Issues in District Court. If a proceeding is commenced in district court and the petition, response, motion, or counter motion raises one or more issues identified in Rule 1.03, subdivision 1, the district court judge hearing the matter must determine whether to decide all issues or refer appropriate issues to the expedited child support process.

Subd. 3. Multiple Issues in Expedited Child Support Process. If a proceeding is commenced in the expedited child support process and the response, motion, or counter

motion raises one or more issues identified in Rule 1.03, subdivision 3, the child support magistrate assigned to the matter must determine whether to refer all issues to district court or decide the issues permitted in Rule 1.03, subdivision 1 and refer the remaining issues to district court. In the event a child support magistrate refers issues to the district court, if the district court judge determines that the issues decided by the child support magistrate in the expedited child support process are so integral to the issues under consideration by the district court judge, the district court judge may modify the order of the child support magistrate without finding that there has been a substantial change in the circumstances.

Advisory Committee Comment

Multiple Issues. Rule 1.04, sets forth the procedure to be followed when multiple issues are raised either in district court or in the expedited child support process. In deciding whether to refer issues to district court, the child support magistrate should determine whether the issue raised in the response, motion, or counter motion is genuine or solely for the purpose of seeking referral of the matter to district court. If the issue raised is not genuine, the child support magistrate should not refer the matter to district court. If the issue raised is genuine, the child support magistrate should decide whether it would be best to have all issues decided by one judicial officer or whether the issues are not so integral to each other that the child support magistrate may decide appropriate issues and a district court judge may decide the remaining issues.

RULE 2. DEFINITIONS

Rule 2.01. Definitions

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

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

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

(c) **"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.

(d) **"Initiating party"** means the person or county agency starting the proceeding in the expedited child support process.

(e) **"IV-D case"** means any proceeding where a party has either (i) assigned to the State rights to child support because of the receipt of public assistance as defined in Minnesota Statutes § 256.741, or (ii) 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 the party has applied for income withholding only services under Minnesota Statutes § 518.6111.

(f) **"Non-initiating party"** means the person or county agency responding to the complaint or motion.

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

(h) **"Support"** means child support, child care support, spousal maintenance when combined with child support, medical support including expenses for confinement and pregnancy, arrearages, reimbursement, related costs and fees, and interest and penalties.

RULE 3. COMPUTATION OF TIME

Rule 3.01. Generally

Whenever a person has the right or is required to do an act within a prescribed period of time under these rules, that time period must be measured by starting to count on the first day after any event happens or is required to happen. When the last day of the time period is any day other than a business day, then the last day is the next business day.

Rule 3.02. Time Periods Less Than Seven Days

When any prescribed time period is less than seven (7) days, only business days shall be counted.

Rule 3.03. "Business Day" Defined

A "business day" means any day that is not a Saturday, Sunday, or legal holiday. As used in these rules, "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's and Lincoln's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President or Congress of the United States, by the State, or by a county.

Advisory Committee Comment

State-Level Judicial-Branch Holidays. The legal holidays listed in Rule 3.03 are based upon Minnesota Statutes § 645.44, subdivision 5, 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. Minnesota Statutes § 645.44, subdivision 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 Minnesota Statutes § 373.052. Thus, if a county closes its offices under section 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 3.03. *See Mittelstadt v. Breider*, 286 Minn. 211, 175 N.W.2d 191 (1970) (applying section 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 3.03.

Rule 3.04. Additional Time If Service by Mail or Service Late in Day

Whenever a person has the right or is required to do an act within a prescribed period of time after service of a notice or other paper and the notice or other paper is served by U.S. mail, three (3) days must be added to the prescribed time period. If service is made by any means other than by U.S. mail and accomplished after 5:00 p.m. Minnesota time, one (1) additional day must be added to the prescribed time period.

RULE 4. FILING FEE

Rule 4.01. Collection of Filing Fee

The court administrator must charge and collect a filing fee in the amount established by statute for filing a civil action, along with the applicable law library fee, from each party when the first paper for that party is filed either in the dissolution, parentage, custody, or expedited child support process proceeding.

Advisory Committee Comment

Minnesota Statutes § 357.021, subdivision 2(1), establishes the amount of the filing fee to be paid in civil actions. Rule 4.01 provides that each party is to pay the prescribed filing fee upon the filing of the party's first paper in the proceeding. The Advisory Committee intends that each party should pay only one filing fee per case. Thus, a party must pay the required filing fee either in the expedited child support process matter, the dissolution matter, the custody matter, or the parentage matter, but not each matter if there is more than one. Under Minnesota Statutes § 357.021, subdivision 1a(c), the public authority is not required to pay a filing fee.

Rule 4.02. Waiver of Filing Fee

If a party indicates an inability to pay the filing fee required under Rule 4.01, the court administrator must explain that the party may apply for permission to proceed without payment of the filing fee. Upon request, the court administrator must 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 filing fee, and such a request to waive the filing fee is approved by a child support magistrate, the court administrator must not charge and collect a filing fee.

Advisory Committee Comment

Minnesota Statutes § 563.01, subdivision 3, 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.

RULE 5. SERVICE AND FILING

Rule 5.01. Service of Summons and Complaint, Motions, Pleadings, Orders, and Other Papers

Subdivision 1. Service Required. Except as otherwise provided in these rules, the following must be served upon each of the parties:

(a) every order required by its terms to be served;

(b) every pleading or amended pleading, including a summons and complaint or a motion;

(c) every written motion, except one that may be heard ex parte; and

(d) every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper.

Subd. 2. Exception -- Default. Service is not required to be made on any party who is in default for failure to appear, except that pleadings asserting new or additional claims for relief against such a party shall be served upon the party in the manner provided for service of summons in Rule 5.02.

Subd. 3. Service Upon Attorney for Party. Whenever under these rules service is required or permitted to be made upon a party, if the party is represented by an attorney such service shall be made upon the party's attorney unless personal service upon a party is required or unless the child support magistrate otherwise orders. Service upon an attorney for a party must be at the attorney's office.

Subd. 4. Appearance. A party appears when that party serves or files any paper in the proceeding.

Rule 5.02. 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 dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. 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 Minnesota Statutes chapter 518C.

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

(b) **By Whom Served.** Unless otherwise ordered by the child support magistrate, personal service must 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.

Subd. 2. Service by Publication.

(a) **Service.** Service by publication means the publication in full of the summons or notice in the regular issue of a qualified newspaper, once each week for three 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, what efforts 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.

(b) **Response by Non-Initiating Party.** If the summons or notice is served by publication and the non-initiating party receives no actual notification of the proceeding, the non-initiating party must be permitted to defend upon application to the child support magistrate before judgment and for sufficient cause. If the defense is sustained, and any part of the judgment has been enforced, such restitution shall be made as the child support magistrate may direct.

Subd. 3. Service by U.S. Mail.

(a) **Service.** In any proceeding authorized by these rules, service may be made by mailing a copy of the summons and complaint, notice, motion, or other document by first-class

mail, postage prepaid addressed to the person to be served at the person's last known address. In addition, the serving party must also include two copies of a notice and acknowledgment of service by mail conforming substantially to Form 22 set forth in the Rules of Civil Procedure, along with a return envelope, postage prepaid, addressed to the sender.

(b) **Acknowledgment of Service.** Within fourteen (14) days of service, the person served must complete the acknowledgment part of the form and return one copy of the completed form to the sender. If the sender does not receive acknowledgment of service under this rule within fourteen (14) days, service shall be ineffectual. Unless good cause is shown for not doing so, the child support magistrate must order the payment of the costs of personal service by the person served if such person does not complete and return the notice and acknowledgment of service by mail within fourteen (14) days.

Subd. 4. Service by Facsimile Transmission.

(a) **Service.** Unless these rules require personal service, by agreement of the parties any document may be served by facsimile transmission. If service is by facsimile transmission, such service must include a notice and acknowledgment of service by facsimile conforming substantially to Form 22 set forth in the Rules of Civil Procedure.

(b) **Acknowledgment of Service.** Within fourteen (14) days of service, the person served must complete the acknowledgment part of the form and return one copy of the completed form to the sender. If the sender does not receive acknowledgment of service under this rule within fourteen (14) days, service shall be ineffectual. Unless good cause is shown for not doing so, the child support magistrate must order the payment of the costs of personal service by the person served if such person does not complete and return the notice and acknowledgment of service by facsimile transmission within fourteen (14) days.

Advisory Committee Comment

Rule 5.02, subdivision 1, provides for personal service. Personal service may not be made on Sunday, a legal holiday, or election day. Minn. Stat. § 624.04, § 645.44, subd. 5; Minn. Const. art. VII, § 4.

Rule 5.03. 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 5.04. Proof of Service

Subdivision 1. Parties. Service must be proved by the certificate of the sheriff making personal service, by the affidavit of any other person making personal service, by the written admission or acknowledgment of the party or party's attorney served by U.S. mail or facsimile transmission, or, if served by publication, by the affidavit of the printer or the printer's designee. The proof of service must describe what was served, as well as 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 notice in the court’s computerized records that service was made.

Rule 5.05. Filing of Pleadings, Motions, Notices, and Other Papers

Subdivision 1. Documents to be Filed; Timing. The original of any summons and complaint, pleading, notice, motion, or other document required or permitted to be served upon a party must be filed with the court administrator. The filing must be completed within a reasonable time following such service and must be completed at least five (5) days before any scheduled hearing. The court administrator must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in the proper form as required by these rules or any local rules or practices.

Subd. 2. Exception -- Discovery. Expert disclosures and reports, depositions upon oral examination, interrogatories, requests for documents, requests for admissions, and answers and responses to such discovery requests must not be filed with the court administrator unless otherwise ordered by the child support magistrate.

Subd. 3. Certificate of Service. All papers filed with the court administrator shall be accompanied by proof of service as set forth in Rule 5.04.

Subd. 4. Filing by Facsimile Transmission.

(a) **Generally.** Any paper may be filed with the court administrator by facsimile transmission. Filing is deemed complete at the time that the court administrator receives the facsimile transmission. The facsimile has the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the Supreme Court may be used for filing in accordance with this rule.

(b) **Fees; Original Document.** Within five (5) days after the court administrator has received the transmission, the party filing the document must forward the following to the court administrator:

(1) a $5 transmission fee, unless otherwise provided by statute or rule or otherwise ordered by the child support magistrate;

(2) the original signed document; and

(3) the applicable filing fee, if any.

(c) **Noncompliance.** Upon failure to comply with the requirements of this subdivision, the child support magistrate may make such orders as are just, including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action or proceeding, or any part thereof.

RULE 6. COURT INTERPRETERS

Rule 6.01. Appointment Mandatory

The child support magistrate must appoint a qualified interpreter in any proceeding conducted in the expedited child support process in which a person handicapped in communication is a party or witness. Such appointment must be made according to the provisions of Rule 8 of the Rules of General Practice for the District Courts.

Rule 6.02. "Person Handicapped in Communication" Defined

For the purpose of Rule 6.01, a "person handicapped 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 handicap to obtain due process of law.

Advisory Committee Comment

Rules 6.01 and 6.02 are based upon the provisions of Minnesota Statutes § 546.42 and § 546.43, which set forth the types of proceedings in which qualified interpreters, must be appointed.

RULE 7. INTERVENTION

Rule 7.01. County Agency

Subdivision 1. Intervention as a Matter of Right. To the extent allowed by law, the public authority may intervene as a party as a matter of right in any matter conducted in the expedited child support process. Intervention is accomplished by serving upon all parties by U.S. Mail a notice of intervention. The notice of intervention must be filed with the court administrator.

Subd. 2. Effective Date. Intervention by the county agency is complete upon service of the notice of intervention on all parties.

Rule 7.02. 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 must file with the court and serve upon all parties a motion to intervene. The motion must 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;

(c) the purposes for which intervention is sought; and

(d) the person's statutory right to intervene, if one exists.

Subd. 3. Objection to Permissive Intervention. Any existing party may submit a written objection to the child support magistrate within ten (10) days of service of the motion for permissive intervention.

Subd. 4. Effective Date; Hearing. If no objection is timely received and the requesting party meets the requirements of subdivisions 1 and 2, the child support magistrate must grant the request to intervene. If an objection is timely made, the child support magistrate may hold a hearing on the matter or may decide the issue without hearing.

Rule 7.03. 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. The intervention is effective as of the date granted and prior proceedings and decisions of the child support magistrate are not affected.

RULE 8. RIGHT TO REPRESENTATION; APPOINTMENT OF ATTORNEY; APPOINTMENT OF GUARDIAN AD LITEM

Rule 8.01. Right to Representation

Each party appearing in the expedited child support process has a right to be represented by an attorney admitted to practice law before the courts of this State.

Advisory Committee Comment

Rule 8.01 sets forth the basic principle that each person appearing in court has the right to be represented by an attorney. That person, however, does not necessarily have the right to appointment of an attorney at public expense as provided in Rule 8.02.

Rule 8.02. Appointment of Attorney at Public Expense

The child support magistrate must appoint an attorney at public expense for a party who cannot afford to retain an attorney when the case involves:

(a) establishment of parentage; or

(b) contempt proceedings in which the party is the person who has allegedly failed to comply with a court order or judgment, and incarceration of the party is a possible outcome of the proceeding.

Rule 8.03. Appointment of Guardian Ad Litem

Subdivision 1. Applicability of Rules of Guardian Ad Litem Procedure. Child support magistrates must appointment guardians ad litem to advocate for the best interests of children when required under Minnesota Statutes § 518.165. When a child support magistrate determines that the appointment of a guardian ad litem is necessary, that appointment must be made according to Rules 901 through 913 of the Rules of Guardian Ad Litem Procedure.

Subd. 2. Exception. Rules 901 through 913 of the Rules of Guardian Ad Litem Procedure do not apply when the person for whom the guardian ad litem is being appointed is a minor parent.

RULE 9. TELEPHONE AND INTERACTIVE VIDEO

Rule 9.01. Telephone and Interactive Video Permitted

A child support magistrate may on the magistrate's own initiative conduct a motion or hearing by telephone or, where available, interactive video. Any party may make a written or oral request to the court administrator to have a scheduled motion or hearing conducted by telephone or, where available, interactive video. In the event the request is for interactive video, the request must be made at least five (5) days before the date of the scheduled hearing. A child support magistrate may deny any request to conduct a motion or hearing by telephone or interactive video. When conducting a proceeding by telephone or interactive video and a party or witness resides out of state, the child support magistrate must ensure that the requirements of Minnesota Statutes § 518C.316 are met.

Advisory Committee Comment

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

Rule 9.02. Procedure

The court administrator must initiate any telephone or interactive video hearing approved by the child support magistrate. The child support magistrate must make adequate provision for a record of any proceeding conducted by telephone or interactive video. No recording may be made of any proceeding conducted by telephone or interactive video, except the recording made as the official court record.

Rule 9.03. In-Court Appearance Not Precluded

Rule 9.01 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 10. ADMINISTRATION OF EXPEDITED CHILD SUPPORT PROCESS; CHILD SUPPORT MAGISTRATES

Rule 10.01. Administration of Expedited Process

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

Advisory Committee Comment

Rule 10.01 does not permit a judicial district to opt out of the expedited child support process. Rather, Rule 10.01 simply indicates that the chief judge of the district must decide who will be responsible for administering the expedited child support process within each judicial district.

Rule 10.02. Use and Appointment of Child Support Magistrates

The chief judge of each judicial district must determine whether the district will use child support magistrates, family court referees, or district court judges, or a combination of these individuals, to preside over proceedings in the expedited child support process. Each child support magistrate, except family court referees and district court judges, shall be appointed by the chief judge of the judicial district, 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, part time, or contract basis. Child support magistrates have the powers and duties necessary to perform their role in the expedited process.

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.

Rule 10.03. Minimum Qualifications

Each person who is not a family court referee or district court judge who wishes to serve as a child support magistrate must satisfy the following minimum qualifications:

(a) be an attorney in good standing licensed to practice in Minnesota; and

(b) have at least seven years of legal experience, with significant emphasis in family law and demonstrable knowledge of support law.

Rule 10.04. Residence

Child support magistrates are not required to reside within any judicial district in which they serve.

Rule 10.05. Application Process

Each person who is not a family court referee or a district court judge who wishes to serve as a child support magistrate must complete an application developed by the state court administrator. Applications must be processed under the policy established by the state court administrator.

Advisory Committee Comment

The state court administrator should establish a uniform, statewide application process which should provide for the state court administrator to receive completed applications, conduct initial screening for eligibility, and test applicants for knowledge of support law and procedure.

Rule 10.06. Training

Each child support magistrate must satisfactorily complete the training program developed by the state court administrator. Each child support magistrate who is not a family court referee or district court judge must complete the training program prior to presiding over any proceeding in the expedited child support process. Each child support magistrate who is a family court referee or district court judge must complete the training program as soon as practicable.

Advisory Committee Comment

Rule 10.06 does not require training for district court judges whose sole function in the expedited child support process is to decide motions for review Rule 22.

Rule 10.07. Continuing Education

Each child support magistrate must complete continuing education according to the administrative policy established by the supreme court.

Rule 10.08. Conflict of Interest

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

(a) an attorney in any family law case within any county in which the person serves as a child support magistrate; or

(b) a guardian ad litem in any family law matter, as defined in the comment to Rule 901.01 of the Rules of Guardian Ad Litem Procedure, in any county in which the person serves as a child support magistrate.

Subd. 2. Disqualification. The disqualifications listed in subdivision 1 are not imputed to other members of a child support magistrate's law firm.

Rule 10.09. Code of Judicial Conduct

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

Advisory Committee Comment

The comment to Canon 5 of the 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 Code of Judicial Conduct.

Rule 10.10. Impartiality

Each child support magistrate must conduct each hearing in an impartial manner and must 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 must withdraw.

Rule 10.11. Periodic Evaluation

The chief judge of the judicial district, or the state court administrator at the request of the chief judge of the judicial district, must provide for the periodic evaluation of the performance of child support magistrates serving in the judicial district who are not family court referees or district court judges. The state court administrator must develop a uniform performance evaluation process.

Advisory Committee Comment

The Advisory Committee recommends that each periodic evaluation be objective in nature and include review of the cases assigned to the child support magistrate; review of the person's compliance with the continuing education requirements; review of complaints filed against the child support magistrate, if any; and review of any other information that may have come to the attention of the chief judge of the judicial district.

RULE 11. EMPLOYEES OF THE COUNTY AGENCY

Rule 11.01. County Attorney Direction Required

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

Subd. 2. 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 legal 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 employees of the county agency regarding legal issues;

(c) prepare pleadings, 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.

Subd. 3. Support Recommendations Precluded. Unless called as a witness, employees of the county agency may not offer recommendations as to support at the hearing. Computation and presentation of support calculations are not considered recommendations as to support.

Advisory Committee Comment

Although Rule 11.01 provides that the county attorney is required to provide legal supervision of and direction to employees of the county agency, nothing in these rules is intended to require the county attorney to be present at every hearing. The county attorney determines which hearings the county attorney will attend.

Rule 11.02. County Attorney Direction Not Required

Employees of the county agency may perform the following duties without direction from the county attorney:

(a) gather information on behalf of the public authority;

(b) prepare financial worksheets;

(c) obtain income information from the department of economic security and other sources;

(d) serve documents on parties;

(e) file documents with the court;

(f) meet and confer with parties by mail, telephone, electronic, or other means regarding non-legal issues;

(g) explain to parties the purpose, procedure, and function of the expedited child support process and the role and authority of employees of the county agency regarding non-legal issues; and

(h) perform such other routine non-legal duties as assigned.

Rule 11.03. Performance of Duties Not Practice of Law

Performance of the duties prescribed in Rules 11.01 and 11.02 by employees of the county agency does not constitute the unauthorized practice of law for purposes of these rules or Minnesota Statutes § 481.02, subdivision 8.

RULE 12. INITIATION OF PROCEEDING

Rule 12.01. Establishment of Parentage and Support

Subdivision 1. Summons and Complaint.

(a) **Pleadings.** Except when the establishment of support has been reserved in a prior order or judgment, to start a parentage or support proceeding in the expedited child support process a person must serve a summons and complaint. The party or the party's

attorney must sign the complaint. The summons and complaint must not include a hearing date.

(b) **Proposed Order.** The initiating party must ordinarily attach to the complaint a proposed order that state**s** in plain language what the party wants the child support magistrate to order. A proposed order is not required if the party does not have the information necessary to calculate support or establish parentage.

(c) **Content of Summons.** The summons must state that any non-initiating party has a right to a hearing and that the non-initiating party may schedule a hearing by contacting the court administrator to obtain a date and then serving upon all parties written notice of the date, time, and location of the hearing. The summons must also state that if the non-initiating party fails to serve upon the initiating party a written response to the complaint within twenty (20) days as required under Rule 13, the child support magistrate may proceed to default and may sign the proposed order without further notice or hearing as permitted in Rule 14. The summons must also state that the case can be settled informally. When the county agency is the initiating party, the summons must identify the name, address, and telephone number of the person to contact to discuss settlement.

(d) **Content of Complaint.** The complaint must plainly state the facts and grounds supporting what the initiating party wants the child support magistrate to order.

(e) **Amended Pleadings.** The initiating party may, at any time up to five (5) days before a scheduled hearing, serve and file amended pleadings, which may include an amended proposed order.

Subd. 2. Service of Summons and Complaint. All parties, and the county agency even if not a party, must be served with a copy of the summons and complaint. If the county agency initiates the proceeding, any party who has assigned to the state rights to receive child support or who is receiving services from the county agency may be served by U.S. mail and all other parties must be served by personal service unless the child support magistrate authorizes service by publication. If someone other than the county agency initiates the proceeding, the county agency may be served by U.S. mail and all other parties must be served by personal service unless the child support magistrate authorizes service by publication. Any party who resides out of state must be served according to the provisions of Minnesota Statutes chapter 518C.

Subd. 3. Filing of Summons and Complaint. The summons and complaint, together with the applicable filing fee and the appropriate proof of service, must be filed with the court administrator according to Rule 5.05.

Rule 12.02. Modification and Enforcement of Support

Subdivision 1. Motion.

(a) **Pleadings.** The following proceedings must be started in the expedited child support process by serving a motion:

(1) establishment of support reserved in a prior order or pending in another proceeding;

(2) modification or enforcement of support;

(3) enforcement of spousal maintenance if it is combined with child support; and

(4) other requests for relief permitted by Rule 1.03.

(b) **Proposed Order.** The initiating party must ordinarily attach to the motion a proposed order that must state in plain language what the party wants the child support magistrate to order. A proposed order is not required if the party does not have the information necessary to calculate support.

(c) **Content of Motion.** The motion must state that the non-initiating party has a right to a hearing and that any non-initiating party may schedule a hearing by contacting the court administrator to obtain a date and then serving upon all parties written notice of the date, time, and location of the hearing. The motion must also state that if the non-initiating party fails to serve upon all parties a written response to the motion within twenty (20) days as required under Rule 13, the child support magistrate may proceed to default and may sign the proposed order without further notice or hearing as permitted under Rule 14. The motion must also state in plain language the facts and grounds supporting what the initiating party wants the child support magistrate to order. The motion must also state that the case can be settled informally. When the county agency is the initiating party, the motion must identify the name, address, and telephone number of the person to contact to discuss settlement. If the motion does not include a proposed order, the motion must include a specific hearing date. A separate notice of motion is not required.

(d) **Amended Pleadings.** The initiating party may serve and file amended pleadings, which may include an amended proposed order.

Subd. 2. Service of Motions and Amended Pleadings. All parties, and the county agency, even if not a party, must be served with a copy of the motion by U.S. mail, unless the child support magistrate authorizes service by publication. Any party who resides out of state must be served according to the provisions of Minnesota Statutes chapter 518C.

Subd. 3. Filing of Motion. The motion, together with the applicable filing fee and the appropriate proof of service, must be filed with the court administrator according to Rule 5.05.

Subd. 4. Effective Date of Modification. Any modification of a prior support order may be made retroactive only to the date of service of a motion for modification on the county agency and other parties. The modification may be applied to an earlier period if the child support magistrate makes the findings required under Minnesota Statutes § 518.64, subdivision 2(d).

Rule 12.03. Enforcement by Motion for Contempt

Subdivision 1. Initiation. Contempt proceedings initiated in the expedited child support process must be brought according to the procedure set forth in Rule 309 of the Rules of Family Court Procedure.

Subd. 2. Resolution of Contempt Matter. If the matter is resolved at the initial appearance, the agreement may be stated orally on the record or the county attorney may prepare a proposed consent order that must be signed by all parties and submitted to the child support magistrate for approval. If approved, the consent order must be forwarded to the court administrator for signing by a district court judge. The order is effective upon signing by a district court judge.

Subd. 3. Evidentiary Hearing. If the matter is not resolved at the initial appearance, the child support magistrate must refer the matter to the court administrator to schedule an evidentiary hearing before a family court referee or district court judge.

Subd. 4. 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.

Advisory Committee Comment

Orders to show cause required in contempt proceedings may be signed by child support magistrates.

RULE 13. RESPONSE TO SUMMONS AND COMPLAINT OR MOTION

Rule 13.01. Timing

A non-initiating party must respond to a summons and complaint or motion within twenty (20) days of the date of service upon that party. A non-initiating party must respond to any amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period is longer, unless the court otherwise orders.

Rule 13.02. Written Response Required

A non-initiating party must respond in writing to the initiating party. A copy of the response must be served upon all parties, and upon the county agency. Any written document objecting to the relief requested in the complaint or motion, or objecting to any of the provisions of the proposed order, or requesting a hearing, must be treated as a written response.

Rule 13.03. Filing of Response

The response, together with the applicable filing fee and the appropriate proof of service, must be filed with the court administrator according to Rule 5.05.

Rule 13.04. Scheduling of Hearing

The initiating party must schedule a hearing under Rule 19.01 if a written response is received, or if an objection to the provisions of a proposed order is received, or if a request for a hearing is received.

RULE 14. DEFAULT

Rule 14.01. Procedure

Subdivision 1. Timing. If the non-initiating party has been duly served with the summons and complaint or motion and there has been no response within the time period prescribed by Rule 13.01, the initiating party may submit the case to the child support magistrate as a default proceeding.

Subd. 2. Affidavits and Information Used to Prepare Proposed Default Order. When submitting any case as a default proceeding, the initiating party must file with the court administrator a proposed order, if not previously submitted, along with copies of all pleadings, affidavits of service, an affidavit of nonmilitary status, and an affidavit of no response. A copy of the information used to prepare the proposed order must also be filed with the court administrator.

Rule 14.02. Hearing

Subdivision 1. Hearing Not Required. Except in establishment of parentage cases, if the child support magistrate makes the findings required in Rule 14.03, the magistrate may sign the proposed order without further notice or hearing. Establishment of parentage cases must proceed according to subdivision 2(b).

Subd. 2. Hearing Required—Parentage Cases.

(a) **No Proposed Order.** In all cases except establishment of parentage cases, the initiating party must schedule a hearing if the non-initiating party fails to timely respond in writing to the summons and complaint or motion and a proposed order was not originally attached to the summons and complaint or motion. At least (20) days before the hearing the initiating party must serve the non-initiating party and the county agency with a copy of the proposed order and notice of the date, time, and location of the hearing.

(b) **Establishment of Parentage Proceedings.** In establishment of parentage cases, the initiating party must schedule a hearing if the non-initiating party fails to timely respond in writing to the summons and complaint or motion. At least twenty (20) days before the hearing the initiating party must serve the non-initiating party and the county agency a copy of the proposed order and notice of the date, time, and location of the hearing.

Subd. 3. Evidence. At any hearing required under this rule, the child support magistrate may issue an order based upon oral or written testimony.

Rule 14.03. Signing of Proposed Order

A child support magistrate may sign a proposed order if the child support magistrate finds that the non-initiating party:

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

(b) was notified of the requirement to respond in writing within twenty (20) days of service of the summons and complaint or motion;

(c) failed to timely respond in writing;

(d) was notified of the opportunity to be heard and the method for requesting a hearing; and

(f) did not request a hearing or was notified of the date, time, and location of the hearing and failed to appear.

Rule 14.04. Proposed Order Not Accepted

The child support magistrate may reject a proposed order on the grounds that it is not supported by the evidence submitted or is contrary to law. If the child support magistrate rejects the proposed order, the child support magistrate must notify the initiating party of the deficiencies. The initiating party must then either submit the missing documentation or set the case on for a hearing, and must serve notice of the date, time, and location of the hearing on all parties.

Advisory Committee Comment

Default in Paternity Proceedings. Minnesota Statutes § 257.651 provides that "[i]n an action to determine the existence of the father and child relationship under sections 257.51 to 257.74, if the alleged father fails to appear at a hearing after service duly made and proved, the court shall enter a default judgment or order of paternity." However, in *Bartlow v. Brinkman*, 378 N.W.2d 790 (Minn. 1985), the Minnesota Supreme Court held that in paternity proceedings

"default should not be entered, upon objection, merely on the allegations and verifications contained in the complaint. It should be entered only after the allegations have been verified in open court under oath before a trial judge." *Id.* at 795. The court stated that upon request of the defendant, the court "should require the mother of the child to be placed on the stand in open court and be required to testify under oath to verify the allegations of the complaint." *Id.* While the Advisory Committee is aware that default hearings are not specifically required in establishment of parentage cases, given the potential outcome of such cases the Advisory Committee nevertheless chose to require hearings in such cases.

RULE 15. PREHEARING INFORMAL RESOLUTION

Rule 15.01. Informal Discussions

The parties may confer informally by telephone or in person in an attempt to settle the case prior to a hearing.

Rule 15.02. Settlement Conference

Subdivision 1. Procedure. On its own initiative or at the request of a party, the county agency may schedule a settlement conference between the parties. A notice of the date, time, and place of the settlement conference must be served by U.S. mail upon the parties by the county agency no later than five (5) days before the settlement conference. The scheduling of a settlement conference will not void the requirement that a hearing be held within sixty (60) days of service of the summons and complaint or motion.

Subd. 2. Domestic Abuse. The parties are not required to participate in any settlement conference when one of the parties claims to be the victim of domestic abuse by the other party or when the county agency determines that there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse.

Subd. 3. Documentation. Each party must bring to the settlement conference all documentation establishing the party's income and expenses, including the party's most recent pay stubs, verification of employment status from employer(s), copies of regular monthly bills such as utility statements, rental statements, loan payment statements, and any other documents available to prove the claimed income or expenses.

Advisory Committee Comment

Rule 15 relates to settlement conferences between the parties, not between the parties and the child support magistrate. Rule 15 is not intended to require a pre-hearing conference between the child support magistrate and the parties as provided in Rule 16 of the Rules of Civil Procedure or Rule 305 of the Rules of General Practice for Family Court Procedure.

RULE 16. SETTLEMENT

Rule 16.01. Procedure

The parties may settle the case at any time before a hearing.

Rule 16.02. Proposed Consent Order

Subdivision 1. Preparation and Signing. If the parties reach an agreement, one of the parties must prepare a proposed consent order. If the county agency is a party, the county agency must prepare the proposed consent order. All parties to the agreement,

including the county agency, must sign the proposed consent order. The proposed consent order must state that the parties have waived their right to a hearing.

Subd. 2. Filing. The proposed consent order must be filed with the court administrator, who shall submit it to the child support magistrate for signature. When submitting the consent order to the child support magistrate, all pleadings and affidavits of service must be submitted to the child support magistrate. If the county agency is not a party, other parties must submit copies of the information used to prepare the consent order.

Subd. 3. Approval of Proposed Order. The child support magistrate may approve the consent order by signing it or may reject it and proceed under Rule 16.03.

Advisory Committee Comment

Rule 16.02 provides that background information used in preparing the proposed consent order be sent to the child support magistrate. However, if the proposed consent order is not filed, the non-pleading documents should be returned to the county agency.

Rule 16.03. Order Not Accepted

The child support magistrate may reject a proposed order on the grounds that it is not supported by the evidence submitted or is contrary to law. If the child support magistrate rejects the proposed consent order, the child support magistrate must notify the parties of the deficiencies. The child support magistrate may direct the parties to submit the missing documentation, appear at the previously scheduled hearing time, or schedule a hearing, giving notice of the date, time, and location to the parties.

Rule 16.04. Exception from Alternative Dispute Resolution

Alternative dispute resolution, as provided in Rule 310 of the Rules of Family Court Procedure, does not apply to cases brought in the expedited child support process.

RULE 17. DISCOVERY

Rule 17.01. Witnesses

Each party may call witnesses to testify at the hearing. Any party intending to call a witness must notify the other parties of the witness' name and address and provide a brief summary of the testimony to be given by each witness. Notice must be provided at least five (5) days before the hearing.

Rule 17.02. Exchange of Documents

If any party needs information to support or respond to the complaint or motion, that party should immediately notify the other parties and make arrangements for the exchange of information. The parties must cooperate in providing information to each other. Documents must be exchanged within a reasonable time after a request is made and must be exchanged at least five (5) days before the hearing.

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.

Rule 17.03. Subpoenas

Subdivision 1. Written Request. Requests for subpoenas for the attendance of witnesses or for the production of documents must be in writing and must be submitted to the court administrator. The request must specifically identify any documents requested, must include the full name and home or business address of all persons to be subpoenaed, and must specify the date, time, and place for responding to the subpoena. The court administrator must issue the subpoena.

Subd. 2. Service of Subpoenas Must be by Personal Service. The person being served must be given the fees and mileage allowed by Minnesota Statutes § 357.22. When the subpoena is issued on behalf of the state of Minnesota or an officer or agency thereof, fees and mileage need not be tendered. The cost of service, fees, and expenses of any witnesses subpoenaed must be paid by the party at whose request the witness appears. The person serving the subpoena is required to make proof of service by filing the original subpoena with the court administrator along with an affidavit of personal service.

Subd. 3. Objection to Subpoena. Any person served with a subpoena may file an objection with the court administrator. The objection must be filed promptly and no later than the time specified in the subpoena for compliance. A child support magistrate must 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 cost of producing documents, books, papers, or other tangible things.

Rule 17.04. Other Discovery

Any additional means of discovery available under the Minnesota Rules of Civil Procedure may be allowed by order of the child support magistrate. The party seeking discovery must bring a motion before the child support magistrate for an order permitting additional means of discovery. The motion must include the reason for the request and must 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 proper presentation of the party's case, is not for purposes of delay or harassment, and that the issues or amounts in controversy are significant enough to warrant the discovery. The child support magistrate may order such other discovery as is deemed appropriate or may deny the motion without the need for any hearing on the matter.

Rule 17.05. Noncompliance with Request for Discovery

Subdivision 1. Decision by Child Support Magistrate. If the parties cannot agree on acceptable exchange of information, the parties must exchange what can be agreed upon and be prepared to explain the disagreement to the child support magistrate. If time permits before the date set for the hearing, any party may schedule a prehearing conference, with five (5) days notice to the other parties, or the parties may jointly submit the matter to the child support magistrate for a ruling without a hearing. If no action is taken prior to the contested hearing, the dispute will be decided at the hearing.

Subd. 2. Burden of Proof. The party seeking discovery has the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay or harassment, and that the issues or amounts in controversy are significant enough to warrant the discovery. In ruling on a discovery motion, the child support magistrate must recognize all privileges recognized at law.

Subd. 3. Options Available to Child Support Magistrate. When ruling on a discovery motion, the child support magistrate may:

(a) direct the parties to exchange specified documents or information;

(b) deny the discovery request;

(c) affirm or quash the subpoena;

(d) issue a protective order;

(e) continue the hearing;

(f) conduct the 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. 4. Failure to Comply with Discovery Order. If a party fails to comply with an order made under subdivision 3, the child support magistrate may make a further order as follows:

(a) an order that the subject matter of the order for discovery or any other relevant facts must be taken as established for the purposes of the case in accordance with the claim of the party requesting the order;

(b) an order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(c) any other order appropriate in the interests of justice.

Rule 17.06. Filing of Discovery Requests and Responses Precluded

Copies of a party's request for discovery and the responses to those requests must not be filed with the court administrator unless:

(a) ordered by the child support magistrate;

(b) filed in support of any motion; or

(c) introduced as evidence in the hearing.

RULE 18. REMOVAL OF A PARTICULAR CHILD SUPPORT MAGISTRATE

Rule 18.01. Automatic Right to Remove Precluded

No party has an automatic right to remove a child support magistrate.

Rule 18.02. Removal for Cause

Subdivision 1. Procedure. Any party may serve on the other parties and file with the court administrator a request to remove the child support magistrate assigned to hear the matter. If the assigned child support magistrate denies the request to remove, the chief judge of the judicial district must determine whether cause exists to remove the assigned child support magistrate. If the chief judge of the judicial district is the subject of the request to remove, the assistant chief judge must determine whether cause exists to remove the child support

magistrate. A request to remove must be filed with the court administrator and served upon the parties 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 must be made as soon as practicable after notice of assignment is given.

Subd. 2. Removal for Cause. Cause to remove 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.

Advisory Committee Comment

At the time these rules were drafted, the Minnesota Conference of Chief Judges (the policy making body of Minnesota's trial courts) was in the process of considering whether to adopt a uniform rule applicable to all types of cases, including civil, criminal, and juvenile matters, regarding removal of district court judges. The intent of this Advisory Committee is to implement the language adopted by the Conference of Chief Judges. However, regardless of the policy adopted by the Conference of Chief Judges, the Advisory Committee intends that there not be removal as a matter of right.

RULE 19. HEARING PROCESS

Rule 19.01. Timing of Hearing

In the event the parties are unable to resolve the matter, a hearing must be held no sooner than twenty (20) days and no later than sixty (60) days after service of the summons and complaint or motion.

Rule 19.02. Notice of Hearing

Subdivision 1. Timing. The initiating party must contact the court administrator to obtain a hearing date and shall serve upon all parties by U.S. mail a notice of hearing no later than fourteen (14) days before the hearing.

Subd. 2. Content. The notice of the hearing should, if possible, include the name of the child support magistrate assigned to the case. No child support magistrate will be assigned to, or preside over, a case if that magistrate is interested in its determination or might be excluded for prejudice.

Rule 19.03. Continuance of Hearing

Subdivision 1. Request by Party. The child support magistrate upon an agreement of the parties or a showing of good cause may grant a request for continuance of a hearing. Unless time does not permit, a request for continuance of the hearing must be made in writing to the child support magistrate and must be served upon all parties. In determining whether good cause exists, due regard will be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

Subd. 2. Discretion of Child Support Magistrate. During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the child support magistrate must either order the additional testimony be taken by deposition or continue the hearing to a future date and oral notice on the record is sufficient.

Advisory Committee Comment

Rule 19.03 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 subsequent 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 19.04. Explanation of Hearing Purpose and Procedure

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

Rule 19.05. Hearings Open to Public

Except as otherwise provided in these rules or by statute, all hearings must be open to the public. For good cause shown, child support magistrates have the discretion to exclude members of the public from attending hearings.

Advisory Committee Comment

Under Minnesota Statutes § 257.70, hearings regarding the establishment of parentage are closed to the public. Other proceedings identified in Rule 1.03 are generally open to the public.

Rule 19.06. Record of Hearing

Each child support magistrate must ensure that an accurate record is made of each hearing over which the magistrate presides.

Advisory Committee Comment

Under Minnesota Statutes § 484.72, subdivisions 1 and 6, records of hearings and other proceedings in the expedited child support process may be made either by competent stenographers or by use of electronic recording equipment. 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.

Rule 19.07. 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 through 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 must 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.

Subd. 3. Necessary Preparation Required. Each party must 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 are encouraged to exchange copies of exhibits before the hearing begins.

Rule 19.08. 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 must give effect to the rules of privilege recognized by law. Evidence that is incompetent, irrelevant, immaterial, or unduly repetitious must be excluded.

Subd. 2. Evidence Part of Record. Only evidence that is offered and received during the hearing or submitted following the hearing with the permission of the child support magistrate may be considered in rendering a decision, including, but not limited to, testimony, affidavits, exhibits, and financial worksheets.

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 there is a genuine question of accuracy or authenticity, or if it would be unfair to admit the copy instead of the original. The financial worksheets 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 notice of judicially cognizable facts, but must do so on the record and with the opportunity for any party to contest the facts so noticed.

Rule 19.09. Burden of Proof

The party proposing that certain action be taken must 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 19.10. Examination of Adverse Party

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

Rule 19.11. Role of Child Support Magistrate

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

Advisory Committee Comment

The intent of Rule 19.11 is to require the child support magistrate to proactively solicit information so as to be able to make sufficient findings.

Rule 19.12. 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 information. Unless otherwise ordered by the

child support magistrate, such additional information must be submitted within ten (10) days of the conclusion of the hearing. The record is considered closed either at the conclusion of the hearing or upon submission by the parties of any additional information authorized or requested by the child support magistrate. Documents submitted after the due date or without permission of the child support magistrate must be returned to the sender and must not be considered by the child support magistrate when deciding the case.

RULE 20. DECISION AND ORDER OF CHILD SUPPORT MAGISTRATE

Rule 20.01. Timing

Within thirty (30) days of the close of the record the child support magistrate must file with the court administrator the decision and order. The child support magistrate may serve the parties with the order at the hearing.

Rule 20.02. Effective Date; Final Order

The decision and order of the child support magistrate is effective and final when signed by the child support magistrate.

Rule 20.03. Notice of Filing of Order or Notice of Entry of Judgment

Subdivision 1. Service by Court Administrator. The court administrator must promptly serve a notice of filing of order or notice of entry of judgment upon each party by U.S. mail upon receipt of the decision and order of the child support magistrate together with a copy of the order or judgment, if a copy of the order was not served at the hearing. The state court administrator must draft a "notice" form setting forth the information required in subdivision 2.

Subd. 2. Content of Notice.

(a) **Right to Bring Motions or Appeal.** The notice required in subdivision 1 must state that:

(1) under Rule 21 each party has a right to bring a motion to correct clerical mistakes, typographical errors, or errors in mathematical calculations set forth in the decision and order of the child support magistrate, and that such a motion must be decided by the child support magistrate who issued the decision and order;

(2) under Rule 22 each party has a right to bring a motion for review of the decision and order of the child support magistrate, and that at the request of the party the motion may be decided either by the child support magistrate who issued the decision and order or by a district court judge. If a district court judge issued the decision and order in question, that judge must also decide the motion for review; or

(3) under Rule 24 each party has a right to appeal a final order or judgment of the child support magistrate directly to the court of appeals.

(b) **Right to Respond to Motions and Appeals.** The notice required by subdivision 1 must also state that the other parties have a right to respond to motions to correct clerical mistakes, motions for review, and appeals.

(c) **Costs and Fees.** The notice required by subdivision 1 must also state that the child support magistrate has authority to award the opposing party 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.

Subd. 3. Court Administrator Computes Dates. The court administrator must compute the time and set forth in the notice of filing of order or in the notice of entry of judgment the last day for bringing a motion for review, as well as the last day for bringing any response to such motion.

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 22, 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 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 judgment. The Advisory Committee intends that Rule 24.01 supersede appellate Rule 104.01 to provide that the sixty (60) days begins to run from the time the court administrator serves the written notice of filing of the order or notice of entry of judgment.

Court Administrator to Compute Time. Rule 22 establishes a twenty (20) day time period for bringing a motion for review. The twenty (20) days is measured from the date the court administrator serves the notice of filing of order or notice of entry of judgment, and Rule 3 requires that an additional three days be added to the time period when service is by U.S. mail. Computing the deadline for bringing motions can be difficult and confusing for lay persons. Rule 20.03, subdivision 3, attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice. The court administrator must not compute the time for bringing an appeal to the court of appeals.

Options For Review and Appeal. A party may choose to bring a motion to correct clerical mistakes or a motion for review, 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. 1996), *review 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 21. MOTION TO CORRECT CLERICAL MISTAKES

Rule 21.01. Motion

Subdivision 1. Party or Child Support Magistrate May Initiate. Clerical mistakes, typographical errors, and errors in mathematical calculations in orders, judgments, or other parts of the record 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. A motion to correct such clerical mistakes must be made in good faith and not for purposes of delay or harassment. A motion to correct such clerical mistakes must be decided by the child support magistrate who issued the decision and order. If an appeal has been made to the court of appeals, a child support magistrate may correct clerical mistakes,

typographical errors, and errors in mathematical calculations only upon order of the appellate court.

Subd. 2. Combined Motions. A motion to correct clerical mistakes may be combined with a motion for review brought under Rule 22. At the request of the party such a combined motion may be decided either by the child support magistrate who issued the decision and order or by a district court judge.

Rule 21.02. Procedure

Subdivision 1. Motion. To bring a motion to correct clerical mistakes, the aggrieved party must perform all the following:

(a) serve a motion to correct clerical mistakes on the opposing parties and county agency by U.S. mail or by personal service in accordance with the provisions for personal service of a summons in district court. The state court administrator will develop a form entitled "motion to correct clerical mistakes" which the court administrator must provide to any party who requests one. The motion must state the reason each correction is requested and that the motion is made in good faith and not for purposes of delay or harassment;

(b) file with the court administrator the original motion;

(c) file with the court administrator proof of service of the motion upon the opposing parties and the county agency; and

(d) order a transcript of the hearing under Rule 23, if the party desires to submit such a transcript.

Subd. 2. Response to Motion. A responding party may, but is not required to, respond to a motion to correct clerical mistakes. To respond, the party must perform all the following:

(a) serve a response to motion on the opposing parties and county agency by U.S. mail or by personal service in accordance with the provisions for personal service of a summons in district court. The state court administrator will develop a form entitled "response to motion to correct clerical mistakes" which the court administrator must provide to any party who requests one. In the response to motion, the party must state why the motion to correct clerical mistakes should not be granted and that the response to motion is made in good faith and not for purposes of delay or harassment;

(b) file with the court administrator the original responsive motion;

(c) file with the court administrator proof of service of the responsive motion upon the opposing party and the county agency; and

(d) order a transcript of the hearing under Rule 23, if the party desires to submit such a transcript.

Advisory Committee Comment

Rule 21.02, subdivision 1(a) and subdivision 2(a), provides that service of a motion and any responsive motion may be made by U.S. mail, which means first class mail, postage pre-paid, addressed to the person's last known address. Rule 21.02, subdivision 1(a) and subdivision 2(a), also provides that service of a motion and any responsive motion may be made by personal service. In district court, personal service may only be made by a sheriff or any other person who is at least 18 years of age and who is not a party to the action. Minn. R. Civ. P. 4.02. Personal service may not be made on Sunday, a legal holiday, or election day. Minn. Statute § 624.04, § 645.44, subd. 5; Minn. Const. art. VII, § 4.

Rule 21.03. Decision and Order Not Stayed

The decision and order of the child support magistrate remains in full force and effect and is not stayed pending a motion to correct clerical mistakes.

Rule 21.04. Basis of Decision

Subdivision 1. Timing. The child support magistrate must file with the court administrator an order regarding the motion to correct clerical mistakes within thirty (30) days of the later of the following events: the filing of any responsive motion, receipt of a transcript, or the submission of new evidence under subdivision 4.

Subd. 2. Decision. The child support magistrate 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 must specifically state in the order that the findings, decision, and order are affirmed.

Subd. 3. Motion Decided Upon Court File. The child support magistrate must decide the motion to correct clerical mistakes based upon the court file, including, but not limited to, motions, affidavits, exhibits, and worksheets.

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

Subd. 5. No Right to Hearing. No hearing will be held, and the parties will not be allowed to appear before the child support magistrate, unless the magistrate upon motion orders a hearing. The motion will 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 magistrate or 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 may award the opposing parties costs and fees incurred in responding to a motion to correct clerical mistakes that the magistrate determines is not made in good faith or is brought for purposes of delay or harassment.

Rule 21.05. Notice of Order

Upon receipt of an order issued as a result of a motion to correct clerical mistakes, the court administrator must promptly serve a notice of filing of order or notice of entry of judgment upon each party by U.S. mail, along with a copy of the order or judgment. The notice must state that the parties have a right to appeal to the court of appeals under Rule 24.

Rule 21.06. Effective Date; Final Order

The order of the child support magistrate is effective and final when signed by the child support magistrate.

RULE 22. MOTION FOR REVIEW

Rule 22.01. Motion

Any party may bring a motion for review of the decision and order or judgment of the child support magistrate. At the request of the party, the motion for review may be brought before either the child support magistrate who issued the order or a district court judge. If a

district court judge issued the order in question, that judge must also decide the motion for review.

Advisory Committee Comment

A party may make a motion for review regarding any type of order, including a default order, a consent order, or an order issued following a hearing.

Rule 22.02. Procedure

Subdivision 1. Motion. To bring a motion for review, the party must perform all the following within twenty (20) days of the date the court administrator served that party with the notice of filing of order or notice of entry of judgment:

(a) serve a motion for review on the opposing parties and county agency by U.S. mail or by personal service. The state court administrator will develop a form entitled "motion for review" which the court administrator must provide to any party who requests one. In the motion, the party must state the reason(s) review is requested, describe the specific changes requested, and identify the evidence to support the changes. The motion must establish that it is made in good faith and not for purposes of delay or harassment;

(b) file with the court administrator the original motion;

(c) file with the court administrator proof of service of the motion upon the opposing party and the county agency;

(d) if the party has not already done so, pay to the court administrator the filing fee required by Rule 4.01; and

(e) order a transcript of the hearing under Rule 23, if the party desires to submit such a transcript.

Subd. 2. Response to Motion. A responding party may, but is not required to, respond to a motion for review. To respond, the party must perform all the following within thirty (30) days of the date the court administrator served that party with the notice of filing of order and notice of entry of judgment:

(a) serve a response to motion on the opposing parties and county agency by U.S. mail or by personal service in accordance with the provisions for personal service of a summons in district court. The state court administrator will develop a form entitled "response to motion for review " which the court administrator must provide to any party who requests one. In the response to motion, the party must state why the motion for review should not be granted and that the response to motion is made in good faith and not for purposes of delay or harassment;

(b) file with the court administrator the original response to motion;

(c) file with the court administrator proof of service of the response to motion upon the opposing party and the county agency ;

(d) if the party has not already done so, pay to the court administrator the filing fee required by Rule 4.01; and

(e) order a transcript of the hearing under Rule 23, if the party desires to submit such a transcript.

Rule 22.03. Notice of Assignment of Judge

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

Rule 22.04. Decision and Order Not Stayed

The order of the child support magistrate remains in full force and effect and is not stayed pending a motion for review.

Rule 22.05. Basis of Decision

Subdivision 1. Timing. The child support magistrate or district court judge must file with the court administrator an order regarding the motion for review within thirty (30) days of the later of the following events: the filing of any responsive motion, receipt of a transcript, or the submission of new evidence under subdivision 4.

Subd. 2. Decision. The child support magistrate or district court judge may deny the motion for review, may approve or modify the decision and order of the child support magistrate, or may remand the matter to the child support magistrate with instructions. The child support magistrate or district court judge must approve the findings of the child support magistrate unless clearly erroneous, and must approve the order of the child support magistrate unless there is an abuse of discretion or error of law. If the motion is denied, the child support magistrate or district court judge must specifically state in the order that the findings, decision, and order are affirmed but need not make specific findings as to each point raised in the motion.

Subd. 3. Motion Decided Upon Court File. The child support magistrate or district court judge must decide the motion for review based upon the court file, including, but not limited to, motions, affidavits, exhibits, and worksheets.

Subd. 4. Additional Evidence Discretionary. When bringing or responding to a motion for review, the parties must 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. Transcript. A transcript of the hearing in dispute is not required, but may be ordered by a party. If the party chooses to submit a transcript, it must be ordered according to the procedure in Rule 23. If a party orders a transcript, the motion must state the date the transcript was ordered.

Subd. 6. No Right to Hearing. No hearing will be held, and the parties will not be allowed to appear before the child support magistrate or district court judge, unless the magistrate or judge upon motion orders a hearing. The motion will 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 magistrate or 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. 7. Costs and Fees. The child support magistrate may award the opposing parties costs and fees incurred in responding to a motion for review, if the magistrate or district court judge determines that the motion for review is not made in good faith or is brought for purposes of delay or harassment.

Rule 22.06. Notice of Order

Upon receipt of an order issued as a result of a motion for review, the court administrator must promptly serve a notice of filing of order or notice of entry of judgment upon

each party by U.S. mail, along with a copy of the order or judgment. The notice must state that the parties have a right to appeal to the court of appeals under Rule 24.

Rule 22.07. Effective Date; Final Order

The order of the child support magistrate or district court judge is effective and final when signed by the child support magistrate or district court judge.

RULE 23. TRANSCRIPT

Rule 23.01. Ordering of Transcript by Parties

Any party may request a transcript of any proceeding held before the child support magistrate as permitted in Rule 22.05, subdivision 5. A request for a transcript must be made to the court administrator at the earliest possible time. The party requesting the transcript must pay for the transcript and must serve a copy on the other parties and the county agency, if a party. Ordering and submission of a transcript does not delay the due dates for the submissions described in Rule 22.02. The transcriber must file the original transcript with the court.

RULE 24. APPEAL TO COURT OF APPEALS

Rule 24.01. 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 22. Such an appeal must be taken in accordance with the Minnesota Rules of Civil Appellate Procedure within sixty (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 21 or a timely motion for review under Rule 22, 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 sixty (60) days to appeal from the final order or judgment of a child support magistrate or from a final order deciding 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.

Advisory Committee Comment

Timing. Under Rule 104.01 of the Rules of Civil Appellate Procedure, 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 24.01 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 425, 428 (Minn. App. 1996), *review 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 25. FORMS

Rule 25.01. Court Administrator to Provide Forms

Whenever a court administrator is required to provide forms under these rules, those forms must be provided to the parties in the most accessible method for the parties, including fax, electronic mail, in person, or by U.S. mail, or in alternate formats.

Rule 25.02. Substantial Compliance

The forms developed by the state court administrator and by the department of human services for use in the expedited child support 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 child support process. Attorneys may modify these standardized forms or, in their discretion, may prepare other pleadings to address the factual or legal issues in each case that are not adequately covered by the standardized forms.

Rule 25.03. Modification of Forms

The attorney signing pleadings has discretion to modify the standardized forms to address the factual and legal issues that cannot be covered by standardized forms.

Rule 25.04. Exception from Rules Governing Civil Actions

Subdivision 1. Informational Statement. The Informational Statement required by Rule 304.02 of the Rules of Family Court Procedure is not required to be filed in cases brought in the expedited child support process.

Subd. 2. Prehearing Statement. The Prehearing Statement required by Rule 305.01 of the Rules of Family Court Procedure is not required to be filed in cases brought in the expedited child support process.