STATE OF MINNESOTA

IN SUPREME COURT

C4-99-404

ORDER FOR HEARING TO CONSIDER PROPOSED FINAL EXPEDITED CHILD SUPPORT PROCESS RULES

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on April 17, 2001 at 1:30 p.m., to consider the recommendations of the Supreme Court Advisory Committee on the proposed final Rules of the Expedited Child Support Process. A copy of the committee's report containing the proposed rules is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before March 16, 2001, and

2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of the Appellate Courts together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before March 16, 2001.

Dated: January 11, 2001

BY THE COURT:

Kathleen A. Blatz
Chief Justice

DISTRICT COURT OF MINNESOTA
TENTH JUDICIAL DISTRICT

HONORABLE GARY J. MEYER
JUDGE OF DISTRICT COURT

CHAMBERS
WRIGHT COUNTY COURTHOUSE
10 NW 2nd STREET
BUFFALO, MINNESOTA 55313-1192
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WATS 1-800-362-3667

SHERBURNE COUNTY COURTHOUSE
13880 HIGHWAY 10
ELK RIVER, MINNESOTA 55330
(612) 241-2800

April 6, 2001

Mr. Frederick Grittner
Clerk of Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

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

Dear Mr. Grittner,

Please find attached my Comments on the Proposed Final Rules of the Expedited Child Support Process. I would appreciate the opportunity to present oral comments as Chair of the Expedited Child Support Rules Committee, on April 17.

Very Truly Yours,

Gary J. Meyer
Judge of District Court

Cc: Deanna Dohrmann

DISTRICT COURT OF MINNESOTA
TENTH JUDICIAL DISTRICT

HONORABLE GARY J. MEYER
JUDGE OF DISTRICT COURT

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Frederick Grittner
Clerk of Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

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

To the Honorable Justices of the Minnesota Supreme Court:

Thank you for allowing me to submit my comments after the close of the public comment period. I am submitting these comments on behalf of the Child Support Rules Committee. The following additional people have also submitted comments on behalf of the Child Support Rules Committee: Diana Eagon, Jodie Metcalf, Beverly Anderson, Laura Kadwell, and Mark Ponsolle.

Background

In January, 1999 this Court issued the Holmberg decision, placing the child support process back in the judiciary. As a result the Rules Committee met and recommended Rules to this Court on June 4, 1999. This Court adopted those Rules, with revision, as Interim Rules, effective July 1, 1999.

Our Committee met again beginning in October, 1999 to monitor implementation of the Interim Rules. We talked to the system users: the county attorneys, the magistrates, the child support officers and learned what was working well and not so well regarding the system. We surveyed the professionals, users and parents, and on two separate occasions received official public input, prior to the drafting of the final rules. Public comment has again been solicited on the proposed final rules. We hope this Court will determine the final rules at its May 10 meeting. That will allow less than 60 days for training and amending any forms as necessary before the anticipated effective date of July 1, 2001.

Committee Work

The Rules Committee consisted of a varied membership. We had eight district court judges; seven members of the bar, including three county attorneys, three from legal aid or legal

services, and one from the Family Law section of the bar; three court administrators; the State Court Administrator; the State Director of Child Support Enforcement, Department of Human Services; the former supervising Administrative Law Judge; and the manager of the child support magistrates. The Rules Committee was diverse and often at conflict with each other on the issues. Notwithstanding that, the Rules Committee developed a consensus on all the Rules, and the Report contains NO minority reports, but is reflective of varying viewpoints on issues. One of our members said that each of us could recite at least two to five rules where we fought valiantly for a position and lost, including the Chair of the Committee.

Rules Summary

We are not recommending wholesale revision of the Rules. The Interim Rules have given the system users an opportunity to try the Rules on for size, and we have as a result been able to perfect them. The following is a list of some of the more significant changes to the Interim Rules.

- Overall format of the rules changed. The rules now are set out in sections; general rules, establishment actions, paternity actions, modification and other motions, enforcement, and review and appeal procedures.
- The rules no longer try to be an all inclusive "one stop shop". There is a specific rule that states all other rules apply unless inconsistent with these rules. (Rule 351.01).
- Proposed orders are eliminated as an initiating document.
- Certificate of Representation must now be filed and parties must serve attorney of record and not the party if represented by counsel. (Rule 355.01, subd. 2).
- Magistrates power and authority is not enumerated, and we have taken out of the rules the qualifications and education requirements of magistrates. We recommend these rules be put in a separate personnel manual.

Below is a more detailed description of those rules that did receive more in depth discussion and some recommended changes. In addition, my comments will also address the submitted public comments that raise concerns regarding a specific rule. Some of the public comments raised do require consideration and some minor changes to the rules may be in order.

Proposed Final Rule 353 – Types of Proceedings

Rule 353 delineates the kinds of matters which are mandatory, permissive, and prohibited in the expedited process. One major main point of contention with the Interim Rules centered on parentage proceedings. The federal law mandates that the States have some type of expedited process for parentage proceedings. Minnesota has opted to allow child support magistrates the authority to hear paternity actions as long as the action is "uncontested". Just what constitutes an "uncontested" paternity action raised long and arduous discussion among the Committee members, as well as the practitioners and magistrates using the Interim Rules. In fact, the Committee brought this issue to the Supreme Court back in November, 1999 and recommended that a change be made to the Interim Rules. Although a recommendation was made to immediately amend the rule to authorize magistrates to sign orders establishing custody and parenting time in uncontested cases, the rules were not so amended. Instead, the Rules Committee continued discussions on this issue and finally reached a consensus.

Some Committee members urged that magistrates should be able to sign uncontested parentage orders, including orders establishing custody and parenting time because the federal law requires the States to have an expedited process for parentage actions and that when parents agree on all issues, the matter should be resolved in one hearing. Others stated that because the statute establishing the expedited process prohibits issues of custody and parenting time, the Rules could not authorize such proceedings and these matters must be referred to district court.

The comments of the magistrates in the Third Judicial District raise a very compelling argument. Some Committee members favored the same approach. However, the Rules Committee finally decided that the statute had a different interpretation. Therefore, the Rules Committee reached a consensus that if the parties reached agreement on all the issues, or all the issues except the amount of support, the child support magistrate could approve the parties' stipulation and determine support when necessary. The only other time a magistrate may determine parentage is when the complaint, motion, or supporting affidavit specifically states all relief requested and a party fails to serve a response or appear at a hearing.

The proposed final rule does not allow the magistrate to bifurcate the parentage action when there is an agreement as to paternity, but no agreement regarding one or more issues outside the jurisdiction of the magistrate, such as custody, parenting time, or name of the child. The consensus of the Rules Committee to structure the proposed rule in this fashion centered on the statutory provisions of the parentage act. Because Minnesota Statutes § 257.66 mandates that the judgment or order shall include provisions concerning the custody, parenting time, and name of the child, the Rules Committee interpreted the statute to prohibit bifurcation of those mandatory issues. A reservation of custody or parenting time does not adequately resolve the issue and leaves unanswered questions. Does an order adjudicating paternity and setting support, but reserves custody, parenting time, and the name of the child sufficiently meet the statutory requirements under Minnesota Statutes § 257.66 and is it a final order? Minnesota Statutes § 257.541, subd. 1 states that the mother has sole custody of the child until paternity is established under the parentage act. The Rules Committee raised concerns that if custody is reserved by the magistrate and the issue is then referred to the district court, what is the appropriate burden of proof: would it be the "best interests" as in any establishment of custody case or "endangerment" as in custody modification proceedings? The Committee fully appreciates the importance of issuing an order that adjudicates paternity and establishes support so money starts flowing to the child, however, because of the unanswered questions raised above, the consensus was to keep the magistrate's authority regarding paternity adjudication limited.

Proposed Rule 353.01, subd. 1 and subd. 3(d) – Mandatory Proceedings and Prohibited Proceedings and Issues

One of the public comments made by both Mary Lauhead and the Third Judicial District Magistrates regards the limitation of the magistrate to modify or enforce orders for protection. Because orders for protection can potentially address so many issues outside the jurisdiction of the magistrate, the Rules Committee felt it was appropriate to make orders for protection a prohibited issue. However, in light of the public comments, I cannot foresee any problems with this request to allow the magistrates to modify and enforce provisions of child support as set out in an order for protection. Therefore, it is reasonable to make the recommended changes to

proposed rule 353.01, subd. 1 and subd. 3(d) as submitted by Mary Lauhead, with some minor changes to the proposed language for subdivision 3(d).

Proposed Rule 353.01, subd. 2(c) – Permissive Proceedings

The proposed rules added a new rule allowing child support magistrates to issue orders changing venue when all parties are in agreement. Most Committee members initially agreed that child support magistrates should not have authority to change venue as venue hearings may clog the calendar and bog down the expedited process, thereby delaying critical child support decisions. After some discussion, a consensus was reached to allow magistrates to grant a change of venue when the parties are in agreement, seeing that it would be a disservice to parties to not honor their agreement. However, where there is no mutual agreement, the magistrate shall refer the matter to the district court. The Rules Committee decided that because change of venue motions can include issues that go beyond child support, it was not appropriate for magistrates to be hearing all change of venue motions.

There has been a recommendation by a member of the public to allow magistrates to issue orders consolidating hearings when there is one obligor and multiple obligees. This issue was discussed by the Rules Committee and the Committee members recognize the need to resolve this issue, however, the Committee members did not spend the time that this very convoluted issue needs. Rather, the Rules Committee felt this issue deserves more deliberation and careful consideration, quite possibly by a future Advisory Committee, before any changes should be made to the proposed rule. The language recommended by Mary Lauhead that allows a magistrate to issue orders consolidating child support hearings involving the same obligor needs more clarification as it is open for broad interpretation as written.

Proposed Final Rule 361.04, subd. 2 – Noncompliance with Discovery

One public comment made on this rule proposes that the rule allow for the use of telephone conferences, as it is an effective tool for resolving discovery disputes. In addition, the commentator recommended that the rule should include language allowing magistrates to assess fees for noncompliance with discovery. After review of the proposed language, it is reasonable to include additional language to the proposed rule to specify that telephone conferences are available. It is my proposal that the additional language be added to the proposed final rule:

- 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 or telephone conference unless the child support magistrate determines that a hearing or telephone conference is necessary.

As for the request to add language regarding the assessment for fees, that is already covered in Proposed Rule 361.05, subd. 2(c), which states in part, "If a party fails to comply with an order issued pursuant to Rule 361.04, subd. 2, upon motion the child support magistrate may . . . issue any other order that is appropriate in the interests of justice, including attorney fees or other sanctions."

Proposed Final Rule 366 - Transcript

A comment from one member of the public has recommended that parties be allowed to purchase copies of their hearing tape, rather than mandating that a transcript must be ordered. This was an issue raised during the discussions of the Interim Rules. It is the policy of the Conference of Chief Judges that stenographer notes are the property of the stenographer, not the public. Therefore, it is the position of the Rules Committee that the electronic recordings are the property of the electronic recorder and are not to be treated as public record. Only the transcript is public.

Proposed Final Rule 367.01 – Administration of Expedited Process

There is no proposed change to the interim rule, however, because of a comment raised by Laura Kadwell that a more centralized administration of the expedited process may ensure more consistency and specialization, I wish to point out a few facts. Currently, only two districts use the state court administrator's office for scheduling the expedited hearings. All other districts are administering the expedited process and things seem to be working out well. The fact that districts are managing their own scheduling makes the expedited process feel that it truly is a part of the judicial district. Because so many of the districts are choosing to administer the process locally, this supports the Rules Committee's recommendation that a bench book be created so the districts and the child support magistrates have a resource to turn to for procedural guidance and best practices should the need arise.

Proposed Final Rule 368 – No Automatic Right to Remove

I would like to first point out that the proposed final rule has not deviated that much from the current interim rule. The Rules Committee's consensus was to maintain the current interim rule regarding no automatic right to remove a magistrate and to further clarify that there is no removal as a right for district court judges or referees who are acting as a magistrate or handling a motion for review of a magistrate's order. There has been some opposition to this rule by the public. The opposition states there is no good reason to preclude a party or attorney from exercising a one-time entitlement to remove an assigned magistrate, judge, or referee. The opposition's concern is that because magistrates are still allowed to practice law in counties where they do not sit as magistrates, there is a potential danger of bias against an attorney or party resulting from unrelated matters involving that magistrate when acting in his or her capacity as an attorney. They further imply the concern about re-scheduling expedited matters has little merit.

The rationale behind creating a rule that is different than the Rules of Civil Procedure are twofold. First, allowing for an automatic right of removal will indeed slow down the expedited process. Ten days are added to each determination to allow for removal. In addition, having to re-schedule the matter on an already full docket, pushes out the hearing another two to six weeks, depending on the county. The delay in being heard can mean the delay in getting support to children in a timely fashion. Secondly, each county controls how many expedited hearings days are allotted on the court calendar. Typically, this is based upon the need in each individual county. In some of the smaller out-of-state counties, expedited hearings may only be scheduled once a month and only on a specific day of the week. If a matter has to be continued because a

request to remove the magistrate has been filed, that matter gets pushed out until the next scheduled magistrate calendar, which in this example is another four weeks. It is not the practice of these smaller counties to add a "special" day on the district court calendar to hear expedited child support matters.

There is also the added expense if a county has to request a different magistrate to appear in the county to hear one hearing. In addition, the number of magistrates assigned to any one district varies, as well as how often a particular magistrate may be scheduled to appear in that particular county. The pool of magistrates is a lot smaller than the pool of district court judges. Furthermore, trying to re-schedule for another magistrate to handle the case is not always practical, even if a request is filed ten days before the scheduled hearing. In the sixth district, there is only one magistrate assigned and if a removal is filed against that magistrate, the court administrator would need to request other districts for their assistance to schedule a magistrate for one hearing. In many districts, there are counties where only one judge sits. A removal filed against that judge in any proceeding is a problem. But in the expedited process, with tighter time lines, it is even more difficult. For ease of administering the expedited process in the most expeditious manner, it is the consensus of the Rules Committee that there should be no automatic right to remove.

Finally, the recommendation to have notices served and filed no later than three days before the hearing is not a sufficient time frame. This notice is not likely to be received and parties will show up for a hearing that will not take place. These litigants are already taking time off from work and if notices are not received, it will mean another day off from work. This is not treating child support matters expeditiously, nor cost-effectively. There is also the problem of parties who will purposely file removal requests as a ploy to delay the process. This recommendation to allow for an automatic removal rule really is only feasible in the big metro counties like Hennepin and Ramsey, given the availability of magistrates and every day calendaring.

Proposed Final Rule 369 – Appearance of the County Attorney

One of the issues in Holmberg centered on the unauthorized practice of law by nonattorney employees of the public authority. Under the Administrative Process the child support officer's role was quite vast and county attorneys participated very little in the process unless a complicated issue arose. In an effort to address the unauthorized practice of law, the Interim Rules and now the proposed rules set forth when the county attorney is to appear at the hearing. Under Nicollet Restoration v. Turnham, 475 N.W.2d 508 (Minn.Ct.App. 1991) *affirmed* 486 N.W.2d 753 (Minn. 1992), the Supreme Court held that a corporation or other non-human entity can appear in court only through counsel. Following the mandate of this holding, the Rules Committee drafted language requiring the child support agency to appear through counsel when the agency is a party. The Rules Committee recognizes the financial burden and staffing problems for the smaller counties, however, the Rules Committee did not see another way around the requirement of the county attorney's presence at the hearing.

Proposed Final Rule 370.03, subd. 2 – Service of Summons and Complaint in Establishment Cases and Proposed Final Rule 355.02, subd. 2 – Service by Mail

The current interim rule regarding service of the summons and complaint in establishment cases requires personal service upon both the plaintiff and defendant, as is required in all initial actions. Even when the county initiates an action, the county must personally serve the party who is receiving public assistance or has applied for services, (recipient). This is an added expense. Currently, the county attempts to serve the recipient first by mail and hopes that the recipient returns the acknowledgment of service. If this acknowledgement is not returned, the county must follow through with personal service, which is what typically happens.

This issue generated many public comments during the first public comment period and was vigorously debated by the Rules Committee. In discussing alternative ways to somehow alleviate this requirement of the county having to personally serve the recipient, a consensus was reached that allows for the county to serve a recipient by any means of service for establishment actions only. Parentage actions will still require personal service. The Rules Committee decided that the risk of not having personal jurisdiction over the recipient was minimal since this proceeding is limited to the issue of child support.

Proposed Final Rule 372.01 – Commencement

The Rules Committee fully discussed using a fourteen day timeline for motions rather than the proposed twenty day timeline and rejected that concept so that all proposed timelines were consistently twenty days, thus making it easier for pro se litigants. The twenty day timeline for motions may be more helpful to the pro se litigant by allotting six extra days to complete, serve and file court documents. Even though on its face, a twenty day motion timeline appears to be less expedited, it may end up being more beneficial and more user-friendly. The Rules Committee drafted the rules to be user-friendly for the pro se litigant, not the bar. If the Court decides to adopt the fourteen day motion timeline, it would require some other timeline adjustments throughout the rules.

Another comment made by a member of the public states the proposed rule is still misleading in how to bring an action when support is reserved in a prior order. The Rules Committee prepared several drafts in an attempt to clarify the rule. A majority of the Committee members 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. A consensus was reached and the proposed rule no longer specifies which initiating document to use, leaving it up to the initiating party to determine the appropriate papers to be filed.

Proposed Final Rule 374.02 – Resolution of Contempt Matter

There are no changes being recommended to the interim rule regarding the resolution of contempt. There appears to be only one judicial district that is experiencing some problems with this rule. However, the rules are written to work for the whole and it is impossible to structure rules that address every possible specific scenario that a user may encounter. Therefore, it is the

recommendation of the Rules Committee to make no changes to the current interim rule on civil contempt actions.

Proposed Final Rule 377.01 – Other Motions Precluded

A member of the public has raised the issue of allowing Rule 60 motions within the expedited process. The Expedited Rules specifically create an intermediate level of review in place of Rule 59 and Rule 60 motions. Because of the expedited timeframes, Rule 59 and Rule 60 motions would not keep expedited matters moving along, thus jeopardizing the federal timeline mandates.

Proposed Final Rule 377.09, subd. 2(b) – Decision: Motion for Review

There is little change to the current interim rule and the proposed final rule regarding the decision process for a motion for review. The Rules Committee made no changes to the requirement that the review should be independent. However, due to the request of many judges who are reviewing these motions, the Rules Committee added language to provide some guidance that now delineates some type of standard of review. "The judge or the magistrate 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."

Recommendation #2

The Final Report listed five recommendation to the Supreme Court. Recommendation #2 addresses proposed changes to the Legislature. One of the recommendations to the Legislature is to 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. It was not the intent of the Rules Committee to totally do away with the requirement of filing an affidavit when a person is requesting blood or genetic tests. The purpose of the recommendation was to allow, in limited exceptions, a party to make the request for blood or genetic testing at the time of the hearing in lieu of having to file an affidavit. All parentage actions require the scheduling of a hearing and, if at the time of the hearing the alleged father wishes to exercise his right to genetic testing, he could make a request at that time. The magistrate would then issue an order for genetic testing without the requirement of the alleged father having to file an affidavit, thus avoiding the filing fee issue for many non-initiating parties.

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March 14, 2001

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Written statement concerning the proposed final Rules of the Expedited Child Support Process.

Dear Mr. Grittner:

Pursuant to the Order for Hearing to Consider Proposed Final Expedited Child Support Process Rules, I am submitting the following as a written statement concerning the subject matter of the hearing. I do not wish to make an oral presentation unless of course the Supreme Court requests it.

I feel I am qualified to submit this statement as I worked in the Administrative/Expedited Process in the Office of Administrative Hearings (OAH) from July 1989 until the child support section disbanded in October of 1999 resulting from the Supreme Court's decision in *Homberg v. Holmberg*, 588 N.W. 2nd 720 (Minn. 1999). My last three years at OAH, I worked directly for the Family Law section's head Administrative Law Judge/Child Support Magistrate. I have watched the development of the Expedited Process and have experienced first hand how the Department of Human Services, County Child Support Officers, County Attorneys, Administrative Law Judges/Child Support Magistrates and Attorneys interpret the rules. In my current position, I am a Paralegal in the Family Law Section and am considered the Expedited Process expert.

Procedure to Set Support When Support is Reserved in a Prior Order. *The Advisory Committee on the Rules of the Expedited Child Support Process, Committee Deliberation, Paragraph S., Page 30. Rule 362.01 of the Interim Rules, Rule 372.01 of the Proposed Rules.*

The new Rule 372 should specifically state that any action seeking "reimbursement" of past due support pursuant to Minn. Stat. § 256.87, may only be brought by service of a Summons and Complaint/Petition.

As noted in the Committee Deliberations, attorneys and Magistrates have interpreted Rule 362 in at least two ways regarding the issue of past due support. "Neither of these interpretations were intended by the Committee". The problem appears to be that litigants are misinterpreting the difference between "establishing support" and seeking "reimbursement of past support", on a prior order that "reserved" the issue of support.

Some attorneys are seeking by motion pursuant to the Interim Rule 362.02, Subd. 1(1), and some Magistrates are granting, ongoing support **and** reimbursement of past support for the two years prior to the commencement of the action in which the order was entered reserving the issue of child support. In some cases, attorney's are interpreting the "two years prior" as two years prior to the service of the Summons and Petition for Dissolution, not the service of their motion.

Pursuant to the Interim Rule 362.02, Subd. 1(1), the establishment of support reserved in a prior order in a previous proceeding must be started in the expedited process by serving a motion. In the Proposed Rule 372.01, Subd. 1, 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. For **ongoing child support**, this is the correct procedure. Support would be set and made retroactive only to the date the motion was served (Minn. State. 518.64, Subd 2(d)).

To seek "reimbursement" pursuant to Minn. Stat. 256.87, for the statutory "two years immediately preceding the commencement of the action" an action pursuant to Minn. Stat. 256.87 must be commenced. Commencement of an action is accomplished only by service of a Summons and Complaint/Petition. See, Minn. R. Civ. Proc. Rule 3.01, the General Rules of Practice, Family Court Procedure, Rules 301, 302.01, Interim Rule 362.01, Subd. 1, Proposed Rule 370.01, and Minn. Stat. 256.87, Subd. 1.

For the above reasons, the new Rule 372 should specifically state that any action seeking "reimbursement" of past due support, may only be brought by service of a Summons and Complaint/Petition.

The Parties should be able to request a tape of their hearings. *The Advisory Committee on the Rules of the Expedited Child Support Process, Committee Deliberation, Paragraph N, Page 26. Rule 373 of the Interim Rules, Rule 366 of the Proposed Rules.*

Parties should be allowed to obtain a copy of the tape of their hearings. I say this for the following reasons:

(1) Many times in the old Administrative Process, many parties who were thinking about bringing post hearing motions changed their minds after having the opportunity to listen to the tape thereby determining what was actually said rather than thinking that someone said something else.

(2) This is supposed to be an "expedited" process. Most of the participants cannot afford an attorney because they are at the lower end of the income brackets and are appearing *Pro Se*. Additionally, in making the process a more expedited process, the system was put in place to allow parties to appear without an attorney and yet still feel like they were obtaining a fair hearing. Requiring parties to obtain a transcript (without first giving them the opportunity to review the tape recording) is a prohibitive cost that most cannot afford.

(3) Finally, If the Child Support Magistrate or the District Court Judge can base their decision upon all or a part of the tape (New Rule 376.09, Subd. 3) the parties should be allowed to also review the tape to determine whether or not to bring their motions for review.

Rule 60 Motions should not be excluded from the Expedited Process. *The Advisory Committee on the Rules of the Expedited Child Support Process, Committee Deliberation, Not discussed. Rule 377.01 of the Proposed Rules.*

The Expedited Process Rules should not preclude a Rule 60 Motion on hearings as not all issues may be discovered within the 20 days allowed in bringing a Motion for Review. By the same token, not all issues may be discovered within the 15 days that a party has to bring a Motion for Amended Findings/New Trial in a regular civil or family matter. By excluding a Rule 60 Motion, you are effectively eliminating the parties' rights and remedies that are available to **all** other civil litigants if the errors are not discovered within the 20 days. Furthermore if you emphasize and enforce the provisions of Rule 9 of the General Rules of Practice for all court proceedings and Rule 11 of the Rules of Civil Procedure, there should not be many frivolous motions being brought under the Rule.

All decisions on a Motion for Review should have an order at least addressing what the issues are and why a decision is rendered. *The Advisory Committee on the Rules of the Expedited Child Support Process, Committee Deliberation, Not discussed. Rule 372.05 of the Interim Rules, Rule 377.09, Subd. 9(b) of the Proposed Rules.*

In some decisions on Motions for Review decided by a District Court Judge rather than the Child Support Magistrate, the District Court Judges are issuing "form orders" that do not imply much thought on their behalf, let alone making an "independent review of the findings and order" from which the Motion was brought. The wording of the Rule is being used to avoid doing a legitimate "independent review" and preparing a reasoned order and it infers that they do not have to write any kind of supporting order for their decision to deny the motion, i.e. they want a blanket denial. In fact, our firm received a form order from a District Court Judge where all the Judge had to do was check a box and sign, i.e.:

_____ The Child Support Magistrate's Findings and other provisions of the Order dated _____ are affirmed.

(A copy of this Order is attached hereto as Exhibit 1)

This same case was appealed to the Court of Appeals who recently issued their Order stating they "reverse and remand for findings consistent with the record and the law." I feel that with any reasonable "independent review", the appeal in that matter may not have been necessary.

The parties deserve to know some reasoning as to why their motions are denied as well as why they are granted. Blanket denials (as the one shown above) have no place where a motion is brought in good faith. At a minimum, all orders should at least state the issues that were raised to show a minimum understanding of what they are reviewing.

I respectfully submit that the Proposed Final Rules be changed to reflect the concerns stated above. Please do not hesitate to contact me if you have any questions or desire more information regarding this matter.

Sincerely,

BARNA, GUZY & STEFFEN, LTD.

Terry R. Pahl
Paralegal

STATE OF MINNESOTA, COUNTY OF ANOKA
Certified to be a true and correct copy of the original on file and of record in my office
JAMES F. MORROW, Court Administrator
BY _____ Deputy

FILED JUL 31 2000

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

JUN 29 2000

TENTH JUDICIAL DISTRICT

Jame F. Morrow
COURT ADMINISTRATOR
ANOKA COUNTY, MN
DEBORAH FILLMORE
DEPUTY

ORDER REGARDING RULE 22.01 MOTION FOR REVIEW OF CHILD SUPPORT ORDER

Petitioner

-vs-

File No.

Respondent
- Intervenor.

This matter came before the undersigned Judge of District Court upon a Motion for Review filed on 6-7-00. Based upon its review of the court file the motion and any responses, the Court orders as follows:

☑ The Child Support Magistrate's Findings and other provisions of the Order dated May 15, 2000 are affirmed.

☐ This matter is remanded to the Child Support Magistrate for reconsideration in accordance with the instructions in the attached appendix.

☐ The matter is taken under advisement by this Court for further review.

☐ The Child Support Magistrate's Findings, Conclusions and Order dated _____ are modified as described in the attached appendix. Any Findings, Conclusions or Orders not specifically modified are affirmed.

Neither party may submit new or additional evidence unless it has been requested in writing by the Court. Any unauthorized submissions will be ignored.

BY THE COURT:

Date: 6/29/00

Judge of District Court

Third Judicial District Administration Office
2200 SW 2nd Street, Suite 101
Rochester, Minnesota 55902-4125
507-280-5559

TO: MINNESOTA SUPREME COURT

FROM: CHILD SUPPORT MAGISTRATES BEVERLY J. ANDERSON, RONELLE ANDERSON, COLIA CEISEL, ANN LEPPANEN AND MARY MADDEN

RE: PROPOSED RULES OF THE EXPEDITED CHILD SUPPORT PROCESS

DATE: MARCH 16, 2001

As Child Support Magistrates currently serving the Second, Third and Tenth Judicial Districts we would like to make the following comments to the proposed Rules of the Expedited Child Support Process. We have questions and concerns on the wording of several proposed rules and on the concepts of several others. Our concerns are divided into two main categories defined as "jurisdictional issues" and "other issues."

Jurisdictional Issues

Rule 371.12, Subd. 3 **Parentage Cases - Objection to Support**

Of primary concern are the limitations created by the new proposed rules in parentage actions. The proposed rule would severely limit the ability to bring paternity cases in the Expedited Process. Paternities are an integral part of the IV-D system. Limiting the ability of the Expedited Process to resolve parentage actions seriously undermines the effectiveness of the system in meeting the needs for which it is created.

By statute, the following issues are required to be addressed in a parentage order: the existence of the parent and child relationship, financial issues, custody, parenting time and the name of the child. Almost all parentage actions proceed with an admission of paternity; either without genetic testing or after the results of genetic testing are received. The financial issues to be resolved include ongoing child support, medical support, contribution to childcare, past support up to two years before the commencement of the action, contribution to pregnancy and confinement expenses, and contribution to the cost of genetic testing. These are the same issues that are dealt with in an action to establish support brought pursuant to Minn. Stat. §256.87. These are issues that the Expedited Child Support system is designed to resolve. The other issues of custody, parenting time and name of the child are issues

that, the rules provide, if agreed upon by the parties may be incorporated into an order in the Expedited Process. However, the current proposed rule provides if any of those issues are not agreed upon by the parties no issue may be decided in the Expedited Process. If the individual parties both want an order adjudicating parentage, either agree on child support issues or want them resolved at the hearing, agree on issues of custody and parenting time, but do not agree on the permanent name of the child, under the proposed rule, the Child Support Magistrate (CSM) cannot hear the case or enter an order, but must refer the entire case to District Court.

The result is that there will be a significant delay in obtaining an adjudication of parentage and a significant delay in obtaining child support. The parties will need to take additional time off from work to attend another hearing or one or both parties will not attend the next hearing resulting in an order that may not take their circumstances into consideration. Another result would be that one or both parties agree to a resolution to which they are not comfortable and which may not be in the best interests of the child or the parties, so that the other issues may get resolved. For example, parties may agree on an order for parental access which they do not believe is in the best interests of the child, so that they will not need to return to court or so that they will be able to start collecting child support. The parties will then not be comfortable with the process or with the resulting order. There will either be additional hearings to modify the terms of the order or orders that will not be followed.

When parties do not have agreements on the issues of custody or parenting time or the court is not able to approve the agreement, the District Court Judge or Referee rarely makes a permanent determination of those issue at an initial hearing in a parentage action. Frequently those issues are reserved or custody is temporarily continued in the mother pursuant to statute and the initial determination continued for hearing at a later time, either after mediation, after an evaluation, or after the parties have had an opportunity to file supporting information for the court to review prior to making a determination on the issue. The same process has been used in the former Administrative Process and in some counties in the current Expedited Process. The issues of parentage and child support are dealt with in the Expedited Child Support Process and contested issues of custody and or parenting time are referred to District Court to be resolved on an initial basis after a motion is brought by one or both individual parties. This resolution is consistent with the current working of Minn. Stat. §257.541, Subd. 2.

Since Declarations of Parentage are no longer used, almost all cases would fall under Minn. Stat. §257.541, Subd. 2(b) requiring a petition or motion to be made. Motions can be made on pro se forms or can be made through private attorneys. Motions require the parties to think through their request and assure that when a case is before a District Court Judge there will be

information on which the District Court Judge can make a decision. Requiring a motion also weeds out those parties who are bringing up issues only for the purpose of delay or tactical advantage. When the issues of custody, parenting time and name of child are resolved in District Court, if the resolution would impact the amount of time each parent spends with the child, the issues of child support would then be able to be readdressed. Even if some counties continue to allow parties to bring an oral request for custody or parenting time at an initial paternity hearing, those requests could be accommodated by allowing resolution of parentage and issues in the Expedited Process, noting the request in the Order and referring the case to District Court in a manner which accommodates the practices of the individual counties. For example a hearing date in District Court could be provided for in the initial order issued in the Expedited Process. The order would set forth the issues to be determined and the information to be provided by each party prior to the hearing. There are many ways of providing for the initial resolution of the non-child support issues in a timely manner in District Court. Regardless of the final resolution of how issues are referred to District Court, it is our suggestion that some direction be given detailing what information needs to be provided by the parties prior to a hearing in District Court so that the cases are not again continued and resolutions are not made in the absence of information.

We would suggest a revision in the rule that would allow the CSM to incorporate all matters on which there is agreement and deal with financial issues. In cases where there are issues left for resolution in District Court that may affect financial issues, a temporary support order could be issued as is set forth in the current proposed Rule 353.02. Subd. 3. There is no down side to allowing the CSM to issue an order adjudicating parentage, resolving child support issues on a temporary or permanent basis and incorporating agreements on issues of custody, parenting time and name of the child. There are however, serious concerns about the current rules that allow for parentage actions to proceed only by default or by agreement on all issues. The Expedited Process should be designed in a way that maximizes the ability of the process to resolve IV-D issues in IV-D cases.

Rule 353.01, Subd. 3 (d) **Prohibited Proceedings and Issues** - modification of enforcement of orders for protection.

There is concern on the part of the CSMs as well as Child Support Officers that modification and enforcement of child support provisions included in an Order for Protection be allowed in the Expedited Child Support Process. The only access to modify an order that many parties to an Order for Protection have is either through the Child Support Office or by bringing a pro se motion. IV-D services are provided in almost all of these cases. Modification of the child support provisions in dissolution proceedings, custody proceedings, and

parentage actions are done in the Expedited Process. Making distinctions that require certain IV-D cases to go to District Court for modification and others to go through the Expedited Process many be difficult to administer.

Rule 374.02 **Resolution of Contempt Matter**

Because of the seriousness of the consequences of a finding of contempt, we strongly recommend agreements on the issue of contempt be on the record.

When an Obligor is questioned on the record about the terms of an agreement for contempt, there have been many situations in which the agreement cannot be approved. The Obligor often does not understand what he/she is agreeing to or is in no position to make the agreement. Too often the Obligor is given misinformation or has felt coerced into making an agreement that is not in his/her best interest.

In the alternative, if the rules provide for a written stipulation on contempt, as long as a District Court Judge needs to sign the Order we would request the requirement of approval by a CSM be eliminated.

Other Issues

Rule 372.0, Subd. 1 **Motions to Modify, Motions to Set Support, and Other Matters** - timing

The requirement that motions be served in the Expedited Process at least twenty days prior to any scheduled hearing continues to be difficult to administer. The timing requirement for similar motions under the Rules of Family Court is fourteen days. Motions are regularly on the calendar where service has been more than fourteen days but less than twenty days. When both parties appear it is rare that one of the parties requests a continuance because of untimely service. However, when one party does not appear the case cannot go forward because of the untimely service. The difference in timing creates confusion for pro se parties, court administrators and private attorneys. There does not appear to be any reason for the additional four-day requirement in the Expedited Process. We suggest that the timing of motions in the Expedited Process be fourteen days, consistent with the practice in District Court.

Rules 369.01, Subd. 2. **Attendance at Hearings.**

The proposed rules provide the county attorney is not required to be present at any hearing to which the county agency is not a party. There is a question as to whether it is then implied that the county attorney is required to be present a hearing when the county agency is a named party. There are many

cases in which the county agency is a party, public assistance is not placed and one or both parties brings a motion to modify or enforce support. It isn't clear that the county attorney does not need to attend when the County has not initiated the motion and does not have an interest. It also is not clear whether a Child Support Officer could appear as a witness at a hearing on a pro se or private attorney motion when the county attorney does not attend.

It may be more straightforward to say an attorney must represent the County Agency when the County Agency initiates an action or brings a motion.

Rule 357.02 **Certificate of Representation**

Should the reference be to court appointed counsel rather than to a public defender? Public defenders do not provide services in family court in many counties rather there is a panel of attorneys for appointment in contempt and paternity cases.

Rule 359.02, Subd. 2 **Telephone Procedure**

Does the rule intend to leave to the discretion of the County court administration who places the call (the court or the party) and who pays for the call?

Minn. Stat. §518C.316 contemplates arranging for a party to appear by telephone from a tribunal in his/her jurisdiction or other similar location where the party would be able to provide sworn testimony. Is the CSM to begin making arrangements for telephone hearings as they are traditionally held in District Court proceedings under the Uniform Interstate Family Support Act or are we continuing the "user-friendly" practice of people appearing by phone from their homes and place of employment?

Rule 361.02 **Exchange of Documents**

A written request for information may be easier to respond to and easier to enforce.

Rule 369 **Role of the County Attorney**

In the past some County Child Support Offices have considered hiring a private contract attorney rather than use the County Attorney's Office. Should the reference to the attorney for the agency be more generic?

In general, we are in support of the Proposed Rules of the Expedited Child Support Process. We appreciate the effort of the committee in designing rules that incorporate the concerns of various interest groups. The proposed changes to the Interim Rules address many of the issues that caused confusion and resulted in different interpretations and different procedures from county to county.

Our comments come from the position that the Expedited Child Support Process provides a valuable service to parties and to the State. The Expedited Process allows for access to the court system to resolve child support issues in a timely manner that is easily accessible, provides for active participation from the parties and is designed in a way that allows for federal funding. It is our position Rules that provide for only a portion of IV-D cases to be handled in the Expedited Process fall short of meeting the goals of the process. The result is a process that is not comprehensive, requiring District Court Judges to continue to deal with child support issues in many cases and requiring parties and court administrators to determine whether IV-D cases are placed before a Child Support Magistrate or before a District Court Judge on a regular basis. These limitations raise concerns of whether this program is an effective way of processing IV-D cases that will meet the needs of the Child Support System on a long-term basis.

We appreciate the opportunity to comment on the proposed Rules and look forward to working with the new Rules. If there are questions on our concerns or testimony is requested, Colia Ceisel will be available to testify.

Sincerely,

Ronelle Anderson
Mary Madden
Colia Ceisel
Ann Leppanen
Beverly J. Anderson

Beverly J. Anderson
893 County Road C2 W
Roseville, Minnesota 55113
612-840-9674

March 16, 2001

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: Proposed Rules of the Expedited Child Support Process

Dear Mr. Grittner:

I appreciate the opportunity to comment on the Proposed Rules of the Expedited Child Support Process.

I was an Administrative Law Judge Supervisor at the Office of Administrative Hearings from 1994 to 1999. In my role as supervisor of the Child Support Division of the Office of Administrative Hearings, I developed what came to be known as the "new hearing process" for child support administrative hearings and supervised the development and implementation of the hearing process throughout the State. Prior to working for the Office of Administrative Hearings, I was a Referee in Ramsey County. I am currently a full time Child Support Magistrate serving primarily in the Third and Tenth Judicial Districts. I base my comments on the hearing process prior to, during and after the administrative process on my work in this area and my experience as a hearing officer for the judicial and the executive branches of government.

Although, it was always my public position that the child support administrative process created by the legislature would eventually be declared unconstitutional, I saw the administrative process as an opportunity to create a hearing system which would serve the needs of participants, would improve the quality of orders, and would provide for consistency in procedure and results through out the state. Although it was still a work in progress, there is no doubt that the quality of the child support hearing process improved greatly. Through educational efforts and efforts in to use the same law and procedure throughout the state, consistency in the way hearings were conducted and consistency in the application of the law improved significantly. Actions and motions were brought pursuant to statute, orders addressed all the issues required by statute, and the same law and procedures were applied regardless of whether public assistance was placed, regardless of whether the case was in Hennepin County or in Roseau County, regardless of whether attorneys were present.

I view the hearing process created under the administrative process as a vast improvement over the way child support had been dealt with in District Court. It was my experience, both as a private attorney and as a Referee in Ramsey County that the issue of child support was treated very differently when it was an issue in a dissolution proceeding with private attorneys from the way it was treated when the issue was in a pro se modification or a County initiated case. In County initiated establishment and parentage actions, parties often did not know their rights or the issues to be resolved and were often not given an opportunity to provide information to the court. Sometimes it was because the calendar moved too quickly, often it was because the parties were too intimidated to bring up their concerns. The County Attorney made a short presentation to the court outlining the County's request and the non-custodial parent's situation and the court entered an order. Although expeditious, too often the system created orders that were not representative of the financial situations of the parties.

Although child support is in the grand scheme of things a very narrow issue, it is a very important issue to the parties. A child support action is often the first or the only involvement parties have with the court system. How parties are treated in this setting goes a long way to instill respect for the entire judicial system. The treatment of the parties in their child support hearing also impacts on whether they will abide by the terms of the order, how they will interact with the other party and whether they will utilize the court to modify the terms of the order when appropriate.

There was an ability under the Rules of the Office of Administrative Hearings to implement a hearing process that would complement the legislative intent of the Administrative Child Support Process. Because the Rules of Evidence were advisory rather than applicable and because the Rules provided for information to be presented at the hearing, rather than only through affidavits that were timely served and filed, parties were able to easily present the information they wanted considered and the court was able to gather information that was necessary to determine the issues. In the administrative system, the Administrative Law Judge (ALJ) had the responsibility for knowing child support law and applying the law to the facts of an individual case. The ALJ managed the hearing process. The ALJ reviewed the hearing procedure at the beginning of the hearing, made sure the parties understood the procedure and were able to participate in the process. The ALJ had the responsibility of guiding the hearing process so the County and the parties were able to present information through testimony, argument and documentary evidence. The ALJ took an active role in questioning the parties and the County representative so that all necessary information was obtained.

The "new hearing process" allowed many parties to participate in child support hearings for the first time. It is my belief that the ability of the parties to present information at the hearings greatly improved the ability of the court to issue orders that were appropriate for each circumstance and greatly improved the level of respect for the process and in turn compliance with the orders.

There are multiple statutes involving child support and a large body of case law interpreting the statutes. The current state of the law mandates significant information and numerous findings on child support issues. The parties, and even the counties, do not always know what issues are required to be addressed or under which statute a request is being made. To adequately address the issues, the court needs to take an active role in both identifying the issues and in obtaining information necessary to make a determination. If the court were limited to the information provided by the parties through affidavits that were timely served and filed, the court would be unable to rule on many issues and would not have the necessary information to make an appropriate order on others.

The purpose of the Expedited Child Support Process as found in proposed Rule 351.02 remains the same as the goals have been throughout the history of the administrative child support system. The proposed Rules of the Expedited Child Support Process continue to allow for a user-friendly process that is designed to be accessible to and respectful of the parties. The Rules continue to require the CSM to explain the purpose of the hearing and the process and procedures to be used during the hearing. The Rules provide for information, including testimony of the parties and witnesses, to be presented at the hearing. The relaxed rules of evidence provided for in the Rules allow the parties to present and the CSM to obtain the information necessary to make an order that is appropriate for each situation. In designing the Rules of the Expedited Child Support Process, the Rules Committee has preserved the best parts of the administrative hearing process and successfully implemented them in the judicial branch of government.

I am in support of the Proposed Rules of the Expedited Child Support Process. I appreciate the difficult task of designing rules that incorporate the concerns of numerous interest groups and believe a good balance has been struck that provides for an Expedited Child Support Process in the judicial branch that will meet the goals of the process.

Sincerely,

Beverly J. Anderson
Child Support Magistrate

OFFICE OF DAKOTA COUNTY ATTORNEY
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March 16, 2001

OFFICE OF APPELLATE COURTS
MAR 19 2001
FILED

FREDERICK GRITTNER
CLERK OF THE APPELLATE COURTS
305 JUDICIAL CENTER
25 CONSTITUTION AVENUE
ST PAUL MN 55155

RE: Proposed Final Expedited Child Support Process Rules

Dear Mr. Grittner:

I am the supervising attorney for the Child Support Enforcement Unit of the Dakota County Attorney's Office. In this capacity I am familiar with the implementation of the Interim Expedited Child Support Process Rules and their application by the county child support enforcement agency. I have had the opportunity to review the Final Report and Proposed Final rules submitted to the Supreme Court by the Advisory Committee on the Rules of the Expedited Child Support Process.

My comments are limited to Proposed Rule 370.03, subd. 2. This Proposed Rule governs service of the summons and complaint in an initial proceeding to establish child support. It provides that the summons and complaint shall be served upon the parties by personal service, or alternative personal service, unless personal service has been waived. However, where the county child support enforcement agency initiates the proceeding, the party who is receiving assistance from the county [i.e., public assistance recipient] or who has applied for child support services from the county [non-public assistance recipient of services] may be served by any means permitted under Proposed Rule 355.02. The latter includes service by mail and facsimile service.

The county initiates child support establishment proceedings in diverse situations. For example, where a parent is receiving public assistance, the county seeks reimbursement of the assistance from the non-custodial parent. If the parent ceases receiving public assistance, the reimbursement to the county is disbursed to the custodial parent. In other cases where a parent is not receiving public assistance, the county initiates child support establishment proceedings at the request of such a parent. Usually (but not always) these cases are initiated on the application of the custodial parent. These actions are brought by the county in the name of the county or the state on the information and instigation of an individual with a private interest in the matter (i.e., ex relatione). Sometimes actions are brought in

the name of the county and both parents are named as defendants, as, for example, in a case where a relative has assumed the care of the children and both of the parents are able to contribute to the support of the child.

Current practice in county child support agencies is that recipients of county services are intended to be parties to the litigation and subject to the personal jurisdiction of the court. It is desirable that both parents be parties to the litigation. As the case proceeds, the court may desire to impose obligations and duties upon the either or both parents, such as the duty to provide medical insurance or the duty to provide financial or other information. The noncustodial parent may desire that the court subsequently modify the child support order. Service of such a motion on the custodial parent may be by mail, if the custodial parent is a party to the litigation.

In child support establishment proceedings initiated by the county the recipient parent typically appears in the caption as a party plaintiff. Sometimes county-initiated litigation is captioned with the recipient as the relator, the action being brought on the information and instigation of the recipient. However, even where the recipient is named as a plaintiff, it is not the practice that the recipient sign the summons or the complaint. Nor does the individual who is named the relator sign the summons or the complaint. The complaint is signed by the county attorney, who represents only the county child support agency and not the recipient. In child support establishment proceedings, the recipient of child support services typically is not named as a party defendant, although there are exceptions to this.

The Proposed Rule regarding service of the summons and complaint upon the recipient of public assistance or child support services is confusing. It does not address the question of whether this individual is a plaintiff or a defendant to the action, or only a relator. Under the Rules of Civil Procedure, the plaintiff must subscribe the summons and sign the complaint. Under the Proposed Rules it appears that only the initiating party need sign the summons and the complaint. Thus, where the county initiates the child support establishment action, only the county attorney need sign the summons and complaint. If the recipient is intended to be a party plaintiff to the action, the Proposed Rules depart from the Rules of Civil Procedure in a way which creates a cloud on the recipient's status as a party to the litigation.

The Proposed Rules provide that the summons and complaint may be served upon the recipient by mail or by facsimile service. However, if the recipient is a defendant, service by mail (without return of an acknowledgment) or service by facsimile would be insufficient to establish personal jurisdiction of the court over the recipient. Although the Advisory Committee in its Report at paragraph G (2) states that personal service is a "vestige of days gone by" and should be abandoned because of expense and difficulty, the requirement of personal service upon a defendant is based upon the constitutional

requirement of due process. "...[P]rior to an action which affects an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 94 L.Ed. 865, 70 S.Ct. 652 (1950), cited in Mennonite Board of Missions v. Adams, 462 U.S. 791, 77 L.Ed. 180, 103 S.Ct. 2706 (1983). The Minnesota Rules of Civil Procedure, requiring personal service (or alternative personal service) upon defendants, meet this constitutional requirement. Service upon a defendant or other non-initiating party by mail or by facsimile, without more, may not.

Proposed Rule 371.03 provides that in parentage actions, the summons and complaint must be personally served upon all parties. There is no reason given for different treatment in child support establishment actions.

Furthermore, the Advisory Committee at paragraph G (2) states (at the end of the second paragraph) that personal service is extremely costly and time consuming and that initiating parties who are pro se litigants should not be burdened with such requirements. However, initiating parties who are pro se litigants are required to personally serve all parties; only the county is excused from complying with a personal service rule.

The Proposed Rule should be clarified to provide that all defendants in child support establishment actions must be personally served with the summons and complaint, whether or not the defendant is a recipient of public assistance or child support services. The Proposed Rules could be further clarified to provide that the recipient who is designated as a plaintiff is affirmatively excused from the obligation to sign the summons or the complaint in child support establishment proceedings.

The issue remains, however, as to whether a plaintiff who has not signed the summons and the complaint, who has not been personally served with the summons and complaint, and who has not appeared in the action has truly been made a party to the action. If there is no need for this person to be party, there is no harm. However, in most cases it is desirable that the recipient be a party to the action and be amenable to order of the court. Child support establishment proceedings may remain open and subject to modification for many years. If subsequent motions are brought by the defendant against the recipient to modify the child support order, the defendant should be able to serve such motions by mail. If the recipient is not truly a party to the case, and within the personal jurisdiction of the court, the ability to use mail service for future motions may be jeopardized.

The Proposed Rule departs from the existing Rules of Civil Procedure governing the commencement of actions. By failing to require personal service on recipients who are defendants in child support

establishment proceedings and by failing to require that recipients who are plaintiffs or relators sign the complaint, questions of whether an individual has been made a party to the case are needlessly raised. The disparate treatment accorded defendants and plaintiffs in parentage actions and child support establishment actions is not justified. The disparate treatment accorded the county and pro se litigants in child support establishment actions is not justified. The Expedited Process Rules should provide for a uniform approach to the commencement of actions that are scheduled in the expedited Process.

The opportunity to comment upon the Proposed Final Expedited Child Support Process Rules is appreciated.

Sincerely,

Karen A. Schaffer

Karen A. Schaffer
First Assistant Dakota County Attorney

KAS/cr

MiscDocs/supreme court letter-2nd draft

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Office Hours: Telephones Answered, Hearings and Appointments Scheduled:
Monday through Thursday: 9:00 a.m. to 4:00 p.m.
Friday: Scheduled Telephone Appointments Only

March 16, 2001

Minnesota Supreme Court
305 Minnesota Judicial Center
25 Constitution Avenue
Saint Paul, Minnesota 55155-6102

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

To the Honorable Justices of the Minnesota Supreme Court:

I am providing the following comments to the Proposed Rules of the Advisory Committee of the Rules of The Expedited Child Support Process. The Advisory Committee successfully incorporated extremely different perspectives of the different constituencies involved in the child support process, be they men or women, custodial parents or obligors, the attorneys who work in the system, whether the private bar or court-appointed counsel, the child support officers and court administrators, all of which individuals are involved in every single support case that addresses the financial needs of minor children. The members of the Advisory Committee have devoted substantial time and energy in discharging the assigned task. Child support magistrates have achieved a consistent and uniform implementation of the child support laws across the State of Minnesota. The Rules of the Expedited Child Support Process, past, present and proposed, have made that achievement possible.

The following comments do reflect much of the discussion and debate that has accompanied the final draft of the proposed rules in the family bar, particularly given the prior two years of the evolution and expansion of child support magistrates in family court.

In these comments, I am presenting proposed revisions that track the Rules sequentially. Where a recommended revision would affect a separate rule or subdivision, to the extent possible, I have kept those sections together for organizational purposes.

Re-draft **Rule 353.01. Subd. 1** as follows:

> **Subd. 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, 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. **Modification or enforcement of the support provisions in an order for protection 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.**

The foregoing revision would include a parallel revision to **Rule 353.01, Subd. 3 (d)** as follows:

Subd. 3. Prohibited Proceedings and Issues.

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

The expedited child support system should include the modification and enforcement of child support provisions established in an Order for Protection in a domestic abuse proceeding. There is little reason to treat domestic abuse cases as different from other family law matters or require victims to start a separate legal proceeding before they deem that step necessary. Victims can operate under an order for protection or an extended order for protection for as much as one to two years, without starting a separate proceeding for paternity, divorce or legal separation. Why should there be a different system in play to ensure collection, enforcement or modification of those support obligations, by different treatment that results in longer delays for the parties in a domestic abuse proceeding to achieve resolution of financial issues?

Re-draft **Rule 353.01. Subd. 2 (c)** as follows:

(c) ~~Upon written consent of all parties, a~~ A child support magistrate may issue an order changing venue. The court administrator shall forward the court file to the **court administrator in 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~~ who shall schedule the matter for hearing. The court administrator shall mail notice of the date, time, and location of the hearing to all parties.

(d) A child support magistrate may issue an order consolidating for hearing child support cases that involve the same obligor and different obligees, to ensure that support orders remain fair and equitable. In such cases that involve multiple counties or judicial districts, the child support magistrate shall apply to the chief judge of the judicial district for an order of consolidation for hearing of those cases.

There are too many families where obligors have support obligations to children residing in different family units, where children are competing for financial support. Some children have special needs that require increased support. Other children may be buffered somewhat by the employment of the custodial parent and not quite so dependent upon the financial support necessary

from the obligor. This issue is receiving heightened legislative scrutiny, with possible radical changes expected this year, such as the Department of Human Services' proposal (SF 1364) for an income shares model of both parents. There is little reason to believe that a child support magistrate cannot made the same legal and factual judgment as any other judicial officer in weighing the competing arguments on a venue change to issue a sound decision. There is absolutely every reason to allow a child support magistrate to hear cases involving the same obligor to ensure that facts peculiar to one support matter do not unfairly prejudice the absent obligee in another matter, where the needs of minor children of different obligees might well be the same but the race to the courthouse was assisted by collusion between the obligor and the most recent love interest to the prejudice of older or emotionally abandoned children.

Re-draft **Rule 361.04, Subd. 2** as follows:

> **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. **The child support magistrate may have a telephone conference with the attorneys and parties for resolution of the issues, upon request of counsel. The child support magistrate may assess fees for noncompliance with discovery.**

Judicial telephone conferences have succeeded as an effective tool for resolution of discovery disputes. That same method, without rising to the level of a telephone "hearing," should be available to child support magistrates to keep cases moving forward. Being specific about the ability of the magistrate to assess fees against a noncompliant party provides respect for the expedited child support process and gives the bar not only fair warning but also a means to require cooperation in the production of financial information often seen as intrusive by recalcitrant parties, particularly in support modification matters. A telephone conference is far less expensive to represented parties than a trip to the courthouse by their attorneys.

Re-draft **Rule 368.01 and Rule 368.02** as follows:

> **Rule 368.01. Notice to Remove ~~Precluded.~~** Any party or attorney may make and serve on the opposing party and file with the administrator a notice to remove an assigned child support magistrate, family court referee or district court judge in a case. The notice shall be serve and filed within ten days after the party receives notice of the assigned judicial officer or child support magistrate to the hearing but not later than **three working days before** the hearing.
>
> No such notice may be filed by a party or party's attorney against a child support magistrate, family court referee or district court judge presiding over matters in the expedited process who has presided at a motion or any other proceeding of which the party had notice. A child support magistrate, family court referee or

> district court judge who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the child support magistrate, family court referee or district court judge.
>
> **Subd. 2. Grounds to Remove.** After a party has once disqualified a presiding child support magistrate, family court referee or district court judge as a matter of right in the case, that party may disqualify a substitute child support magistrate, family court referee or district court judge only by making an affirmative showing of prejudice. A showing that the child support magistrate, family court referee or district court judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

There is no good reason for a party or attorney to be precluded for exercising a one-time entitlement to remove an assigned judicial officer or child support magistrate. Minn. R. Civ. P. 63.03 allows that entitlement to be exercised in district court. Where magistrates are also practicing lawyers, who may have conflicts with opposing counsel in cases in different counties, then attorneys and litigants should not be forced to have the neutrality and impartiality of an outcome questioned by perceived bias, antipathy or plain dislike attributable to past or ongoing conflicts. If "silver bullets" are used to repeatedly remove a particular child support magistrate, then maybe there should be an examination of why that route is deemed necessary by attorneys.

As the proposed revision is drafted, there could only be one notice to remove filed by or on behalf of a litigant, regardless of whether the notice were brought against a judge, referee or magistrate during the shelf-life of a family law matter, which can well extend through the eighteen years of minority of a child.

It is a specious argument or a mark of chaotic administrative calendaring to contend that the identity of a child support magistrate is not known at least a week in advance of any scheduled hearing. By requiring the notice to be provided three working days before a hearing, the delay does not become insurmountable in terms of re-scheduling, whether by shifting the case to a different magistrate that day or by moving the case to a different day within the week when another magistrate would/could be available. While a number of counties do only have one magistrate hearing a child support calendar on a given day, no county only has one child support magistrate, particularly given the back-up coverage available from the Supreme Court Magistrate's Program or neighboring counties.

Re-draft **Rule 371.12, Subd. 3** as follows:

> **Subd. 3. Objection to Support. In the event that** a written answer is submitted that objects to the following issues, ~~parentage,~~ custody, parenting time or the legal name of the child, **then the matter shall heard by the child support magistrate for decision on the financial issues of ongoing child support, medical support, contribution to childcare, past support up to two years before the commencement of the action and contribution to pregnancy, confinement expenses and genetic testing.**

The child support magistrate shall issue an order addressing the foregoing issues and shall refer the remaining contested issues to district court pursuant to Rule 353.02, Subd. 3.

Decisions for minor children should not be held hostage by litigants whose objections could well be calculated to delay a decision by the time delay inherent in any referral to or from District Court. If a decision can be made on two of three issues, with the third contested issue being an argument about custody, parenting time or the name of the child, then a magistrate should be allowed to proceed with an adjudication of paternity, an order for genetic testing, establishment of interim support, with those decisions made within the 30 day time period independent of the contested issues.

- As a practical matter, any referral to district court would put the case in a scheduling queue that could extend anywhere from three to six weeks in non-metro counties and up to three months in metro counties.

- Virtually any and all initial paternity hearings in district court that do not have partial agreements on custody and parenting time maintain the status quo as to custody, usually in the mother under existing law, with access as already established by the parties or, in the case of infants, as might be supervised by friends or relatives to minimize the stress for the baby. The court routinely refers the parties to a mandatory parenting education program, a mediation service to try to resolve conflict over parental access or for evaluation of competing claims of custody and parenting time. While most of these services are court-annexed in metro Minnesota, the referrals in small out-state counties are to private providers, with delays in scheduling that track the delays in the judicial system.

- Should the contested issue be over the name of the child, Minnesota law requires the appointment of a guardian ad litem to make a recommendation. Given the scarcity of guardians to the system, the issue is commonly addressed in a custody evaluator in the recommendations to the court.

- If upon referral to district court, a decision would need to be made to readdress the existing order, as for example a parent returns to work and needs a childcare contribution or custody is transferred to the other parent or the amount of parental access would result in a necessary adjustment to support, the district court judge or referee has a starting point from the financial information in the court file and the findings and decision of the child support magistrate. It is far easier to make an adjustment on changed facts and figures than to start the case from the ground zero of an initial appearance.

- While the system works hard to promote parental cooperation, it should not be held hostage by the persons whose very appearance in court in a family law case signals the lack of agreement that made the trip to court necessary in the first place. Basing an outcome on whether or not parties will, can or should agree keeps the cart before the horse and impedes

the immediate decisions that the child support magistrates can make to meet the financial needs of children, the least vocal constituency of the system.

Re-draft **Rule 372.01 Subd. 1**:

> **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. Services shall be made at least **fourteen (14)** ~~twenty (20)~~ days prior to any scheduled hearing.

The service and filing time requirements in the expedited child support process should be the same as the Rules for Family Court Procedure and Civil Procedure. No good reason has been advanced as necessary to require a different time period in the presentation of the same financial information and motions contained in child support matters, with the distinction solely based on whether the assigned judicial officer is a child support magistrate or a judge or referee. In fact, it could be argued given the complexity of additional issues prohibited in the expedited child support process, such as litigated custody, property or relationship issues, the requirement for additional time should be provided to district court matters.

The confusion to the practicing bar in simply scheduling and proper calendaring of support matters becomes compounded within the system itself, with different scheduling clerks and court administrative staff required to operate a system that is designed to deliver the same service to the same litigants yet operating on a different track. The duplicative costs in maintaining separate court administrations for district court and magistrate calendars cannot be justified against the financial needs of a system operating under the severe budgetary constraints, whether imposed by county boards or the legislature.

Parallel changes should be made on the rules involving service and filing of responses.

Re-draft **Rule 377.09, Subd. 2 (b)** as follows:

> **(b) Motion for Review.** The child support magistrate or district court judge shall make an **informed, final and** independent review of any findings or other provisions of the underlying decision and order for which specific changes are requested on the motion. . . .

Using the language that is embodied in family law cases that address the review of a referee's order maintains the same standards, applicable caselaw and process in place for the same types of judicial decisions on child support. It makes little difference if a referee's order is being reviewed by implementation of Rule 53 or if a magistrate's order is being reviewed through the Expedited Child Support Process. The review of two separate child support orders, one issued by a child support magistrate and one by a district court referee, are performed by the same district court judge. The financial issues are virtually identical, with the referee's order addressing more issues. They should be subject to the same standard of review, consistent with the following precedents:

> "The trial judge [is] completely free to exercise his judgment and discretion." LaBelle v. LaBelle, 296 Minn. 173, 176, 207 N.W.2d 291, 293 (1973).
>
> The "family court judge has the duty and ultimate responsibility for making an informed final and independent decision", id. at 306, 242 N.W.2d at 94, because the proposed findings and order of a family court referee will carry only such weight and persuasive force as their merits demand and the properly exercised discretion of the family court judge warrants. Peterson v. Peterson, 308 Minn. 297, 302-03, 242 N.W.2d 88, 92-93 (1976).

No logical reason can be offered to demand that the "clearly erroneous" standard be applied to magistrate's orders as having more value versus a referee's order. Review by a district court judge requires the same process. Judges typically approve the vast majority of reviewed orders, with fairly summary orders. When there are problems in the order being reviewed, the orders modifying or vacating particular findings and/or conclusions become more detailed. This might have in substantially less than 10 % of the cases upon which review is sought by a litigant. The questions about the record have been resolved in the proposed rules, including the problems with the expense of transcription of an audiotaped hearing.

By including the proposed language, the Supreme Court will eliminate confusion among the bench and bar in the family law area.

I do request the opportunity to appear and testify at the public hearing on April 17, 2001 to answer any questions or provide additional commentary on the Rules.

Thank you for your consideration of the foregoing.

Sincerely,

Mary Catherine Lauhead

Mary Catherine Lauhead

Cc: Honorable Gary Mayer, Judge of District Court
Ann Schultz, Chair, Family Law Section of Minnesota State Bar Association
Robert Zalk, Chair, American Academy of Matrimonial Lawyers

Minnesota Department of **Human Services**

Memo

DATE: March 16, 2001

TO: Frederick Grittner
Clerk of the Appellate Courts

FROM: Laura Kadwell, Director
Child Support Enforcement Division

SUBJECT: Public Hearing on Rules of the Expedited Child Support Process

The Department of Human Services Child Support Enforcement Division requests to appear and present oral testimony at the public hearing on the proposed Rules of the Expedited Child Support Process on April 17, 2001.

Attached please find the Department's written comments.

Thank you.

Minnesota Department of **Human Services**

Public Hearing on Rules of the Expedited Child Support Process

April 17, 2001

Statement of
Minnesota Department of Human Services

The Minnesota Department of Human Services ("the Department") appreciates the opportunity to comment on the Proposed Rules of the Expedited Child Support Process ("Expedited Rules"). We will comment first on the role of the Department in the Expedited Process. We will then review the background of the Expedited Rules from DHS' perspective and the Rules themselves. Our comments will conclude with a section on Next Steps.

Role of the Department

The Department's interest in the Expedited Rules arises in two ways. First, the Department is the "single state agency" overseeing administration of Minnesota's child support program. Second, the Department has responsibility for maximizing the self-sufficiency of Minnesota's low-income families.

Under federal law, states are reimbursed with federal funds for child support services delivered under a state plan that has been approved by the federal Office of Child Support Enforcement pursuant to 45 C.F.R. 301.13. One important requirement that all states must meet to secure federal child support funding[1] is establish and enforce child support in a timely manner (specific time frames are set out in 45 C.F.R. 303.4). As the agency responsible for ensuring that Minnesota's child support program complies with federal law, the Department has an interest in the timeliness of legal actions necessary to establish and enforce child support. The Department takes this responsibility very seriously, in part because of our duty to administer programs in a fiscally responsible manner, and more importantly, because of our responsibility to the children living in Minnesota's low-income families.

Setting and enforcing adequate child support in a timely manner has become even more important to low income families since passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996, 42 U.S.C. 651, et. seq. Among its many far-reaching provisions, PRWORA limits families' receipt of public assistance to five years. PRWORA has significantly elevated the importance of child support as a stream of income that will allow families to become self-sufficient in the absence of guaranteed public assistance payments.

[1] 75% of the funding for Minnesota's child support program came from the federal government in state fiscal year 2000.

Approximately 270,000 children and their parents receive child support services through Minnesota's publicly funded child support program. Of these families, 26% are receiving public assistance, and an additional 56% were on assistance at some time. In FY2000, the public child support program distributed $492 million in child support payments, a 52% increase over the amount distributed in 1996, the year that Congress passed PRWORA. Although we do not have data to show exactly what portion of family income child support is in Minnesota, nationally, child support provides 26% of income for poor families who receive child support. Because child support can be such a large portion of income for low-income families, it is imperative that we maximize the effectiveness of Minnesota's child support program at the state and county levels.

The Department recognizes the conflict inherent in administering a program that provides both adequate and accessible services to thousands of families while ensuring that each family is accorded due process in the eyes of the law. While numbers and time frames are important to the administration of the program, it is also important that each litigant have notice and an opportunity to be heard. In order to build respect and trust among families using the system, we must treat all families fairly. The Department recognizes its role in maintaining the integrity of the child support system.

Background

The Department played a pivotal role in creating an administrative process for setting and enforcing child support in Minnesota. Modeled on similar processes in other states, the Administrative Process was intended to address three primary shortcomings in the earlier court processes in Minnesota: (1) the courts were not meeting federal time frames in many counties, (2) the courts were not consistently following statutory guidelines for setting support, and (3) the court process was "mysterious" and, therefore, primarily accessible only to parties with attorneys.

The administrative process addressed these shortcomings by hiring and training a cadre of child support specialists to act as hearing officers to set and enforce support. The training and specialization of the judicial officers obviated the need for attorneys in child support cases. Review of the orders helped ensure that orders were consistent throughout the state. While consistency may not be important in many areas of the law, it is important in child support because of the link between child support and public assistance, referenced earlier.[2] Additionally, unlike any other civil cases, child support cases often deal with individual obligors with several open cases in several different counties with just as many obligees.

The Minnesota Supreme Court declared this Administrative Process unconstitutional in Holmberg, 588 N.W.2d 720 (Minn. 1999). Despite its disappointment with the Holmberg decision, the Department appreciates the concerns addressed by the Supreme Court in the opinion. We also appreciate the steps taken by the Court to mitigate

[2] The Department recognizes that there are some issues inherent in Minnesota's child support guidelines, Minn. Stat. §518.551, that encourage district court judges, administrative law judges, and now child support magistrates to deviate from the guidelines.

Holmberg's impact on our ability to administer the child support program in a fair and effective way. These steps include the delayed effective date of the opinion, the prospective application of the ruling and the establishment of an Advisory Committee to develop rules governing an expedited process within the judicial system for the setting and enforcing of child support orders. We also appreciate the Supreme Court's decision to include a representative of the Department among the members of the Advisory Committee.

- ***Valuable Lessons Learned from the Administrative Process***

Even though the Court in Holmberg ruled that the Administrative Process was unconstitutional, without having had the Administrative Process and tweaking it over a number of years, we would have viewed the development of the Expedited Child Support Process from a different viewpoint. It would have been a blank slate and we should have been unaware of many constitutional issues. The Administrative Process set the stage, and many of the concepts and procedures from it were brought into the Expedited Process. The focus on time frames and fiscal responsibility for the taxpayers, and more importantly, the focus on families remain the same.

Although county attorneys are required to review and sign pleadings and appear at hearings to represent the counties' interests, the child support workers still play a significant role in gathering information, drafting documents, and are often the only witnesses at the hearings. Additionally, after working through the development of the Administrative Process, when Holmberg required a new system, all of the players were at the table and understood the importance of developing a process that met the constitutional requirements set forth in Holmberg.

- ***The Advisory Committee Process***

We wish to take this opportunity to commend all members of the Advisory Committee on the seriousness with which they undertook their duties to the work of the committee. We believe the work of the committee has produced two products, not one. First, it has produced the rules themselves, on which we will comment in remaining sections. As importantly, the committee process has forged lasting links among the many players in the child support program.

Now that the child support program is dependent for success on county attorneys and judicial officers, it is imperative that all of the partners work together in a positive and constructive way. These working relationships were not in place at the beginning of the rules process. They are moving into place now, largely because of the work of the Rules Committee. The Department intends to take full advantage of the links formed by our membership on the Rules Committee to continue building a responsive, family-friendly child support system for the families of Minnesota. This system will work well not only in human services agencies throughout the state, but also in the offices of judges, county attorneys, court administrators, and all who play a role in ensuring success for families.

We believe we can be successful in future efforts to work together, in part because we successfully negotiated development of the Rules themselves. When we began our work together, there was palpable hostility in the room. The hostility has dissipated and, for the most part, has been replaced with mutual respect. There will always be competing interests among the players in the child support system. As the Department, we will always be focused on fiscal responsibility, time frames, and simplicity of the process. It is our job to seek "the greatest good for the greatest number" while others closer to the judicial process are more likely to seek the highest good for an individual case. We believe the rules balance these two diverse viewpoints as well as they could; the Rules also set the stage for further cooperation among the players.

The State of Minnesota owes a debt of gratitude to Judge Meyer who, more than any other individual, is responsible for creating an atmosphere in which we could work out our differences. Judge Meyer consistently worked toward consensus on the rules. He listened to each member speak on each issue (sometimes more than we wanted to hear each other) and took votes on questions only when absolutely necessary. The fact that the Rules enjoy such widespread support is due largely to his efforts.

Proposed Rules

In this section, we will discuss first the role of child support staff. We will then turn to the goals of the Expedited Process and specific Rules that, in the Department's opinion, further the goals.

- ***The Role and Responsibilities of Child Support Staff***

We discuss separately the role of child support staff, in part because of their controversial yet pivotal role in the Administrative Process and in part because, as the agency overseeing the child support program, the Department has a fundamental interest in assuring that the role of workers is carefully defined and respected throughout the State.

Under the Administrative Process, child support officers were allowed to gather evidence, sign pleadings, serve parties and present evidence at hearings. County attorneys were specifically precluded from the process unless there was a complicated legal issue, at which time the child support officers requested the county attorney's participation. The court in Holmberg ruled that without county attorney oversight, child support officers were engaging in the unauthorized practice of law.

The Interim Expedited Process Rules (Interim Rules) attempted to resolve the unauthorized practice of law issue by setting forth areas of responsibilities that require county attorney oversight and areas that do not require county attorney oversight. The Expedited Rules basically adopt the Interim Rules, but do not enumerate these responsibilities; Rule 369.02 refers to Minnesota Statute §518.5513, Subd. 2, where the responsibilities are set forth in statute. The Expedited Rules also clarify in Rule 369.02 that child support officers may attend and participate as witnesses in hearings and may present agreements and stipulations reached by all parties. Essentially, this means that

the child support officer may not present evidence on behalf of the county except if called as a witness, and may not offer the position of the county unless it is part of the agreement and stipulation.

We understand the Court may prefer to enumerate the specific responsibilities of the child support officer. Whether this is accomplished by reference to statute or by a listing in the Expedited Rules themselves is immaterial to the Department. We are concerned that the responsibilities be clarified, and believe the Rules do a good job of delineating the responsibilities that can and should be handled by child support staff.

Child support staff continue to be vital players in the Expedited Process as they gather information, prepare pleadings, moving papers, affidavits, and exhibits for the county, act as a witness at hearings (sometimes the only witness), and prepare and present stipulations and agreements. A significant change from the Administrative Process is that the county attorneys must approve all legal documents as to form and content; however, the role of the child support officer in preparing and serving documents has not changed. Another significant change from the Administrative Process is that the child support officer may not appear on behalf of the county to present the case, evidence or the county's interests unless called as a witness. However, the proposed rules continue to utilize the child's support officer's knowledge of the case, as the child support officer often is the entity that presents the case and evidence in the hearings.

Child support officers also continue to have a significant role in meeting and conferring with the parties in advance of the hearings, gathering information, attempting to negotiate settlement, and explaining the purpose and procedure of the Expedited Process. This role requires the direction and consultation of the county attorney, but the child support officer's role has not significantly changed.

While perhaps there were some hard feelings among some child support officers about losing control of the process, as the county attorneys offices and child support offices are developing their own systems and procedures and as the lines of communication open, these feelings seem to be diminishing. It is clear that child support staff continues to do everything they did prior to Holmberg, but in "legal" areas, they now must work under the oversight of the county attorney.

- ***Specific Rules of Interest to the Department***

The Department is very pleased that the Proposed Rules include a statement delineating the goals of the Expedited Child Support Process (Rule 351.01). First, the goals are important because they have already been useful in informing the decision-making of the Advisory Committee. Second, the rules remind all interested parties (litigants, attorneys, judges, magistrates, agency personnel, and others) that the intent of the Expedited Process is to meet the very concerns voiced by the Department over the last several years; meeting federal time frames, producing consistent orders, and being family and user friendly.

The Department believes that the following rules will help Minnesota meet time frames, provide consistent orders, and provide services that are family and user friendly:

1. Rules Expediting the Process and Maximizing Federal Financial Participation:

   a. *Time Frames.* To maximize federal financial participation, we must expedite setting and enforcing child support orders pursuant to 45 C.F.R. 303.4. For example, the county must either establish an order for support, or complete service of process to establish an order, within 90 days of locating an alleged father or noncustodial parent, or document unsuccessful attempts. Another example is that the State must notify all parents subject to a child support order of the right to review the order and how to make such a request. However, please keep in mind that these time frames do not tell the whole story as they are measured from service of process only and there are many ways a case can get delayed (avoidance of service, lack of cooperation, etc.).

   In addition to the establishment of support orders and reviews of orders, 45 C.F.R. 303.101(b)(2)(i) requires that 75% of all IV-D child support cases be resolved within six months of service of the pleadings or moving papers and that 90% be resolved within one year of the service. The report dated February 2001, filed with the Minnesota Supreme Court, that relays the evaluation of the Expedited Child Support Process, sets forth that all 87 Minnesota counties are well within compliance with these laws.[3]

   b. *Rule 368.01 - Removal of Magistrates.* Another way in which the process expedites the setting and enforcement of orders is to preclude parties from removing a particular child support magistrate without cause. This provision was controversial among members of the committee. However, the Department believes that litigants should not be allowed to remove a magistrate for the following reasons: (1) child support is, in so many cases, such an acrimonious process, it is not a good idea to allow difficult litigants a way to evade the "child support specialist" (the magistrate), (2) allowing removal will delay the process, especially in rural counties where a child support magistrate may only appear once or twice per month; (3) there is a strong interest in establishing the reputation of the child support magistrate as a decision maker, and (4) litigants retain the right to request review of orders to a District Court judge.

[3] The report was a mandate pursuant to Minnesota Laws 1999, Chapter 196, Article 2, Section 8. As a part of this process, this report was to be filed with the legislature. The report reviews, measures, and evaluates whether the Expedited Child Support Process meets the statutory goals of being:

- uniform statewide, resulting in timely and consistent orders;
- accessible to parties without the need for attorneys and minimizes litigation;
- cost-effective of the use of limited financial resources; and
- in compliance with the application of federal laws.

The report concludes that the Expedited Child Support Process meets the statutory goals.

c. *Rule 359.01 - Telephone and Video Hearings.* Allowing hearings to be conducted by telephone conference call or through interactive television serves the needs of both litigants and taxpayers. Many parties live far from the courthouse (including parents living in other states) or cannot take the time from work to attend a hearing. These parties should be allowed to request to appear by telephone or by video. Under the rules the magistrate retains the right to decide whether or not to grant the request, but any party may always make the request. We believe this is a satisfactory balance of efficiency, customer service, and judicial discretion.

d. *Rule 353.02 – Temporary Support.* The rules are quite clear under all of the past and present processes (Administrative, Interim Expedited, and the Proposed Expedited) that the decision-maker could not and still cannot make a determination of custody, visitation or maintenance. In the Administrative Process and under the Interim Rules, if any of those issues came up in responsive motions or during the hearings, the decision-maker had to refer the entire matter to District Court. This caused a delay in getting a support order for the family. In the Expedited Rules, the child support magistrate must refer these issues to District Court, but may determine temporary support as well. The District Court Judge may adopt the findings and order of the magistrate or make new findings and order permanent support.

Rule 370.03, 371.03, and 372.03 – Service of Process on a Party Receiving Services. A party who receives services may be served by traditional methods for the type of action (personal service, service by mail with an acknowledgement, or service by publication), but the new rules allow the party who receives services to waive formal service and to accept service by mail without the need to return an acknowledgment of service. Not requiring personal service or the use of an acknowledgment will save time because parties receiving services do not necessarily care to cooperate with the public authority and learn to avoid service.

f. *Rule 365.02 – Time to File an Order.* The child support magistrates must file orders within 30 days of the close of the record. District Court Judges have 90 days in which they are to file orders.

g. *Rule 365.04 – Notice of Filing Served by Court Administrator.* The court administrator is mandated to serve the parties with a notice of filing or order or notice of entry of judgment within five days of receipt of the underlying decision and order of the child support magistrate. The notice outlines the rights of the parties for review and appeal and provides for a the last day to bring such reviews and appeals. Having the court administrator serve the notice of filing ensures that all parties receive notice and starts the clock ticking for reviews and appeals within five days

of the order or judgment being filed. Through the traditional District Court method, the appeal period commences when any party files a notice of filing on the other parties which often substantially delays the appeal period from running; it could take the court administrator weeks to send out the order to the parties, and then it could take the moving party weeks or months to serve the notice of filing on the other parties.

2. Rules Ensuring Consistent Decisions Statewide:

   a. *Rules 352.01 and 353.01 - Child Support Magistrates Make the Decisions.* These rules recognize the need for specialization in child support, a need driven by both the volume and complexity of child support decisions. We realize that District Court judges and referees will continue to decide some cases, primarily when the population of child support cases are distributed so sparsely in some areas of the state.

   b. *Rule 367.01 - Chief Judge of Each Judicial District Determines Which Agency Administers the Expedited Process.* The chief judge of each judicial district determines whether the district will administer the expedited process or whether the state court administrator will do so in whole or in part. The Department would have preferred a centralized system as a way of providing a higher level of consistency and specialization. The committee compromised on a system that allows the districts elect the use of the state court administrator. We hope judicial districts will avail themselves of this option if the expedited system becomes too unwieldy in their districts.

   c. *Rule 367.02 – Use and Appointment of Child Support Magistrates.* This rule contains two provisions that contribute to the consistency of the expedited process. First, it clarifies that magistrates must be confirmed by the Supreme Court. By virtue of its statewide authority, the Supreme Court has the ability to confirm magistrates that will further the goal of consistency in the system. Second, the rule also clarifies that magistrates serve at the pleasure of the judges in their district. This rule will help chief judges throughout the state to maintain the quality of magistrates in their districts. While the rule precluding removal of magistrates may seem to grant magistrates too much autonomy, this rule will help the chief judges control a magistrate who may abuse his or her power.

   d. *Rule 362.02 – Preparation of Order in Settled Matters.* If the parents are not represented by counsel (pro se) and the public authority is a party, the county must prepare the order if the parties settle all issues prior to a hearing. The public authority is automatically a party in all cases involving public assistance and may intervene as a matter of right in all other cases conducted in the expedited process. A significant number of litigants in the expedited process also appear pro se, therefore, the public

authority will be a party in many of the cases and the county will prepare many of the stipulations and orders, providing consistency in form and content.

e. *Rule 364.13 – Role of the Magistrate in Hearings.* A child support magistrate may ask questions of witnesses to ensure there is enough evidence to make the required findings. While District Court Judges have the same right to ask questions, it may not always be appropriate for the Judge to do so. This specific power allows the process to proceed in an expedited manner and reduces the need for further proceedings (review hearings or additional motions).

f. *Rule 379.01* – The State Court Administrator is to prepare and make forms readily available for pro se parties and public and private attorneys. If the parties and attorneys use these forms or base their pleadings or motions on the forms, generally all pleadings, motions, requests for hearings and review will be consistent in form and promote consistency in content.

3. Rules that are family and user friendly:

a. *General Format of the Rules.* The rules have been renumbered and reorganized making them more user friendly for child support staff, attorneys and the public.

b. *Rule 353.01, Subd. 1 – Scope of General Rules.* To ensure consistent treatment for litigants and consistent support orders, it is imperative that all IV-D proceedings to establish, modify, and enforce support be in the expedited process.

c. *Rule 353.01. Subd. 2 – Purpose and Goals of the Process.* The Rules Committee debated long and hard regarding the inclusion of paternity proceedings in the Expedited Process. It was always clear that contested paternity decisions could only be made by a District Court judge. It was less clear to members of the Committee whether the Expedited Process could play any role in deciding paternity issues. On the issue of conserving judicial resources and maintaining as much consistency as possible, the committee decided that "uncontested paternity matters" could be decided in the Expedited Process. This decision reflects the Committee's understanding that many paternity issues are obviated by the voluntary Recognition of Parentage and/or the increased accuracy of various kinds of genetic testing.

d. *Rule 375, through 378 et. al. – Review and Appeal.* The process to review a case for clerical mistakes as well as to review the substance of the order continues to be family friendly. While some may argue that it is more efficient to have a review process that circumvents the District Court and goes directly to the Court of Appeals, we believe that the current system is more cost effective, less time consuming and easier to manage for both pro se litigants and low income litigants. Reviews and appeals under the IV-A program (MFIP, Medical Assistance, General Assistance, Emergency Assistance, etc.) as well as appeals regarding the alleged maltreatment of adults and children follow the same pattern for the same purposes (cost effective, less time consuming and easier to manage for pro se litigants).

After a decision has been filed by the District Court, the party seeking review may choose to appeal the District Court's decision to the Court of Appeals following the Minnesota Rules of Civil Appellate Procedure. The only difference in Expedited Process cases is that the appeal period is extended beyond the 60 days if a party has filed a request for review or a motion to correct clerical mistakes.

If pro se litigants were required to proceed directly to the Court of Appeals, the costs of a transcript and another filing fee would be required as well as the use and knowledge of the proper format of formal appeals. The State Court Administrator has developed forms for pro se litigants to use to commence the review process which includes the choice of ordering a transcript (paid for by the litigant requesting review) or allowing the court to review the matter based on the records in the file. The District Court Judge conducting the review may independently request a transcript, listen to the taped proceeding, or order an additional hearing.

Additionally, if proceeding through the District Court does not meet the needs of the litigant, whether pro se or represented by counsel, he or she may elect to take an appeal directly to the court of appeals from the final order or judgment of a child support magistrate.

Over a one-year period, approximately 21,000 orders were issued and the District Courts reviewed just over 1,000 orders. The Department believes that more pro se litigants are willing to file a motion for review through the simpler and more cost effective the District Court method than would be willing to take on the expense and complications of filing a formal appeal to the Court of Appeals. Therefore, more pro se litigants are being afforded the due process of review than if they were required to proceed directly to the Court of Appeals.

e. *Rules 370, 371 and 372 – Commencement of Actions.* The establishment of support proceedings (the proceedings known as §256.87 actions) are found in Rule 370, parentage actions are located in Rule 371, and motions to modify, motions to set support, and other motions are in Rule 372. Under the Administrative Process and the Interim Rules, establishment and parentage proceedings were commenced by service of a summons and complaint and a proposed order, while motions to modify and set support were commenced by service of a notice of motion and motion and proposed order.

   In all cases, the information contained in the proposed order served as the factual basis for the underlying proceedings. This was confusing to pro se litigants and attorneys alike. For example, even without a judicial officer's signature and all of the notices provided about contesting the matter, many people thought that the proposed order was a final order. Rules 370, 371 and 372 changes the process to be consistent with District Court proceedings by eliminating the use of the proposed order as the factual basis, using a summons and complaint and affidavit or notice of motion and motion and affidavit where appropriate.

f. *Rule 364.09 – Presenting Evidence.* Evidence may be presented through the traditional methods of formal testimony, witnesses and documents. This rule also provides that testimony through witnesses or parties may be given in a narrative fashion as well as by question and answer. Allowing narrative testimony of a party or a witness promotes a user-friendly system.

g. *Rule 364.10 – Hearsay Evidence is Admissible.* The child support magistrate may admit hearsay evidence if it is probative in value and if it is the type of evidence that a reasonable person relies on in day to day life. The child support magistrate states this on the record at the beginning of the hearing and has the right to stop testimony if the evidence goes beyond this scope. This eliminates the need for the constant hearsay objections that sometimes occur in District Court cases and allows parties to freely state anything that is relevant.

Next Steps

The Department of Human Services is pursuing one goal with regard to child support. That goal is to establish and enforce orders as efficiently and effectively as possible. In order to reach that goal, the Department needs the participation of the courts in implementing a process for setting and enforcing orders; and we need the participation of county boards, the Legislature, and the federal government in funding the process. We set out in support of an administrative process because we believed a process in the executive branch would more easily accommodate our program goals. We now seek efficiency and effectiveness in the Expedited Process developed within the court system.

- ***Efficiency***

We have been concerned that the Expedited Process, because it is in the judicial branch and because of its dependence on county attorneys, will be less efficient and user-friendly than the Administrative Process. Some of our concerns have been addressed in the two years since the Holmberg decision. Certainly, there has been a great deal of cooperation and communication among the participants at the state and county levels. The increased role of county attorneys has, however, increased the cost of the system to the taxpayer. Since the increased costs fall on counties (therefore, on the property tax), resources to address this issue are not distributed uniformly across the state. Those of us working in child support must continue to look for creative and fair ways to ameliorate any additional financial burden from the Expedited Process.

- ***Consistency***

There are many ways to achieve more consistency across cases. One way is the process itself. Another way is through the child support guidelines. For a variety of reasons, current Minnesota guidelines do not enjoy the universal confidence of magistrates, attorneys (public and private), or users. As a result, child support decisions often deviate from the guidelines as judges and magistrates attempt to reach just results in individual cases, undermining the goal of consistency and consuming additional resources.

Over the last several years the Department has led an effort to review and rewrite the guidelines, including the medical support provisions. In the past two years, these efforts have been the work of a child support guidelines workgroup and a medical support workgroup. The goals of these workgroups were similar to the goals of the Expedited Process; specifically, making support orders more consistent throughout the State. Aside from judicial discretion, support orders should not differ depending on the region or county in which the case was heard.

We have developed a proposal to change the way Minnesota computes both basic child support and medical support. The proposal addresses several areas where the current guidelines were silent, thus promoting more consistency. These areas include the use of gross income rather than net income, consideration of subsequent children, how to treat low-income obligors and stay-at-home parents, clarification of the deviation factors, and a process to determine appropriate medical coverage. The Department's bill has been introduced as House File No. 1500 (Representative Steve Smith) and Senate File No. 1364 (Senator Linda Berglin).

- ***IV-D Forms***

Regardless of whether the Expedited Rules are approved in their current format or if there are significant changes, the Department must ensure that a uniform process, with forms to support the process, is available to child support offices throughout Minnesota. Since the beginning of January, a group of attorneys from the Minnesota County Attorneys' Association, along with representatives from the State Court Administrator's Office and

the Department, have been meeting frequently to develop and review forms that will be used by the counties through PRISM (the State's child support computer system).

Since the Expedited Rules will change the process so that many of the current forms will be obsolete, it is necessary to develop many new forms and improve upon those current forms that will continue to be used. The Department has also taken advantage of a change in the system to develop a new program for PRISM that will be more user friendly for the child support staff in the field as well.

- ***Pro Se Litigants***

The Department remains concerned about the accessibility of the Expedited Process to pro se litigants. We recognize that access to legal services of all kinds is an issue for low-income families. The Expedited Process is designed so that families may easily access the process, but we also want to make sure they can really use the system.

As we mentioned earlier, the order of the Rules is much improved over the Interim Rules. Clearly, the reorganization of the forms will help pro se litigants. Pro se litigants also need access to forms and assistance in completing the forms. The State Court Administrator's office is responsible to create and make accessible forms for all sections of the Expedited Process Rules that require forms.

- ***Training.***

Whether or not we have new Expedited Process rules, the traini of staff, attorneys and child support magistrates continues to be a high priority. A sim r group as the group mentioned above has started to meet about getting out to the var us regions throughout the State to conduct a collaborative training on the proposed Ex edited Rules for child support officers, county attorneys and child support magistrates. To ensure that we get training to those counties that are unable attend a metro-based seminar, the group is following the lead of the trainers who conducted training on the child protection rules relating to out-of-home placements last year by taking the training on the road to several sites throughout the State. The same group held an Expedited Process seminar in January for 250 people (over 50 people were on a waiting list as well) that was well received. We hope to continue these collaborative efforts, which accomplish many goals including improved communication among the various players in the Expedited Process system and the promotion of a statewide system of handling these cases.

Again, the Department of Human Services appreciates the opportunity to comment on the Rules. We remain dedicated to working with all partners to achieve the goals of the Expedited Process. Questions about this statement may be directed to Laura Kadwell, Director, Child Support Enforcement Division (651-297-8232).

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT

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March 16, 2001

Frederick Grittner
Clerk of Appellate Courts
305 Judicial Center
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St. Paul, Minnesota 55155

Re: Written Submission of comments concerning the proposed final Rules of the Expedited Child Support Process

I am submitting these comments at the request of Judge Meyer on behalf of the Child Support Rules Committee.

Proposed Final Rule 376: Motion for Review

The changes in this rule were made to clarify procedures. The Committee felt the rules needed to specify that when a magistrate issued a temporary order for support pursuant to Rule 353 Subd. 3 (b), the temporary order would not be reviewed under Rule 376. Rather the issue would be addressed de novo by the district court judge at the referred hearing. The Rules now specify who will hear the review if the original magistrate or judge is not available. It also clarifies who should hear the review if a judge heard the original matter.

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

Proposed final rule 377 deals with the procedures regarding a motion to correct clerical mistake and a motion for review. Based upon comments received from the public and concerns raised by administrators, attorneys, magistrates and judges who had used these Rules, the Committee added language that clarifies more precisely when the record closes on a motion for review and that generally Rule 59, Rule 60, and relief under Minn. Stat. 518.145 do not apply to the expedited process. In addition, the rule now gives a little more guidance regarding the "independent" review standard.

From the inception of the interim rules, it was the intent of the Committee to create an exclusive rule regarding an intermediate review for orders issued in the expedited process. The Committee felt that by creating a specific rule that addressed post decision relief, all other rules inconsistent with the expedited rule would not apply. However, because the interim rule did not specifically

state this, there were practitioners who felt relief under Rule 59 and Rule 60 were still applicable. Therefore, the proposed final rule now clearly states that relief under Rule 59, Rule 60, and Minn. Stat. 518.145 do not apply to orders issued in the expedited process, with the one exception for fraud, which can be brought at any time.

The Committee was asked to provide by these rules clarification and expansion of when the record officially closes on a motion for review. The current interim rule states that the magistrate or judge assigned to decide the motion for review has 30 days from the close of the record to issue the order granting or denying the motion. Problems determining the timeframe arose when a transcript was ordered. When a transcript has been ordered, close of the record is extended until receipt of the transcript. However, if the transcript request for a motion for review is later withdrawn, (which happened in about 35% of the cases for calendar year 2000), there was confusion by court administration as to what was the official record close date. The proposed final rule now clarifies that when a transcript request is withdrawn, the date of the withdrawal is the official close of the record.

The major point of contention with this current rule regards the standard of review. When the interim rules were first drafted, the Committee believed that the Holmberg decision required a review of a magistrate's order by a district court judge. The Proposed Rules provided for review by the district court judge using a "clearly erroneous" standard on the review. The Supreme Court agreed that there should be a trial court level of review, but decided against a clearly erroneous standard since that was more of an appellate-type of review. Instead the Supreme Court concluded that the review should be a completely independent review of the court file without the need for another evidentiary hearing. The Interim Rules did not require a full Rule 53 review, but did require that the judge make an independent review of the matter. This raised questions and confusion with the magistrates and district court judges as they are unsure what this really encompasses. In an effort to clarify this "independent review" standard, the Committee has drafted additional language that states 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." It is hopeful that this additional language will give the guidance requested by the magistrates and judges who struggle with this rule and its current lack of not laying out a more specific standard for review.

It is anticipated that there will be some comments raised by the public regarding the appropriateness of having an intermediate level of review. The Committee felt very strongly about having this option for litigants and believes it was in accordance with the directives in Holmberg. Two of the goals of the expedited process were to have a user-friendly process and to be fair to the parties. By allowing parties to file an intermediate level of review rather than having to go directly to the Court of Appeals, the litigants save time and money. Decisions for motions for review are decided quickly, as opposed to an appellate decision which can take up to nine months. Filing a motion for review is less costly and much easier for pro se litigants to complete the necessary paperwork without feeling the need to hire an attorney. In addition, because there exists the choice for a litigant to have the matter reviewed by the magistrate or a district court judge, it allows the option of having the court touch it one more time to "fix" any possible errors, if they exist, without having to burden the appellate court. This also satisfies the argument that a litigant should have the ability to have his or her matter heard by an elected judicial officer rather than one who has been appointed by the judges.

Finally, the new rules expand the length of time for a magistrate or judge to issue the decision on the review from 30 days to 45 days. This additional 15 days was added for the benefit of magistrates and judges. As a practical matter, many of them did not receive the motion when it was filed and became aware of it on the review date, which was often the date the decision was due. The extra days were necessary to give them an opportunity to provide the independent review required by these motions.

These rules also clarify the right of a magistrate or judge to review a video or audio tape in lieu of a transcript and the right of a district court judge to remand one or more issues back to the magistrate with instructions as to what needs to be done.

Respectfully submitted,

Diana Eagon
by Deanna J. Dohrman

Diana Eagon

THE SUPREME COURT OF MINNESOTA

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March 16, 2001

Fred Grittner
Clerk Of Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

RE: Proposed Final Rules of the Expedited Child Support Process

I am submitting these comments at the request of Judge Meyer and on behalf of the Expedited Process Rules Committee. In addition, I am requesting the opportunity to speak at the public hearing scheduled for April 17, 2001.

Recommendation 1, first and second bullets:

- **Adopt the Expedited Child Support Process Rules**
- **Establish a permanent child support rules advisory committee**

Personally, in my capacity as the manager of the Expedited Child Support Process and on behalf of the Rules Committee, I respectfully recommend and request that the Court adopt the proposed final Expedited Child Support Process Rules. The Committee, whose members represented the many divergent interests in the child support program and process, has reached agreement on these rules. Each committee member has at least one issue that, although important to that member, was decided differently by the committee as a whole. Like our constitution, the proposed final rules are the result of many compromises.

In the same fashion, I also respectfully recommend and request that the Supreme Court establish a permanent child support rules advisory committee. Child support is a complex, specialized and rapidly changing area of the law. The rules will undoubtedly need to be updated on a regular basis. In addition, there are bound to be minor, unanticipated "glitches" in the interpretation and application of the final rules. A permanent child support rules committee can address these problems and will increase the likelihood that the stated statutory goals of being streamlined, uniform statewide, and resulting in timely and consistent issuance of orders will be achieved and maintained. Allowing this committee to develop an Expedited Child Support Process Bench Book for district court judges, family court referees, and child support magistrates will also support the goals.

Rule 369.02: Role of Employees of County Agency

In an effort to reduce the length of the rules, the committee struck the statutory listing (contained in the Interim Rules) of duties the employee of the county agency may perform under the direction of the county attorney that do not constitute the unauthorized practice of law. Unfortunately, this practice leaves open the possibility that the duties permitted by the statute may be changed and these rules then implicitly approve those changes, whether the Court truly does or not. For this reason, I respectfully recommend that the current statutory listing be returned to this section. Amended proposed final language will be submitted directly to the Court by staff.

Is the Expedited process working?

Yes, and quite well, considering the enormous and complex transition that was required in such a short time frame. All 87 counties are well within the federal time standards that require 75% of the cases to be resolved within six months of service and 90% resolved within 12 months of service. The volume of work handled in the Expedited Process is also good. In calendar year 2000, 15,611 hearings were held in the expedited process. This compares favorably to the 12,419 child support hearings held before Administrative Law Judges in calendar year 1998. From April to December 2000, 4,013 orders were approved without a hearing (default or stipulation) in the Expedited Process. For the same period in 1998 under the administrative process, 3,604 orders were approved.

I agreed, in conjunction with the other committee members, to limit my comments to certain topics to reduce the amount of repetitive information presented to the Court in support of the rules. However, I will be happy to answer questions on any aspect of the rules or the recommendations at the public hearing or at the Court's request.

Sincerely,

Jodie Metcalf

Jodie Metcalf
Magistrate/Manager

OFFICE OF THE RAMSEY COUNTY ATTORNEY

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Child Support Enforcement Division

March 16, 2001

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

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

Dear Mr. Gritnner:

Please find attached my Comments on the Proposed Final Rules of the Expedited Child Support Process.

Sincerely,

Mark J. Ponsolle

Mark J. Ponsolle
Assistant County Attorney

CC: Deanna Dohrmann

Comments on the Proposed Final Rules of the Expedited Child Support Process

by

Mark J. Ponsolle
Assistant Ramsey County Attorney
Member of the
Advisory Committee on the
Rules of the Expedited Child Support Process

March 15, 2001

My name is Mark J. Ponsolle. I am an Assistant Ramsey County Attorney. I supervise the attorneys and child support officers who work to collect child support in Ramsey County. I am the Chair of the Human Services Committee of the Minnesota County Attorneys Association and am a member of the Advisory Committee on the Rules of the Expedited Child Support Process. Although, the Minnesota County Attorneys Association has not taken a formal position on the Proposed Final Rules I have met with and discussed these Proposed Rules with many of my colleague assistant county attorneys.

I would like to thank the Minnesota Supreme Court for appointing me to the Advisory Committee on the Rules of the Expedited Child Support Process. Although the process of drafting the Interim Rules and the Proposed Final Rules was often an agonizing process, it was also a productive one as well.

The Committee was composed of people who work in or are responsible for varying aspects of the child support system but who often have and had diametrically opposed views. Often these opposing views seemed irreconcilable. Due process and fairness to the parties often conflicted with the expeditious and cost effective collection of child support. Under the leadership of Judge Gary Meyers, we worked tremendously hard, sweated much, argued much, laughed much, tried to understand each other's positions and eventually produced a balanced product that will serve the parties well, collect child support and feed children.

Judge Meyers deserves an immense amount of credit for helping us to find common ground and for keeping us on track. I thank you Judge Meyer for your patience.

Judy Nord and Deanna Dohrman also deserve an immense amount of credit for enduring speech after speech and then pulling the information together into a format that we could analyze and develop into a workable product. I thank you Judy and Deanna for your commitment to the work.

Judge Meyer asked me, as an Assistant County Attorney to comment on **Rule 386: Removal of a Particular Child Support Magistrate**; the first part of **Rule 369: Role of County Attorney and Employees of the County Agency;** and **Rule 371: Parentage Actions**.

I will discuss **Rule 369: Role of the County Attorney** first. I believe my colleague Laura Kadwell will discuss the second part of Rule 369: Role of Employees of the County Agency. I will then discuss **Rule 371: Parentage Actions** and finally offer some thoughts on **Rule 368: Removal of a Particular Child Support Magistrate**.

Rule 369: Role of the County Attorney

Prior to the Supreme Court's decision in Holmberg, assistant county attorneys did not often appear in the Administrative Child Support Process. Although the practice varied form county-to-county, child support officers and administrative law judges primarily administered the process. Although the Minnesota Supreme Court ruled in Holmberg, that the Administrative Process was unconstitutional, the Process as originally envisioned had many redeeming qualities. When the Administrative Process was first developed a financial analysis of the parties was the primary focus. The child support officers were well equipped to handle this part of the case. The administrative law judge then would apply the law and issue an order. However, many of the cases became quite complex from a legal perspective and child support officers were becoming more and more involved in activities that were traditionally considered the practice of law. An assistant county attorney is now needed to assist the child support officer in many of these cases both because of the complex nature of these cases and to provide legal representation for the county. Jodie Metcalf has often said, assistant county attorneys do not replace the child support officers but provide "added value" to the process.

Our Committee struggled with the recognized need to have assistant county attorneys present and the need to keep the process expedited and cost effective. We tried to always remember there were children awaiting child support and therefore we needed to carefully balance these often conflicting ideals throughout all of the Proposed Rules.

The Rule regarding the role of the county attorney requires an assistant county attorney to represent the local agency when and if that agency makes an appearance or takes a position in a case. The agency appears through the assistant county attorney. The Proposed Rule does not prohibit a child support officer from acting as a witness in any case, but prohibits a child support officer from appearing on behalf of the agency or taking a position on behalf of the agency. Therefore, when the agency appears in a case to protect its financial interest or appears in a case to aid in the application of the child support laws, an assistant county attorney must appear and represent the agency. The child support officer may be present and assist that assistant county attorney.

If the agency is not going to appear or take a position, a party or the child support magistrate may request the child support officer to be present as a witness only. Whether an assistant county attorney appears with the child support officer when that child support officer is appearing only as a witness is a decision left with the agency and the assistant county attorney.

If the agency is not going to appear or take a position and the child support officer is not going to be a witness in the case, the assistant county attorney need not appear.

The Proposed Rule attempts to insure that the practice of law is undertaken only by licensed attorneys but does not require assistant county attorneys to appear in all cases in the Expedited Child Support Process.

Further the Proposed Rule requires all legal documents to be prepared under the guidance of an assistant county attorney, continuing to ensure that the practice of law be undertaken only by licensed attorneys. A positive by-product of this Proposed Rule is that the child support officers and assistant county attorneys must work closely together and cooperate with each other more than ever before.

Rule 371: Parentage Actions

Prior to Holmberg, some counties brought all parentage actions in District Court. Other counties initiated parentage actions in the Administrative Process where most of the cases were resolved due to stipulations by the parties or by default. If the parties entered into a stipulation or if the alleged father defaulted, the administrative law judge would adjudicate parentage. As part of the adjudication, the administrative law judge would issue an order for child support and provide for custody and visitation. If the matter was not settled in the Administrative Process, the matter would be referred to District Court.

The Interim Rules authorized this practice by continuing to allow counties to choose to commence actions in either District Court or the new Expedited Process. If a matter commenced in the Expedited Process was resolved by stipulation or default a child support magistrate would adjudicate parentage similar to the administrative law judge. If the matter became "contested" the matter was referred it to District Court.

Two issues arose however. The first issue was, when does a matter become "contested". The second issue was whether child support magistrates should issue uncontested orders regarding custody and visitation.

Although our Committee did not and does not support child support magistrates hearing contested custody and visitation matters, there was consensus that parentage cases could be resolved by stipulation and defaulted in the Expedited Process. In some counties this is the most expeditious and cost effective way to handle these matters. However, Minnesota law requires that child support, custody and visitation be addressed in all adjudications of parentage. Therefore, if a parentage action is to proceed by stipulation or default in the Expedited Process, child support magistrates must be authorized to fully adjudicate these parentage matters, including stipulated or defaulted custody and visitation issues.

The Proposed Rule resolves both issues by specifically setting forth when parentage cases may be commenced in and concluded in the Expedited Process and when the case must be transferred to the District Court.

Our Committee brought these two issues and our recommendations to the Minnesota Supreme Court after the Interim Rules had been adopted and implemented. The Court has not yet resolved these issues. After much discussion and reflection we are again raising these issues but are offering improved recommendations to resolve them.

Rule 368: Removal of a Particular Child Support Magistrate

I have always supported and continue to support the right of a litigant to remove a judicial officer without cause. However, in many Judicial Districts there is only one child support magistrate available and only at limited times. If that child support magistrate is removed there may be lengthy delays in the hearing of that case. My colleagues on the Advisory Committee have persuaded me that this right to remove needs to be balanced against the need for expeditiously resolving child support disputes. The longer a case is delayed, the longer the payment of child support may be delayed. As we all know receipt of child support is often needed to pay for family necessities and for the feeding of children.

I have concluded that because child support magistrate decisions may be appealed to the District Court in an expedited and inexpensive manner, the right to remove a child support magistrate, balanced against the delays that would occur when that right is exercised must be resolved in favor of expeditiously getting child support to children.

Summary

I have not come to come to the conclusion regarding the removal of child support magistrates easily and have not come to consensus on the Proposed Rules as a whole easily. I have won some arguments and I have lost some arguments. I believe my colleagues on the Advisory Committee would agree that they to have won and lost arguments. The reasoned Recommendations we bring you are based upon the balancing of many public policy issues, weaved carefully throughout the Proposed Rules. The Proposed Rules must be viewed as a whole and not individually. I believe that the Proposed Rules as a whole appropriately balance the need for due process and fairness for all parties and the need to expeditiously and cost effectively provide for the payment of child support and the feeding of Minnesota children and babies. I believe the Proposed Rules as a whole are greater than the sum of their parts.

DANIEL H. MABLEY
JUDGE

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STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT
HENNEPIN COUNTY DISTRICT COURT

March 20, 2001

Members of the Minnesota Supreme Court
c/o Frederick Grittner, Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

In re: Comments on the Proposed Final Rules of the Expedited Child Support Process.

Dear Justices of the Minnesota Supreme Court:

I am writing to express my strong concerns and reservations about the portion of the proposed rules that permits or mandates review of child support magistrate (CSM) decisions by district court judges. I believe that the best and most efficient method for reviewing such decisions would be on direct appeal to the Minnesota Court of Appeals. I offer the following as reasons for this position:

Child Support Magistrates are Competent and Professional. The review process marginalizes the professionalism and competence of CSM's. In actual fact, CSM's are competent, committed, and professional judicial officers. They were all hired after an exhaustive screening process to ensure that only those with the most experience and knowledge concerning child support matters were hired. This process was extremely competitive and resulted in the hiring of an exceptionally qualified group of individuals who are committed to this work. Moreover, given their specialization, these individuals have become the top experts in their field since they were hired, if they were not so beforehand. Put simply, they are probably more knowledgeable and experienced than most of the district court judges who will be required to review their work. It is

patronizing and wrong to presume that a review by a district court judge will bring more expertise or care to these important decisions

The Review Process is Inefficient. This review process adds another step or layer into a court proceeding that by its very nature is complicated, contentious, and multi-layered. Perhaps no other area of law offers more opportunity for litigation than the family law area. Moreover, the litigants in these disputes, because of their generally low state of mind, rarely waste any opportunity to litigate. While those who have written the rules may assume that only people with legitimate issues would appeal, this has not been the case. It is becoming almost automatic for the party that loses an issue before a CSM to demand review by a district court judge.

In other words, if a losing party wishes to prolong the proceedings and increase the costs of litigation, this procedure provides an excellent tool. If a party is willing to pursue a child support issue to its ultimate procedural conclusion, there could be review at four levels: by the CSM, a district court judge, a Court of Appeals panel, and ultimately by the Supreme Court. Simply put, this is too much review. It wastes the time of the system and makes it more difficult and more expensive to ultimately resolve cases. Moreover, it does not serve the goal of finality, which has long been a guiding principle in American jurisprudence. Under these circumstances, I really don't understand how these rules can be referred to as an "expedited" child support process.

This Process Obviates the Need for CSM's. The review procedure would make CSM's unnecessary and even undesirable. If these rules are adopted, one must ask why any judicial district would use CSM's. The proposed rules already permit judges to perform the functions of CSM's. It makes more administrative sense and would involve significantly less time and expense to assign district court judges to hear these cases from the outset, thereby eliminating an entire tier of unnecessary legal process. It follows that some districts would undoubtedly be motivated to convert CSM positions into district court judge positions.

Review Should be Handled in the Appellate Courts. The record review envisioned by these rules is more appropriately handled at the appellate court level. Ultimately, this rule imposes upon trial court judges work that they are neither inclined nor trained to perform. I do not understand why this kind of appellate work cannot be done by the Court of Appeals where it is both expected and appropriate.

Direct Appellate Review Would Ensure Accountability. I assume that the main reason for the review process is to ensure accountability on the part of CSM's. But they already serve at the pleasure of the local Chief Judge and are supervised both at the district level and by the State Court Administrator's Office. In any event, providing a direct appeal of their decisions to the Court of Appeals would certainly not lessen their accountability.

I should add that the above comments also apply with equal force to the current statutory process that provides for district court judge review of the decisions of referees.

I believe that CSM review procedure was designed to make that process consistent with the referee review process. I agree that these procedures should be consistent. However, that consistency should not be achieved by developing a procedure that repeats the errors and shortcomings of the referee review statutes. Rather than create a new review process for CSM's, we in the judicial branch should instead ask the Legislature to repeal or amend the current referee review statutes.

Finally, it should be noted that my concerns are not isolated or new. When the temporary proposed rules were presented to the Conference of Chief Judges, these same concerns were strongly voiced. Therefore, I am somewhat surprised that those concerns were not addressed in the proposed rules now before you. To reiterate, I believe that we should learn from the mistakes of our past with regard to the defective and inefficient process of referee reviews and should resist adoption of a similar procedure for reviewing CSM decisions.

Thank you for considering my remarks.

Sincerely,

Daniel H Mabley

Daniel H. Mabley

COUNTY OF STEARNS

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LAW OFFICE SUPERVISOR
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March 5, 2001

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: Proposed Final Expedited Child Support Process Rules

Dear Mr. Grittner:

On March 1, 2001, Supreme Court Order CX-89-1863 went into effect.

Contained in said order was an amendment to Rule 355.05 of the Interim Expedited Child Suport Rules entitled Filings of Pleadings, Motion, Notices, and Other Papers which added subd. 5, which specifically states that Rule 313 (regarding social security numbers and tax returns) specifically applies to the Expedited Child Support Process.

The Proposed Final Rules for Expedited Child Support Process contains no similar provision. It is my recommendation that there be included in the Expedited Child Support Process Final Rules a provision that specifically addresses the requirements of Rule 313 regarding tax returns and social security numbers.

With kind regards,

Richard J. May

RJM/jac

cc: Mark Ponsolle, Assistant Ramsey County Attorney

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MEMORANDUM

TO: Minnesota Supreme Court

FROM: Deanna J. Dohrmann

DATE: April 9, 2001

RE: Summary of Public Comments To Proposed Final Rules of the Expedited Child Support Process

Public Hearing on April 17, 2001

To assist the Court as it considers the proposed child support rules, the following is a summary of the comments received from the public organized by rule number. Comments in **bold** are those where members of the public are requesting changes to a rule. Non-bolded comments are positive comments about the proposed revisions. Finally, following each public comment where a revision is requested, staff and the Committee Chair's comments are in *italics*, and either recommend approval or rejection of the proposed revisions made by the commentator.

General Comments

1. *Richard May, Civil/Human Services Division Chief, Stearns County Attorney's Office*
The proposed rules should expressly provide a provision regarding the requirements of Rule 313 of the Rules of Family Court Procedure - confidentiality of tax returns and social security numbers.

2. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Resources*
In order to secure federal reimbursement funding, the Department is responsible for ensuring that Minnesota's child support program complies with federal law and that legal actions to establish and enforce child support are being met in a timely manner. The Department has played a pivotal role in creating an administrative process for setting and enforcing child support. The use of child support officers and the training and specialization of judicial officers has helped to meet the federal time frames, has led to more consistent orders that follow the statutory child support guidelines, and has created a more accessible forum for pro se litigants.

Even though the Court in Holmberg ruled the Administrative Process unconstitutional, the Administrative Process set the stage and many of the concepts and procedures from it were brought into the Expedited Process. The focus on time frames and fiscal responsibility for the

taxpayers, and more importantly, the focus on families remain the same. Although county attorneys are required to be more involved, child support officers still play a significant role in the Expedited Process. And, because of the concern of child support officers not engaging in the unauthorized practice of law, the Department believes the rules do a good job of delineating the responsibilities that can and should be handled by the child support staff, whether those duties are specifically enumerated in the rules or referenced to statute.

One major change the Rules Committee made to the Interim Rules is eliminating the service of a proposed order as an initiating document. Many times the litigants were confused when receiving these proposed orders, thinking they were the final order. Instead, the proposed rules now follow standard civil procedure rules by using a summons and complaint and affidavit or notice of motion and motion and affidavit where appropriate.

The Department is pursing one major outcome with regard to child support. That outcome is to establish and enforce orders as efficiently and effectively as possible. In order to reach that outcome, the Department needs the participation of the courts, the county boards, the Legislature, and the federal government. The Department has been concerned that because the Expedited Process is in the judicial branch and because of its dependency on county attorneys, the process will be less efficient and user-friendly than the Administrative Process. The costs to taxpayers may increase with the increased need for county attorneys. Those of us working in child support must continue to look for creative and fair ways to ameliorate any additional financial burden from the Expedited Process. Another goal of the Expedited Process is consistency of orders. Child support decisions often deviate from guidelines, making the process less consistent. This undermines the goals of consistency and consumes additional resources. The Department has developed a proposal to change the way Minnesota computes both basic child support and medical support, thus promoting more consistency. Finally, in an effort to ensure that a uniform process is available to child support offices throughout Minnesota, attention must be focused on developing new forms, improving the current forms, and making these forms accessible to the users of the Expedited Process.

Proposed Final Rules 351 to 379

Proposed Final Rule 351.02

3. *Beverly Anderson, Magistrate, Third Judicial District*

The Administrative Process, even though found to be unconstitutional, provided the opportunity to create a hearing system that served the needs of the parties in a family-friendly manner, improved the quality of the orders, and provided a consistency in procedures and results throughout the state. The proposed rules of the Expedited Child Support Process have retained these beneficial aspects from the Administrative Child Support Process and support the court's active involvement in identifying the issues and obtaining information necessary to make an informed decision. The Rules Committee has fashioned a set of rules that preserve the best parts of the Administrative Process and successfully implemented them in the judicial branch of government. These proposed rules incorporate the concerns of the numerous interest groups and continue to allow for a user-friendly process that is designed to be accessible to and respectful of the parties.

4. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Services*
Overall, the Department is very pleased that the proposed rules include a specific rule that delineates the goals of the Expedited Child Support Process. This rule acts as a reminder to all users that the intent of the Expedited Process is to meet the federal time lines, produce consistent orders, and be family and user friendly.

Proposed Final Rule 353.01, subd. 1

5. *Mary Lauhead, Family Law Attorney*
The Expedited Child Support Process should include the modification and enforcement of child support provisions established in an Order for Protection in a domestic abuse proceeding. There is little reason to treat domestic abuse cases differently from other family law matters or require victims to start a separate proceeding. The rule should be changed to include the following language:

> **"Modification or enforcement of the support provisions in an order for protection 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."**

The foregoing revision would include a parallel revision to Proposed Final Rule 353.01, subd. 3(d) as follows:

> **(d) issuance or extension ~~modification or enforcement~~ of orders for protection under Minnesota Statutes Chapter 518B;**

Staff Comment: Staff and the Committee Chair accept the proposal and agree with the proposed language and request for Rule 353.01, subdivision 1 and subdivision 3(d), with minor changes to the proposed language for subdivision 3(d). Staff recommends that subdivision 3(d) be amended to read as follows:

(d) issuance, modification, or enforcement of orders for protection under Minnesota Statutes Chapter 518B, unless authorized in subdivision 1;

Proposed Final Rule 353.01, subd. 2

6. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Resources*
The Committee debated long and hard regarding the inclusion of paternity proceedings in the Expedited Process. Where it was always clear that contested paternity actions could only be decided by a district court judge, it was less clear to members of the Committee whether the Expedited Process could play any role in deciding paternity issues. The proposed rule reflects the Rules Committee's understanding that the voluntary Recognition of Parentage and/or the increased accuracy of various kinds of genetic testing obviate many paternity issues.

Proposed Final Rule 353.01, subd. 2(c)

7. *Mary Lauhead, Family Law Attorney*
The proposed rule should be expanded to allow magistrates to hear change of venue motions when there are multiple cases in varying counties that involve the same obligor.

There is little reason to believe that a child support magistrate cannot make the same legal and factual judgment as any other judicial officer in weighing the competing arguments on a venue change to issue a sound decision. Allowing the magistrate to hear cases involving the same obligor will ensure that facts peculiar to one support matter do not unfairly prejudice the absent obligee in another matter. It is recommended that Rule 353.01, subd. 2(c) be re-drafted and subd. 2(d) be added as follows:

> **(c) ~~Upon written consent of all parties, a~~ A child support magistrate may issue an order changing venue. The court administrator shall forward the court file to the court administrator in 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~~ who shall schedule the matter for hearing. The court administrator shall mail notice of the date, time, and location of the hearing to all parties.**
>
> **(d) A child support magistrate may issue an order consolidating for hearing child support cases that involve the same obligor and different obligees, to ensure that support orders remain fair and equitable. In such cases that involve multiple counties or judicial districts, the child support magistrate shall apply to the chief judge of the judicial district for an order of consolidation for hearing of those cases.**

Staff Recommendation: Staff and the Committee Chair reject this proposal. The Rules Committee discussed the change of venue issue and decided to keep the magistrate's authority limited to only granting a change of venue when all parties were in agreement. There are other issues involved with change of venue actions that can go beyond the scope of child support and therefore not appropriate for the magistrate to address. In addition, the proposed language regarding consolidation for hearing child support cases that involve the same obligor is overly broad and subject to interpretation. Furthermore, a change of venue and consolidation for hearing may not be appropriate when there are multiple obligees. A change of venue for convenience to the obligor may not be convenient to the multiple obligees.

Proposed Final Rule 353.01, subd 3(d)

8. *Third Judicial District Magistrates*

Modification and enforcement of child support provisions included in an Order for Protection should be allowed in the Expedited Child Support Process. IV-D services are provided in almost all of these cases and therefore, should be heard in the Expedited Process. Having a rule that delineates that certain IV-D cases must go to district court may prove to be confusing and difficult to administer.

Staff Recommendation: As stated in Comment #5, Staff and the Committee Chair accept this proposal.

Proposed Final Rule 353.02

9. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Services*

The rules are quite clear under all of the past and present processes (Administrative, Interim Expedited, and the Proposed Final Expedited) that the magistrate could not and still cannot make

a determination of custody, visitation or maintenance. The proposed rule now specifies that the magistrate may set temporary support when there are other issues that must be referred to district court. Allowing the magistrates to set temporary support ensures the children start receiving the support they need while the contested issues are resolved at a later time in district court.

Proposed Final Rule 357.02

10. *Third Judicial District Magistrates*
The recommendation is that the term "public defender" should be replaced with "court appointed counsel" since public defenders do not provide services in family court in many counties, but rather there is a panel of attorneys for appointment in contempt and paternity cases.

Staff Recommendation: Consistent with other court rules and recent statutory changes, "public defender" should be replaced with "court appointed attorney" throughout the rules.

Proposed Final Rule 359.01

11. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Services*
Allowing hearings to be conducted by telephone conference call or through interactive television serves the needs of both litigants and taxpayers. We believe this is a satisfactory balance of efficiency, customer service, and judicial discretion.

Proposed Final Rule 359.02

12. *Third Judicial District Magistrates*
This rule is not clear as to whether the child support magistrate is to make the arrangements for telephone hearings. The rule first states that the court administrator is to make arrangements but then goes on to say that the child support magistrate shall ensure the requirements of Minn. Stat. § 518C.316 are met.

Staff Recommendation: Staff and the Committee Chair reject the proposed language change. The proposed rule is written to allow each court administrator to work with the magistrates in the district and to develop its own best practices for arranging telephone hearings. The rule is clear that the court administrator is to make arrangements for any telephone or ITV conference approved by the court. This could mean actually initiating the call or having one of the parties or attorneys initiate the call. The reference to Minnesota Statute § 518C.316 simply references the UIFSA requirements that must be met when one of the parties is a non-resident.

Proposed Final Rule 361.02

13. *Third Judicial District Magistrates*
A written request for information may be easier to respond to and easier to enforce.

Proposed Final Rule 361.04, subd. 2

14. *Mary Lauhead, Family Law Attorney*
The rules should explicitly state that telephone conferences may be used to resolve discovery disputes. In addition, the rules should specifically state that magistrates may assess fees against a non-compliant party. The suggested language to add to Rule 361.04, subd. 2 is as follows:

> **"The child support magistrate may have a telephone conference with the attorneys and parties for resolution of the issues, upon request of counsel. The child support magistrate may assess fees for noncompliance with discovery."**

Staff Recommendation: Staff and the Committee Chair agree with the proposal to amend the rule to include telephone conferences as an available means to resolve discovery disputes is appropriate. The intent of the rules was to allow for all hearings, motions, and other proceedings to be conducted by telephone conference. However, rather than adopting the recommendation of Ms. Lauhead to amend only the discovery rule, staff recommends revising Rule 359.01 to provide as follows, thus fully implementing the committee's intent and at the same time incorporating Ms. Lauhead's suggestion:

> *Rule 359.01. Telephone and Interactive Video Permitted*
> *A child support magistrate may on the magistrate's own initiative conduct a hearing, motion, or other proceeding by telephone or, where available interactive video. . . . .*

Because proposed rule 361.05, subdivision 2(c) already allows the magistrate to assess fees or other sanctions, staff and the Committee Chair reject the proposed language of Ms. Lauhead regarding fees.

Proposed Final Rule 362.02

15. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Resources*
Because a significant number of litigants in the Expedited Process are pro se, this rule requires the public authority, when a party by right or by intervention, to prepare many of the stipulations and orders. This rule will provide consistency in form and content.

Proposed Final Rule 364.09

16. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Resources*
Evidence may be presented through the traditional methods of formal testimony, witnesses and documents, or may be given in a narrative fashion as well by question and answer. Allowing narrative testimony of a party or a witness promotes a user-friendly system.

Proposed Final Rule 364.10

17. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Resources*
The Expedited Process allows for the admission of hearsay evidence if it is probative in value and if it is the type of evidence that a reasonable person relies on in day to day life. This

eliminates the need for the constant hearsay objections that sometimes occur in district court cases and allows parties to freely state anything that is relevant.

Proposed Final Rule 364.13

18. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Resources*
This rule grants the specific power to the magistrate to ask questions of witnesses to ensure there is enough evidence to make the required findings. This rule allows the process to proceed in an expedited manner and reduces the need for further proceedings.

Proposed Final Rule 365

19. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Services*
The service requirement rule is different from the traditional district court method and helps to ensure matters are kept expedited. By having the court administrator serve the notice of filing within five days from issuance of the order ensures that all parties receive prompt notice and starts the clock ticking for reviews and appeals.

Proposed Final Rule 366

20. *Terry Pahl, Paralegal, Barna, Guzy & Steffen, Ltd.*
The parties should be allowed to order a copy of the tape of their hearing rather than mandating that a transcript must be ordered. This would help to keep expenses down for the parties, thus making the rules more cost-effective and user-friendly. It may also have a direct impact on the number of motions for review and appeals that are filed, as the parties may decide not to follow through with filing a motion for review after listening to the hearing tape.

Staff Recommendation: Staff and the Committee Chair reject this proposal. The policy of the Conference of Chief Judges is that the stenographer's notes are the property of the stenographer, not the public. Therefore, it is the position of the Committee Chair that the electronic recordings are the property of the electronic recorder and are not to be treated as public record. The proposed rule should be kept as written.

Proposed Final Rule 367

21. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Services*
The Department would have preferred a centralized system of administering the process rather than letting the chief judge of the district decide, as this would have provided a higher level of consistency and specialization. We hope judicial districts will avail themselves of this option if the expedited system becomes too unwieldy in their districts. The rule does contain two provisions that contribute to the consistency of the Expedited Process: the clarification that magistrates must be confirmed by the Supreme Court and that magistrates serve at the pleasure of the judges in their district.

Proposed Final Rule 368

22. *Mark Ponsolle, Supervisor, Assistant Ramsey County Attorney's Office*
The proposed rule regarding no automatic right to remove has not been altered in any form from the current interim rule. Because the Expedited Process must adhere to different time requirements, having a rule that does not allow an automatic right to remove a child support magistrate helps to keep the process flowing. The right to automatic removal must be balanced against the need for expeditiously resolving child support disputes. Furthermore, the rules still allow a litigant to request a review by the district court, which is a satisfactory compromise.

23. *Mary Lauhead, Family Law Attorney*
There is no good reason for a party or attorney to be precluded for exercising a one-time entitlement to remove an assigned judicial officer or child support magistrate. Where magistrates are also practicing lawyers, who may have conflicts with opposing counsel in cases in different counties, then attorneys and litigants should not be forced to have the neutrality and impartiality of an outcome questioned by perceived bias, antipathy or plain dislike attributable to past or ongoing conflicts. The proposed revision of the rule would allow a one time notice to remove to be filed during the shelf-life of a family law matter. In addition, by requiring the notice to be provided three working days before a hearing should not become an insurmountable problem with calendaring, as the case could be shifted to a different magistrate that day or move the case to different day within the week when another magistrate would/could be available.

> **Rule 368.01. Notice to Remove. Any party or attorney may make and serve on the opposing party and file with the administrator a notice to remove an assigned child support magistrate, family court referee or district court judge in a case. The notice shall be served and filed within ten days after the party receives notice of the assigned judicial officer or child support magistrate to the hearing but not later than three working days before the hearing.**
>
> **No such notice may be filed by a party or party's attorney against a child support magistrate, family court referee or district court judge presiding over matters in the expedited process who has presided at a motion or any other proceeding of which the party had notice. A child support magistrate, family court referee, or district court judge who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the child support magistrate, family court referee or district court judge.**
>
> **Subd. 2. Grounds to Remove. After a party has once disqualified a presiding child support magistrate, family court referee or district court judge as a matter of right in the case, that party may disqualify a substitute child support magistrate, family court referee, or district court judge only by making an affirmative showing of prejudice. A showing that the child support magistrate, family court referee or district court judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.**

Staff Recommendation: Staff and the Committee Chair reject the proposal. In the interest of meeting the federal time lines and keeping matters expedited, it is the recommendation

of Staff and the Committee Chair that the Expedited Child Support Rules do not allow for an automatic right to remove.

24. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Services*
The Expedited Process Rules should maintain the distinctive rule that does not allow an automatic right to remove a magistrate. This provision, even though controversial, is necessary to ensure unnecessary delay, prevent difficult litigants from evading the "child support specialist", and helps to foster the positive reputation of the child support magistrate as a decision maker. The litigants still maintain the opportunity to have the decision reviewed by a district court judge as well.

Proposed Final Rule 369.01, subd. 1

25. *Mark Ponsolle, Supervisor, Assistant Ramsey County Attorney's Office*
From the inception, child support officers and Administrative Law Judges primarily administered the child support process. Although the Supreme Court found the Administrative Process unconstitutional, the child support officer still maintains a vital role in the expedited process and it is the desire of the Rules Committee that these Rules do not lose sight of this. However, many family law case have become more complex from a legal perspective and an assistant county attorney is now needed to assist the child support officer in many of these cases both because of the complex nature of these cases and to provide legal representation for the county.

Many county attorneys and magistrates have struggled with the current interim rule, which has led to various interpretations regarding when the county attorney must be present at a hearing. The Rules Committee has clarified the proposed final rule in hopes to alleviate this confusion. It is the Rules Committee's intent that the rule more clearly reflects that when the agency appears in a case to protect its financial interest or appears in a case to aid in the application of the child support laws, an assistant county attorney must appear and represent the agency. If the child support officer is appearing only as a witness, the decision to appear is left with the agency and the county attorney. And finally, if the agency is not going to appear and the child support officer is not going to be a witness in the case, the assistant county attorney need not appear. Therefore, the rule does not require the assistant county attorney to appear in every case.

26. *Third Judicial District Magistrates*
There are some counties who do not have a specific county attorney, but hire or contract with a private attorney to perform the county attorney duties. A recommendation is being made that the rule should be drafted more generic when referencing the attorney for the county agency.

Staff Recommendation: Staff and the Committee Chair accept the proposal. In fact, the rules already cover this issue. Rule 352.01(d) defines "county attorney" to mean "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."

Proposed Final Rule 369.01, subd. 2

27. *Kari Jacobson, Assistant County Attorney, Blue Earth County Attorney's Office*
The requirement of when the county attorney must appear at an expedited child support hearing is unclear. This rule needs more clarification so only one interpretation can be made. In addition, consideration must be given to the funding issue that is so closely tied to the requirement of the county attorney appearing at all PA hearings and at all NPA hearings when the county initiates the action. Furthermore, a request is made to allow a transition time until January 1, 2002 for implementation of this particular rule, if passed, or, in the alternative, to allow discretion to the magistrates if the rule is left up to interpretation.

Staff Recommendation: Please see the "staff recommendations" for item #28.

28. *Third Judicial District Magistrates*
The proposed rule states that the county attorney is not required to be present at any hearing to which the county agency is not a party. However, the rule is not clear as to whether the county attorney is required to be present at a hearing when the county agency is a named party. The rule should specify that the county attorney need not be present if the county has not initiated the action and does not have an interest. In addition, the rule should clearly state that the county attorney need not be present when the child support officer appears as a witness at the hearing when a pro se or private attorney initiates the motion and the county agency has no interest. The rule should state the county attorney must represent the county agency when the county agency initiates an action or brings a motion, if that is the intent of the rule.

Staff recommendation: *Staff and the chair recommend rejection of the commentator's suggestion. Rule 369.01, subd. 2 provides that "The county attorney is not required to be present at any hearing to which the county agency is not a party." By implication this means that the county attorney is required to appear at any hearing to which the county is a party. While Staff and the Committee Chair agree that the rule is somewhat ambiguous, the Rules Committee did not feel that the court had authority to mandate appearance of the county attorney.*

Proposed Final Rule 369.02

29. Jodie Metcalf, Magistrate/Manager, State Court Administrator's Office
The proposed rules should be adopted as written, with the one recommendation that Proposed Rule 369.02 should delineate the duties of the employees of the county agency, rather than merely reference the statutory provision. The Committee's recommendation that the Supreme Court establish a permanent child support rules advisory committee to monitor the rules and to develop a bench book for use by the district court judges, family court referees, and child support magistrates will help to ensure the goals of the expedited child support process will be achieved and maintained.

Staff Recommendation: Staff and the Committee Chair accept the proposal. The duties of the employees of the county agency should be delineated in the proposed rule and not merely make reference to the statutory language.

Proposed Final Rule 370.03, subd. 2

30. *Karen Schaffer, First Assistant, Dakota County Attorney's Office*
The proposed rule regarding service of the summons and complaint in establishment cases upon the recipient of public assistance or child support services is confusing. It does not address whether the recipient is a plaintiff, a defendant, or a realtor. There is a potential constitutional problem of due process if the recipient is truly a defendant, as defendants must be served personally in all initial actions. Suggested change to the rule is to specifically state that all defendants are to be personally served with a summons and complaint, regardless of the type of action. Another problem is if the recipient is a plaintiff or a realtor and this party does not sign the complaint, nor appear at a hearing, it is questionable whether this party has truly been made a party to the case.

In addition, the rule sets out one standard for paternity and another for establishments without giving a reason to support the different treatment. And, only the county may serve the recipient by mail. Pro se parties who initiate the action must serve all parties personally. This disparate treatment is not justified and the rules should provide a uniform approach to the commencement of actions that are scheduled in the expedited process.

Staff Recommendation: Staff and the Committee Chair reject the proposal and believe the rule is sufficient as drafted. The proposed rule is narrowly tailored to allow the county to serve the recipient of public assistance or services only in an establishment action by any means available. This will save time and money for the county, and ultimately, the taxpayers. The concern of not having personal jurisdiction over the recipient for future court actions was minimal since this proceeding is limited to the issue of child support. Further, if the court adopts the rule as drafted, Ms. Schaffer's concern about due process will be eliminated since the Court will have "blessed" the new procedure.

31. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Services*
The proposed rule to allow a party to waive formal service and accept service by mail without the need to return an acknowledgement in establishment actions will save time because the parties receiving services do not necessarily care to cooperate with the public authority and learn to avoid service.

Proposed Final Rule 371

32. *Mark Ponsolle, Supervisor, Assistant Ramsey County Attorney's Office*
Pursuant to the current Interim Rules, paternity actions are permissive proceedings. Each county decides whether to initiate paternity in the expedited process or in district court. The magistrates cannot hear "contested" paternity actions, and just what constitutes a "contested" paternity has raised debate among the county attorneys, the judiciary, and even the Committee members. The Rules Committee supports a rule that allows magistrates to sign paternity stipulations and to issue default paternity orders when specific requests for relief have been made and properly served upon all parties. However, because Minnesota law requires that child support, custody, visitation, and the child's legal name to be addressed in all paternity adjudications, our rule does not support magistrates hearing any case where any one of these issues is contested. When

custody, visitation, or legal name of the child is contested, the matter must be referred to district court.

Proposed Final Rule 371.12, subd. 3

33. *Third Judicial District Magistrates*

This proposed rule would severely limit the ability to bring parentage actions in the expedited process and undermines the effectiveness of the system in meeting the needs for which it is created. The Rules Committee comments state that the rule had to be written this way because a true paternity adjudication must contain provisions concerning support, custody, visitation, and the legal name of the child. Therefore, even if the parties agree on all issues except the legal name of the child, the whole case must get referred to district court. This will create significant delays in obtaining adjudication and in obtaining support for the child. The parties will need to take additional time off from work to attend more court proceedings which is not supportive of the goals of a user-friendly and cost-effective system.

When parties do not have agreements on the issues of custody or parenting time or the court is not able to approve the agreement, the district court judge or referee rarely makes a permanent determination of those issues at an initial hearing in a parentage action. Frequently those issues are reserved or custody is temporarily continued in the mother pursuant to statute and the initial determination continued for hearing at a later time. Currently, under the Interim Rules, some counties are operating in this manner and any contested issue of custody or parenting time is referred to district court to be resolved on an initial basis after a motion is brought by one or both individual parties. This resolution is consistent with Minn. Stat. § 257.541, subd. 2.

A revision to the rule should be made to allow the magistrate to incorporate all matters on which there is agreement and deal with financial issues. In cases where there are issues left for resolution in district court that may affect financial issues, a temporary support order could be issued as is set forth in the current proposed rule 353.02, subd. 3.

Staff Recommendation: Please see the "staff recommendation" for item #34.

34. *Mary Lauhead, Family Law Attorney*

Decisions for minor children should not be held hostage by litigants whose objections could well be calculated to delay a decision by the time delay inherent in any referral to or from district court. A magistrate should be able to adjudicate paternity, set interim support, order genetic testing, or any other uncontested matter, and refer the contested issues on to district court. Referrals to district court extend out the time a child could be receiving support and it is in the best interests of the child to adjudicate paternity and establish support, even if on a temporary basis. Even in district court, custody matters are often continued and merely maintain the status quo as to custody, usually in the mother under existing law. And, the court routinely refers the parties to a mandatory parenting education program or mediation service to work out custody and parenting time issues. All this takes time and magistrates should be allowed to issue decisions when there is at least no controversy regarding paternity, allowing for support to be set, albeit temporary. Rule 371.12, subd. 3 should be re-drafted as follows:

Subd. 3. Objections to Support. In the event that a written answer is submitted that objects to the following issues, custody, parenting time or the legal name of the child, then the matter shall be heard by the child support magistrate for decision on the financial issues of ongoing child support, medical support, contribution to childcare, past support up to two years before the commencement of the action and contribution to pregnancy, confinement expenses and genetic testing.

The child support magistrate shall issue an order addressing the foregoing issues and shall refer the remaining contested issues to district court pursuant to Rule 353.02, subd. 3.

Staff Recommendations: The Rules Committee discussed the bifurcation concept proposed by Ms. Lauhead and the Third Judicial District Magistrates. However, the Rules Committee interpreted Minnesota's statutes to require orders in parentage cases to address in one setting the issues of custody, support, parenting time, and child's name, thus precluding the bifurcation concept. If the Court interprets the statute differently (to allow bifurcation), then Ms. Lauhead's and the Third Judicial District Magistrates' concept could be adopted.

Proposed Final Rule 372.01, subd. 1

35. *Terry Pahl, Paralegal, Barna, Guzy & Steffen, Ltd.*

The language of the rule should specifically state that the only appropriate way to bring an action for reimbursement of past support under Minn. Stat. § 256.87 is by service of a summons and complaint. The interim rule 362.02 stated that when support is reserved in a prior order, a party must file a motion in order to establish support. However, in order to seek reimbursement for the statutory two year period as addressed in Minn. Stat. § 256.87, an action must be commenced by service of a summons and complaint. The proposed rule 372.01 still does not specifically state this and therefore, the rule may still be misleading. Some practitioners as well as some magistrates currently interpret interim rule 362.02 as allowing past reimbursement actions by service of a motion when support was reserved in a prior order. The proposed rule 372.01 should specifically state that any action seeking the statutory two year reimbursement of past support must be brought by summons and complaint.

Staff Recommendation: A majority of the Committee members 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. A consensus was reached and the proposed rule no longer specifies which initiating document to use, leaving it up to the initiating party to determine the appropriate papers to be filed.

36. *Third Judicial District Magistrates*

The requirement that motions be served 20 days before a scheduled hearing in the Expedited Process should utilize the same time frame of 14 days as in the Rules of Family Court. There is no apparent reason why the expedited process should be longer and therefore, should be consistent with the practice in district court.

Staff Recommendation: Please see the "staff recommendation" for item #37.

37. *Mary Lauhead, Family Law Attorney*

The service and filing time requirements in the Expedited Child Support Process should be the same as the Rules for Family Court Procedure and Civil Procedure. The time for service should be changed from twenty (20) days to fourteen (14) days prior to any scheduled hearing. Parallel changes should be made on the rules involving service and filing of responses.

The requirement of having two separate scheduling and calendaring of support matters is confusing to the practicing bar, and the duplicative costs in maintaining separate court administrations for district court and magistrate calendars cannot be justified against the financial needs of a system operating under the severe budgetary constraints, whether imposed by the county boards or the Legislature.

Staff Recommendation: By requiring all actions, (establishment, paternity, and motions to modify or motions to set) to be served no sooner than twenty days before a scheduled hearing, the proposed rules support the goals of being consistent and user-friendly for the pro se litigant. Changing the service and filing requirement from twenty days to fourteen days may negatively impact other expedited rules and time frames. The difference of six days may prove more beneficial for the pro se litigant, thus allowing the pro se litigant additional time to gather necessary documents and serve and file the motion. However, the proposal does have some merit. A rule requiring the service and filing of motions to be six days longer than what the Rules of Family Court require for similar motions does not appear on its face to be "expedited". And, arguably, having a different motion practice timeline for the Expedited Process may create confusion for the users of both systems. The recommendation would be to monitor this rule to see if the twenty day timeline is truly problematic, and modify if necessary, in the future.

Proposed Final Rule 374.02

38. *Third Judicial District Magistrates*

Because of the serious consequences of a finding of contempt, agreements on the issue of contempt should be on the record and not merely reduced to a written agreement. In the alternative, if the rules allow for written agreements, these written agreements should go directly to the district court judge and eliminate the requirement of approval by a magistrate.

Staff Recommendation: Staff believes that the Rules Committee would reject this proposal because they fully discussed this issue and the procedures. Contempt proceedings are permissive; it is up to each county to decide whether to pursue contempt actions in the Expedited Process or exclusively use the district court. This issue may be a concern only in the third judicial district. The recommendation, given the limited number of contempt hearings heard in the expedited process, would be to monitor this process and modify in the future, if necessary.

Proposed Final Rule 376

39. *Diana Eagon, Judge, Fourth Judicial District*
Clarification of this rule was needed to eliminate the guess work in who hears the review when the original magistrate or judge is not available and that temporary orders are not subject to motions for review.

Proposed Final Rule 377

40. *Diana Eagon, Judge, Fourth Judicial District*
Clarification of this rule was needed to specify the close of the record, that Rule 59, Rule 60 and relief under Minn. Stat. § 518.145 do not apply to expedited child support orders, and to give more guidance regarding the "independent" review standard. The intermediate level of review must be maintained to afford the litigants an opportunity to have their matter heard by the district court, to keep the costs down, and to have timely resolution of the matter. Furthermore, the change to the rule to add 15 more days for the magistrate or judge to issue its order regarding the motion for review is necessary in order to give adequate time to review the file.

41. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Resources*
The Department believes that the Expedited Rules providing for an intermediate level of review makes the Expedited Process more cost effective, less time consuming, and easier to manage for both pro se litigants and low income litigants who wish to seek review of their orders.

42. *Terry R. Pahl, paralegal for Barna, Guzy & Steffen, Ltd.*
Exclusion of relief under Rule 60 eliminates the parties' rights and remedies that are available to all other civil litigants not using the expedited process. Not all issues may be discovered within the 20 days allowed under the motion for review rule. Proposed final rule 377.01 should provide for relief under Rule 60.

Staff Recommendation: Staff and the Committee Chair reject this proposal. The Expedited Rules specifically create an intermediate level of review in place of Rule 59 and Rule 60 motions. Because of the expedited timeframes, Rule 59 and Rule 60 motions would not keep expedited matters moving along, thus jeopardizing the federal timeline mandates.

Proposed Final Rule 377.09, subd. 2(b)

43. *Terry R. Pahl, paralegal for Barna, Guzy & Steffen, Ltd.*
Proposed final rule 377.09, subd. 2(b) should be amended to exclude "blanket" denial orders on a motion for review and require the child support magistrate or district court judge who is issuing the order from a motion for review, to at least state the issues that were raised.

Staff Recommendation: Staff and the Committee Chair reject the proposal. In the interest of judicial economy, an order denying the request for a review should not require repetition of the issues.

44. *Mary Lauhead, Family Law Attorney*

There should be no distinction in the way a child support order is reviewed when being reviewed by a district court judge. An order issued by a child support magistrate should be subject to the same type of review as a child support order issued by a referee. There is no logical reason to demand that the "clearly erroneous" standard be applied. Both orders should be subject to the same standard of review as exemplified in LaBelle v. LaBelle, 207 N.W.2d 291 (1973) and Peterson v. Peterson, 242 N.W.2d 88 (1976). Accordingly, the proposed recommended language change to Rule 377.09, subd. 2(b) is as follows:

> **(b) Motion for Review. The child support magistrate or district court judge shall make an informed, final and independent review of any findings or other provisions of the underlying decision and order for which specific changes are requested on the motion . . .**

Staff Recommendation: Staff and the Committee Chair reject the proposal. The proposed rule provides some guidance that now delineates some type of standard for review. The recommended language proposed by Ms. Lauhead does not clarify the standard any better than what the proposed rule sets forth.

Proposed Final Rule 379.01

45. *Laura Kadwell, Director, Child Support Enforcement, Department of Human Resources*

The rule mandates that the state court administrator is to prepare and make forms readily available for pro se parties and public and private attorneys. If the parties and attorneys use these forms or base their pleadings or motions on the forms, generally all pleadings, motions, requests for hearings and review will be consistent in form and promote consistency in content.

MINNESOTA SUPREME COURT

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MEMORANDUM

TO: The Minnesota Supreme Court

FROM: Deanna J. Dohrmann

DATE: April 11, 2001

RE: Addendum to the Summary of Public Comments to Proposed Final Rules of the Expedited Child Support Process

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Below please find an addendum to the Summary of Public Comments submitted to the Court on April 10. Due to an oversight, the public comment listed below was missed and should be considered along with the rest of the public comments.

Rule 376 and 377

Daniel H. Mabley, Judge, Fourth Judicial District
I believe that the best and most efficient method for reviewing magistrate decisions would be on direct appeal to the Minnesota Court of Appeals. The current review process marginalizes the professionalism and competence of the child support magistrates. Child support magistrates are experts in the field of child support and are hired after an exhaustive screening process. They are more knowledgeable and experienced than most of the district court judges who are required to review the child support magistrates work. It is patronizing and wrong to presume that a review by a district court judge will bring more expertise or care to these important decisions. Furthermore, the independent review these rules envision is more appropriate for the appellate court.

The parties in family law matters tend to be more litigious. This review process only encourages the parties to prolong the proceedings, thus not making the process "expedited", and therefore, inefficient. The proposed rules already allow district court judges to perform the functions of the magistrate. It makes more administrative sense and would involve significantly less time and expense to assign district court judges to hear these cases from the outset. This rule makes the role of the child support magistrate unnecessary and even undesirable.

I believe that the magistrate review procedure was designed to make that process consistent with the referee review process. These procedures should be consistent, yet that consistency should not be achieved by developing a procedure that repeats the errors and shortcomings of the referee

review statutes. Rather than create a new review process for child support magistrates, we should ask the Legislature to repeal or amend the current referee review statutes.

Staff Recommendation: Staff and the Committee Chair reject the proposal. The proposed rule allows parties the same relief afforded parties in district court under Rule 59 and Rule 60 motions yet utilizes much tighter time frames in order to keep the matter expedited. If pro se litigants were required to proceed directly to the Court of Appeals, there would be higher costs, more time delays, and a more intimidating procedure for pro se litigants than what the review process affords. There were over 21,000 orders issued by child support magistrates in the year 2000 and only 1000 motions for review were filed. That is less than 5%, which does not support Judge Mabley's concern that parties in the expedited process will be more litigious given the opportunity to file motions for review. The recommendation, given the limited number of reviews being filed, would be to monitor this rule to see how this rule impacts the district court and the final outcome of the decisions.

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MEMORANDUM

TO: Minnesota Supreme Court

FROM: Deanna J. Dohrmann

DATE: April 9, 2001

RE: Presentation of oral comments at the Public Hearing on April 17, 2001

On behalf of the Child Support Rules Committee, the Chair of the Committee is requesting the opportunity to present oral comments at the public hearing on April 17, 2001. In addition, the following Committee members and one Child Support Magistrate also wish to present oral comments:

Gary Meyer, Committee Chair
Diana Eagon, Committee Member
Laura Kadwell, Committee Member
Jodie Metcalf, Committee Member
Mark Ponsolle, Committee Member
Beverly Anderson, Child Support Magistrate

I would also like to point out that only one commentator from the public, Mary Lauhead, has requested the opportunity to testify at the public hearing.