STATE OF MINNESOTA
IN MINNESOTA SUPREME COURT
C4-99-404

ADVISORY COMMITTEE ON THE RULES OF THE EXPEDITED CHILD SUPPORT PROCESS

FINAL REPORT AND PROPOSED FINAL RULES

DECEMBER 29, 2000

TABLE OF CONTENTS

I. COMMITTEE MEMBERSHIP

CHAIR
Gary Meyer, District Court Judge, Tenth Judicial District

COMMITTEE MEMBERS
Lou Anderson, Crow Wing County Child Support Supervisor, Ninth Judicial District
Judith Besemer, Blue Earth County Court Administrator, Fifth Judicial District
Julie Brunner,* St. Louis County Administrator, Sixth Judicial District
Sue Dosal, State Court Administrator, St. Paul
Bruce Douglas, District Court Judge, Tenth Judicial District
Diana Eagon, District Court Judge, Fourth Judicial District
Sean Fremstad,* Attorney at Law, Legal Services Advocacy Project, Minneapolis
Mark Gardner, Attorney at Law and MSBA Representative, Fourth Judicial District
Sharon Hall, District Court Judge, Tenth Judicial District
Tama Hall,** Special Courts Administrator, Second Judicial District
Duane Harves, District Court Judge, First Judicial District
Beverly Jones Heydinger, Supervising Administrative Law Judge, Office of Admin. Hearings
James Hoolihan, District Court Judge, Seventh Judicial District
Lucinda Jesson, Deputy Hennepin County Attorney, Fourth Judicial District
Gregg Johnson, District Court Judge, Second Judicial District
Laura Kadwell, Director, Child Support Enforcement Div., Department of Human Services
Jayne Barnard McCoy,** Attorney at Law, Mid-Minnesota Legal Assistance, Minneapolis
Jodie Metcalf,** Child Support Magistrate; Manager, Child Support Unit, State Court Admin.
Michael Moriarity,* Special Courts Administrator, Second Judicial District
Mark Ponsolle, Assistant Ramsey County Attorney, Second Judicial District
Ruth Sundermeyer, Aitkin County Child Support Supervisor, Ninth Judicial District
Sandra Torgerson, Assistant Dakota County Attorney, First Judicial District
Katie Trotzky, Director, Dakota County Legal Services
Renee Worke, District Court Judge, Third Judicial District

STAFF
Deanna Dohrmann,** Staff Attorney, Child Support Unit, State Court Administration
Judith Nord, Staff Attorney, State Court Administration
Tori Wible,* Staff Attorney, State Court Administration

***** = Participated only from March 1999 to June 1999 (Interim Rules).
** = Participate only from October 1999 to December 2000 (Final Rules).
All others participated during entire rules drafting process from March 1999 to December 2000.

II. EXECUTIVE SUMMARY

A. THE ADMINISTRATIVE CHILD SUPPORT PROCESS AND THE *HOLMBERG* DECISION

In 1995 the Minnesota Legislature enacted legislation requiring each county to implement an administrative child support process. In January 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 established by the Legislature in 1995 was unconstitutional. Although three key findings supported the Court's decision, the most significant was the Court's finding that the administrative process infringed on the jurisdiction of the district court in violation of the constitutional constraints on the separation of powers.

B. ESTABLISHMENT OF THE SUPREME COURT RULES COMMITTEE

In March 1999, in anticipation of legislation revising the structure of the child support process to place it within the judicial branch of government, the Supreme Court established the Advisory Committee on the Rules of the Expedited Child Support Process [hereinafter "the Committee"]. The Committee was charged with the task of drafting proposed rules of child support procedure for review by the Supreme Court. The Committee was directed to submit the proposed rules by June 1, 1999. A detailed account of the Committee's work during the two-year period from March 1999 to December 2000 leading to promulgation and revision of the Expedited Child Support Process Rules is set forth in *Section III: Background - from Holmberg to the Proposed Rules*.

C. COMMITTEE DELIBERATIONS PROCESS

1. Interim Rules Process

During the eight-week period from April 7 through May 23, 1999, the Committee met weekly to draft procedural rules consistent with the pending legislation. The Committee submitted its proposed rules to the Supreme Court on June 4, 1999. On June 23, 1999, the Supreme Court issued an Order promulgating the Interim Rules of the Expedited Child Support Process. The Interim Rules were to be effective July 1, 1999, through June 30, 2000. Given the relatively short period of time allotted to the Committee to draft the proposed rules, the Supreme Court directed the Committee to monitor implementation of the Interim Rules and, by March 2000, to make recommendations for any necessary revisions. In an effort to solicit adequate feedback from the child support system stakeholders, at the request of the Committee the Supreme Court extended the due date for the Committee's recommendations to December 15, 2000. The effective date of the Interim Rules was subsequently extended to June 30, 2001.

2. Proposed Final Rules Process

Approximately four months after the Interim Rules were implemented, the Committee reconvened to begin the process of reviewing the expedited process rules. From October 1999 through November 2000 the Committee met monthly to discuss the Interim Rules and the need for any revisions. In fulfillment of its directive to monitor implementation of the Interim Rules, the Committee distributed surveys to 700 parents and professionals involved in the expedited child support process. The Committee considered the comments and concerns raised in the survey responses and revised the rules accordingly. Through this process, the Committee prepared the first draft of the Proposed Final Rules. In August 2000, at the request of the Supreme Court, the Committee distributed the first draft of the Proposed Final Rules to nearly 1,500 members of the public for review and comment. The Committee considered the public's comments and again

revised the Proposed Final Rules accordingly. The final version of the Proposed Final Rules is set forth in *Section VI* of this Report.

D. HIGHLIGHTS OF RULES REVISIONS

Following are highlights of the Committee's recommendations for revisions to the Interim Rules. Details of the Committee's discussions and the rationale underlying each recommendation are set forth in *Section IV: Committee Deliberations.*

- Format: rules renumbered and reorganized
- Other court rules now applicable
- Goals of Expedited Process stated as rule rather than as comment
- Definitions expanded to include "answer", "response", "non-initiating party", "parentage", and "parenting time"
- Types of permissible and prohibited proceedings clarified and expanded
- Procedure clarified when prohibited issue raised in expedited process
- Method of service upon person receiving services amended
- Persons authorized to serve process clarified
- "Submission" of documents changed to "filing"
- Filing of documentation supporting complaint or motion now discretionary
- "Proposed orders" eliminated as initiating document
- Collection of filing fees and modification fees amended
- Scope and timing of appointment of counsel clarified
- Certificate of representation required except for public defenders and county attorneys
- Hearing not required on motion alleging non-compliance with discovery
- Content of recommended order regarding settlement agreements expanded
- Transcript rule clarified
- Child support personnel issues recommended for placement in personnel manual
- Power and authority of child support magistrates not enumerated
- Child support magistrate appointment process modified
- Rule precluding automatic right to remove extended to judges and family court referees
- Procedure to set support when support reserved in prior order addressed
- Role of employees of public authority clarified
- Hearing required in parentage actions
- Time to issue order upon motion for review increased from 30 to 45 days
- "Close of Record" on motion for review clarified
- Review remains "independent", but standard for review is clarified
- Clarified procedures for review when magistrate no longer available
- Revised Request for Blood or Genetic Tests

E. RECOMMENDATIONS

The following is a summary of the recommendations as set forth in *Section V*: *Recommendations.*

1. The Minnesota Supreme Court should:

- Adopt the Expedited Child Support Process Rules set forth in *Section VI* of this Report;
- Establish a permanent child support rules advisory committee;
- Amend Rule 111.01(b) and 115.01 of the General Rules of Practice to extend to the Expedited Child Support Process Rules; and
- Amend Rule 301 of the General Rules of Practice to provide that the Rules of Family Court Procedures are not applicable to the Expedited Child Support Process, with limited exception.

2. The Minnesota Legislature should:
   - Amend Minnesota Statutes § 357.021 to provide that a filing fee need not be paid by a non-initiating party when the county agency is the initiating party in the expedited child support process; and
   - Amend Minnesota Statutes § 257.62 to allow on-the-record requests for blood or genetic tests and to repeal the requirement of the filing of an affidavit.

3. The Minnesota Supreme Court and the Minnesota Legislature should make necessary changes in rules and statutes to eliminate the need to issue an "Amended Judgment and Decree" when an order modifying support is issued.

4. The State Court Administrator should draft and distribute to court administrators forms required under these rules. Court administrators should make the forms available to litigants on the same basis as other forms.

5. An Expedited Child Support Process policy manual should be created by the appropriate authority and should include child support magistrate personnel policy information deleted from these rules.

III. BACKGROUND: FROM *HOLMBERG* TO THE PROPOSED RULES

A. THE ADMINISTRATIVE CHILD SUPPORT PROCESS

In 1995, the Minnesota Legislature enacted Minnesota Statutes § 518.5511 and § 518.5512 requiring each county to implement an administrative child support process to resolve child support matters involving the public authority.

B. THE *HOLMBERG* DECISION

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 violated the constitutional constraints on the separation of powers in three ways:

- The administrative process infringed on the district court's jurisdiction in contravention of Minnesota Constitution article VI, section 1;
- Administrative law judge jurisdiction was not inferior to the district court's jurisdiction as mandated by Minnesota Constitution article VI, section 3; and
- The administrative process empowered non-attorney employees of the public authority to engage in the practice of law, thereby infringing on the court's exclusive power to supervise the practice of law.

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

C. 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. The purpose of the Workgroup was to identify the various fiscal, systemic, and operational impacts of potential executive branch and judicial branch options for modifying the 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 any deficiencies.
- *Fiscal Impact Subcommittee*: Studied the overall fiscal impact of the change from the administrative process to the judicial branch process as it affected each of the stakeholders.

D. ESTABLISHMENT OF SUPREME COURT RULES COMMITTEE

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 such legislation, the Supreme Court issued an order establishing the Advisory Committee on the Rules of Child Support Procedure [hereinafter "the Committee"]. The Court directed the Committee to:

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

E. PHASE I COMMITTEE DELIBERATIONS – DRAFTING OF THE INTERIM RULES

1. Committee and Subcommittee Meetings

During the eight-week period from April 7 through May 27, 1999, the 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. Information obtained by the Child Support Workgroup, as well as the Workgroup's recommendations, was provided to the various subcommittees. Each subcommittee met twice in early April to draft rules relating to its specific area of the rules. The full Committee reconvened in mid-April to begin discussing and refining the rules proposed by the subcommittees.

2. Distribution of Proposed Rules for Public Comment

On May 14, 1999, the Committee distributed the first draft of Proposed Rules to the public for review and comment. The Proposed Rules were distributed to nearly 500 individuals and advocacy groups throughout Minnesota, including all district court judges, family court referees, 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 necessitated by the Committee's deadline, the Committee received nearly 100 pages of written comments.

3. Finalization of Proposed Interim Rules

During the final two meetings in May 1999, the Committee carefully considered the public's comments as it continued to debate the issues surrounding establishment of the expedited process. Through this process, the Committee refined and finalized its recommendations and proposed rules. Highlights of the Committee's discussions are set forth in *Section IV*.

The Committee's Final Report and Proposed Rules were submitted to the Supreme Court on June 4, 1999. As a result of the unusually short period of time allotted to the Committee to draft the Proposed Rules, the Supreme Court decided to issue the rules as interim rules. This provided an opportunity for the bench and bar, county attorneys, child support officers and court administrators to work with the rules and offer suggestions for improvements. On June 23, 1999, the Supreme Court issued an Order promulgating the Interim Rules of the Expedited Child Support Process. The

Interim Rules became effective July 1, 1999. The Court directed the Committee to monitor implementation of the Interim Rules, assist in evaluation of the Expedited Process, and, by March 1, 2000, advise the Court with respect to any recommended revisions to the Interim Rules.

F. IMPLEMENTATION OF INTERIM RULES

1. Appointment of Child Support Magistrates and Hiring of Other Personnel

During July and August 1999, each judicial district appointed child support magistrates as authorized under the Interim Expedited Child Support Process Rules. In addition, State Court Administration employed a manager to oversee implementation of the expedited child support system, as well as legal and other staff to handle various administrative issues.

2. Training of System Stakeholders

During the Fall and Winter of 1999 – 2000, training sessions were provided to judicial system personnel and practitioners. State Court Administration conducted five regional training sessions for court administration personnel regarding the expedited child support process and their role and responsibilities under the new rules. In addition, State Court Administration also conducted a magistrate training session for district court judges, family court referees, and child support magistrates regarding practices and procedures under the expedited child support process. The Department of Human Services conducted training for child support officers and other systems personnel. The Minnesota County Attorneys Association and the Minneapolis Legal Aid Society offered training sessions to county attorneys and legal aid attorneys, respectively. Finally, nearly 200 family law attorneys attended continuing legal education courses offered by the Minnesota State Bar Association regarding the expedited process.

3. Amendment of Interim Rules

In November 1999, the Committee identified two issues requiring immediate attention: county attorney attendance at hearings and uncontested parentage matters.

a. County Attorney Attendance at Hearings

While the Interim Rules are silent with respect to appearance by county attorneys, the comment to Interim Rule 361.01 provides in pertinent part as follows: "The county attorney determines which hearings the county attorney will attend." This language proved to be confusing. As a result, the first issue of immediate concern was whether the Interim Rules should require county attorneys to attend every hearing in which the county agency is a party. The Interim Rules authorized employees of the county agency [hereinafter "child support officers" or "CSOs"] to attend and participate as witnesses in hearings upon the direction of and in consultation with county attorneys. Pursuant to this language, in many counties child support officers would appear at hearings, but county attorneys would not. In some counties, child support magistrates permitted such cases to proceed without the presence of a county attorney. In other counties, however, child support magistrates dismissed such cases on the grounds that county agencies, like corporations and other non-human entities, are required to appear through legal counsel.

Some Committee members argued that existing case law requires county attorneys to appear at contested hearings and it is not appropriate for child support officers to appear on behalf of the county agency. Others urged that the county attorney, not the child support magistrate, should decide whether the county attorney attends hearings. County attorneys are

well aware of the Rules of Professional Conduct and the consequences for failing to abide by such rules.

The Committee agreed that, through training, county attorneys should understand that they ought be present at each contested hearing. However, rather than placing a county attorney appearance mandate in the rules, the Committee ultimately decided to recommend to the Supreme Court that the Interim Rules be amended. Upon the Committee's recommendation, in December 1999 the Supreme Court issued an Order amending the Interim Rules to provide that child support officers could "participate in such other activities and perform such other duties as delegated by the county attorney, but not to conduct contested hearings." At the same time, the Interim Rules were renumbered to follow sequentially at the end of the Family Court Rules of the General Rules of Practice for District Courts.

b. Uncontested Parentage Matters

The second issue of immediate concern discussed by the Committee was whether the Interim Rules authorized child support magistrates to sign orders establishing custody and parenting time (i.e., visitation) in uncontested parentage actions. Some magistrates were signing such orders on the grounds that the Interim Rules authorize magistrates to deal with "establishment of parentage, when uncontested." Other magistrates, however, were referring uncontested parentage matters to district court on the grounds that the Interim Rules preclude "establishment, modification or enforcement of custody or visitation." Still other magistrates were signing orders relating to uncontested parentage actions, but were having the orders co-signed by district court judges.

Some Committee members were in favor of amending the Interim Rules to clarify that magistrates are authorized to sign uncontested parentage orders, including orders establishing custody and parenting time. They urged that federal law requires uncontested parentage matters be expedited and that parents who have agreed on all issues should have the matter resolved in one setting. Others stated that because the statute establishing the expedited process prohibits issues of custody and parenting time, the Interim Rules could not be amended to authorize such proceedings. They also stated that the only way to resolve the issue would be to require uncontested parentage actions to be filed in district court. Although the Committee recommended that the Interim Rules be immediately amended to authorize "establishment of parentage, including custody and visitation, when uncontested," the rules were not so amended.

G. PHASE II COMMITTEE DELIBERATIONS – DRAFTING OF THE PROPOSED FINAL RULES

In October 1999, approximately four months after the Interim Rules became effective, the Committee reconvened to begin monitoring implementation of the Interim Rules and identifying any revisions that might be necessary. After discussing various methods for monitoring implementation of the Interim Rules, the Committee decided to solicit feedback from parents and professionals involved in the expedited child support process by distributing surveys.

1. Parents and Professionals Surveys

In November 1999, the Committee distributed surveys [hereinafter "the surveys"][1] to parents and judicial system professionals in an attempt to gain a better understanding about how the Interim Rules were being received:

- One survey was distributed to 100 custodial and non-custodial parents involved in contested child support proceedings;
- A second survey was distributed to 100 custodial and non-custodial parents involved in consent and default child support proceedings; and
- A third survey was distributed to approximately 500 professionals involved in the child support system, including judges, child support magistrates, county attorneys, child support officers, court administrators, and private and legal aid attorneys.

The professionals survey addressed the content and process of the text of the Interim Rules, while the parents surveys addressed the system's user-friendliness, timeliness, expeditiousness, understandability, and whether the parent was able to navigate the expedited process without hiring an attorney.

While the survey response rate was less than expected, the Committee understood the lack of response to mean that implementation of the Interim Rules was generally going well. During the period from November 1999 through July 2000 the Committee met to discuss and resolve the numerous pages of issues identified by the public. A summary of the substantive issues raised, and the Committee's discussions regarding each issue, are set forth in *Section IV*. Through this process the Committee drafted the Proposed Final Rules.

2. Extension of Committee Deadline and Effective Date of Interim Rules

The Interim Rules were to be effective July 1, 1999, through June 30, 2000. The Committee was directed to monitor implementation of the Rules and to submit its recommendations for revisions, if any, by March 2000. To solicit adequate feedback from child support system stakeholders regarding the newly promulgated rules, the Committee requested an extension of time in which to monitor the Rules and report back to the Court. On June 19, 2000, the Court issued an Order extending the due date for the Committee's final report and recommendations to December 15, 2000. The Court also extended the effective date of the Interim Rules to June 30, 2001.

3. Distribution of Proposed Final Rules for Public Comment

The Committee continued to monitor implementation of the rules and discuss improvements. In August 2000, at the request of the Supreme Court, the Committee distributed the Proposed Final Rules to the public for review and comment. In addition to posting the Proposed Final Rules and notice of the request for comments on the Supreme Court's website, the Committee also distributed the proposed rules to nearly 1,500 child support system stakeholders, including all trial and appellate court judges, family court referees, child support magistrates, district administrators, court administrators, as well as county attorneys, child support officers, and the

[1] Copies of the parents and professionals surveys are available upon request by contacting the Court Services Division of State Court Administration.

members of the Family Law section and Children and the Law section of the Minnesota State Bar Association.

In a few counties, one questionnaire was returned on behalf of the staff of an entire office or agency. Although the overall response rate was again relatively low (2%), the Committee nevertheless received 85 pages of constructive comments. The Committee reviewed each of the comments and considered each issue raised. A summary of the substantive issues raised, and the Committee's discussions regarding each issue, are set forth in *Section IV*.

4. Finalization of Proposed Rules

During the meetings in September, October and November 2000, the Committee carefully considered the public's comments as it continued to debate the issues surrounding improvement of the expedited process. Through this process, the Committee refined and finalized its recommendations and proposed rules. Highlights of the Committee's discussions are set forth in *Section IV*.

IV. COMMITTEE DELIBERATIONS

A. OVERVIEW OF DELIBERATIONS PROCESS

This section of the Final Report summarizes the Committee's deliberations with respect to each recommendation for substantive revision of the Interim Rules. Recommendations for non-substantive revisions, such as those for grammar, more user-friendly language, or minor format changes, are not summarized.

During their deliberations, Committee members attempted to reach consensus on each of the issues. "Consensus" was not defined as an agreement by the "majority" of the members but, rather, as language that everyone could live with for the good of the whole. While a number of the issues provoked lengthy and passionate debate, the Committee achieved consensus on each of the issues thus avoiding the necessity of any minority reports.

B. FORMAT OF FINAL RULES REVISED

1. Rules Reorganized

When the Committee was first established in 1999, in essence it was given the task of drafting procedural rules relating to five distinct areas of law: (a) determination of parentage, (b) establishment of support, (c) modification of support, (d) enforcement of support, and (e) review and appeal of orders for support. In drafting the Interim Rules, the Committee chose to merge the various areas of law under broad procedural headings. For example, the rule dealing with "Initiation of Proceedings" was divided into three subsections: "Establishment of Parentage and Support," "Modification and Enforcement of Support," and "Enforcement by Motion for Contempt." However, as a result of the surveys distributed in November 1999, the Committee learned that the public desired a more user-friendly format as it was difficult to determine which procedure applied to each type of proceeding.

In response to the public's concerns, the Committee reorganized the format of the Proposed Final Rules in a more user-friendly manner so that each area of law is now a separate, stand-alone rule. For example, Rule 370 now deals solely with "Establishment of Support Proceedings." All information necessary to process an Establishment case is included under that rule, including subsections dealing with commencement, content of pleadings, service and filing of pleadings, response to pleadings, settlement procedure, default procedure, hearing procedure, decision and order, and review and appeal. Likewise, Rules 371, 372, 373, and 374 deal, respectively, with the other distinct areas of law, including "Parentage Actions," Motions to Modify and Set Support," "Enforcement Proceedings," and "Contempt Proceedings." Each of these rules is divided into subsections similar to those in Rule 370.

2. Rules Renumbered

A second area of format revision deals with the sequential order of the first two rules. The Interim Rules currently begin with the rule relating to "Scope, Purpose, and Types of Proceedings," and the second rule deals with "Definitions." The Committee believes the would be more consistent with the format of other court rules if the first rule encompassed "Scope and Purpose," the second rule set forth "Definitions," and the third rule identified "Types of Proceedings." The Proposed Final Rules have been renumbered to fit this scheme.

C. SCOPE AMENDED AND GOALS STRENGTHENED

1. Other Court Rules Are Now Applicable

In drafting the Interim Rules, the Committee attempted to make them a "one-stop-shop" -- a comprehensive, user-friendly source to consult when dealing with a case in the expedited process. To achieve this goal, the Committee attempted to include in the Interim Rules all necessary language from all other court rules and pertinent statutes. For this reason, Rule 351.01 of the Interim Rules provides that "To the extent other rules of court [such as the Rules of Civil Procedure and the General Rules of Practice] are inconsistent with the Interim Rules, the Interim Rules supersede."

However, through the process of public comment the Committee learned that the Interim Rules are not as user-friendly as envisioned. Instead, there is confusion about which other court rules apply and which rules supersede. The confusion was caused in part by the Advisory Committee Comment to Interim Rule 351.01 which provides, in part, that "Unless otherwise incorporated, such other rules of court are not binding on the child support process. However, child support magistrates, court administrators, parties, and attorneys should look to such other court rules for guidance." For example, both the Rules of Civil Procedure and the Interim Rules discuss service of process by U.S. Mail. While the language is similar in both sets of Rules, it is not identical. As such, there are questions about which rules apply.

The Committee members agreed that the best solution would be to delete the Advisory Committee Comment and to revise the language so that other rules of court (e.g., Rules of Civil Procedure, Rules of Evidence, etc.) are applicable unless inconsistent with the expedited process rules. By reaching this conclusion, the Committee not only resolved the public's concern, but also significantly decreased the length of the Proposed Final Rules as they no longer repeat language from other court rules and statutes. In addition, the committee also overcame the possibility that it missed quoting one or more other court rules as part of the expedited process rules. Based upon the Committee's decision, Rule 351.01 of the Proposed Final Rules provides that "The Minnesota Rules of Civil Procedure, Minnesota Rules of Evidence, and Minnesota General Rules of Practice for the District Court shall apply to proceedings in the expedited process unless inconsistent with these rules." The rule was also amended to provide that "These rules do not apply to matters commenced in or referred to district court."

2. Goals as Rule Rather than as Advisory Committee Comment

Consistent with the purposes set forth in statute, Rule 351.02 of the Interim Rules identifies the purposes of the expedited process. In addition, as an advisory committee comment, the Committee identified the various goals of the Interim Rules. During deliberations the Committee frequently referred to the list of goals and realized that the goals should be set forth in a substantive rule rather than in a comment that carries no authoritative weight. For that reason, Rule 351.02, subd. 2, was added to the Proposed Final Rules to set forth the goals in a rule rather than in a comment.

3. Achievement of Goals

Public comment on the Interim Rules reflected that the rules required too much paperwork, were too complicated, and were not easy to understand, not user-friendly, and not expedited. The public requested rules that were short and easy to use without the need to hire a

lawyer. The vast majority of non-agency parties to support proceedings are not represented by counsel and generally are not likely to be familiar with the use of court rules, such as the Expedited Child Support Process Rules. The Committee worked diligently to draft rules that would address the public's concerns and submits that the Proposed Final Rules provide more clarity and uniformity, and support the goals of the expedited process. In addition, the Committee agreed that it is important that the judicial system make available user-friendly forms and train court staff to explain the forms. The Committee believes that proper forms, readily available, are essential to making the system work.

It should be noted that some Committee members felt that the Rules, even as proposed for amendment in this Final Report, do not meet all of the goals of the expedited process. The Committee realized that some goals may conflict with each other and for that reason not all goals are able to be met. Some Committee members are uncertain of whether any court rules could satisfy the burden of achieving all goals. For example, the attempt to write rules that were short and concise jeopardized clarity. The Committee agreed that it was more important to have substance over brevity. It is also more important to have rules that comport with due process requirements and that are fair to all parties involved. While the Proposed Final Rules may be more lengthy than originally hoped, the complexity of today's varying family dynamics leads to more complex rules. Child support is no longer a simple process and it is important for these rules to be precise in order to address very complicated areas of law. To ensure that the rights of the parties are protected and proper notice and timeframes are clearly explained, the rules are slightly longer and the process may not be as "expedited" as some people would expect.

D. DEFINITIONS EXPANDED

While legal practitioners may have a common understanding of the definitions of various legal words and phrases, lay persons may not be familiar with the definitions of such legal terms. Since the expedited process rules are intended to be used by lay persons as well as practitioners, the Committee drafted the Interim Rules to include a "definitions section". Rule 352.01 of the Proposed Final Rules was amended to revise one existing definition and to add four new definitions:

1. "Non-Initiating Party"

In subdivision (g), the definition of "non-initiating party" was amended to include not only the person or county agency responding to the complaint or motion, but also "any person who assigned to the state rights to child support because of the receipt of public assistance or applied for child support services." This language was added to clarify that there are generally two non-initiating parties: the person receiving services from the State and the person from whom child support is sought to be collected. The language was also intended to clarify that the county attorney does not represent either the person who is receiving services from the State or the person from whom child support is sought to be collected. Rather, the county attorney represents the interests of the public authority.

2. "Answer" and "Response"

The definition of "answer" was added as subdivision (a) to mean "a written document responding to the allegations of a petition or complaint." This term is now distinguished from the

definition of "response" which was added as subdivision (k) to mean "a written answer or a request for hearing form."

3. "Parentage"

Consistent with the statutory definition, the definition of "parentage" was added as subdivision (h) to mean "establishment of the existence or non-existence of the parent-child relationship."

4. "Parenting Time"

Consistent with a 1999 statutory amendment replacing the term "visitation" with the phrase "parenting time," the phrase "parenting time" was added as subdivision (i) to mean "the time a parent spends with a child regardless of the custodial designation regarding the child. Previously known as 'visitation.'"

E. TYPES OF PERMISSIBLE AND PROHIBITED PROCEEDINGS CLARIFIED AND EXPANDED

The Committee discussed whether to enumerate all powers and duties of the child support magistrate and identify all issues that the child support magistrate could decide. The Committee broadly identified proceedings that a child support magistrate is not authorized to decide, such as contested parentage and criminal contempt matters. The Committee chose not to identify in rule specific issues that child support magistrates could decide, because of concern about accidentally failing to identify an authorized issue. Following is a summary of the Committee's discussions regarding these clarifications.

1. Uncontested Parentage Proceedings Clarified as Permissible Proceeding

As noted in *Section III: Background – From Holmberg to the Proposed Final Rules*, in November 1999 the Committee submitted to the Court a recommendation to immediately amend the Interim Rules relating to the issue of uncontested parentage proceedings. The Court, however, did not adopt the Committee's recommendations. During its second round of deliberations, the Committee revisited the recommendation after receipt of the additional public comments regarding the issue.

Rule 351.03 of the Interim Rules identifies proceedings that must be commenced in the expedited process; proceedings that cannot be commenced in the expedited process; and proceedings that may, at the option of the county, be commenced in the expedited process. The Interim Rules provide that, at the option of the county, "establishment of parentage proceedings, when uncontested" are permitted to be conducted in the expedited process. As a result of public comment, however, the Committee learned that there remains some confusion regarding the intent of the word "uncontested." At what point in a proceeding is a case considered "uncontested." For example, some were unsure of whether a case may proceed in the expedited process if the parties agree to all issues except support. Others were unsure of whether a case may proceed in the expedited process if the parties agree to support, but not to other issues such as custody, parenting time, or the child's legal name.

The Committee consensus was that the Interim Rules are intended to encourage settlements and stipulations. A rule requiring magistrates to refer all contested and uncontested parentage issues to district court would not meet the goals of being a user-friendly or an

expedited process, especially in cases where the parties had reached agreement regarding one or more issues (e.g., support, custody, parenting time, the child's legal name). Some Committee members urged that where parties agree upon an issue, that issue should be captured by issuance of an order and then any outstanding issue beyond the jurisdiction of the magistrate would be referred to district court. This would further the goal of establishing paternity and support so money starts flowing to the child. The Committee agreed that if the parties reached agreement on all issues except support, the child support magistrate could approve the stipulation and determine support.

There was also consensus that Minnesota Statutes § 257.66 mandates that all issues be resolved in the parentage order, thus by implication, prohibiting bifurcated proceedings between the expedited process and district court. Along these lines, the Committee expressed concern regarding the applicable burden of proof if issues were bifurcated. For example, if support is set in the expedited process and other issues, such as custody and visitation, are referred to district court, the Committee questioned whether the district court would have authority to revise support, and, if so, whether the "modification standard" (substantial change in circumstances) would apply. Likewise, if custody is awarded or reserved in the expedited process, the Committee questioned whether the burden of proof upon referral to district court would be "best interests" as in any establishment of custody case or "endangerment" as in custody modification proceedings. Similarly, the Committee questioned whether an order issued in the expedited process setting forth decisions on some issues and referring other issues to district court would be a final order subject to review, appeal, and confidentiality constraints.

Based upon these discussions, the Committee decided to add language clarifying a magistrate's authority to issue parentage orders under certain circumstances. Rule 353.01, subd. 2(b), of the Proposed Final Rules provides that "When establishing parentage, a child support magistrate has the authority to establish custody, parenting time, and the legal name of the child only when (1) the parties agree or stipulate to all of these particular issues, or (2) if the complaint, motion, or supporting affidavit specifically addresses these particular issues and a party fails to serve a response or appear at the hearing." Likewise, subdivision 3(g) prohibits "evidentiary hearings to establish custody, parenting time, or the legal name of the child under Minnesota Statutes Chapter 257."

2. Criminal Contempt Proceedings Clarified as a Prohibited Proceeding

Rule 351.03, subd. 2(b), of the Interim Rules provides that, at the option of the county, "contempt proceedings, when uncontested," may be conducted in the expedited process. As a result of public comment, the Committee discussed whether child support magistrates should be authorized to resolve both criminal and civil contempt matters. Since child support magistrates do not have authority to hear criminal issues, the Committee decided that only uncontested civil contempt matters could proceed in the expedited process. For that reason, Rule 353.01, subd. 2(a)(2) of the Proposed Final Rules was clarified to authorize "civil contempt matters" as a permissible proceeding. Likewise, Rule 353.01, subd. 3, was revised to add subdivision (h), "evidentiary hearings in contempt matters" as a prohibited proceeding to clarify that only uncontested civil contempt matters may proceed in the expedited process.

3. Change of Venue Proceedings Added as Permissible Proceeding

Today's families are increasingly mobile, and, as a result, venue issues frequently arise in child support proceedings. For example, this occurs where the initial dissolution decree was issued in "County A," but now the divorced parents reside in "County B" and "County C." Similarly, one parent may reside in one county but pay support for children who reside in several different counties. Public comment questioned the authority of child support magistrates to issue orders changing venue under these circumstances.

Most Committee members initially agreed that child support magistrates should not have authority to issue orders changing venue. Change of venue hearings would likely clog the calendars and bog down the expedited process, thereby delaying critical child support decisions. However, after further discussion, the Committee reached a compromise relating to uncontested change of venue motions. Since the Interim Rules encourage stipulations and settlements, it would be a disservice to parties who had agreed to change venue to require them to proceed in district court when the matter could be handled in the expedited process. As a result, Rule 353.01, subd. 2(c) of the Proposed Final Rules provides in part that "Upon written consent of all parties, a child support magistrate may issue an order changing venue. . . . If any party disputes a motion to change venue, the child support magistrate shall issue an order referring the matter to district court and the court administrator shall schedule the matter for hearing."

4. Tax Dependency Exemptions Authorized

Some committee members questioned whether child support magistrates are authorized to grant and modify tax dependency exemptions. The answer to the question hinged on whether tax dependency exemptions are viewed as child support (which can be decided in the expedited process) or marital property (which cannot be decided in the expedited process). Based upon the case of *Kriesel v. Gustafson,* 513 N.W.2d 9 (Minn. App. 1994), which provides that tax dependency exemptions are not marital property, the Committee determined that child support magistrates are authorized to grant and modify tax dependency exemptions. This decision to authorize tax dependency exemptions is reflected in the Advisory Committee Comment to Rule 367.03.

5. Additional Prohibited Proceedings

Rule 351.03, subd. 3, of the Interim Rules identifies proceedings that cannot be conducted in the expedited process. As a result of questions raised in the survey responses, Rule 353.01, subd. 3, of the Proposed Final Rules was revised to add the following prohibited proceedings:

- Evidentiary hearings to establish custody, parenting time, or the legal name of the child under Minnesota Statutes Chapter 257;
- Evidentiary hearings in contempt matters;
- Motions to change venue, except as permitted in subdivision 2;
- Enforcement proceedings prohibited in Rule 373.01;
- Matters of criminal non-support; and
- Motions to vacate a recognition of paternity or paternity adjudication.

F. PROCEDURES CLARIFIED WHEN PROHIBITED ISSUES RAISED

1. District Court to Decide all Issues Upon Referral from Expedited Process

Rule 351.04, subd. 2, of the Interim Rules provides that if a proceeding is commenced in district court and multiple issues are raised, "the district court judge . . . must determine whether to decide all issues or refer appropriate issues to the expedited child support process." From survey responses the Committee learned that there is confusion about proper procedure to be followed if a proceeding is commenced in district court and includes support issues. One issue is whether the district court judge should decide all issues, including support, or whether the judge should decide all issues except support and refer the support issue to the expedited process. A second issue is whether a district court judge has authority to refer certain issues back to the expedited process after they have already been referred to district court.

On the one hand, the Committee agreed that it would not be user-friendly to require parties to appear at multiple hearings (one in district court and one in the expedited process) when all issues might be capable of resolution in one setting. On the other hand, however, the Committee agreed that if a district court judge cannot decide the support issues without benefit of a further hearing, then the judge should have the option of referring the support issues to the expedited process Similarly, if a case is commenced in the expedited process and a prohibited issue is raised requiring referral of the matter to district court, the district court judge should not have the option of sending some issues (e.g., support) back to the expedited process.

As a result of the Committee's discussions, Rule 353.02, subd. 2, of the Proposed Final Rules was revised to provide that "the district court judge should attempt to decide all issues . . . .". However, if the judge cannot decide the support issues without an additional hearing, the judge may refer the support issues to the expedited process. The rule was also revised to provide that a matter referred to district court from the expedited process "shall be decided in its entirety by the district court judge and shall not be referred back to the expedited process."

2. Discretion to Set Temporary Support When Prohibited Issue Raised

The Committee learned that there is confusion regarding proper procedure when prohibited issues arise in cases commenced in the expedited process. Rule 351.04, subd. 3, of the Interim Rules provides that if a proceeding is commenced in the expedited process and a prohibited issue is raised, "the child support magistrate must refer all issues to district court for decision by a district court judge." In reviewing this language, the Committee discussed whether the entire case should be referred to district court or whether the child support magistrate should decide the authorized issues (i.e., support) and refer all other issues to district court. The Committee agreed that the process should be kept as simple as possible and that, if at all possible, parties should not be required to attend multiple hearings.

Based upon the Committee's discussions, Rule 353.02, subd. 3, of the Proposed Final Rules was revised to provide that if one or more prohibited issues is raised in the expedited process, the child support magistrate may either "refer the entire matter to district court, or determine the temporary support amount and refer all issues to district court." The rule also provides that the district court judge "may adopt and incorporate by reference the findings and order of the child support magistrate. If the district court judge does not adopt the findings and order of the child support magistrate, the judge shall make the necessary findings and order regarding permanent

support. In the alternative, the order for temporary support shall become permanent upon the dismissal or withdrawal of the prohibited issue referred to district court."

G. SERVICE OF PROCESS RULE AMENDED

Rule 355.02 of the Interim Rules deals with "Types of Service" and is divided into 4 subdivisions: personal service, service by publication, service by U.S. mail, and service by facsimile transmission. The "service by U.S. mail" subdivision provides that "any party serving a summons and complaint must also include two copies of a notice and acknowledgement of service by mail form, along with a return envelope, postage prepaid, addressed to the sender." As a result of the survey responses, the Committee discussed the following issues relating to service of process.

1. Service of Process Rule Reorganized

First, the Committee discussed whether service by publication and service by U.S. mail accompanied by an acknowledgement of service form are separate types of service or, instead, whether they are actually methods of alternative personal service. In reviewing the Rules of Civil Procedure, the Committee determined that they are methods of alternative personal service. For that reason, Rule 355.02, subd. 1, of the Proposed Final Rules regarding personal service was reorganized to include acknowledgement by mail and service by publication as alternative means of personal service.

2. Method of Service Upon Person Receiving Services Amended

Second, the Committee discussed the appropriate method of service upon the person receiving services from the county agency. Rule 362.01, subd. 2, of the Interim Rules provides that "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 . . . ."

This issue received the greatest number of comments during the public comment period. Likewise, it was among the issues most vigorously debated by the Committee. In discussing this language, some Committee members urged that from a constitutional perspective the person receiving services from the county agency should be personally served so that jurisdiction is conferred for purposes of any potential future proceedings. Others argued that if a person is seeking services from the county agency, it is reasonable to expect that they will submit to the jurisdiction of the court and, therefore, personal service is unnecessary. Those receiving services from the State sign an application authorizing the child support office to take legal action on behalf of the children for whom benefits are received. It is not feasible to require service by mail with return of an acknowledgement of service since persons receiving services rarely return such acknowledgement forms, thereby forcing personal service. Personal service is extremely costly and time consuming and is a vestige of days gone by. For initiating parties who are pro se litigants, the expense and confusion of personal service is difficult to justify.

To resolve these concerns, the Committee reached a compromise and made two revisions. First, the Committee agreed that in parentage and establishment of support actions service upon all parties may be made by personal service, or by alternative personal service (i.e., service by publication or service by mail with a written acknowledgement of service), unless personal service

has been waived in writing. Second, when the county agency initiates an establishment action the party who is receiving services may be served by any means authorized under the service rule. These decisions are reflected in Rules 370.03, subd. 2 (establishment proceedings); 371.03, subdivision 2 (parentage proceedings); and 372.03, subd. 2 (modification of support and setting of support proceedings).

3. Parties Not Authorized to Serve Process

Rule 355.02, subd. 1(b) of the Interim Rules provides that "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." Some members suggested that because of potential conflict of interest and fraud, the Interim Rule should be expanded to provide that parties should not be permitted to serve each other either personally or by U.S. mail. Other members urged that the Rules of Civil Procedure are silent as to whether motions and other documents may be served by mail by a party and that the expedited process rules should not be more stringent than the Rules of Civil Procedure.

The Committee decided that "personal service" and "service by U.S. mail" "shall be made only by the sheriff or by another person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minnesota Statutes § 518.5513, an employee of the county agency may serve documents on parties." These decisions are reflected in Proposed Final Rule 355.02, subd. 1(b) and subd. 2.

4. Service by Facsimile Rule Amended to be Consistent with Rules of Civil Procedure

Rule 355.02, subd. 4, of the Interim Rules provides as follows: "Unless these rules require personal service, by agreement of the parties any document other than a summons and complaint may be served by facsimile transmission."

Several members of the public questioned why service by facsimile under the Expedited Process was more stringent than the Rules of Civil Procedure, which do not require an agreement of the parties or mailing of a hard copy of the document. Some Committee members were in opposition to any amendment to the proposed language, claiming that there are times when people incorrectly send facsimile documents, such as upside down, and then the other person never receives the document even though the sender has a receipt stating that it was sent. These individuals advocated that if the parties agree in advance to service by facsimile, the receiver will know when to expect a document and, therefore, can contact the sender if it is not received. Those in favor of the less stringent language argued that accidentally sending a blank document is not a common occurrence, and more should not be required of litigants involved in the expedited process than those involved in district court proceedings.

The Committee ultimately decided to revise the rule to model it after the Rules of Civil Procedure. Rule 355.02, subd. 3, of the Proposed Final Rules provides as follows: "Unless these rules require personal service, any document may be served by transmitting a copy by facsimile machine."

H. FILING OF DOCUMENTS AND SUPPORTING DOCUMENTATION CLARIFIED

1. "Submission" of Documents Changed to "Filing" of Documents

The Interim Rules permit documents to be "submitted" to the court. One example is Interim Rule 357.02, subd. 3, which provides that with respect to a motion for intervention "an existing party may submit a written objection to the child support magistrate." Another example is Interim Rule 369.12 which deals with submission of additional evidence at the close of a hearing and provides that "Unless otherwise ordered by the child support magistrate, such additional information must be submitted to the court administrator within ten days of the conclusion of the hearing."

Some Committee members suggested that by using the term "submitted" in lieu of the term "filed," the Committee was in essence condoning the practice of ex parte contact. Encouraging ex parte contact was never the Committee's intent. For that reason, in the Proposed Final Rules all references to "submission" of documents have been changed to "filing" of documents. To further clarify the prohibition against ex parte contact, Rule 355.04 dealing with proof of service now provides that "All papers and documents filed with the court administrator shall be accompanied by an affidavit of service, or an acknowledgment of service by that party or party's attorney . . . ."

2. Filing of Documentation Supporting Complaint or Motion is Discretionary

Rule 366.02, subd. 2, of the Interim Rules relating to settlement provides that "When submitting the proposed consent order to the child support magistrate, all pleadings and affidavits of service must be submitted to the child support magistrate." Similar language is found in Interim Rule 364.01, subd. 2, relating to proposed default orders. However the default rule also requires that "A copy of the information used to prepare the proposed order must also be filed with the court."

Several child support magistrates requested that the documentation supporting proposed consent orders and proposed default orders be filed with the court so that magistrates could verify the accuracy of the information contained in them. The Committee agreed that the request raises a trust issue between magistrates and child support officers who draft the proposed orders for review and approval by county attorneys. The request also raises a trust issue as to whether county attorneys are truly reviewing and approving both the form and content of proposed orders. Some Committee members argued that such supporting documentation should be automatically filed with the court in all proceedings or, at a minimum, that the child support magistrate should have the authority to request such information. Others, however, argued that authorizing child support magistrates to review the supporting documentation in every case would unnecessarily bog down the expedited nature of the process. Court administrators expressed concern about the size of court files if all supporting documentation is required to be filed in every case.

The Committee ultimately decided to amend Rules 362 (Settlement) and 363 (Default) of the Proposed Final Rules to delete all references to the filing of supporting documentation. Instead, the Committee chose to include an advisory committee comment to Rules 370.02, 371.02, and 372.02 which provides that "for all cases involving establishment or modification of support, the pleadings are to contain specific information. At times, it may be necessary to attach supporting documentation to the affidavit. Each county should establish its own local policy regarding the attachment of supporting documents." In addition, Rules 362.04(a) and 363.04(a) were revised to

provide that if a child support magistrate rejects a recommended order as deficient, the magistrate has the authority to request that supporting documentation be filed. Finally, throughout the rules the Committee changed "proposed orders" to "recommended order".

I. "PROPOSED" ORDER ELIMINATED AS INITIATING DOCUMENT

Rule 362 of the Interim Rules deals with initiation of proceedings in the expedited process. The rule provides that proceedings are commenced either with service of a summons and complaint or with service of a notice of motion and motion. The rule also provides that "The initiating party must ordinarily attach to the summons and complaint [or notice of motion and motion] a proposed order that states in plain language what the party wants the child support magistrate to order."

As a result of the parents surveys, the Committee learned that parents are often confused by receipt of a proposed order along with a summons and complaint or notice of motion and motion. Upon receipt of a proposed order, many parents believe that the court has already made a decision regarding the case and, therefore, it is useless for the parent to respond. In drafting the Interim Rules, the Committee chose to include the "proposed order" language as it was a concept utilized in the former administrative child support process. In the Final Proposed Rules the Committee ultimately decided to delete the requirement to serve proposed orders as part of the initiating documents. Instead, recommended orders are now submitted to the court only in cases of settlement or default. The Proposed Final Rules now provide for the commencement of proceedings by service of a summons and complaint or notice of motion and motion, along with a supporting affidavit, without the requirement of serving a proposed order. The complaint or motion, or the supporting affidavit, must now set forth specific information, if known to the initiating party.

J. COLLECTION OF FILING FEES AND MODIFICATION FEES AMENDED

Rule 354.01 of the Interim Rules provides that "The court administrator must charge and collect a filing fee in the amount established by statue 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." In drafting this language, the Committee attempted to reiterate the language of Minnesota Statutes § 357.021, thus making the Interim Rules a one-stop-shop.

The Committee learned, however, that the language was confusing. Court administrators and practitioners were unclear about whether and when a filing fee was required to be paid. For example, if a petitioner paid a filing fee as part of the dissolution process, and is now bringing a motion in the expedited process to modify the support order, must the petitioner pay another filing fee or must the petitioner pay only the $20 modification fee? In addition, there appears to be an issue of apparent unfairness to defendants. Unlike other parties to support proceedings, pursuant to statute county agencies are not required to pay a filing fee when filing their initial pleadings, responsive documents, or other documents. Since petitioners' positions are generally aligned with those of the county agency, petitioners generally do not file any pleadings, responsive documents, or other documents and, therefore, are not required to pay any filing fees or modification fees. Defendants, however, are required to pay a filing fee if they wish to file an answer to the complaint or motion and it is the first document they have filed in the action.

In an attempt to resolve these concerns, the Committee recommends amendment of Minnesota Statutes § 357.021 to provide that a filing fee need not be paid by a non-initiating party when the county agency is the initiating party in the expedited child support process. In addition, Rule 356.01 of the Proposed Final Rules was simplified to provide that "The court administrator shall charge and collect fees pursuant to Minnesota Statutes." An Advisory Committee Comment provides guidance as to the types of fees to be collected under Minnesota Statutes § 357.021.

K. LEGAL REPRESENTATION RULE CLARIFIED

1. Scope and Timing of Appointment of Counsel Clarified

Rule 358.01 of the Interim Rules provides that "Each party appearing in the expedited process has a right to be represented by an attorney admitted to practice before the courts of this State." As a result of public comments it became clear that there is confusion about the intent of this rule. Some read this rule to mean that the court is to appoint counsel for all parties involved in the expedited process.

The Committee agreed that it is not their intent for all persons to receive court-appointed counsel. Rather, counsel should be appointed only as authorized by statute. Parties should be able to waive appointment of counsel, even if they are entitled to such appointment. For this reason, Rule 357.01 of the Proposed Final Rules was modified to add that "A party, however, does not necessarily have the right to appointment of an attorney at public expense." In addition, Rule 357.03 which specifies the circumstances under which appointment of counsel is required was revised to provide "Unless a party voluntarily waives the right to counsel . . . ." Following Rule 357.03 the Committee also added an advisory committee comment summarizing the statutory provisions and case law which identifies the point at which the court may appoint counsel in parentage actions and contempt proceedings.

2. Requirement of Certificate of Representation Added

The Interim Rules are silent about whether a certificate of representation must be filed. This led to confusion for court administrators and litigants. One example is when the court administrator served the party rather than the attorney as there was no indication in the file about representation of that party. It was only after the time for review had expired that the attorney learned that an order had been issued.

To resolve this problem, in the first draft submitted for public comment, the Committee added a requirement that a certificate of representation be filed except for county attorneys and public defenders. The Committee believed there is no reason for the county attorney's office or the public defender to file a certificate of representation since the rules dictate that the county agency must be served, and information concerning appointment of a public defender should be in the file. During the public comment period, however, several private practitioners objected to this requirement as being unnecessary and time consuming. Committee members, especially those who are court administrators, argued in favor of retaining the language on the grounds that they sometimes are not made aware of whether a party is represented. And, since the rules require them to serve the party's attorney if the party is represented, information about representation is crucial. To strengthen the mandate, some argued that even public defenders should be required to file certificates of representation.

The Committee ultimately decided to add Proposed Final Rule 357.02 which provides "An attorney representing a party in the expedited process, other than a public defender or county attorney, shall on or before the attorney's first appearance, file with the court a certificate of representation." For that reason, the expedited rule is somewhat different than the Rules of Civil Procedure.

L. HEARING NOT REQUIRED TO DECIDE MOTION REGARDING NON-COMPLIANCE WITH DISCOVERY

With respect to discovery requests and non-compliance with discovery requests, Rule 367 of the Interim Rules provides that such issues must be decided at a hearing, unless the parties reach a settlement agreement. Several Committee members questioned whether it was absolutely necessary to convene a hearing. Instead, they advocated that a hearing should not be required if the parties in their moving papers fully explained the non-compliance issue. The Committee agreed that the child support magistrate should determine whether a hearing is or is not required to resolve the issue. For this reason, Rule 361.04, subd. 2 of the Proposed Final Rule was revised to provide that a "motion shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary."

M. CONTENT OF RECOMMENDED ORDER REGARDING SETTLEMENT AGREEMENTS EXPANDED

Rule 366.02, subd. 1, of the Interim Rules provides that if the parties reach an agreement resolving the issues, a proposed consent order shall be prepared and shall "state that the parties have waived their right to a hearing." Rule 362.02 of the Proposed Final Rules was revised to also add that any recommended order shall also "state that the parties have waived their right to counsel, if a party is not represented by counsel, and have received and reviewed all documents used to prepare the order."

N. TRANSCRIPT RULE CLARIFIED

When bringing or responding to a motion to correct clerical mistakes or a motion for review, Interim Rules 371.02, subd. 1(d), and 372.02, subd. 1(e), each provide that a party has the option to order and file a transcript of the hearing. Interim Rule 373.01 provides that "[a] request for a transcript must be made at the earliest possible time," and that "[o]rdering and submission of a transcript does not delay the due dates for the submissions" for bringing a motion to correct or a motion for review. These rules in combination with each other have raised concern on the part of court administrators and child support magistrates because the current rule does not identify any specific timeline for when transcripts must be ordered, paid for, filed, or withdrawn. In addition, there is some confusion about when the record closes on a motion for review or combined motion in cases when a transcript has been ordered.

To resolve these concerns, the Committee decided that the request for transcript shall be deemed cancelled if satisfactory arrangements for payment have not been made within 30 days of ordering the transcript. The Committee also decided that the request for transcript could be withdrawn anytime prior to the time transcription has begun. Further, the transcriber must file an affidavit of service to prove that the transcript was mailed to all parties. Proposed Final Rule 366 reflects the Committee's decisions.

O. CHILD SUPPORT MAGISTRATE RULE AMENDED

1. Child Support Magistrate Personnel Issues Recommended for Placement in Personnel Manual

Rule 360 of the Interim Rules specifies the process for administering the expedited process. The rule also sets forth various mandates relating to child support magistrate personnel issues, such as the process for appointing magistrates, magistrate minimum qualifications, requirements regarding county of residence, the magistrate application process, magistrate training, magistrate continuing education, conflict of interest and disqualification terms, applicability of the code of judicial conduct, magistrate impartiality, and the requirement of periodic performance evaluation.

During Committee deliberations members questioned whether some of the magistrate information was properly placed in the Interim Rules and whether it should instead be placed in a personnel policy manual. Each of these rules was initially placed in the Interim Rules because at the time they were drafted there was no other location for the language. However, the Committee agreed that several of the provisions should be deleted from the rules and placed in personnel policy manuals. Rule 367 of the Proposed Final Rules has been amended to comply with the Committee's decision. Provisions deleted from the Final Proposed Rules include magistrate minimum qualifications, requirements regarding county of residence, the magistrate application process, magistrate training, magistrate continuing education, and the requirement of periodic performance evaluation. Given the critical nature of these provisions, it is the Committee's desire that these provisions are not discarded. The deleted provisions are best placed in an Expedited Child Support Process policy manual, as recommended in *Section V*.

2. Power and Authority of Child Support Magistrates Not Enumerated

Rule 360.02 of the Interim Rules provides, in pertinent part, that "child support magistrates shall have the powers and authority necessary to perform their role in the expedited process." During the public comment period a number of comments were received about whether magistrates had authority to decide certain types of issues, such as change of venue and tax dependency exemptions. Others had questions about whether magistrates have the authority to issue Orders to Show Cause in connection with a support proceeding.

The Committee members agreed that pursuant to Minnesota Statutes § 484.702, magistrates should have all the powers and authority necessary to perform their duties under the expedited process. Some members wanted to enumerate each of those powers so that the limited scope of authority of child support magistrates would be clearly established. They argued that under Minnesota's Constitution judges are elected officials with a broad scope of powers while, pursuant to the *Holmberg* decision, child support magistrates must have powers and authority inferior to that of district court judges. Others stated, however, that one could accidentally fail to enumerate a power thus forcing practitioners and others to conclude that magistrates do not have that power.

The Committee agreed that at a minimum the language regarding power and authority should be set off in a rule of its own. In addition, the Committee chose to revise the language to refer to "duties" of magistrates rather than the "role" of magistrates. Proposed Final Rule 367.03 now provides as follows: "Child support magistrates shall have the powers and authority necessary to perform their duties in the expedited process pursuant to statue and rule." The Committee also

chose to include in an Advisory Committee Comment the following language: "It is the intent of the Committee that child support magistrates have the authority to decide all issues permitted in the expedited process, including, but not limited to, those identified in Rule 353.01, as well as awarding and modifying tax dependency exemptions, awarding costs and attorneys fees, and issuing orders to show cause."

3. Child Support Magistrate Appointment Process Modified

With respect to the appointment of child support magistrates, the Interim Rules provide that "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." In reviewing this language, the Committee agreed that the language was conflicting in that appointment was by the chief judge but termination was by all district court judges. To resolve this conflict, Rule 367.02 was revised to provide as follows: "The chief judge of each judicial district, with the advice and consent of the judges of the district, shall appoint each child support magistrate, except family court referees and district court judges, subject to confirmation by the Supreme Court."

P. RULE PRECLUDING AUTOMATIC RIGHT TO REMOVE EXTENDED TO DISTRICT COURT JUDGES AND REFEREES

Rule 368.01 of the Interim Rules provides as follow: "No party has an automatic right to remove a child support magistrate." Rule 368.02 specifies the procedure for filing a motion to remove for cause.

During the public comment period some practitioners requested that this rule be revised to mirror Rule 63.03 of the Rules of Civil Procedure which permits as a matter of right the one-time filing of a notice to remove. In discussing the issue, some Committee members felt very strongly that the rule should be amended to be consistent with the Rules of Civil Procedure. They stated there are occasions where it is important to be able to seek removal of a judicial officer without specifying the rationale. Opponents, however, argued that allowing an automatic right to remove would delay the expedited process, especially in those counties where the identity of the presiding officer is not known until the day of the hearing. They also opposed the amendment on the grounds that there are some counties where only one judicial officer is available to preside over expedited process proceedings and, in such cases, it would be all but impossible to find another magistrate to hear the matter on the date scheduled for hearing.

The Committee reached consensus that the rule should not be amended to permit an automatic right to remove. However, the Committee did decide to amend the rule to specify that the preclusion against the automatic right to remove applied not only to child support magistrates, but also to district court judges and family court referees serving as child support magistrates. The Committee also decided to expand the rule, making the preclusion applicable not only to cases decided in the expedited process, but also to cases subject to motions for review and motions to correct clerical mistakes. As a result of their discussions, Proposed Final Rule 368.01 provides as follows: "No party has an automatic right to remove a child support magistrate, family court referee, or district court judge presiding over matters in the expedited

process, including motions to correct clerical mistakes under Rule 375 and motions for review under Rule 376."

Q. ROLE OF EMPLOYEES OF THE PUBLIC AUTHORITY CLARIFIED

Consistent with statutory provisions, Rule 361.01, subd. 2, of the Interim Rules enumerates the legal duties that may be performed by non-attorney employees of the county agency under the direction of, and in consultation with, the county attorney. The list of nine duties is identical to the duties specified in Minnesota Statutes § 518.5513, subd. 2(b).

To decrease the length of the Proposed Final Rules, and, where possible, to avoid repetition of statutory language, the Committee decided to delete the list of duties and instead simply reference the statutory citation. While the Committee reached consensus on the issue, some were opposed on the grounds that lay persons and practitioners must now look to the statute to determine the role and authority of child support officers.

As a result of the Committee's decision, Proposed Final Rule 369.02 provides as follows: "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 duties listed under Minnesota Statutes § 518.5513, subd. 2(b)." Then, to emphasize two statutory duties key to the expedited process, the Proposed Final Rule further provides: "Specifically, under the direction of, and in consultation with the county attorney, employees of the county agency may (a) attend and participate as witnesses in hearings and other proceedings; and (b) present to the child support magistrate at a hearing agreements and stipulations reached by all parties." As in the Interim Rules, Proposed Rule 369.02, subd. 4, provides that "Performance of the duties identified in Rule 369.02 by employees of the county agency does not constitute the unauthorized practice of law for purposes of these rules or Minnesota Statutes 481.02."

R. HEARING REQUIRED IN PARENTAGE ACTIONS

Interim Rule 364.02 identifies the two circumstances under which a hearing is required in the expedited process: when a proposed order was not served as the initiating document, and in establishment of parentage proceedings. A number of commenters expressed concern about mandating hearings in parentage matters.

The Committee reviewed Minnesota Statutes § 257.651 which 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." The Committee also reviewed *Bartlow v. Brinkman*, 378 N.W.2d 790 (Minn. 1985), in which 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.*

The Committee is aware that default hearings are not specifically required in establishment of parentage cases. However, given the potential outcome of such cases the Committee

nevertheless chose to require hearings in establishment of parentage cases. The Committee revised the rule, however, to provide that if the parties resolve all issues in a parentage action and sign a Stipulation and Order, the hearing may be cancelled.

S. PROCEDURE TO SET SUPPORT WHEN SUPPORT RESERVED IN PRIOR ORDER ADDRESSED

Rule 362.01 of the Interim Rules provides that an action to establish support where support was reserved in a prior order shall commence by service of a notice of motion and motion as opposed to a summons and complaint. The procedure for setting support when support was reserved in a prior order caused much debate among Committee members and child support magistrates as to what document should used to initiate the proceeding.

Interim Rule 362.01 has been interpreted by attorneys and magistrates in at least two ways: (1) to mean that an action to set support and request past support would be barred since, pursuant to Minnesota Statutes § 256.87, an action to set support and obtain past support must be brought by a summons and complaint; or (2) filing of a notice of motion and motion in the original action is a basis for an award of up to two years of past support. Neither of these interpretations were intended by the Committee.

Several drafts were prepared to attempt to clarify the rule. One draft specified when a motion must be used as the initiating document or when a summons and complaint must be used. Another draft required a summons and complaint when a party is seeking past support in addition to ongoing support pursuant to Minnesota Statutes § 256.87. A majority of the Committee agreed that the rules should not mandate which initiating document should be required because of the uncertainty in interpretation of the underlying statutory law. Others felt strongly that the rules should specify which type of initiating document to use in each type of proceeding to promote the goal of system wide uniformity.

As a result of these discussions, Proposed Final Rule 372.01 no longer specifies which initiating document to use (complaint or motion), leaving it up to the initiating party to determine the appropriate papers to be filed.

T. MOTION FOR REVIEW RULE REVISED

1. Time to Issue Order Upon Motion for Review Increased from 30 to 45 Days

Rules 371.04 and 372.05 of the Interim Rules provide that "The child support magistrate must file with the court administrator an order regarding the motion to correct clerical mistakes [or motion for review] within thirty (30) days of the filing of a response . . . ." This issue received the most criticism from both judges and child support magistrates who objected on the grounds that 30 days is not sufficient time to conduct an independent review and issue and order. In some jurisdictions, for example, the judge may not be assigned the case right away. They urged that orders should be issued within 90 days, just as in other proceedings. Others, however, argued that extension of the time for issuance of orders to 90 days would not satisfy the goal of being an expedited process.

The Committee ultimately reached a compromise of 45 days. As a result, Rule 377.09 of the Proposed Final Rules was amended to provide that the decision and order must be filed with the court administrator within 45 days of the close of the record.

2. "Close of Record" for Motions for Review Clarified

Another issued raised in the survey responses centered on the close of the record for motions for review when a transcript is ordered. Interim Rule 372.05 provides that "an order regarding the motion for review must be filed within 30 days of the later of the following events: the filing of any response to motion, receipt of a transcript, or the submission of new evidence under subdivision 4." This language becomes problematic when a transcript has been ordered but then the request for a transcript is later cancelled. In such a case, there is confusion about when the record actually closes since a transcript now would not be filed.

To resolve this concern, the Committee amended Rule 377.09 to provide that "the record shall be deemed closed upon occurrence of one of the following, whichever occurs later: filing of a response pursuant to Rule 376.04; filing of a transcript pursuant to Rule 366; withdrawal or cancellation of a request for transcript pursuant to Rule 366; or submission of new evidence under subdivision 4."

3. Standard of Review on Motion for Review Remains "Independent Review"

Rule 372.01 of the Interim Rules provide that any party may bring a motion for review of any order of a child support magistrate. The party may request review by the magistrate who issued the order or by a district court judge. Rule 372.05 provides that upon the filing of a motion for review, the magistrate or judge "must make an independent review of any findings or other provisions of the magistrate's decision and order for which specific changes are requested in the motion." Upon review, the magistrate or judge may approve or modify the magistrate's order, or a judge may remand to the magistrate with instructions.

A number of magistrates and judges expressed confusion about the standard of review being an "independent review" – they are unsure of what this encompasses. Some also expressed concern about an inability to conduct an independent review when the court file lacks sufficient supporting documentation or evidence and generally does not include a transcript of the hearing as parties do not choose to request a transcript. They believe it is not possible to conduct an independent review when the transcript of the hearing has not been filed.

To resolve the "independent review" concern, some district court judges and magistrates suggested that the parties should be mandated to provide a transcript when filing a motion for review. However, mandating the filing of transcripts raises significant cost issues for the parties. Some judges have ordered transcripts when the parties chose not to provide a transcript. A question then arises as to who should pay for the transcript: the court or the parties. Some judges are reluctant to order transcripts as many do not wish to impose that cost burden upon the parties when the rules make submission of a transcript optional. Those judges then make a decision based upon the limited information in the file, typically dismissing the motion based upon the lack of a record or affirming the magistrate's order. Other judges feel strongly that they cannot make a decision without a transcript. These judges then order a transcript at the court's expense.

The rationale for the "independent review" language is, to provide for an expedited review of the magistrate's findings and order at the trial court level. The Committee originally drafted the rules to provide for a "clearly erroneous" standard of review. In promulgating the Interim Rules, the

Supreme Court agreed that there should be a trial court level of review. However, the Court decided it should not be an appellate-type review with "clearly erroneous" as the standard and, instead, decided it should be a completely independent review of the findings and order. Based upon this discussion, the Committee decided to keep the standard of review as an "independent review of the findings and order" and to provide more training and guidance to magistrates and judges about what this might encompass.

In discussing the lack of transcript issue, the Committee agreed that in deciding a motion for review it is important for the district court judge or magistrate to have access to the complete record, including the record of the hearing. However, in balancing that need with the concern about the costs and potential delays involved in mandating the filing of transcripts, the Committee instead decided to clarify the rule to provide that judges and magistrates may listen to the recordings of the hearings and need not order a transcript if one has not been filed by the parties. As a result, Proposed Final Rule 377.09, subd. 3, now provides that the review "shall be based upon the decision of the child support magistrate or district court judge and any exhibits and affidavits filed, and, where a transcript has not been filed, may be based upon all or part of the audio or video recording of the hearing."

4. Clarified Procedures for Processing Motions for Review When Magistrate No Longer Available

Rule 372.01 of the Interim Rules provides that "At the request of either party, a motion for review may be brought before either the child support magistrate who issued the order or before a district court judge." Rule 372.04, subd. 2, of the Interim Rules also provide that if the matter is brought before a district court judge, after making an independent review of the order the judge "may remand the matter to the child support magistrate with instructions." During the Committee's deliberations, questions arose about who should handle a motion for review or a remand from district court if the child support magistrate who issued the order is unavailable.

The Committee concluded that it is reasonable to assume that there will be cases when the child support magistrate who issued the order is now retired, deceased, has moved to another judicial district, or has been terminated from service as a child support magistrate. The Committee agreed that two options are available: assign the matter to another child support magistrate serving in the judicial district or assign it to a district court judge. In discussing the two options, the Committee agreed that assigning the matter to another child support magistrate, if one was available, would be the best practice since that would assure that the case would be resolved in the expedited process. As a result, Rule 376.03 and Rule 377.09, subd. 2(b), of the Proposed Final Rules provide that "If the child support magistrate who issued the order is unavailable, the motion may be assigned by the court administrator to another child support magistrate in the judicial district." The Committee chose not to define the term "unavailable," leaving it to each district to determine the scope of its meaning.

U. REVISED REQUEST FOR BLOOD OR GENETIC TESTS

The Federal Uniform Parentage Act has been adopted by the Minnesota Legislature and is incorporated as part of Minnesota Statutes Chapter 257. Section 257.62 requires the filing of an affidavit in support of a request for blood or genetic tests. Under the statute, oral requests are not specifically permitted. To create a more user-friendly system, the Committee recommends

authorizing on-the-record requests for blood or genetic tests and repealing the requirement of filing an affidavit.

CONCLUSION

The charge to the Committee was to monitor implementation of the Interim Rules and make recommendations for necessary changes. Promulgation of the rules as Interim Rules proved to be highly successful in that it allowed child support system stakeholders an opportunity to work with the rules and provide valuable feedback. Through public comment the Committee learned that clarification was necessary for some of the rules as they were subject to multiple interpretations. Although the Proposed Final Rules are now more lengthy as a result of the clarifications, the Committee felt it was important to have substance over brevity. The Committee is satisfied that the Proposed Final Rules meet the goals of having an expedited child support process, keeping the process accessible, being user-friendly, and protecting the rights of all parties. If the Supreme Court adopts the recommendation regarding filing fees, the goal of having a cost-effective process should also be met. These rules for establishing paternity and support, modifying support, and enforcing support orders in an expedited process are a positive step toward the ultimate goal of meeting the needs of children in the most efficient manner possible.

V. RECOMMENDATIONS

A. COMMITTEE CHARGE

Pursuant to the Supreme Court Order issued in June 1999, the Committee was directed to monitor implementation of the expedited process rules and make recommendations for any necessary revisions. Over the course of the past year the Committee has sought feedback from child support system stakeholders regarding the expedited process rules. Through discussion of the issues raised by the public, the Committee has revised and refined the expedited process rules and has identified areas requiring statutory revision.

B. RECOMMENDATIONS

Based upon their deliberations, the Committee makes the following recommendations:

1. The Minnesota Supreme Court should:
   - Adopt the Expedited Child Support Process Rules set forth in *Section VI* of this Report.
   - Establish a permanent child support rules advisory committee, the purpose of which should be to promote uniformity within the expedited process, monitor implementation of the Expedited Child Support Process Rules, consult with State Court Administration personnel to develop an Expedited Child Support Process Bench Book for district court judges, family court referees, and child support magistrates, and make recommendations to the Court with respect to any future Rules revisions that may be necessary.
   - Amend Rule 111.01(b) of the General Rules of Practice to provide as follows: "(b) Family court matters governed by Minn. Gen. R. Prac. 301 through 379."
   - Amend Rule and 115.01 of the General Rules of Practice to provide as follows: "This rule shall govern all civil motions, except those in family court matters governed by Minn. Gen. R. Prac. 301 through 379 . . . ."
   - Amend Rule 301 of the General Rules of Practice to provide that Rules 301 to 312 of the Rules of Family Court Procedure do not apply to proceedings commenced in the Expedited Child Support Process, except for Rules 302.04, 303.05, 303.06, and 308.02.

2. The Minnesota Supreme Court and the Minnesota Legislature should:
   - Amend the General Rules of Practice, the Expedited Child Support Process Rules, and Minnesota's statutes to provide that there is no need to issue an "Amended Judgment and Decree" when an order modifying support is issued.

3. The Minnesota Legislature should:
   - Amend Minnesota Statutes § 357.021 to provide that a filing fee need not be paid by a non-initiating party when the county agency is the initiating party in the expedited child support process.
   - Amend Minnesota Statutes § 257.62 to allow on-the-record requests for blood or genetic tests and to repeal the requirement of the filing of an affidavit.

4. The State Court Administrator should:
   - Draft and distribute to all court administrators forms as required under these rules. Court administrators should make the forms available to litigants on the same basis as they do for other pro se forms.

5. The appropriate authority should:
   - Draft an Expedited Child Support Process policy manual which should include information such as the child support magistrate personnel policy text deleted from these rules.

Respectfully Submitted,

Advisory Committee on the Rules of
the Expedited Child Support Process

PROPOSED EXPEDITED CHILD SUPPORT PROCESS RULES

TABLE OF CONTENTS

Rule 365. Decision and Order of Child Support Magistrate

Rule 366: Transcript

Rule 367: Administration of Expedited Child Support Process; Child Support Magistrates

Rule 368: Removal of a Particular Child Support Magistrate

Rule 369: Role of County Attorney and Employees of the County Agency

II. PROCEEDINGS

Rule 370: Establishment of Support Proceedings

Rule 371: Parentage Actions

Rule 372: Motions to Modify, Motions to Set Support, and Other Matters

Rule 373: Enforcement Proceedings

Rule 374: Civil Contempt

III. REVIEW AND APPEAL

Rule 375: Motion to Correct Clerical Mistakes

Rule 376: Motion for Review

Rule 377: Procedure on a Motion to Correct Clerical Mistakes, Motion for Review, or Combined Motion

Rule 378. Appeal to Court of Appeals

IV. FORMS

Rule 379. Forms

I. GENERAL RULES

RULE 351. SCOPE; PURPOSE

Rule 351.01. Scope

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

Rule 351.02. Purpose and Goals of Expedited Child Support Process

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

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

Subd. 2. Goals. These rules should be construed to meet the following goals:

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

RULE 352. DEFINITIONS

Rule 352.01. Definitions

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

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

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

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

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

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

(f) "IV-D case" means any proceeding where a party has either (1) assigned to the State rights to child support because of the receipt of public assistance as defined in Minnesota Statutes § 256.741, or (2) applied for child support services under title IV-D of the Social Security Act, 42 U.S.C. § 654(4). "IV-D case" does not include proceedings where income withholding is the only service applied for or received under Minnesota Statutes § 518.6111.

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

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

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

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

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

(l) "Support" means child support; child care support; medical support, including medical and dental insurance, and unreimbursed medical and dental expenses; expenses for confinement and pregnancy; arrearages; reimbursement; past support; related costs and fees; and interest and penalties. "Support" also means the enforcement of spousal maintenance when combined with child support, child care support, or medical support.

RULE 353. TYPES OF PROCEEDINGS

Rule 353.01. Types of Proceedings

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

Subd. 2. Permissive Proceedings.

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

(1) parentage actions; and

(2) civil contempt matters.

(b) When establishing parentage, a child support magistrate has the authority to establish custody, parenting time, and the legal name of the child only when:

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

(2) if the complaint, motion, or supporting affidavit specifically addresses these particular issues and a party fails to serve a response or appear at the hearing.

(c) Upon written consent of all parties, a child support magistrate may issue an order changing venue. The court administrator shall forward the court file to the county that has been granted venue. If any party disputes a motion to change venue, the child support magistrate shall issue an order referring the matter to district court and the court administrator shall schedule the matter for hearing. The court administrator shall mail notice of the date, time, and location of the hearing to all parties.

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

(a) non-IV-D cases;

(b) establishment, modification, or enforcement of custody or parenting time under Minnesota Statutes Chapter 518, unless authorized in subdivision 2;

(c) establishment or modification of spousal maintenance;

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

(e) division of marital property;

(f) determination of parentage, except as permitted by subdivision 2(b);

(g) evidentiary hearings to establish custody, parenting time, or the legal name of the child under Minnesota Statutes Chapter 257;

(h) evidentiary hearings in contempt matters;

(i) matters of criminal contempt;

(j) motions to change venue, except as permitted in subdivision 2;

(k) enforcement proceedings prohibited in Rule 373.01;

(l) matters of criminal non-support; and

(m) motions to vacate a recognition of paternity or paternity adjudication.

Rule 353.02. Procedure When Prohibited 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 or motion involves one or more issues identified in Rule 353.01, subdivision 1, and one or more issues identified in Rule 353.01, subdivision 3.

Subd. 2. Multiple Issues in District Court. If a proceeding is commenced in district court, the district court judge should attempt to decide all issues before the court. If the district court judge cannot decide the support issues without an additional hearing, the district court judge shall determine whether to retain the support issues or refer them to the expedited process for decision by a magistrate. If the district court judge refers the support issues to the magistrate, the referral shall include a clear statement of the issues referred and a description of the additional information needed. If possible at the time of the referral, the district court judge shall decide temporary support. A matter referred to district court pursuant to subdivision 3 shall be decided in its entirety by the district court judge and shall not be referred back to the expedited process.

Subd. 3. Prohibited Issues in Expedited Child Support Process. If a proceeding is commenced in the expedited process and the complaint, motion, answer, responsive motion, or

counter motion raises one or more issues identified in Rule 353.01, subdivision 3, upon the child support magistrate's own initiative or motion of a party, the child support magistrate assigned to the matter shall, either before or at the time of the hearing, decide whether to**:**

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

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

When a matter is referred to district court, service of the summons and complaint or notice of motion and motion in the expedited process is sufficient for the matter to proceed in district court.

RULE 354. COMPUTATION OF TIME

Rule 354.01. Generally

All time periods shall be measured by starting to count on the first day after any event happens which by these rules starts the running of a time period. 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 354.02. Time Periods Less Than Seven Days

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

Rule 354.03. "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" means 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 354.03 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 § 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 353.03. *See Mittelstadt v. Breider*, 286 Minn. 211, 175 N.W.2d 191 (1970) (applying § 373.052 to filing of notice of election contest with district court). If a county does not close its offices on a day that is a state-level judicial-branch holiday, such as the Friday after Thanksgiving, the court in that county must still include that day as a holiday for the purpose of computing time under Rule 354.03.

Rule 354.04. 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 shall 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. Central Time, one (1) additional day shall be added to the prescribed time period.

RULE 355. METHODS OF SERVICE; FILING

Rule 355.01. Generally

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

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

Rule 355.02. Types of Service

Subdivision 1. Personal Service.

(a) Upon Whom.

(1) Upon an Individual. Personal service upon an individual in the state shall be accomplished by delivering a copy of the summons and complaint, notice, motion, or other document to the individual personally or by leaving a copy at the individual's house or usual place of residence with some person of suitable age and discretion who presently lives at that location. If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service, or if a statute designates a state official to receive service, service may be made in the manner provided by such statute. If the individual is confined to a state institution, personal service shall be accomplished by also serving a copy of the document upon the chief executive officer at the institution. Personal service upon an individual outside the state shall be accomplished according to the provisions of Minnesota

Statutes Chapter 518C and Minnesota Statute § 543.19. Personal service may not be made on Sunday, a legal holiday, or election day.

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

(b) By Whom Served. Unless otherwise ordered by the child support magistrate, personal service shall be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minnesota Statutes § 518.5513, an employee of the county agency may serve documents on parties.

(c) Alternative Personal Service.

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

(2) Service by Publication.

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

(B) Defense by Non-Initiating Party. If the summons or notice is served by publication and the non-initiating party receives no actual notification of the proceeding, either before judgment or within one year of entry of judgment the non-initiating party may seek relief pursuant to Rule 4.043 of the Minnesota Rules of Civil Procedure.

Subd. 2. Service by U.S. Mail. Service by U.S. mail means mailing a copy of the document by first-class mail, postage prepaid, addressed to the person to be served at the person's last known address. Service by mail shall be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minnesota Statute § 518.5513, an employee of the county agency may serve documents on the parties.

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

Rule 355.03. Completion of Service

Personal service is complete upon delivery of the document. Service by U.S. mail is complete upon mailing. Service by publication is complete twenty-one (21) days after the first publication. Service by facsimile is complete upon completion of the facsimile transmission.

Rule 355.04. Proof of Service

Subdivision 1. Parties. All papers and documents filed with the court shall be accompanied by an affidavit of service, an acknowledgment of service by the party or party's attorney if served by alternative service, or, if served by publication, by the affidavit of the printer or the printer's designee. An affidavit of service shall describe what was served, state how the document was served, upon whom it was served, and the date, time, and place of service.

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

RULE 356. FEES

Rule 356.01. Collection of Fees

The court administrator shall charge and collect fees pursuant to Minnesota Statutes.

Advisory Committee Comment

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

Rule 356.02. Waiver of Fees

If a party indicates an inability to pay any fee required under Rule 356.01, the court administrator shall explain that the party may apply for permission to proceed without payment of the fee. Upon request, the court administrator shall provide to such a party an application to proceed *in forma pauperis*. If a party signs and submits to the court administrator an application to proceed without payment of the fee, and such a request to waive the fee is approved by a child support magistrate, the court administrator shall not charge and collect the 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 357. LEGAL REPRESENTATION AND APPOINTMENT OF GUARDIAN AD LITEM

Rule 357.01. Right to Representation

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

Rule 357.02. Certificate of Representation

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

Rule 357.03. Appointment of Attorney at Public Expense

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

(a) establishment of parentage; or

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

Pursuant to Minnesota Statutes § 257.69, a court appointed attorney shall represent a party with respect to all issues necessary for the initial establishment of parentage, including child support, custody, parenting time, and name of the child.

Advisory Committee Comment

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

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

Rule 357.04. Appointment of Guardian Ad Litem

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

Subd. 2. Exception. The Minnesota 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 358. COURT INTERPRETERS

Rule 358.01. Appointment Mandatory

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

Rule 358.02. "Person Handicapped in Communication" Defined

For the purpose of Rule 358.01, 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 358.01 and 358.02 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 359. TELEPHONE AND INTERACTIVE VIDEO

Rule 359.01. Telephone and Interactive Video Permitted

A child support magistrate may on the magistrate's own initiative conduct a hearing by telephone or, where available, interactive video. Any party may make a written or oral request to the court administrator or the court administrator's designee to appear at a scheduled hearing by telephone or, where available, interactive video. In the event the request is for interactive video, the request shall be made at least five (5) days before the date of the scheduled hearing. A child support magistrate may deny any request to appear at a hearing by telephone or interactive video.

Advisory Committee Comment

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

Rule 359.02. Procedure

The court administrator or court administrator's designee shall arrange for any telephone or interactive video hearing approved by the child support magistrate. When conducting a proceeding by telephone or interactive video and a party or witness resides out of state, the child support magistrate shall ensure that the requirements of Minnesota Statutes § 518C.316 are met. The child support magistrate shall 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 359.03. In-Court Appearance Not Precluded

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

RULE 360. INTERVENTION

Rule 360.01. County Agency

Subdivision 1. Intervention as a Matter of Right. To the extent allowed by law, the county agency may, as a matter of right, intervene as a party in any matter conducted in the expedited process. Intervention is accomplished by serving upon all parties by U.S. mail a notice of intervention. The notice of intervention and affidavit of service shall be filed with the court.

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

Rule 360.02. Other Individuals

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

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

(a) how the person's legal rights, duties, or privileges will be determined or affected by the case;

(b) how the person will be directly affected by the outcome of the case;

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

(d) any statutory grounds authorizing the person to intervene.

Subd. 3. Objection to Permissive Intervention. Any existing party may file with the court and serve upon all parties and the intervenor a written objection within ten (10) days of service of the motion to intervene.

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

Rule 360.03. Effect of Intervention

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

RULE 361. DISCOVERY

Rule 361.01. Witnesses

Any party may call witnesses to testify at any hearing. Any party intending to call a witness other than an employee of the county agency or any party to the proceeding shall, at least

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

Rule 361.02. Exchange of Documents

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

Advisory Committee Comment

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

Rule 361.03. Subpoenas

Subdivision 1. Written Request. Requests for subpoenas for the attendance of witnesses or for the production of documents shall be in writing and shall be submitted to the court administrator. The request shall specifically identify any documents requested, include the full name and home or business address of all persons to be subpoenaed, and specify the date, time, and place for responding to the subpoena. The court administrator shall issue a subpoena signed and sealed stating the name of the court and the title of the action, but otherwise in blank. The party requesting the subpoena shall fill out the subpoena before having it served.

Subd. 2. Service of Subpoenas Shall be by Personal Service. Except as noted in this subdivision, all subpoenas issued by the district court, shall be personally served by the sheriff or by any other person who is at least 18 years of age who is not a party to the action. Employees of the county agency may personally serve subpoenas. The person being served shall, at the time of service, be given the fees and mileage allowed by Minnesota Statutes § 357.22. When the subpoena is requested by the county agency, fees and mileage need not be paid. The cost of service, fees, and expenses of any witnesses who have been served subpoenas shall be paid by the party at whose request the witness appears. The person serving the subpoena shall provide proof of service by filing the original subpoena with the court, along with an affidavit of personal service.

Subd. 3. Objection to Subpoena. Any person served with a subpoena who objects to the request shall serve upon the parties and file with the court an objection to subpoena. The party objecting shall state on the objection to subpoena why the request is unreasonable or oppressive. The objection to subpoena shall be filed promptly and no later than the time specified in the subpoena for compliance. A child support magistrate shall cancel or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence requested, and whether there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the

subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

Rule 361.04. Other Discovery

Subdivision 1. Motion for Discovery. Any additional means of discovery available under the Minnesota Rules of Civil Procedure may be allowed only by order of the child support magistrate. The party seeking discovery shall bring a motion before the child support magistrate for an order permitting additional means of discovery. The motion shall include the reason for the request and shall notify the other parties of the opportunity to respond within five (5) days. The party seeking discovery has the burden of showing that the discovery is needed for the party's case, is not for purposes of delay or harassment, and that the issues or amounts in dispute justify the requested discovery. The motion shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary. The child support magistrate shall issue an order granting or denying the discovery motion.

Subd. 2. Noncompliance with Discovery. If a party fails to comply with a request for discovery, the party requesting the discovery may serve and file a motion for an order compelling an answer or compliance with the discovery request. The motion shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary.

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

(a) discovery is needed;
(b) discovery is not for the purposes of delay or harassment; and
(c) the issues or amounts in dispute justify the requested discovery.

Rule 361.05. Discovery Remedies

Subdivision 1. Options Available to the Child Support Magistrate. When deciding a discovery related motion or issue, the child support magistrate may:

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

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

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

(b) prohibit the non-compliant party from supporting or opposing designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(c) issue any other order that is appropriate in the interests of justice, including attorney fees or other sanctions.

Rule 361.06. Filing of Discovery Requests and Responses Precluded

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

(a) ordered by the child support magistrate;
(b) filed in support of any motion;
(c) introduced as evidence in a hearing; or
(d) relied upon by the magistrate when approving a stipulated or default order.

RULE 362. SETTLEMENT

Rule 362.01. Procedure

The parties may settle the case at any time before a hearing or, if no hearing is scheduled, before an order is issued. Alternative dispute resolution, as provided in Rule 310 of the Minnesota Rules of Family Court Procedure, and settlement efforts, as provided in Rule 303 of the Minnesota Rules of Family Court Procedure, do not apply to cases brought in the expedited process.

Rule 362.02. Signing of Order

Subdivision 1. Preparation and Signing. If the parties reach an agreement resolving all issues, one of the parties shall prepare an order setting forth the terms of the agreement. If the parties are not represented by counsel and the county agency is a party, the county agency shall prepare the order. All parties to the agreement, including the county agency, shall sign the original order. The order shall state that the parties have:

(a) waived their right to a hearing;
(b) waived the right to counsel where a party is not represented by counsel; and
(c) received and reviewed all documents used to prepare the order.

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

Rule 362.03. Order Accepted

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

Rule 362.04. Order Not Accepted

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

(a) to file and serve any missing documents;
(b) to file and serve a revised order;

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

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

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

Advisory Committee Comment

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

RULE 363. DEFAULT

Rule 363.01 Scope

The default procedure set forth in this rule applies to actions to establish support under Minnesota Statutes § 256.87 (Rule 370) and proceedings to modify support or set support (Rule 372).

Rule 363.02. Procedure

The initiating party may proceed by default if:

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

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

(c) there has been no written answer or return of the request for hearing form from any party within twenty (20) days from the date the last party was served.

The initiating party shall file an order with the court within forty-five (45) days from the date the last non-initiating party was served with the summons and complaint or notice of motion and motion. The initiating party shall also file with the court a current affidavit of default and a current affidavit of non-military status. If an order is not filed with the court within forty-five (45) days, the court administrator shall mail a notice to all parties that the matter shall be scheduled for hearing unless the initiating party files an order along with all necessary documents within ten (10) days from the date notice was mailed. If the initiating party fails to

file the necessary documents within the allotted ten (10) days, the court administrator shall set the matter on for hearing and serve upon all parties and the county agency by U.S. mail at least fourteen (14) days before the scheduled hearing, notice of the date, time, and location of the hearing.

Rule 363.03. Order Accepted

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

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

(b) was notified of the requirement to either serve and file a written answer or return the request for hearing form within twenty (20) days of service of the summons and complaint or notice of motion and motion; and

(c) failed to serve and file a written answer or return the request for hearing form within twenty (20) days from the date of service.

Rule 363.04. Order Not Accepted

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

(a) to file and serve any missing documents;

(b) to file a revised order;

(c) to file a revised order and attach any missing or additional documents;

(d) to appear at a hearing, notice of which shall be issued by the court administrator to all parties;

(e) to appear at any previously scheduled hearing; or.

(f) to withdraw the matter without prejudice.

The court administrator shall mail the notice of the deficiency to the initiating party. The initiating party shall either correct the deficiency or set the case on for a hearing and serve notice of the date, time, and location of the hearing upon all parties pursuant to Rule 364. If the initiating party submits a revised order that raises new issues beyond the scope of the complaint or motion, amended pleadings shall be served and filed on all parties pursuant to Rule 370.06 or Rule 372.06. If the initiating party fails to schedule a hearing or comply with the notice of deficiency within forty-five (45) days of the date the notice was mailed, the child support magistrate shall dismiss the matter without prejudice.

RULE 364. HEARING PROCESS

Rule 364.01. Right to Hearing

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

Rule 364.02. Scheduling of Hearing

The initiating party shall schedule a hearing if a written answer or a request for hearing form is received. The initiating party shall contact the court administrator or the court

administrator's designee to obtain a hearing date and shall serve upon all parties and the county agency by U.S. mail at least fourteen (14) days before the scheduled hearing, notice of the date, time, and location of the hearing.

Rule 364.03. Timing of Hearing

In the event the parties are unable to resolve the matter, a hearing shall be held no sooner than twenty (20) days after service of the summons and complaint or notice of motion and motion, unless the time period is waived by the parties. Every effort shall be made to conduct the hearing no later than sixty (60) days after service of the summons and complaint or notice of motion and motion on the last person served or, in an establishment of parentage case, no later than sixty (60) days after receipt of the genetic test results. If conducted later than sixty (60) days, the court administrator shall report that fact to the chief judge of the judicial district. Conducting a hearing later than sixty (60) days after service or receipt of blood or genetic test results does not deprive the child support magistrate of jurisdiction.

Advisory Committee Comment

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

Rule 364.04. Notice of Hearing

A notice of the hearing shall:

(a) state the name of the court;

(b) state the names of the parties;

(c) state the date, time, and location of the hearing;

(d) state that the parties shall appear at the hearing, unless otherwise provided in these rules;

(e) inform the parties of the requirement to bring to the hearing sufficient copies of all documents the parties intend to offer; and

(f) if possible, include the name of the child support magistrate assigned to the case.

Rule 364.05. Continuance of Hearing

Upon agreement of the parties or a showing of good cause, the child support magistrate may grant a request for continuance of a hearing. An order granting a continuance may be stated orally on the record or may be in writing. Unless time does not permit, a request for continuance shall be made in writing, and shall be filed with the court and served upon all parties at least five (5) days before the hearing. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

Advisory Committee Comment

Rule 364.05 provides that a continuance may be granted for good cause. Examples of good cause include: death or incapacitating illness of a party or attorney of a party; lack of proper notice of the hearing; a substitution of the attorney of a party; a change in the parties or pleadings requiring postponement; an agreement for a continuance by all parties provided that it is shown that more time is clearly necessary. Good cause does not include: intentional delay; unavailability

of counsel due to engagement in another judicial or administrative proceeding unless all other members of the attorney's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received prior to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; and failure of the attorney to properly utilize the statutory notice period to prepare for the hearing.

Rule 364.06. Explanation of Hearing Purpose and Procedure

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

Rule 364.07. Hearings Open to Public

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

Advisory Committee Comment

Under Minnesota Statutes § 257.70, hearings regarding the establishment of parentage are closed to the public. Other proceedings identified in Rule 353.01 are generally open to the public.

Rule 364.08. Record of Hearing

Each child support magistrate shall 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 process may be made either by competent stenographers or by use of electronic recording equipment. (1999 Minn. Laws 196, art. 1, § 3.) If electronic recording equipment is used, it must meet the minimum standards promulgated by the state court administrator and must be operated and monitored by a person who meets the minimum qualifications promulgated by the state court administrator. The minimum standards are set forth in Minnesota State Court System Administrative Policy, dated June 29, 1999.

Rule 364.09. Right to Present Evidence

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

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

Subd. 3. Necessary Preparation Required. Each party shall bring to the hearing all evidence, both oral and written, the party intends to present. Each party must have enough copies of each exhibit the party intends to offer so that a copy can be provided to all other parties

and the child support magistrate at the time of the hearing. The parties are encouraged to exchange copies of exhibits before the hearing begins.

Rule 364.10. Evidence

Subdivision 1. Type of Evidence Admissible. The child support magistrate may admit any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The child support magistrate shall give effect to the rules of privilege recognized by law. Evidence that is not related to the issue of support, is unimportant to the issue before the magistrate, or that repeats evidence that has already been provided shall not be allowed.

Subd. 2. Evidence Part of Record. All pleadings and supporting documentation previously served upon the parties and filed with the court, unless objected to, may be considered by the magistrate. 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 information.

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

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

Rule 364.11. Burden of Proof

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

Rule 364.12. Examination of Adverse Party

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

Rule 364.13. Role of Child Support Magistrate

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

Rule 364.14. Discretion to Leave Record Open

At the conclusion of a hearing, the child support magistrate may leave the record open and request or permit submission of additional documentation. Unless otherwise ordered by the child support magistrate, such additional documentation shall be submitted to the court within ten (10) days of the conclusion of the hearing. Documents submitted after the due date or without permission of the child support magistrate shall be returned to the sender and shall not be considered by the child support magistrate when deciding the case.

Rule 364.15. Close of Record

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

RULE 365. DECISION AND ORDER OF CHILD SUPPORT MAGISTRATE

Rule 365.01. Failure to Attend Hearing

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

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

Rule 365.02. Timing

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

Rule 365.03. Effective Date; Final Order

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

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

Subdivision 1. Service by Court Administrator. Within five (5) days of receipt of the decision and order of the child support magistrate the court administrator shall serve a notice of filing of order or notice of entry of judgment upon each party by U.S. mail, together with a copy of the order or judgment if a copy of the order was not served at the hearing. The court administrator shall use the notice of filing form prepared by the state court administrator which shall set forth the information required in subdivision 2.

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

(a) right to bring a motion to correct clerical mistakes, typographical errors, or errors in mathematical calculations pursuant to Rule 375;

(b) right to bring a motion for review of the decision and order of the child support magistrate pursuant to Rule 376; or

(c) right to appeal a final order or judgment of the child support magistrate directly to the court of appeals pursuant to Rule 378.

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

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

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

Advisory Committee Comment

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

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

Options For Review and Appeal. A party may choose to bring a motion to correct clerical mistakes, a motion for review, or a combined motion, or may choose to appeal directly to the court of appeals thus bypassing the first two options. However, if a party chooses the option of appealing directly to the court of appeals without first bringing a motion for review, such an appeal will be limited to determining whether the evidence sustains the findings of fact (to which the "clearly erroneous" standard of review applies) and whether the findings support the conclusions of law and the judgment. *Kahn v. Tronnier*, 547 N.W.2d 425, 428 (Minn. App. 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 366. TRANSCRIPT

Rule 366.01. Ordering of Transcript

Subdivision 1. Informational Request. Any person may request a transcript of any proceeding held before a child support magistrate, except as prohibited by statute or rule.

Subd. 2. Clerical or Review Requests. If a party chooses to request a transcript for purposes of bringing or responding to a motion to correct clerical mistakes, a motion for review, or a combined motion, a request for transcript form shall be filed with the court within the time required under Rule 377.02 and 377.04. The party requesting the transcript must make satisfactory arrangements for payment with the transcriber within thirty (30) days of ordering the transcript or the request for the transcript shall be deemed cancelled. The requesting party may

withdraw that party's request for a transcript any time prior to the time transcription has begun. The transcriber shall file the original with the court and serve each party, including the county agency if a party, with a copy. The transcriber shall also file with the court an affidavit of service verifying that service has been made upon all parties. Ordering and filing of a transcript does not delay the due dates for the submissions described in Rule 377.02 and Rule 377.04. Filing of the transcript with the court closes the record for purposes of Rule 377.09, subd. 1.

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

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

Rule 367.01. Administration of Expedited Process

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

Advisory Committee Comment

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

Rule 367.02. Use and Appointment of Child Support Magistrates

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

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 367.03. Powers and Authority

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

Advisory Committee Comment

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

Rule 367.04. Conflict of Interest

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

(a) an attorney in any family law matter 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 Minnesota 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 shall not be imputed to other members of a child support magistrate's law firm.

Rule 367.05. Code of Judicial Conduct

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

Advisory Committee Comment

The comment to Canon 5 of the Minnesota Code of Judicial Conduct provides that "anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a referee, special master or magistrate" is a judge within the meaning of the Minnesota Code of Judicial Conduct.

Rule 367.06. Impartiality

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

RULE 368. REMOVAL OF A PARTICULAR CHILD SUPPORT MAGISTRATE

Rule 368.01. Automatic Right to Remove Precluded

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

Rule 368.02. Removal for Cause

Subdivision 1. Procedure. Any party may serve upon the other parties and file with the court a request to remove the child support magistrate assigned to hear the matter. If the assigned child support magistrate denies the request to remove, upon written request the chief judge of the judicial district shall 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 shall determine whether cause exists to remove the child support magistrate. A request to remove shall be filed with the court 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 shall be made as soon as practicable after notice of assignment is given.

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

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

Rule 369.01. Role of County Attorney

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

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

Rule 369.02. Role of Employees of County Agency

Subdivision 1. County Attorney Direction. Under the direction of, and in consultation with, the county attorney, and consistent with Rules 5.3 and 5.5 of the Minnesota Rules of Professional Conduct, employees of the county agency may perform the duties listed under Minnesota Statutes § 518.5513, subdivision 2(b). Specifically, under the direction of, and in consultation with the county attorney, employees of the county agency may:

(a) attend and participate as witnesses in hearings and other proceedings; and

(b) present to the child support magistrate at a hearing agreements and stipulations reached by all parties.

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

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

Subd. 3. County Attorney Direction Not Required. Without direction from the county attorney, employees of the county agency may perform the duties listed under Minnesota Statutes § 518.5513, subdivision 2(c). In addition, employees of the county agency may testify at hearings at the request of a party or the child support magistrate.

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

II. PROCEEDINGS

RULE 370: ESTABLISHMENT OF SUPPORT PROCEEDINGS

Rule 370.01. Commencement

An initial proceeding to establish support shall be commenced in the expedited process by service of a summons and complaint pursuant to Rule 370.03. If the summons does not contain a hearing date, a request for hearing form and a supporting affidavit shall be attached to the summons and complaint. In addition to service of the summons and complaint, an order to show cause may be issued pursuant to Rule 303.05 of the Minnesota Rules of Family Court Procedure. Service shall be made at least 20 days prior to any scheduled hearing.

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

Subdivision 1. Content of Summons. A summons shall:

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

If there is reason to believe that domestic violence exists or if an order for protection has been issued, the party may provide an alternative address and telephone number. In all actions where public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to any other party if the county agency has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

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

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

Subd. 3. Content of Supporting Affidavit. A supporting affidavit is required when the summons does not contain a hearing date. The supporting affidavit shall:

(a) state detailed facts supporting the request for relief;

(b) provide all information required by Minnesota Statutes § 518.5513, subd. 3(a), if known; and

(c) be signed and sworn to under oath.

Advisory Committee Comment

Pursuant to Minnesota Statutes § 518.5513, subdivision 3(a), for all cases involving establishment or modification of support, the pleadings are to contain specific information. At times, it may be necessary to attach additional supporting documents. Each county should establish its own local policy regarding the attachment of supporting documents.

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

Rule 370.03. Service of Summons and Complaint

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

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

Rule 370.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

(a) the original summons;

(b) the original complaint;

(c) the original supporting affidavit, if served;

(d) the request for hearing form, if received by the initiating party; and

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

Subd. 2. Responding Party. If a non-initiating party responds with a written answer pursuant to Rule 370.05, the following shall be filed with the court no later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served:

(a) the original written answer; and

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

Rule 370.05. Response

Subdivision 1. Hearing Date in Summons. Inclusion of a hearing date does not preclude a non-initiating party from serving and filing a written answer. Within twenty (20) days of service of the summons and complaint, a non-initiating party may serve upon all parties a written answer to the complaint. The service and filing of a written answer or the failure of a non-initiating party to appear at a hearing does not preclude the hearing from going forward**,** and the child support magistrate may issue an order based upon the information in the file or evidence presented at the hearing.

Subd. 2. Hearing Date Not in Summons. If the summons does not contain a hearing date, within twenty (20) days of service of the summons and complaint a non-initiating party shall either:

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

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

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

Rule 370.06. Amended Pleadings

Subdivision 1. Service. At any time up to ten (10) days before a scheduled hearing, the initiating party may serve and file amended pleadings. If no hearing date has been scheduled, the initiating party may serve and file amended pleadings within the time remaining for response.

Subd. 2. Response. If the non-initiating party chooses to respond to amended pleadings, the response must be made within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleadings, whichever period is longer, unless the court otherwise orders.

Rule 370.07. Fees

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

(a) the summons and complaint; and

(b) the written answer, if any.

Rule 370.08. Settlement Procedure

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

Rule 370.09. Default Procedure

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

Rule 370.10. Hearing Procedure

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

Rule 370.11. Decision and Order

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

Rule 370.12. Review and Appeal

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

RULE 371. PARENTAGE ACTIONS

Rule 371.01. Commencement

A proceeding to establish parentage shall be commenced in the expedited process by service of a summons and complaint pursuant to Rule 371.03. A supporting affidavit may also be served. Unless blood or genetic testing has already been completed, a request for blood or genetic testing shall be served with the summons and complaint. In addition to service of the summons and complaint, an order to show cause may be issued pursuant to Rule 303.05 of the Minnesota Rules of Family Court Procedure. Service shall be completed at least 20 days prior to any scheduled hearing.

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

Subdivision 1. Content of Summons. A summons shall:

(a) state the name of the court;

(b) state the names of the parties;

(c) state an address where the initiating party may be served;

(d) state that the purpose of the action is to establish parentage;

(e) state the date, time, and location of the hearing;

(e) provide information about serving and filing a written response pursuant to Rule 371.04 and Rule 371.05;

(g) state that all parties shall appear at the hearing, and if any party fails to appear at the hearing the child support magistrate shall proceed pursuant to Rule 365.01;

(h) state that a party has the right to representation pursuant to Rule 357;

(i) state that the case may be settled informally by contacting the initiating party and include the name, address, and telephone number of the person to contact to discuss settlement; and

(j) be signed by the initiating party or that party's attorney.

If there is reason to believe that domestic violence exists or if an order for protection has been issued, a party may provide an alternative address and telephone number. Pursuant to Minnesota Statutes § 257.70(b), in all actions where public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to any other party if the county agency has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

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

(a) state the relief the initiating party wants the child support magistrate to order;

(b) state the facts and grounds supporting the request for relief;

(c) set forth the acknowledgement required under Rule 379.04, and

(d) be signed by the initiating party or that party's attorney.

Subd. 3. Content of Supporting Affidavit. A supporting affidavit shall:

(a) state detailed facts supporting the request for relief, including the facts establishing parentage;

(b) provide all information required by Minnesota Statutes § 518.5513, subd. 3(a), if known; and

(c) be signed and sworn to under oath.

Advisory Committee Comment

Pursuant to Minnesota Statutes § 518.5513, subdivision 3(a), for all cases involving establishment or modification of support, the pleadings are to contain specific information. At times, it may be necessary to attach additional supporting documents. Each county should establish its own local policy regarding the attachment of supporting documents.

Rule 371.03. Service of Summons and Complaint

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

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

Rule 371.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

(a) the original summons

(b) the original complaint;

(c) the original supporting affidavit, if served; and

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

Subd. 2. Responding Party. If a non-initiating party responds with a written response pursuant to Rule 371.05, the following, if served, shall be filed with the court no later than five (5) days before any scheduled hearing:

(a) the original written answer; or

(b) a request for blood or genetic testing; and

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

Rule 371.05 Response

Subdivision 1. Response Options. In addition to appearing at the hearing as required under Rule 364.04, a non-initiating party may do one or more of the following:

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

(b) within fourteen (14) days of service of the summons and complaint, serve upon all parties one or more of the written responses pursuant to subdivision 2.

Subd. 2. Types of Written Response.

(a) Request for Blood or Genetic Test. A non-initiating party may serve and file a request for blood or genetic testing either alleging or denying paternity. Filing of a request for blood or genetic testing shall, with the consent of the parties, extend the time for filing and serving a written answer until the blood or genetic test results have been mailed to the parties. In this event, the alleged parent shall have ten (10) days from the day the test results are mailed to the alleged parent in which to file and serve a written answer to the complaint.

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

Rule 371.06. Blood or Genetic Testing Requested Before Hearing

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

Rule 371.07. Amended Pleadings

Subdivision 1. Service. At any time up to ten (10) days before a scheduled hearing, the initiating party may serve and file amended pleadings.

Subd. 2. Response. If the non-initiating party chooses to respond to amended pleadings, the response must be made within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleadings, whichever period is longer, unless the court otherwise orders.

Rule 371.08. Fees

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

(a) the summons and complaint; and

(b) the written answer or the request for blood or genetic testing, if any.

Rule 371.09. Settlement Procedure

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

Rule 371.10. Hearing Procedure

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

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

Rule 371.11. Procedure when Blood or Genetic Testing

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

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

Rule 371.12. Procedure When Written Answer Filed

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

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

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

Rule 371.13. Procedure When Written Answer Not Filed

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

Advisory Committee Comment

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

Rule 371.14. Decision and Order

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

Rule 371.15. Review and Appeal

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

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

Rule 372.01. Commencement

Subdivision 1. Motions to Modify and Motions to Set Support. A proceeding to modify an existing support order shall be commenced in the expedited process by service of a notice of motion, motion, and supporting affidavit pursuant to Rule 372.03. A proceeding to set support where a prior order reserved support may be commenced in the expedited process by service of a notice of motion and motion and supporting affidavit pursuant to Rule 372.03. If the notice of motion does not contain a hearing date, a request for hearing form shall be attached to the notice of motion. In addition to service of the notice of motion and motion, an order to show cause may be issued pursuant to Rule 303.05 of the Minnesota Rules of Family Court Procedure. Service shall be made at least twenty (20) days prior to any scheduled hearing.

Subd. 2. Other Motions. Except as otherwise provided in these rules, all proceedings shall be commenced in the expedited process by service of a notice of motion, motion, and supporting affidavit.

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

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

(a) state the name of the court;

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

(c) state an address where the initiating party may be served;

(d) state the purpose of the action;

(e) for motions brought pursuant to Rule 372.01, subd. 2, state the date, time, and location of the hearing;

(f) for motions brought pursuant to Rule 372.01, subd. 1, either state the date, time, and location of the hearing if one is scheduled or, if no hearing is scheduled, state that any party has a right to a hearing and attach a request for hearing form;

(g) provide information about serving and filing a written response pursuant to Rule 372.04 and Rule 372.05;

(h) state that all parties shall appear at the hearing if one is scheduled, and if any party fails to appear at the hearing, the child support magistrate shall proceed pursuant to Rule 365.01;

(i) state that a party has a right to representation pursuant to Rule 357;

(j) state that the case may be settled informally by contacting the initiating party and the include the name, address, and telephone number of the person to contact to discuss settlement; and

(k) be signed by the initiating party or that party's attorney.

If there is reason to believe that domestic violence exists or if an order for protection has been issued, the party may provide an alternative address and telephone number. Pursuant to Minnesota Statutes § 257.70(b), in all actions where public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to the other party if the county agency has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

Subd. 2. Content of Motion. A motion shall:

(a) state the relief the initiating party wants the child support magistrate to order;

(b) state the specific support that the initiating party wants the child support magistrate to order if the notice of motion does not contain a hearing date;

(c) state the facts and grounds supporting the request for relief;

(d) set forth the acknowledgement under Rule 379.04; and

(e) be signed by the initiating party or that party's attorney.

Subd. 3. Content of Supporting Affidavit. A supporting affidavit shall:

(a) state detailed facts supporting the request for relief;

(b) for motions to modify support and motions to set support, provide all information required by Minnesota Statutes § 518.5513, subd. 3(a), if known; and

(c) be signed and sworn to under oath.

Advisory Committee Comment

Pursuant to Minnesota Statutes § 518.5513, subdivision 3(a), for all cases involving establishment or modification of support, the pleadings are to contain specific information. At times, it may be necessary to attach additional supporting documents. Each county should establish its own local policy regarding the attachment of supporting documents.

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

Rule 372.03. Service of Notice of Motion and Motion

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

Subd. 2. How Served. The notice of motion, motion, supporting affidavit, and if required, the request for hearing form, may be served upon the parties either by U.S. mail, facsimile, or by personal service pursuant to Rule 355.02.

Rule 372.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

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

Subd. 2. Responding Party. If a non-initiating party responds with a responsive motion or counter-motion pursuant to Rule 372.05, the following shall be filed with the court no later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served:

(a) the original responsive motion or counter-motion; and
(b) proof of service upon each party pursuant to Rule 355.04.

Rule 372.05. Response

Subdivision 1. Hearing Date Included in the Notice of Motion. Inclusion of a hearing date does not preclude a non-initiating party from serving and filing a responsive motion or counter motion. A non-initiating party may serve upon all parties a responsive motion or counter motion along with a supporting affidavit within fourteen (14) days of service of the notice of motion and motion. The service and filing of a responsive motion or counter motion does not preclude the hearing from going forward and the child support magistrate may issue an order based upon the information in the file or evidence presented at the hearing if a non-initiating party fails to appear at the hearing.

Subd. 2. Hearing Date Not Included in the Notice of Motion. If the notice of motion does not contain a hearing date, a non-initiating party shall either:

(a) request a hearing by returning the request for hearing form to the initiating party; or
(b) within fourteen (14) days of service of the notice of motion and motion, serve upon all other parties a responsive motion or counter motion.

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

Rule 372.06. Amended Pleadings

Subdivision 1. Service. At any time up to ten (10) days before a scheduled hearing, the initiating party may serve and file amended pleadings. If no hearing date has been scheduled, the initiating party may serve and file amended pleadings within the time remaining for response.

Subd. 2. Response. If the non-initiating party chooses to respond to amended pleadings, the response must be made within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleadings, whichever period is longer, unless the court otherwise orders.

Rule 372.07. Fees

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

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

Subd. 2. Modification Fee. Pursuant to Minnesota Statutes § 357.021, subd. 2(12), a separate fee shall also be collected upon the filing of the motion to modify and a responsive motion or counter motion.

Advisory Committee Comment

The modification fee to be collected under Rule 372.07 is $20.00. (Order Setting Fee, File C9-85-1134, filed March 31, 1993).

Rule 372.08. Settlement Procedure

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

Rule 372.09. Default Procedure

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

Rule 372.10. Hearing Procedure

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

Rule 372.11. Decision and Order

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

Rule 372.12. Review and Appeal

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

RULE 373. ENFORCEMENT PROCEEDINGS

Rule 373.01. Types of Proceedings

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

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

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

Rule 373.02. Commencement

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

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

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

RULE 374. CIVIL CONTEMPT

Rule 374.01. Initiation

Civil contempt proceedings initiated in the expedited process shall be brought according to the procedure set forth in Rule 309 of the Minnesota Rules of Family Court Procedure.

Rule 374.02. Resolution of Contempt Matter

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

Rule 374.03. Evidentiary Hearing

If the parties do not reach agreement at the initial appearance, the child support magistrate shall refer the matter to the court administrator to schedule an evidentiary hearing

before a district court judge or a family court referee. A child support magistrate shall not consider or decide a contempt matter, except as provided in Rule 353.01, subdivision 2.

Rule 374.04. Failure to Appear

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

III. REVIEW AND APPEAL

RULE 375. MOTION TO CORRECT CLERICAL MISTAKES

Rule 375.01. Initiation

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

Rule 375.02. Procedure

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

Rule 375.03. Decision

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

Rule 375.04. Combined Motions

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

RULE 376. MOTION FOR REVIEW

Rule 376.01. Initiation

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

Advisory Committee Comment

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

Rule 376.02. Procedure

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

Rule 376.03. Decision

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

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

Rule 377.01. Other Motions Precluded

Except for motions to correct clerical mistakes, motions for review, or motions alleging fraud, all other motions for post-decision relief are precluded, including those under Rule 59 and Rule 60 of the Rules of Civil Procedure and Minnesota Statutes § 518.145.

Rule 377.02. Timing of Motion

To bring a motion to correct clerical mistakes, the aggrieved party shall perform items (a) through (e) as soon as practicable after discovery of the error. To bring a motion for review or a combined motion, the aggrieved party shall perform items (a) through (f) within twenty (20) days of the date the court administrator served that party with the notice form as required by Rule 365.03.

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

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

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

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

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

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

Rule 377.03. Content of Motion

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

(a) identify by page and paragraph the clerical mistake(s) and state the correct language;

(b) include the acknowledgement as required pursuant to Rule 379.04; and

(c) be signed by the party or that party's attorney.

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

(a) state the reason(s) the review is requested;

(b) state the specific change(s) requested;

(c) specify the evidence or law that supports the requested change(s);

(d) state whether the party is requesting that the review be by the child support magistrate that issued the order being reviewed or by a district court judge;

(e) state whether the party is requesting an order authorizing the party to submit new evidence;

(f) state whether the party requests an order granting a new hearing;

(g) include the acknowledgement as required pursuant to Rule 379; and

(h) be signed by the initiating party or that party's attorney.

Rule 377.04. Response to Motion

Subdivision. 1. Timing of Motion. A responding party may respond to a motion to correct clerical mistakes or a motion for review, but is not required to respond if the party is in agreement with the motion. Any response shall state why the relief requested in the motion should or should not be granted. If a responding party wishes to raise other issues, the responding party must set forth those issues as a counter motion in the response. To respond to a motion to correct clerical mistakes the party shall perform items (a) through (e) within ten (10) days of the date the party was served with the motion. To respond to a motion for review or a combined motion the party shall perform (a) through (f) within thirty-six (36) days of the date the party was served with the notice under Rule 365.03. To respond to a counter motion, the party shall perform items (a) through (f) within forty-six (46) days of the date the party was served with the notice under Rule 365.03.

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

(b) Serve the completed response to motion for clerical mistakes form, response to motion for review form, or response to combined motion form upon all other parties and the county agency. Service may be made by U.S. mail or by personal service pursuant to Rule 354.02.

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

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

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

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

Subd. 2. Content of Responsive Motion

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

(1) identify by page and paragraph the clerical mistake(s) alleged by the moving party and state whether responding party agrees or opposes the corrections;

(2) include an acknowledgement as required pursuant to Rule 379.04; and

(3) be signed by the responding party or that party's attorney.

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

(1) state why the relief requested should or should not be granted;

(2) if new issues are raised, state the specific change(s) requested;

(3) if new issues are raised, specify the evidence or law that supports the requested change(s);

(4) state whether the party is requesting that the review be by the child support magistrate that issued the order being reviewed or by a district court judge;

(5) state whether the party is requesting an order authorizing the party to submit new evidence;

(6) state whether the party requests an order granting a new hearing;

(7) include an acknowledgement as required pursuant to Rule 379.04; and

(8) be signed by the responding party or that party's attorney.

Rule 377.05. Calculation of Time

Subdivision 1. Timing for Motion to Correct Clerical Mistakes. To calculate the time to respond to a motion to correct clerical mistakes, three (3) days shall be added to the ten (10) days for a total of thirteen (13) days within which to respond when the motion is served by mail.

Subdivision 2. Timing for Service of Motion for Review or Combined Motion. To calculate the time to serve a motion for review or combined motion, three (3) days shall be added to the twenty (20) days for a total of twenty-three (23) days within which to respond when the motion is served by mail.

Subd. 3. Timing for Response to Motion for Review or Combined Motion. To calculate the time to serve a response to a motion for review or combined motion, six (6) days shall be added to the thirty (30) days for a total of thirty-six (36) days within which to respond when the motion is served by mail.

Rule 377.06. Review When Multiple Motions Filed – Motion for Review

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

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

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

Rule 377.08. Decision and Order Not Stayed

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

Rule 377.09. Basis of Decision and Order

Subdivision 1. Timing. Within forty-five (45) days of the close of the record, the child support magistrate or district court judge shall file with the court an order deciding the motion. In the event a notice to remove is granted pursuant to Rule 368, the forty-five (45) days begins on the date the substitute child support magistrate or district court judge is assigned. The record shall be deemed closed upon occurrence of one of the following, whichever occurs later:

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

In the event none of the above events occur, the record shall be deemed closed forty-six (46) days after service of the notice of filing despite the requirements of Rule 354.04.

Subd. 2. Decision.

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

(b) Motion for Review. The child support magistrate or district court judge shall make an independent review of any findings or other provisions of the underlying decision and order for which specific changes are requested in the motion. The child support magistrate or district court judge shall affirm the order unless the court determines that the findings and order are not supported by the record or the decision is contrary to law. The child support magistrate or district court judge may issue an order:

(1) denying in whole or in part the motion for review;

(2) approving, modifying, or vacating in whole or in part, the decision and order of the child support magistrate; or

(3) scheduling the matter for hearing and directing the court administrator to serve notice of the date, time, and location of the hearing upon the parties.

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

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

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

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

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

Rule 377.10. Notice of Order or Judgment

Within five (5) days of receipt of an order issued as a result of a motion to correct clerical mistakes, a motion for review, or combined motion, the court administrator shall 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 shall state that the parties have a right to appeal to the court of appeals under Rule 378. If the order was issued by a district court judge, the court administrator shall provide a copy of the order to the child support magistrate.

Rule 377.11. Effective Date; Final Order

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

RULE 378. APPEAL TO COURT OF APPEALS

Rule 378.01. Generally

An appeal may be taken to the court of appeals from a final order or judgment of a child support magistrate or from a final order deciding a motion for review under Rule 376. Such an appeal shall be taken in accordance with the procedures set forth in the Minnesota Rules of Civil Appellate Procedure within 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 375 or a timely motion for review under Rule 376, the time for appeal is extended for all parties while that motion is pending. Once the last such pending motion is decided by the child support magistrate or district court judge, the 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 378 supersede the appellate rule to provide that the sixty (60) days to appeal begins to run from the time the court administrator serves the written notice of filing of order or notice of entry of judgment.

Scope of Review. A party may choose to bring a motion to correct clerical mistakes, or a motion for review, or to appeal directly to the court of appeals thus bypassing the first two options. However, if a party chooses the option of appealing directly to the court of appeals without first bringing a motion for review, such an appeal will be limited to determining whether the evidence sustains the findings of fact (to which the "clearly erroneous" standard of review applies) and whether the findings support the conclusions of law and the judgment. *Kahn v. Tronnier*, 547 N.W.2d 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.

IV. FORMS

RULE 379. FORMS

Rule 379.01. Court Administrator to Provide Forms

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

Rule 379.02. Substantial Compliance

The forms developed by the state court administrator and by the department of human services for use in the expedited process, or forms substantially in compliance with such forms, are sufficient for purposes of these rules.

Advisory Committee Comment

The Advisory Committee encourages use of the standardized forms developed by the state court administrator and department of human services. However, regardless of such standardized forms, attorneys representing the parties and the county attorney representing the interests of the county agency retain professional responsibility for the form and content of pleadings and other legal documents used in the expedited process.

Rule 379.03. Modification of Forms

Except as otherwise provided in these rules, a party has discretion to modify the standardized forms to address the factual and legal issues that cannot be adequately covered by standardized forms.

Rule 379.04. Acknowledgement

Subdivision 1. Generally. Each complaint or motion served and filed in the expedited process shall set forth an acknowledgement by the party or the party's attorney that shall include:

(a) a statement that the party is not serving or filing this document for any improper purpose, such as to harass the other party, cause delay, needlessly increase the cost of litigation, or to commit fraud upon the court; and

(b) a statement that the party understands that if the party is not telling the truth, misleading the court; serving or filing this document for any purpose not in good faith, such as to delay or harass the other party; or is not telling the truth, the court may order the payment of money to the other party, including reasonable expenses incurred by the other party, court costs, and reasonable attorney fees.

Subd. 2. Motions to Correct Clerical Mistakes and Motions for Review. In addition to motions to correct clerical mistakes, motions for review, or combined motions, the acknowledgement shall also include the following:

(a) a statement that the existing order remains in full force and effect and the parties must continue to comply with that order until a new order is issued; and

(b) a statement that the party understands that the child support magistrate or judge will decide whether the party may submit new information or whether the party may have a hearing, and that the parties will be notified if the party's request is granted.

Rule 379.05. Exception from Rules Governing Civil Actions

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

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