

STATE OF MINNESOTA
IN SUPREME COURT
C4-99-404

OFFICE OF
APPELLATE COURTS
MAY 30 2001

FILED

**PROMULGATION OF FINAL RULES OF THE
EXPEDITED CHILD SUPPORT PROCESS AND
ESTABLISHMENT OF TRANSITION RULES**

ORDER

In its report filed December 29, 2001, the Supreme Court Advisory Committee on the Rules of the Expedited Child Support Process recommended Final Rules of the Expedited Child Support Process be adopted.

By order dated January 11, 2001, this Court established a March 16, 2001 deadline for submitting written comments on the proposed final rules and an April 17, 2001 hearing date to allow public testimony on the recommendations.

It is important to both the executive and judicial branches, as well as to the litigants involved in the process, that there be a smooth transition from the Interim Rules to the Final Rules.

The Court has reviewed the proposals and the submitted comments, and is fully advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Interim Rules of the Expedited Child Support Process are hereby repealed in its entirety effective July 1, 2001.
2. The attached Expedited Child Support Process Rules are hereby prescribed and promulgated as Final Rules to be effective beginning July 1, 2001.

3. These final rules shall apply to all expedited child support actions or proceedings pending on or commenced on or after the effective date.
4. The inclusion of Advisory Committee comments in the Final Rules is made solely for the purpose of convenience and does not reflect court approval of the comments.

IT IS FURTHER ORDERED THAT the following transition rules shall govern all support proceedings conducted in the expedited child support process:

1. Through June 30, 2001, IV-D child support matters shall continue to be initiated and processed in conformity with the Interim Expedited Child Support Process Rules. If a proceeding is properly commenced prior to July 1, 2001, the filing of additional pleadings to maintain the action thereafter shall not be required.
2. Any order issued in conformity with the Interim Expedited Child Support Process Rules prior to July 1, 2001 shall remain effective and fully enforceable by the district courts on and after July 1, 2001.

DATED: May 30, 2001

BY THE COURT:

OFFICE OF
APPELLATE COURTS
MAY 30 2001

Kathleen A. Blatz
Kathleen A. Blatz
Chief Justice

FILED

GENERAL RULES OF PRACTICE

TITLE IV RULES OF FAMILY COURT PROCEDURE

* * *

~~Interim Expedited Child Support Process Rules.~~

~~RULE 351. SCOPE; PURPOSE; TYPES OF PROCEEDINGS~~

~~Rule 351.01. Scope~~

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

~~Advisory Committee Comment~~

~~Applicability of Other Rules of Court. To the greatest extent possible, the Advisory Committee has attempted to incorporate into these rules applicable Rules of Civil Procedure, Rules of Evidence, and General Rules of Practice for the District Courts. Unless otherwise incorporated, such other rules of court are not binding on the expedited child support process. However, child support magistrates, court administrators, parties, and attorneys should look to such other court rules for guidance. In doing so, such other rules of court should be applied so as to further the purposes and goals of the expedited child support process as set forth in Rule 351.02 and the accompanying Advisory Committee Comment.~~

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

~~Rule 351.02. Purpose of Expedited Child Support Process~~

~~The purpose of the expedited child support process is to establish a process that:~~

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

~~Advisory Committee Comment~~

~~Rule 351.02 is consistent with the purposes set forth in the legislation establishing the expedited child support process. 1999 Minn. Laws ch. 196, art. 1, § 2(e). However, in addition to the purposes set forth in legislation, the Advisory Committee believes that these rules should also be construed to meet the following goals: be a constitutional system, be an expedited process, be family and user friendly, be fair to the parties, be a cost effective system, address local administration and implementation concerns, maintain the simple administrative procedures and focus on problem cases, comply with federal and state laws, maximize federal financial participation, ensure consistent decisions statewide, and have adequate financial and personnel resources.~~

Rule 351.03. Types of Proceedings

~~Subdivision 1. Mandatory Proceedings. Except as provided in Rule 351.04, the following proceedings must be conducted in the expedited child support process if the case is a IV-D case:~~

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

~~Subd. 2. Permissive Proceedings. Except as provided in Rule 351.04, at the option of the county the following proceedings may be conducted in the expedited child support process if the case is a IV-D case:~~

- ~~(a) — establishment of parentage, when uncontested; and~~
- ~~(b) — contempt proceedings, when uncontested.~~

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

- ~~(a) — cases that are not IV-D cases;~~
- ~~(b) — establishment, modification, or enforcement of custody or visitation;~~
- ~~(c) — establishment or modification of spousal maintenance;~~
- ~~(d) — issuance, modification, or enforcement of orders for protection under Minnesota Statutes Chapter 518B;~~
- ~~(e) — resolution of property issues;~~
- ~~(f) — establishment of parentage, when contested; and~~
- ~~(g) — contempt proceedings, when contested.~~

Advisory Committee Comment

~~County Option Regarding Uncontested Parentage and Contempt Proceedings. Rule 351.03, subdivision 2, provides that uncontested parentage and contempt proceedings may be conducted in the expedited child support process "at the option of the county." In an effort to establish certainty for parties and attorneys, each county should, as soon as possible, develop a policy regarding such proceedings.~~

~~Contested and Uncontested Parentage and Contempt Proceedings. Rule 351.03, subdivisions 2 and 3, both relate to parentage and contempt proceedings. The legislation establishing the expedited child support process provides that "[a]t the option of the county, the expedited process may include contempt actions or actions to establish parentage." 1999 Minn. Laws ch. 196, art. 1, § 1(d) (referring to Minnesota Statutes § 484.702, subdivision 1(d) (Supp. 1999)). While the legislation does not distinguish between contested and uncontested parentage and contempt proceedings, the Advisory Committee believes that the Legislature did not intend for jury trials and contested parentage or contempt proceedings to be conducted in the expedited child support process. For that reason, Rule 351.03, subdivision 3, prohibits contested parentage and contempt proceedings, while subdivision 2 permits uncontested contempt and parentage proceedings at the option of the county. Nothing in these rules is intended to preclude the complete resolution of uncontested parentage proceedings in the expedited child support process.~~

Rule 351.04. Procedure When Multiple Issues

~~Subdivision 1. Generally. These rules do not prevent a party, upon timely notice to all parties and the county agency, from commencing a proceeding or bringing a motion in district court if the proceeding involves one or more issues identified in Rule 351.03, subdivision 1, and one or more issues identified in Rule 351.03, subdivision 3.~~

~~Subd. 2. Multiple Issues in District Court. If a proceeding is commenced in district court and the petition, response, motion, or counter motion raises one or more issues identified in Rule 351.03, subdivision 1, the district court judge hearing the matter must determine whether to decide all issues or refer appropriate issues to the expedited child support process.~~

~~Subd. 3. Multiple Issues in Expedited Child Support Process. If a proceeding is commenced in the expedited child support process and the response, motion, or counter motion raises one or more issues identified in Rule 351.03, subdivision 3, the child support magistrate assigned to the matter must refer all issues to district court for decision by a district court judge.~~

Advisory Committee Comment

~~Rule 351.04 sets forth the procedure to be followed when multiple issues are raised either in district court or in the expedited child support process. In deciding whether to refer issues to district court, the child support magistrate should determine whether the issue raised in the response, motion, or counter motion is genuine or solely for the purpose of seeking referral of the matter to district court. If the issue raised is not genuine, the child support magistrate should not refer the matter to district court. If the issue raised is genuine, the child support magistrate must refer all issues to district court for decision by a district court judge.~~

RULE 352. DEFINITIONS

Rule 352.01. Definitions

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

- ~~(a) — "Child support magistrate" means any individual appointed by the chief judge of the judicial district to preside over matters in the expedited child support process. "Child support magistrate" also means any family court referee or district court judge presiding over matters in the expedited child support process.~~
- ~~(b) — "County agency" means the local public authority responsible for child support enforcement.~~
- ~~(c) — "County attorney" means the attorney who represents the county agency, whether that person is employed by the office of the county attorney or under contract.~~
- ~~(d) — "Initiating party" means the person or county agency starting the proceeding in the expedited child support process.~~
- ~~(e) — "IV-D case" means any proceeding where a party has either (i) assigned to the State rights to child support because of the receipt of public assistance as defined in Minnesota Statutes § 256.741, or (ii) applied for child support services under title IV-D of the Social Security Act, 42 U.S.C. § 654(4). "IV-D case" does not include proceedings where the party has applied for income withholding only services under Minnesota Statutes § 518.6111.~~

- (f) ~~"Non initiating party" means the person or county agency responding to the complaint or motion.~~
- (g) ~~"Party" means any person or county agency with a legal right to participate in the proceedings.~~
- (h) ~~"Support" means child support, child care support, spousal maintenance when combined with child support, medical support including expenses for confinement and pregnancy, arrearages, reimbursement, related costs and fees, and interest and penalties.~~

~~RULE 353. COMPUTATION OF TIME~~

~~Rule 353.01. Generally~~

~~All time periods must be measured by starting to count on the first day after any event happens which by these rules starts the running of a time period. When the last day of the time period is any day other than a business day, then the last day is the next business day.~~

~~Rule 353.02. Time Periods Less Than Seven Days~~

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

~~Rule 353.03. "Business Day" Defined~~

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

~~Advisory Committee Comment~~

~~State Level Judicial Branch Holidays. The legal holidays listed in Rule 353.03 are based upon Minnesota Statutes § 645.44, subdivision 5, which defines state level judicial branch holidays. The statute further provides that when New Year's Day (January 1), Independence Day (July 4), Veteran's Day (November 11), or Christmas Day (December 25) falls on a Sunday, the following day (Monday) shall be a holiday, and that when New Year's Day, Independence Day, Veteran's Day, or Christmas Day falls on a Saturday, the preceding day (Friday) shall be a holiday. Minnesota Statutes § 645.44, subdivision 5, also authorizes the judicial branch to designate certain other days as holidays. The Judicial Branch Personnel Plan designates the Friday after Thanksgiving as a holiday.~~

~~County Holidays. Counties are authorized to close county offices on certain days under Minnesota Statutes § 373.052. Thus, if a county closes its offices under section 373.052 on a day that is not a state level judicial branch holiday, such as Christopher Columbus Day (the second Monday in October), the court in that county would nevertheless include that day as a holiday for the purpose of computing time under Rule 3.03. See *Mittelstadt v. Breider*, 286 Minn. 211, 175 N.W.2d 191 (1970) (applying section 373.052 to filing of notice of election contest with district court). If a county does not close its offices on a day that is a state level judicial branch holiday, such as the Friday after Thanksgiving, the court in that county must still include that day as a holiday for the purpose of computing time under Rule 353.03.~~

Rule 353.04. Additional Time If Service by Mail or Service Late in Day

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

RULE 354. FILING FEE

Rule 354.01. Collection of Filing Fee

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

Advisory Committee Comment

Minnesota Statutes § 357.021, subdivision 2(1), establishes the amount of the filing fee to be paid in civil actions. Rule 354.01 provides that each party is to pay the prescribed filing fee upon the filing of the party's first paper in the proceeding. The Advisory Committee intends that each party should pay only one filing fee per case. Thus, a party must pay the required filing fee either in the expedited child support process matter, the dissolution matter, the custody matter, or the parentage matter, but not in each matter if there is more than one. Under Minnesota Statutes § 357.021, subdivision 1a(c), the public authority is not required to pay a filing fee.

Rule 354.02. Waiver of Filing Fee

If a party indicates an inability to pay the filing fee required under Rule 354.01, the court administrator must explain that the party may apply for permission to proceed without payment of the filing fee. Upon request, the court administrator must provide to such a party an application to proceed in *forma pauperis*. If a party signs and submits to the court administrator an application to proceed without payment of the filing fee, and such a request to waive the filing fee is approved by a child support magistrate, the court administrator must not charge and collect a filing fee.

Advisory Committee Comment

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

RULE 355. SERVICE AND FILING

Rule 355.01. Service of Summons and Complaint, Motions, Orders, and Other Papers

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

- ~~(a) — every order required by its terms to be served;~~
- ~~(b) — every pleading or amended pleading, including a summons and complaint or a motion;~~
- ~~(c) — every written motion, except one that may be heard ex parte; and~~
- ~~(d) — every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper.~~

~~Subd. 2. Exception Default. Service is not required to be made on any party who is in default for failure to appear, except that pleadings asserting new or additional claims for relief against such a party shall be served upon the party in the manner provided for service of summons in Rule 12.01, subdivision 2.~~

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

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

Rule 355.02. Types of Service

Subdivision 1. Personal Service.

(a) — Upon Whom.

~~(1) — Upon an Individual. Personal service upon an individual in the state shall be accomplished by delivering a copy of the summons and complaint, notice, motion, or other document to the individual personally or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service, or if a statute designates a state official to receive service, service may be made in the manner provided by such statute. If the individual is confined to a state institution, personal service shall be accomplished by also serving a copy of the document upon the chief executive officer at the institution. Personal service upon an individual outside the state shall be accomplished according to the provisions of Minnesota Statutes chapter 518C.~~

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

~~(b) — By Whom Served. Unless otherwise ordered by the child support magistrate, personal service must be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding.~~

Subd. 2. Service by Publication.

~~(a) — Service. Service by publication means the publication in full of the summons or notice in the regular issue of a qualified newspaper, once each week for three weeks. Service by publication shall be permitted only upon order of a child support magistrate. The child support magistrate may order service by publication upon the filing of an affidavit by the serving party or the serving party's attorney stating that the person to be served is not a~~

~~resident of the state or cannot be found within the state, the efforts that have been made to locate the other party, and either that the serving party has mailed a copy of the summons or notice to the other party's place of residence or that such residence is not known to the serving party.~~

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

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

~~(a) — Service. In any proceeding authorized by these rules, service may be made by mailing a copy of the summons and complaint, notice, motion, or other document by first-class mail, postage prepaid addressed to the person to be served at the person's last known address. In addition, any party serving a summons and complaint must also include two copies of a notice and acknowledgment of service by mail conforming substantially to Form 22 set forth in the Rules of Civil Procedure, along with a return envelope, postage prepaid, addressed to the sender.~~

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

~~Subd. 4. Service by Facsimile Transmission. Unless these rules require personal service, by agreement of the parties any document other than a summons and complaint may be served by facsimile transmission.~~

~~Advisory Committee Comment~~

~~Rule 355.02, subdivision 1, provides for personal service. Personal service may not be made on Sunday, a legal holiday, or election day. Minn. Stat. § 624.04, § 645.44, subd. 5; Minn. Const. art. VII, § 4.~~

~~Rule 355.03. Completion of Service~~

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

~~Rule 355.04. Proof of Service~~

~~Subdivision 1. Parties. Service must be proved by the certificate of the sheriff making personal service, by the affidavit of any other person making personal service, by an acknowledgment of service of the party or party's attorney served by U.S. mail, by an~~

~~affidavit of service by U.S. mail or by facsimile service, or, if served by publication, by the affidavit of the printer or the printer's designee. The proof of service must describe what was served, state how the document was served, upon whom it was served, and the date, time, and place of service.~~

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

Rule 355.05. Filing of Pleadings, Motions, Notices, and Other Papers

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

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

~~Subd. 3. Proof of Service. All papers filed with the court administrator shall be accompanied by proof of service as set forth in Rule 355.04.~~

~~Subd. 4. Filing by Facsimile Transmission.~~

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

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

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

~~(2) — the original signed document; and~~

~~(3) — the applicable filing fee, if any.~~

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

RULE 356. COURT INTERPRETERS

Rule 356.01. Appointment Mandatory

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

~~Rule 356.02. "Person Handicapped in Communication" Defined~~

~~For the purpose of Rule 356.01, a "person handicapped in communication" is one who, because of a hearing, speech, or other communication disorder, or because of difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings in which the person is required to participate, or when named as a party to a legal proceeding is unable by reason of the handicap to obtain due process of law.~~

~~Advisory Committee Comment~~

~~Rules 356.01 and 356.02 are based upon the provisions of Minnesota Statutes § 546.42 and § 546.43 which set forth the types of proceedings in which qualified interpreters must be appointed.~~

~~RULE 357. INTERVENTION~~

~~Rule 357.01. Public Authority~~

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

~~Subd. 2. Effective Date. Intervention by the public authority is complete upon service of the notice of intervention on all parties.~~

~~Rule 357.02. Other Individuals~~

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

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

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

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

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

~~Rule 357.03. Effect of Intervention~~

~~The child support magistrate may conduct hearings, make findings, and issue orders at any time prior to intervention being accomplished or denied. The intervention is effective as of the date granted and prior proceedings and decisions of the child support magistrate are not affected.~~

~~RULE 358. RIGHT TO REPRESENTATION; APPOINTMENT OF ATTORNEY; APPOINTMENT OF GUARDIAN AD LITEM~~

~~Rule 358.01. Right to Representation~~

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

~~Advisory Committee Comment~~

~~Rule 358.01 sets forth the basic principle that each person appearing in court has the right to be represented by an attorney. That person, however, does not necessarily have the right to appointment of an attorney at public expense as provided in Rule 358.02.~~

~~Rule 358.02. Appointment of Attorney at Public Expense~~

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

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

~~Rule 358.03. Appointment of Guardian Ad Litem~~

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

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

~~RULE 359. TELEPHONE AND INTERACTIVE VIDEO~~

~~Rule 359.01. Telephone and Interactive Video Permitted~~

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

~~Advisory Committee Comment~~

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

~~Rule 359.02. Procedure~~

~~The court administrator must initiate any telephone or interactive video hearing approved by the child support magistrate. When conducting a proceeding by telephone or interactive video and a party or witness resides out of state, the child support magistrate must ensure that the requirements of Minnesota Statutes § 518C.316 are met. The child support magistrate must make adequate provision for a record of any proceeding conducted by telephone or interactive video. No recording may be made of any proceeding conducted by telephone or interactive video, except the recording made as the official court record.~~

~~Rule 359.03. In-Court Appearance Not Precluded~~

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

~~RULE 360. ADMINISTRATION OF EXPEDITED CHILD SUPPORT PROCESS; CHILD SUPPORT MAGISTRATES~~

~~Rule 360.01. Administration of Expedited Process~~

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

~~Advisory Committee Comment~~

~~Rule 360.01 does not permit a judicial district to opt out of the expedited child support process. Rather, Rule 360.01 simply indicates that the chief judge of the district must decide who will be responsible for administering the expedited child support process within each judicial district.~~

Rule 360.02. Use and Appointment of Child Support Magistrates

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

Advisory Committee Comment

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

Rule 360.03. Minimum Qualifications

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

- ~~(a) — be an attorney in good standing licensed to practice in Minnesota; and~~
- ~~(b) — have at least seven years of legal experience, with significant emphasis in family law and demonstrable knowledge of support law.~~

Rule 360.04. Residence

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

Rule 360.05. Application Process

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

Advisory Committee Comment

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

Rule 360.06. Training

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

~~Advisory Committee Comment~~

~~Rule 3610.06 does not require training for district court judges whose sole function in the expedited child support process is to decide motions for review pursuant to Rule 3722.~~

~~**Rule 360.07. Continuing Education**~~

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

~~**Rule 360.08. Conflict of Interest**~~

~~Subdivision 1. Generally.—A child support magistrate may not serve as:~~
~~(a) —an attorney in any family law case within any county in which the person serves as a child support magistrate; or~~
~~(b) —a guardian ad litem in any family law matter, as defined in the comment to Rule 901.01 of the Rules of Guardian Ad Litem Procedure, in any county in which the person serves as a child support magistrate.~~

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

~~**Rule 360.09. Code of Judicial Conduct**~~

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

~~Advisory Committee Comment~~

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

~~**Rule 360.10. Impartiality**~~

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

~~**Rule 360.11. Periodic Evaluation**~~

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

~~Advisory Committee Comment~~

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

~~RULE 361. EMPLOYEES OF THE COUNTY AGENCY~~

~~Rule 361.01. County Attorney Direction Required~~

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

~~Subd. 2. County Attorney Direction. Under the direction of, and in consultation with, the county attorney, and consistent with Rules 5.3 and 5.5 of the Minnesota Rules of Professional Conduct, employees of the county agency may perform the following legal duties:~~

~~(a) — meet and confer with parties by mail, telephone, electronic, or other means regarding legal issues;~~

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

~~(c) — prepare pleadings, including, but not limited to, summonses and complaints, notices, motions, subpoenas, orders to show cause, proposed orders, administrative orders, and stipulations and agreements;~~

~~(d) — issue administrative subpoenas;~~

~~(e) — prepare judicial notices;~~

~~(f) — negotiate settlement agreements;~~

~~(g) — attend and participate as witnesses in hearings and other proceedings and, if requested by the child support magistrate, present evidence, agreements and stipulations of the parties, and any other information deemed appropriate by the magistrate;~~

~~(h) — participate in such other activities and perform such other duties as delegated by the county attorney, but not to conduct contested hearings; and~~

~~(i) — exercise other powers and perform other duties as permitted by statute or these rules.~~

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

~~Advisory Committee Comment~~

~~Although Rule 361.01 provides that the county attorney is required to provide legal supervision of and direction to employees of the county agency, nothing in these rules is intended to require the county attorney to be present at every hearing. The county attorney determines which hearings the county attorney will attend.~~

Rule 361.02. County Attorney Direction Not Required

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

- ~~(a) — gather information on behalf of the public authority;~~
- ~~(b) — prepare financial worksheets;~~
- ~~(c) — obtain income information from the department of economic security and other sources;~~
- ~~(d) — serve documents on parties;~~
- ~~(e) — file documents with the court;~~
- ~~(f) — meet and confer with parties by mail, telephone, electronic, or other means regarding non-legal issues;~~
- ~~(g) — explain to parties the purpose, procedure, and function of the expedited child support process and the role and authority of employees of the county agency regarding non-legal issues; and~~
- ~~(h) — perform such other routine non-legal duties as assigned.~~

Rule 361.03. Performance of Duties Not Practice of Law

~~Performance of the duties prescribed in Rules 361.01 and 361.02 by employees of the county agency does not constitute the unauthorized practice of law for purposes of these rules or Minnesota Statutes § 481.02, subdivision 8.~~

RULE 362. INITIATION OF PROCEEDINGS

Rule 362.01. Establishment of Parentage and Support

~~Subdivision 1. Summons and Complaint.~~

~~(a) — Pleadings. Except when the establishment of support has been reserved in a prior order or judgment, to start a parentage or support proceeding in the expedited child support process a person must serve a summons and complaint. The party or the party's attorney must sign the complaint. The summons and complaint must not include a hearing date.~~

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

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

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

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

~~Subd. 2. Service of Summons and Complaint. All parties, and the county agency even if not a party, must be served with a copy of the summons and complaint. If the county agency initiates the proceeding, any party who has assigned to the state rights to receive child support or who is receiving services from the county agency may be served by U.S. mail pursuant to Rule 355.02, subdivision 3, and all other parties must be served by personal service unless the child support magistrate authorizes service by publication. If someone other than the county agency initiates the proceeding, the county agency may be served by U.S. mail pursuant to Rule 355.02, subdivision 3, and all other parties must be served by personal service unless the child support magistrate authorizes service by publication. Any party who resides out of state must be served according to the provisions of Minnesota Statutes chapter 518C.~~

~~Subd. 3. Filing of Summons and Complaint. The summons and complaint, together with the applicable filing fee and the appropriate proof of service, must be filed with the court administrator according to Rule 355.05.~~

Rule 362.02. Modification and Enforcement of Support

Subdivision 1. Motion.

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

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

~~(2) modification or enforcement of support;~~

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

~~(4) other requests for relief permitted by Rule 351.03.~~

~~(b) Content of Motion. The motion must state that any non-initiating party has a right to a hearing and that such non-initiating party may schedule a hearing by contacting the court administrator to obtain a date and then serving upon all parties written notice of the date, time, and location of the hearing. The motion must also state that if the non-initiating party fails to serve the initiating party a written response to the motion within twenty (20) days as required under Rule 13, the child support magistrate may proceed to default and may sign the proposed order without further notice or hearing as permitted under Rule 3614. The motion must also state in plain language the facts and grounds supporting what the initiating party wants the child support magistrate to order. The motion must also state that the case can be settled informally. When the county agency is the initiating party, the motion must identify the name, address, and telephone number of the person to contact to discuss settlement. If the motion does not include a proposed order, the motion must include a specific hearing date. A separate notice of motion is not required.~~

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

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

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

~~Subd. 3. Filing of Motion. The motion, together with the applicable filing fee and the appropriate proof of service, must be filed with the court administrator according to Rule 355.05.~~

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

~~Rule 362.03. Enforcement by Motion for Contempt~~

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

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

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

~~Subd. 4. Failure to Appear. If the alleged contemnor fails to appear at the initial appearance, the child support magistrate may certify to a district court judge that the alleged contemnor failed to appear and may recommend issuance of a warrant for the person's arrest. Only a district court judge may issue arrest warrants.~~

~~Advisory Committee Comment~~

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

~~RULE 363. RESPONSE TO SUMMONS AND COMPLAINT OR MOTION~~

~~Rule 363.01. Timing~~

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

~~Rule 363.02. Written Response Required~~

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

~~Rule 3613.03. Filing of Response~~

~~The response, together with the applicable filing fee and the appropriate proof of service, must be filed with the court administrator according to Rule 355.05.~~

~~Rule 363.04. Scheduling of Hearing~~

~~The initiating party must schedule a hearing under Rule 369.01 if an objection to the request for relief or to the provisions of a proposed order is received or if a request for a hearing is received. The non initiating party may schedule a hearing. To schedule a hearing, a party must contact the court administrator to obtain a hearing date and then serve upon all parties written notice of the date, time, and location of the hearing.~~

~~RULE 364. DEFAULT~~

~~Rule 364.01. Procedure~~

~~Subdivision 1. Timing. If the non initiating party has been duly served with the summons and complaint or motion and there has been no response within the time period prescribed by Rule 363.01, the initiating party may submit the case to the child support magistrate as a default proceeding.~~

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

~~Rule 364.02. Hearing~~

~~Subdivision 1. Hearing Not Required. Except in establishment of parentage cases, if the child support magistrate makes the findings required in Rule 364.03, the magistrate may sign the proposed order without further notice or hearing. Establishment of parentage cases must proceed according to subdivision 2(b).~~

~~Subd. 2. Hearing Required~~

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

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

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

Rule 364.03. Signing of Proposed Order

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

- ~~(a) — was properly served with the summons and complaint or motion;~~
- ~~(b) — was notified of the requirement to respond in writing within twenty (20) days of service of the summons and complaint or motion;~~
- ~~(c) — failed to timely respond in writing;~~
- ~~(d) — was notified of the opportunity to be heard and the method for requesting a hearing; and~~
- ~~(e) — did not request a hearing or was notified of the date, time, and location of the hearing and failed to appear.~~

Rule 364.04. Proposed Order Not Accepted

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

Advisory Committee Comment

~~Default in Establishment of Parentage Proceedings. Minnesota Statutes § 257.651 provides that "[i]n an action to determine the existence of the father and child relationship under sections 257.51 to 257.74, if the alleged father fails to appear at a hearing after service duly made and proved, the court shall enter a default judgment or order of paternity." However, in *Bartlow v. Brinkman*, 378 N.W.2d 790 (Minn. 1985), the Minnesota Supreme Court held that in paternity proceedings "default should not be entered, upon objection, merely on the allegations and verifications contained in the complaint. It should be entered only after the allegations have been verified in open court under oath before a trial judge." *Id.* at 795. The court stated that upon request of the defendant, the court "should require the mother of the child to be placed on the stand in open court and be required to testify under oath to verify the allegations of the complaint." *Id.* While the Advisory Committee is aware that default hearings are not specifically required in establishment of parentage cases, given the potential outcome of such cases the Advisory Committee nevertheless chose to require hearings in such cases.~~

~~RULE 365. PREHEARING INFORMAL RESOLUTION~~

~~Rule 365.01. Informal Discussions~~

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

~~Rule 365.02. Settlement Conference~~

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

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

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

~~Advisory Committee Comment~~

~~Rule 365 relates to settlement conferences between the parties, not between the parties and the child support magistrate. Rule 365 is not intended to require a pre-hearing conference between the child support magistrate and the parties as provided in Rule 16 of the Rules of Civil Procedure or Rule 305 of the Rules of General Practice for Family Court Procedure.~~

~~RULE 366. SETTLEMENT~~

~~Rule 366.01. Procedure~~

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

~~Rule 366.02. Proposed Consent Order~~

~~Subdivision 1. Preparation and Signing. If the parties reach an agreement, one of the parties must prepare a proposed consent order. If the county agency is a party, the county agency must prepare the proposed consent order. All parties to the agreement, including the county agency, must sign the proposed consent order. The proposed consent order must state that the parties have waived their right to a hearing.~~

~~Subd. 2. Filing. The proposed consent order must be filed with the court administrator, who shall submit it to the child support magistrate for review and signature. When submitting the consent order to the child support magistrate, all pleadings and~~

~~affidavits of service must be submitted to the child support magistrate. If the county agency is not a party, other parties must submit copies of the information used to prepare the consent order.~~

~~Subd. 3. Approval of Proposed Order. The child support magistrate may approve the consent order by signing it or may reject it and proceed under Rule 356.03.~~

~~Advisory Committee Comment~~

~~Rule 366.02 provides that background information used in preparing the proposed consent order be sent to the child support magistrate. However, if the proposed consent order is not filed, the non-pleading documents should be returned to the county agency.~~

~~**Rule 366.03. Order Not Accepted**~~

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

~~**Rule 366.04. Exception from Alternative Dispute Resolution**~~

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

~~**RULE 367. DISCOVERY**~~

~~**Rule 367.01. Witnesses**~~

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

~~**Rule 367.02. Exchange of Documents**~~

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

~~Advisory Committee Comment~~

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

~~**Rule 367.03. Subpoenas**~~

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

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

~~Subd. 3. Objection to Subpoena. Any person served with a subpoena may file an objection with the court administrator. The objection must be filed promptly and no later than the time specified in the subpoena for compliance. A child support magistrate must cancel or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence requested, and whether there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable cost of producing documents, books, papers, or other tangible things.~~

Rule 367.04. Other Discovery

~~Any additional means of discovery available under the Minnesota Rules of Civil Procedure may be allowed by order of the child support magistrate. The party seeking discovery must bring a motion before the child support magistrate for an order permitting additional means of discovery. The motion must include the reason for the request and must notify the other parties of the opportunity to respond within five (5) days. The party seeking discovery has the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay or harassment, and that the issues or amounts in controversy are significant enough to warrant the discovery. The child support magistrate may order such other discovery as is deemed appropriate or may deny the motion without the need for any hearing on the matter.~~

Rule 367.05. Noncompliance with Request for Discovery

~~Subdivision 1. Decision by Child Support Magistrate. If the parties cannot agree on acceptable exchange of information, the parties must exchange what can be agreed upon and be prepared to explain the disagreement to the child support magistrate. If time permits before the date set for the hearing, any party may schedule a prehearing conference, with five (5) days notice to the other parties, or the parties may jointly submit the matter to the child~~

~~support magistrate for a ruling without a hearing. If no action is taken prior to the contested hearing, the dispute will be decided at the hearing.~~

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

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

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

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

- ~~(a) — an order that the subject matter of the order for discovery or any other relevant facts must be taken as established for the purposes of the case in accordance with the claim of the party requesting the order;~~
- ~~(b) — an order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or~~
- ~~(c) — any other order appropriate in the interests of justice.~~

~~Rule 367.06. Filing of Discovery Requests and Responses Precluded~~

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

- ~~(a) — ordered by the child support magistrate;~~
- ~~(b) — filed in support of any motion; or~~
- ~~(c) — introduced as evidence in the hearing.~~

~~RULE 368. REMOVAL OF A PARTICULAR CHILD SUPPORT MAGISTRATE~~

~~Rule 368.01. Automatic Right to Remove Precluded~~

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

~~Rule 368.02. Removal for Cause~~

~~Subdivision 1. Procedure. Any party may serve on the other parties and file with the court administrator a request to remove the child support magistrate assigned to hear the matter. If the assigned child support magistrate denies the request to remove, the chief judge of the judicial district must determine whether cause exists to remove the assigned child support magistrate. If the chief judge of the judicial district is the subject of the request to remove, the assistant chief judge must determine whether cause exists to remove the child support magistrate. A request to remove must be filed with the court administrator and served upon the parties within ten (10) days of service of notice of the name of the magistrate assigned to hear the matter or within ten (10) days of discovery of prejudice. If assignment of a child support magistrate is made less than ten (10) days before the hearing, the request to remove must be made as soon as practicable after notice of assignment is given.~~

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

Advisory Committee Comment

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

~~RULE 369. HEARING PROCESS~~

~~Rule 369.01. Timing of Hearing~~

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

~~Rule 369.02. Notice of Hearing~~

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

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

~~Rule 369.03. Continuance of Hearing~~

~~Subdivision 1. Request by Party. Upon agreement of the parties or a showing of good cause, the child support magistrate may grant a request for continuance of a hearing. The order granting a continuance may be stated in writing or orally on the record. Unless time does not permit, a request for continuance of the hearing must be made in writing to the child~~

~~support magistrate and must be served upon all parties. In determining whether good cause exists, due regard will be given to the ability of the party requesting a continuance to effectively proceed without a continuance.~~

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

Advisory Committee Comment

~~Rule 369.03 provides that a continuance may be granted for good cause. Examples of good cause include: death or incapacitating illness of a party or attorney of a party; lack of proper notice of the hearing; a substitution of the attorney of a party; a change in the parties or pleadings requiring postponement; an agreement for a continuance by all parties provided that it is shown that more time is clearly necessary. Good cause does not include: intentional delay; unavailability of counsel due to engagement in another judicial or administrative proceeding unless all other members of the attorney's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; and failure of the attorney to properly utilize the statutory notice period to prepare for the hearing.~~

Rule 369.04. Explanation of Hearing Purpose and Procedure

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

Rule 369.05. Hearings Open to Public

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

Advisory Committee Comment

~~Under Minnesota Statutes § 257.70, hearings regarding the establishment of parentage are closed to the public. Other proceedings identified in Rule 351.03 are generally open to the public.~~

Rule 369.06. Record of Hearing

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

Advisory Committee Comment

~~Under Minnesota Statutes § 484.72, subdivisions 1 and 6, records of hearings and other proceedings in the expedited child support process may be made either by competent stenographers or by use of electronic recording equipment. (1999 Minn. Laws ch 196, art. 1, § 3.) If electronic recording equipment is used, it must meet the minimum standards promulgated by the state court administrator and must be operated and monitored by a person who meets the minimum qualifications promulgated by the state court administrator.~~

Rule 369.07. Right to Present Evidence

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

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

~~Subd. 3. Necessary Preparation Required. Each party must bring to the hearing all evidence, both oral and written, the party intends to present. Each party must have enough copies of each exhibit the party intends to offer so that a copy can be provided to all other parties and the child support magistrate at the time of the hearing. The parties are encouraged to exchange copies of exhibits before the hearing begins.~~

Rule 369.08. Evidence

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

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

~~Subd. 3. Documents. Ordinarily, copies or excerpts of documents instead of originals may be received or incorporated by reference. The child support magistrate may require the original or the complete document if there is a genuine question of accuracy or authenticity, or if it would be unfair to admit the copy instead of the original. The financial worksheets prepared by the employee of the county agency are admissible without requiring foundation testimony or appearance of the employee of the county agency.~~

~~Subd. 4. Notice of Facts. The child support magistrate may take notice of judicially cognizable facts, but must do so on the record and with the opportunity for any party to contest the facts so noticed.~~

Rule 369.09. Burden of Proof

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

~~Rule 369.10. Examination of Adverse Party~~

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

~~Rule 369.11. Role of Child Support Magistrate~~

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

~~Advisory Committee Comment~~

~~The intent of Rule 369.11 is to require the child support magistrate to proactively solicit information so as to be able to make sufficient findings.~~

~~Rule 369.12. Discretion to Leave Record Open~~

~~At the conclusion of a hearing, the child support magistrate may leave the record open and request or permit submission of additional information. Unless otherwise ordered by the child support magistrate, such additional information must be submitted to the court administrator within ten (10) days of the conclusion of the hearing. The record is considered closed either at the conclusion of the hearing or upon submission by the parties of any additional information authorized or requested by the child support magistrate. Documents submitted after the due date or without permission of the child support magistrate must be returned to the sender and must not be considered by the child support magistrate when deciding the case.~~

~~RULE 370. DECISION AND ORDER OF CHILD SUPPORT MAGISTRATE~~

~~Rule 370.01. Timing~~

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

~~Rule 370.02. Effective Date; Final Order~~

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

~~Rule 370.03. Notice of Filing of Order or Notice of Entry of Judgment~~

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

~~Subd. 2. Content of Notice.~~

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

~~(1) — Under Rule 21 each party has a right to bring a motion to correct clerical mistakes, typographical errors, or errors in mathematical calculations set forth in the decision and order of the child support magistrate, and that such a motion must be decided by the child support magistrate who issued the decision and order. If a party intends to bring both a motion to correct clerical mistakes and a motion for review, those motions must be combined and brought pursuant to Rule 22. A party may not bring a motion to review an order filed following a Rule 21 motion to correct clerical errors.~~

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

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

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

~~(c) — Costs and Fees. The notice required by subdivision 1 must also state that the child support magistrate has authority to award the opposing party costs and fees if the magistrate determines that a motion to correct clerical mistakes or a motion for review is not made in good faith or is brought for purposes of delay or harassment.~~

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

~~Advisory Committee Comment~~

~~Timing and Procedure for Bringing Motions. The timing for bringing a motion for review differs from the timing for bringing an appeal to the court of appeals. Under Rule 372, the time within which to bring a motion for review is twenty (20) days, which begins to run on the date the court administrator serves the notice of filing of order or notice of entry of judgment.~~

~~Timing and Procedure for Bringing an Appeal to Court of Appeals. Rule 104.01 of the Rules of Civil Appellate Procedure provides that the time within which to bring an appeal to the court of appeals is sixty (60) days which begins to run on the date of service by any party upon any other party of written notice of the filing of the order or judgment. The Advisory Committee intends that Rule 3724.01 supersede appellate Rule 104.01 to provide that the sixty (60) days begins to run from the time the court administrator serves the written notice of filing of the order or notice of entry of judgment.~~

~~Court Administrator to Compute Time. Rule 372 establishes a twenty (20) day time period for bringing a motion for review. The twenty (20) days is measured from the date the court administrator serves the notice of filing of order or notice of entry of judgment, and Rule 353 requires that an additional three days be added to the time period when service is by U.S. mail. Computing the deadline for bringing motions can be difficult and confusing for lay persons. Rule 370.03, subdivision 3, attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice.~~

~~The court administrator must not compute the time for bringing an appeal to the court of appeals.~~

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

~~RULE 371. MOTION TO CORRECT CLERICAL MISTAKES~~

~~Rule 371.01. Motion~~

~~Subdivision 1. Party or Child Support Magistrate May Initiate. Clerical mistakes, typographical errors, and errors in mathematical calculations in orders, judgments, or other parts of the record arising from oversight or omission may be corrected by the child support magistrate at any time upon the magistrate's own initiative or upon motion of any party after notice to all parties. A motion to correct such clerical mistakes must be made in good faith and not for purposes of delay or harassment. A motion to correct such clerical mistakes must be decided by the child support magistrate who issued the decision and order. If an appeal has been made to the court of appeals, a child support magistrate may correct clerical mistakes, typographical errors, and errors in mathematical calculations only upon order of the appellate court.~~

~~Subd. 2. Combined Motions. If a party intends to bring both a motion to correct clerical mistakes and a motion for review brought under Rule 372, the combined motion must be brought within the time prescribed by Rule 372.02, subdivision 1. At the request of the party, such a combined motion may be decided either by the child support magistrate who issued the decision and order or by a district court judge.~~

~~Subd. 3. Motion for Review Precluded Following Motion to Correct. A party may not bring a motion to review an order filed following a Rule 371 motion to correct clerical errors.~~

~~Rule 371.02. Procedure~~

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

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

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

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

~~(d) — order a transcript of the hearing under Rule 373, if the party desires to submit such a transcript.~~

~~Subd. 2. Response to Motion. — A responding party may, but is not required to, respond to a motion to correct clerical mistakes. To respond, the party must perform all of the following within ten (10) days of the date the party was served with notice of the motion to correct clerical mistakes:~~

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

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

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

~~(d) — order a transcript of the hearing under Rule 373, if the party desires to submit such a transcript.~~

~~Rule 371.03. Decision and Order Not Stayed~~

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

~~Rule 371.04. Basis of Decision~~

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

~~Subd. 2. Decision. — The child support magistrate may issue an order denying the motion to correct clerical mistakes or may issue an order making such corrections as deemed appropriate. — If the motion is denied, the child support magistrate must specifically state in the order that the findings, decision, and order are affirmed.~~

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

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

~~Subd. 5. No Right to Hearing. — No hearing will be held, and the parties will not be allowed to appear before the child support magistrate, unless the magistrate upon the magistrate's own initiative or upon motion of a party orders a hearing. The motion will be granted only upon a showing of good cause. In the event the child support magistrate decides to conduct a hearing, the magistrate shall direct the court administrator to schedule a~~

~~hearing date and to serve notice of the date, time, and location of the hearing upon all parties and the county agency.~~

~~Subd. 6. Costs and Fees. The child support magistrate may award the opposing parties costs and fees incurred in responding to a motion to correct clerical mistakes that the magistrate determines is not made in good faith or is brought for purposes of delay or harassment.~~

Rule 371.05. Notice of Order or Judgment

~~Upon receipt of an order issued as a result of a motion to correct clerical mistakes, the court administrator must promptly serve a notice of filing of order or notice of entry of judgment upon each party by U.S. mail, along with a copy of the order or judgment. The notice must state that the parties have a right to appeal to the court of appeals under Rule 374.~~

Rule 371.06. Effective Date; Final Order

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

RULE 372. MOTION FOR REVIEW

Rule 372.01. Motion

~~Any party may bring a motion for review of the decision and order or judgment of the child support magistrate. A motion to correct clerical mistakes may be combined with a motion for review as authorized under Rule 371.01, subdivision 2. At the request of either party, the motion for review may be brought before either the child support magistrate who issued the order or a district court judge. If a district court judge issued the order in question, that judge must also decide the motion for review.~~

Advisory Committee Comment

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

Rule 372.02. Procedure

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

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

- ~~(b) — file with the court administrator the original motion;~~
- ~~(c) — file with the court administrator proof of service of the motion upon the other party and the county agency;~~
- ~~(d) — if the party has not already done so, pay to the court administrator the filing fee required by Rule 354.01; and~~
- ~~(e) — order a transcript of the hearing under Rule 373, if the party desires to submit such a transcript.~~

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

- ~~(a) — serve a response to motion on the opposing parties and county agency by U.S. mail or by personal service. The state court administrator will develop a form entitled "response to motion for review " which the court administrator must provide to any party who requests one. In the response to motion, the party must state why the motion for review should not be granted and that the response to motion is made in good faith and not for purposes of delay or harassment;~~
- ~~(b) — file with the court administrator the original response to motion;~~
- ~~(c) — file with the court administrator proof of service of the response to motion upon the opposing party and the county agency;~~
- ~~(d) — if the party has not already done so, pay to the court administrator the filing fee required by Rule 354.01; and~~
- ~~(e) — order a transcript of the hearing under Rule 373, if the party desires to submit such a transcript.~~

Rule 372.03. Notice of Assignment of District Court Judge

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

Rule 372.04. Decision and Order Not Stayed

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

Rule 372.05. Basis of Decision

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

~~Subd. 2. Decision. — The child support magistrate or district court judge must make an independent review of any findings or other provisions of the child support magistrate's decision and order for which specific changes are requested in the motion. The child support magistrate or district court judge may approve or modify the decision and order of the child support magistrate, or may remand the matter to the child support magistrate with~~

~~instructions. If any findings or other provisions of the child support magistrate's decision and order are approved without change, the child support magistrate or district court judge must specifically state in the order that those findings and other provisions are affirmed but need not make specific findings or conclusions as to each point raised in the motion. If any findings or other provisions of the child support magistrate's decision and order are modified, the child support magistrate or district court judge need only make specific findings or conclusions with respect to the provisions that are modified.~~

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

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

~~Subd. 5. Transcript. A transcript of the hearing in dispute is not required, but may be ordered by a party. If the party chooses to submit a transcript, it must be ordered according to the procedure in Rule 373. If a party orders a transcript, the motion must state the date the transcript was ordered.~~

~~Subd. 6. No Right to Hearing. No hearing will be held, and the parties will not be allowed to appear before the child support magistrate or district court judge, unless the magistrate or judge upon the magistrate's or judge's own initiative or upon motion of a party orders a hearing. The motion will be granted only upon a showing of good cause. In the event the child support magistrate or district court judge decides to conduct a hearing, the magistrate or judge shall direct the court administrator to schedule a hearing date and to serve notice of the date, time, and location of the hearing upon all parties and the county agency.~~

~~Subd. 7. Costs and Fees. The child support magistrate may award the opposing parties costs and fees incurred in responding to a motion for review, if the magistrate or district court judge determines that the motion for review is not made in good faith or is brought for purposes of delay or harassment.~~

Rule 372.06. Notice of Order or Judgment

~~Upon receipt of an order issued as a result of a motion for review, the court administrator must promptly serve a notice of filing of order or notice of entry of judgment upon each party by U.S. mail, along with a copy of the order or judgment. The notice must state that the parties have a right to appeal to the court of appeals under Rule 374.~~

Rule 372.07. Effective Date; Final Order

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

RULE 373. TRANSCRIPT

Rule 373.01. Ordering of Transcript

~~Any party may request a transcript of any proceeding held before the child support magistrate as permitted in Rule 371.02, subdivision 2(d), or Rule 372.05, subdivision 5. A request for a transcript must be made to the court administrator at the earliest possible time. The party requesting the transcript must pay for the transcript and must serve a copy on the other parties and the county agency, if a party. Ordering and submission of a transcript does not delay the due dates for the submissions described in Rule 372.02. The transcriber must file the original transcript with the court.~~

RULE 374. APPEAL TO COURT OF APPEALS

Rule 374.01. Generally

~~An appeal may be taken to the court of appeals from a final order or judgment of a child support magistrate or from a final order deciding a motion for review under Rule 372. Such an appeal must be taken in accordance with the Minnesota Rules of Civil Appellate Procedure within sixty (60) days of the date the court administrator serves upon the parties the notice of filing of order or notice of entry of judgment. If any party brings a timely motion to correct clerical mistakes under Rule 371 or a timely motion for review under Rule 372, the time for appeal is extended for all parties while that motion is pending. Once the last such pending motion is decided by the child support magistrate or district court judge, the sixty (60) days to appeal from the final order or judgment of a child support magistrate or from a final order deciding a motion for review runs for all parties from the date the court administrator serves upon the parties the notice of filing of order or notice of entry of judgment disposing of that motion. A notice of appeal filed before the disposition of a timely motion to correct clerical mistakes or for review is premature and of no effect, and it does not divest the child support magistrate of jurisdiction to dispose of the motion. Except as otherwise provided in these rules, the Minnesota Rules of Civil Appellate Procedure shall govern the taking and processing of such appeals.~~

Advisory Committee Comment

~~Timing. Under Rule 104.01 of the Rules of Civil Appellate Procedure, the sixty (60) days in which to bring an appeal to the court of appeals begins to run on the date of service by any party of written notice of filing of an appealable order or on the date on which an appealable judgment is entered. The Advisory Committee intends that Rule 374.01 supersede the appellate rule to provide that the sixty (60) days to appeal begins to run from the time the court administrator serves the written notice of filing of order or notice of entry of judgment.~~

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

~~RULE 375. FORMS~~

~~Rule 375.01. Court Administrator to Provide Forms~~

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

~~Rule 375.02. Substantial Compliance~~

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

Advisory Committee Comment

~~The Advisory Committee encourages use of the standardized forms developed by the state court administrator and department of human services. However, regardless of such standardized forms, attorneys representing the parties and the county attorney representing the interests of the county agency retain professional responsibility for the form and content of pleadings and other legal documents used in the expedited child support process. Attorneys may modify these standardized forms or, in their discretion, may prepare other pleadings to address the factual or legal issues in each case that are not adequately covered by the standardized forms.~~

~~Rule 375.03. Modification of Forms~~

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

~~Rule 375.04. Exception from Rules Governing Civil Actions~~

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

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

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I. GENERAL RULES
RULE 351. SCOPE; PURPOSE

Rule 351.01. Scope

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

Rule 351.02. Purposes and Goals of the Expedited Child Support Process

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

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

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

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

RULE 352. DEFINITIONS

Rule 352.01. Definitions

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

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

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

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

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

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

(f) **“IV-D case”** means any proceeding where a party has either (1) assigned to the State rights to child support because of the receipt of public assistance as defined in Minn. Stat. § 256.741 (2000), or (2) applied for child support services under Title IV-D of the Social Security Act, 42 U.S.C. § 654(4) (1994). “IV-D case” does not include proceedings where income withholding is the only service applied for or received under Minn. Stat. § 518.6111 (2000).

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

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

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

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

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

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

RULE 353. TYPES OF PROCEEDINGS

Rule 353.01. Types of Proceedings

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

Subd. 2. Permissive Proceedings.

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

- (1) parentage actions; and
- (2) civil contempt matters.

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

- (1) the parties agree or stipulate to all of these particular issues; or
- (2) if the complaint, motion, or supporting affidavit specifically addresses these particular issues and a party fails to serve a response or appear at the hearing.

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

matter for hearing. The court administrator shall mail notice of the date, time, and location of the hearing to all parties.

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

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

Rule 353.02. Procedure When Prohibited Issues

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

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

Subd. 3. Prohibited Issues in Expedited Child Support Process. If a proceeding is commenced in the expedited process and the complaint, motion, answer, responsive motion, or counter motion raises one or more issues identified in Rule 353.01, subd. 3, upon the child support magistrate's own initiative or motion of a party, the child support magistrate assigned to the matter shall, either before or at the time of the hearing, decide whether to:

- (a) refer the entire matter to district court; or
- (b) determine the temporary support amount and refer all issues to district court. The district court judge shall issue an order addressing all issues and, with respect to support, may

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

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

RULE 354. COMPUTATION OF TIME

Rule 354.01. Generally

All time periods shall be measured by starting to count on the first day after any event happens which by these rules starts the running of a time period. When the last day of the time period is any day other than a business day, then the last day is the next business day.

Rule 354.02. Time Periods Less Than Seven Days

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

Rule 354.03. “Business Day” Defined

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

Advisory Committee Comment

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

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

level judicial-branch holiday, such as the Friday after Thanksgiving, the court in that county must still include that day as a holiday for the purpose of computing time under Rule 354.03.

Rule 354.04. Additional Time If Service by Mail or Service Late in Day

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

RULE 355. METHODS OF SERVICE; FILING

Rule 355.01. Generally

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

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

Rule 355.02. Types of Service

Subdivision 1. Personal Service.

(a) Upon Whom.

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

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

(b) By Whom Served. Unless otherwise ordered by the child support magistrate, personal service shall be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minn. Stat. § 518.5513 (2000), an employee of the county agency may serve documents on parties.

(c) Alternative Personal Service.

(1) Acknowledgement by Mail. As an alternative to personal service, service may be made by U.S. mail if acknowledged in writing. Any party attempting alternative

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

(2) Service by Publication.

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

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

Subd. 2. Service by U.S. Mail. Service by U.S. mail means mailing a copy of the document by first-class mail, postage prepaid, addressed to the person to be served at the person's last known address. Service by mail shall be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minn. Stat. § 518.5513 (2000), an employee of the county agency may serve documents on the parties.

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

Rule 355.03. Completion of Service

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

Rule 355.04. Proof of Service

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

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

RULE 356. FEES

Rule 356.01. Collection of Fees

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

Advisory Committee Comment

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

Rule 356.02. Waiver of Fees

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

Advisory Committee Comment

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

RULE 357. LEGAL REPRESENTATION AND APPOINTMENT OF GUARDIAN AD LITEM

Rule 357.01. Right to Representation

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

Rule 357.02. Certificate of Representation

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

Rule 357.03. Appointment of Attorney at Public Expense

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

- (a) establishment of parentage; or
- (b) contempt proceedings in which incarceration of the party is a possible outcome of the proceeding.

Pursuant to Minn. Stat. § 257.69 (2000), a court-appointed attorney shall represent a party with respect to all issues necessary for the initial establishment of parentage, including child support, custody, parenting time, and name of the child.

Advisory Committee Comment

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

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

Rule 357.04. Appointment of Guardian Ad Litem

Subdivision 1. Applicability of Rules of Guardian Ad Litem Procedure. Child support magistrates shall appoint guardians ad litem to advocate for the best interests of children when required under Minn. Stat. § 518.165 (2000) or any other applicable statute. When a child support magistrate determines that the appointment of a guardian ad litem is necessary, that appointment shall be made according to the Minnesota General Rules of Practice 901-913.

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

RULE 358. COURT INTERPRETERS

Rule 358.01. Appointment Mandatory

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

Rule 358.02. “Person Handicapped in Communication” Defined

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

Advisory Committee Comment

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

RULE 359. TELEPHONE AND INTERACTIVE VIDEO

Rule 359.01. Telephone and Interactive Video Permitted

A child support magistrate may on the magistrate's own initiative conduct a hearing by telephone or, where available, interactive video. Any party may make a written or oral request to the court administrator or the court administrator's designee to appear at a scheduled hearing by telephone or, where available, interactive video. In the event the request is for interactive video,

the request shall be made at least five (5) days before the date of the scheduled hearing. A child support magistrate may deny any request to appear at a hearing by telephone or interactive video.

Advisory Committee Comment

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

Rule 359.02. Procedure

The court administrator or court administrator's designee shall arrange for any telephone or interactive video hearing approved by the child support magistrate. When conducting a proceeding by telephone or interactive video and a party or witness resides out of state, the child support magistrate shall ensure that the requirements of Minn. Stat. § 518C.316 (2000) are met. The child support magistrate shall make adequate provision for a record of any proceeding conducted by telephone or interactive video. No recording may be made of any proceeding conducted by telephone or interactive video, except the recording made as the official court record.

Rule 359.03. In-Court Appearance Not Precluded

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

RULE 360. INTERVENTION

Rule 360.01. County Agency

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

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

Rule 360.02. Other Individuals

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

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

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

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

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

Rule 360.03. Effect of Intervention

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

RULE 361. DISCOVERY

Rule 361.01. Witnesses

Any party may call witnesses to testify at any hearing. Any party intending to call a witness other than an employee of the county agency or any party to the proceeding shall, at least five (5) days before the hearing, provide to the other parties and the county agency written notice of the name and address of each witness.

Rule 361.02. Exchange of Documents

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

Advisory Committee Comment

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

Rule 361.03. Subpoenas

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

Subd. 2. Service of Subpoenas Shall be by Personal Service. Except as noted in this subdivision, all subpoenas issued by the district court, shall be personally served by the sheriff or by any other person who is at least 18 years of age who is not a party to the action. Employees of the county agency may personally serve subpoenas. The person being served shall, at the time

of service, be given the fees and mileage allowed by Minn. Stat. § 357.22 (2000). When the subpoena is requested by the county agency, fees and mileage need not be paid. The cost of service, fees, and expenses of any witnesses who have been served subpoenas shall be paid by the party at whose request the witness appears. The person serving the subpoena shall provide proof of service by filing the original subpoena with the court, along with an affidavit of personal service.

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

Rule 361.04. Other Discovery

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

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

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

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

Rule 361.05. Discovery Remedies

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

- (a) direct the parties to exchange specified documents or information;
- (b) deny the discovery request;
- (c) affirm, modify, or quash the subpoena;

- (d) issue a protective order;
- (e) set or continue the hearing;
- (f) conduct a hearing and keep the record open to allow for further exchange of information or response to the information provided at the hearing; or
- (g) order other discovery allowable under the Minnesota Rules of Civil Procedure, if appropriate.

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

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

Rule 361.06. Filing of Discovery Requests and Responses Precluded

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

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

RULE 362. SETTLEMENT

Rule 362.01. Procedure

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

Rule 362.02. Signing of Order

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

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

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

Rule 362.03. Order Accepted

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

Rule 362.04. Order Not Accepted

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

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

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

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

Advisory Committee Comment

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

RULE 363. DEFAULT**Rule 363.01 Scope**

The default procedure set forth in this rule applies to actions to establish support under Minn. Stat. § 256.87 (2000) (Rule 370) and proceedings to modify support or set support (Rule 372).

Rule 363.02. Procedure

The initiating party may proceed by default if:

- (a) all noninitiating parties have been properly served with the summons or notice of motion;
- (b) the summons or notice of motion did not contain a hearing date; and

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

The initiating party shall file an order with the court within forty-five (45) days from the date the last noninitiating party was served with the summons and complaint or notice of motion and motion. The initiating party shall also file with the court a current affidavit of default and a current affidavit of non-military status. If an order is not filed with the court within forty-five (45) days, the court administrator shall mail a notice to all parties that the matter shall be scheduled for hearing unless the initiating party files an order along with all necessary documents within ten (10) days from the date notice was mailed. If the initiating party fails to file the necessary documents within the allotted ten (10) days, the court administrator shall set the matter on for hearing and serve upon all parties and the county agency by U.S. mail at least fourteen (14) days before the scheduled hearing, notice of the date, time, and location of the hearing.

Rule 363.03. Order Accepted

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

- (a) was properly served with the summons and complaint or notice of motion and motion;
- (b) was notified of the requirement to either serve and file a written answer or return the request for hearing form within twenty (20) days of service of the summons and complaint or notice of motion and motion; and
- (c) failed to serve and file a written answer or return the request for hearing form within twenty (20) days from the date of service.

Rule 363.04. Order Not Accepted

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

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

The court administrator shall mail the notice of deficiency to the initiating party. The initiating party shall either correct the deficiency or set the case on for a hearing and serve notice of the date, time, and location of the hearing upon all parties pursuant to Rule 364. If the initiating party submits a revised order that raises new issues beyond the scope of the complaint or motion, amended pleadings shall be served and filed on all parties pursuant to Rule 370.06 or Rule 372.06. If the initiating party fails to schedule a hearing or comply with the notice of

deficiency within forty-five (45) days of the date the notice was mailed, the child support magistrate shall dismiss the matter without prejudice.

RULE 364. HEARING PROCESS

Rule 364.01. Right to Hearing

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

Rule 364.02. Scheduling of Hearing

The initiating party shall schedule a hearing if a written answer or a request for hearing form is received. The initiating party shall contact the court administrator or the court administrator's designee to obtain a hearing date and shall serve upon all parties and the county agency by U.S. mail at least fourteen (14) days before the scheduled hearing, notice of the date, time, and location of the hearing.

Rule 364.03. Timing of Hearing

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

Advisory Committee Comment

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

Rule 364.04. Notice of Hearing

A notice of the hearing shall:

- (a) state the name of the court;
- (b) state the names of the parties;
- (c) state the date, time, and location of the hearing;
- (d) state that the parties shall appear at the hearing, unless otherwise provided in these rules;
- (e) inform the parties of the requirement to bring to the hearing sufficient copies of all documents the parties intend to offer; and
- (f) if possible, include the name of the child support magistrate assigned to the case.

Rule 364.05. Continuance of Hearing

Upon agreement of the parties or a showing of good cause, the child support magistrate may grant a request for continuance of a hearing. An order granting a continuance may be stated orally on the record or may be in writing. Unless time does not permit, a request for continuance shall be made in writing, and shall be filed with the court and served upon all parties at least five

(5) days before the hearing. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

Advisory Committee Comment

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

Rule 364.06. Explanation of Hearing Purpose and Procedure

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

Rule 364.07. Hearings Open to Public

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

Advisory Committee Comment

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

Rule 364.08. Record of Hearing

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

Advisory Committee Comment

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

Rule 364.09. Right to Present Evidence

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

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

witnesses. In any proceeding, a sworn written affidavit of any party or witness may be offered in lieu of oral testimony.

Subd. 3. Necessary Preparation Required. Each party shall bring to the hearing all evidence, both oral and written, the party intends to present. Each party must have enough copies of each exhibit the party intends to offer so that a copy can be provided to all other parties and the child support magistrate at the time of the hearing. The parties are encouraged to exchange copies of exhibits before the hearing begins.

Rule 364.10. Evidence

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

Subd. 2. Evidence Part of Record. All pleadings and supporting documentation previously served upon the parties and filed with the court, unless objected to, may be considered by the magistrate. Only evidence that is offered and received during the hearing or submitted following the hearing with the permission of the child support magistrate may be considered in rendering a decision, including, but not limited to, testimony, affidavits, exhibits, and financial information.

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

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

Rule 364.11. Burden of Proof

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

Rule 364.12. Examination of Adverse Party

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

Rule 364.13. Role of Child Support Magistrate

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

Rule 364.14. Discretion to Leave Record Open

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

Rule 364.15. Close of Record

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

RULE 365. DECISION AND ORDER OF CHILD SUPPORT MAGISTRATE

Rule 365.01. Failure to Attend Hearing

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

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

Rule 365.02. Timing

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

Rule 365.03. Effective Date; Final Order

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

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

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

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

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

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

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

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

Advisory Committee Comment

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

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

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

RULE 366. TRANSCRIPT

Rule 366.01. Ordering of Transcript

Subdivision 1. Informational Request. Any person may request a transcript of any proceeding held before a child support magistrate, except as prohibited by statute or rule, by filing a request for transcript form with the court. The person requesting the transcript must make satisfactory arrangements for payment with the transcriber within thirty (30) days of ordering the transcript or the request for the transcript shall be deemed cancelled. The person requesting the transcript may withdraw the request any time prior to the time transcription has begun. The transcriber shall file the original with the court and serve a copy upon the requesting person. The transcriber shall also file with the court an affidavit of service verifying that service has been made upon the requesting person.

Subd. 2. Clerical or Review Requests. If a party chooses to request a transcript for purposes of bringing or responding to a motion to correct clerical mistakes, a motion for review, or a combined motion, a request for transcript form shall be filed with the court within the time required under Rule 377.02 and 377.04. The party requesting the transcript must make

satisfactory arrangements for payment with the transcriber within thirty (30) days of ordering the transcript or the request for the transcript shall be deemed cancelled. The requesting party may withdraw that party's request for a transcript any time prior to the time transcription has begun. The transcriber shall file the original with the court and serve each party, including the county agency if a party, with a copy. The transcriber shall also file with the court an affidavit of service verifying that service has been made upon all parties. Ordering and filing of a transcript does not delay the due dates for the submissions described in Rule 377.02 and Rule 377.04. Filing of the transcript with the court closes the record for purposes of Rule 377.09, subd. 1.

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

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

Rule 367.01. Administration of Expedited Process

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

Advisory Committee Comment

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

Rule 367.02. Use and Appointment of Child Support Magistrates

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

Advisory Committee Comment

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

Rule 367.03. Powers and Authority

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

Advisory Committee Comment

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

Rule 367.04. Conflict of Interest

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

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

(b) a guardian ad litem in any family law matter, as defined in the comment to Minn. Gen. R. Prac. 901.01, in any county in which the person serves as a child support magistrate.

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

Rule 367.05. Code of Judicial Conduct

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

Advisory Committee Comment

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

Rule 367.06. Impartiality

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

RULE 368. REMOVAL OF A PARTICULAR CHILD SUPPORT MAGISTRATE

Rule 368.01. Automatic Right to Remove Precluded

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

Rule 368.02. Removal for Cause

Subdivision 1. Procedure. Any party may serve upon the other parties and file with the court a request to remove the child support magistrate assigned to hear the matter. If the assigned child support magistrate denies the request to remove, upon written request the chief judge of the judicial district shall determine whether cause exists to remove the assigned child support magistrate. If the chief judge of the judicial district is the subject of the request to remove, the assistant chief judge shall determine whether cause exists to remove the child support magistrate. A request to remove shall be filed with the court and served upon the parties within ten (10) days of service of notice of the name of the magistrate assigned to hear the matter or within ten (10) days of discovery of prejudice. If assignment of a child support magistrate is made less than ten (10) days before the hearing, the request to remove shall be made as soon as practicable after notice of assignment is given.

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

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

Rule 369.01. Role of County Attorney

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

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

Rule 369.02. Role of Employees of County Agency

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

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

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

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

Subd. 3. County Attorney Direction Not Required. Without direction from the county attorney, employees of the county agency may perform the duties listed under Minn. Stat.

§ 518.5513, subd. 2(c) (2000). In addition, employees of the county agency may testify at hearings at the request of a party or the child support magistrate.

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

II. PROCEEDINGS

RULE 370. ESTABLISHMENT OF SUPPORT PROCEEDINGS

Rule 370.01. Commencement

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

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

Subdivision 1. Content of Summons. A summons shall:

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

If there is reason to believe that domestic violence exists or if an order for protection has been issued, the party may provide an alternative address and telephone number. Pursuant to Minn. Stat. § 518.005, subd. 5 (2000), in all actions in which public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to any other party if the county agency has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

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

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

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

- (a) state detailed facts supporting the request for relief;
- (b) provide all information required by Minn. Stat. § 518.5513, subd. 3(a) (2000), if known; and
- (c) be signed and sworn to under oath.

Advisory Committee Comment

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

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

Rule 370.03. Service of Summons and Complaint

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

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

Rule 370.04. Filing Requirements

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

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

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

- (a) the original written answer; and
- (b) proof of service upon each party pursuant to Rule 355.04.

Rule 370.05. Response

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

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

- (a) request a hearing by returning the request for hearing form to the initiating party; or
- (b) serve upon all other parties and file with the court a written answer to the complaint.

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

Rule 370.06. Amended Pleadings

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

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

Rule 370.07. Fees

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

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

Rule 370.08. Settlement Procedure

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

Rule 370.09. Default Procedure

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

Rule 370.10. Hearing Procedure

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

Rule 370.11. Decision and Order

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

Rule 370.12. Review and Appeal

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

RULE 371. PARENTAGE ACTIONS

Rule 371.01. Commencement

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

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

Subdivision 1. Content of Summons. A summons shall:

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

If there is reason to believe that domestic violence exists or if an order for protection has been issued, a party may provide an alternative address and telephone number. Pursuant to Minn. Stat. § 257.70(b) (2000), in all actions in which public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to any other party if the county agency has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

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

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

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

- (a) state detailed facts supporting the request for relief, including the facts establishing parentage;
- (b) provide all information required by Minn. Stat. § 518.5513, subd. 3(a), if known; and
- (c) be signed and sworn to under oath.

Advisory Committee Comment

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

Rule 371.03. Service of Summons and Complaint

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

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

Rule 371.04. Filing Requirements

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

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

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

- (a) the original written answer; or
- (b) a request for blood or genetic testing; and
- (c) proof of service upon each party pursuant to Rule 355.04.

Rule 371.05 Response

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

- (a) contact the initiating party to discuss settlement; or
- (b) within fourteen (14) days of service of the summons and complaint, serve upon all parties one or more of the written responses pursuant to subdivision 2.

Subd. 2. Types of Written Response.

- (a) **Request for Blood or Genetic Test.** A noninitiating party may serve and file a request for blood or genetic testing either alleging or denying paternity. Filing of a request for

blood or genetic testing shall, with the consent of the parties, extend the time for filing and serving a written answer until the blood or genetic test results have been mailed to the parties. In this event, the alleged parent shall have ten (10) days from the day the test results are mailed to the alleged parent in which to file and serve a written answer to the complaint.

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

Rule 371.06. Blood or Genetic Testing Requested Before Hearing

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

Rule 371.07. Amended Pleadings

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

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

Rule 371.08. Fees

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

- (a) the summons and complaint; and
- (b) the written answer or the request for blood or genetic testing, if any.

Rule 371.09. Settlement Procedure

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

Rule 371.10. Hearing Procedure

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

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

Rule 371.11. Procedure When Blood or Genetic Testing Requested

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

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

Rule 371.12. Procedure When Written Answer Filed

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

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

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

Rule 371.13. Procedure When Written Answer Not Filed

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

Advisory Committee Comment

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

Rule 371.14. Decision and Order

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

Rule 371.15. Review and Appeal

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

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

Rule 372.01. Commencement

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

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

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

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

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

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

Minn. Stat. § 518.005, subd. 5, in all actions in which public assistance is assigned or the county agency is providing services to a party or parties to the action, information regarding the location of one party may not be released by the county agency to the other party if the county agency has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

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

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

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

- (a) state detailed facts supporting the request for relief;
- (b) for motions to modify support and motions to set support, provide all information required by Minn. Stat. § 518.5513, subd. 3(a), if known; and
- (c) be signed and sworn to under oath.

Advisory Committee Comment

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

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

Rule 372.03. Service of Notice of Motion and Motion

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

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

Rule 372.04. Filing Requirements

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

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

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

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

Rule 372.05. Response

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

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

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

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

Rule 372.06. Amended Motions

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

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

Rule 372.07. Fees

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

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

Subd. 2. Modification Fee. Pursuant to Minn. Stat. § 357.021, subd. 2(12) (2000), a separate fee shall also be collected upon the filing of the motion to modify and a responsive motion or counter motion.

Advisory Committee Comment

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

Rule 372.08. Settlement Procedure

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

Rule 372.09. Default Procedure

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

Rule 372.10. Hearing Procedure

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

Rule 372.11. Decision and Order

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

Rule 372.12. Review and Appeal

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

RULE 373. ENFORCEMENT PROCEEDINGS

Rule 373.01. Types of Proceedings

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

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

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

Rule 373.02. Commencement

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

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

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

RULE 374. CIVIL CONTEMPT

Rule 374.01. Initiation

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

Rule 374.02. Resolution of Contempt Matter

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

Rule 374.03. Evidentiary Hearing

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

Rule 374.04. Failure to Appear

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

III. REVIEW AND APPEAL

RULE 375. MOTION TO CORRECT CLERICAL MISTAKES

Rule 375.01. Initiation

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

Rule 375.02. Procedure

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

Rule 375.03. Decision

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

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

Rule 375.04. Combined Motions

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

RULE 376. MOTION FOR REVIEW

Rule 376.01. Initiation

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

Advisory Committee Comment

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

Rule 376.02. Procedure

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

Rule 376.03. Decision

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

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

Rule 377.01. Other Motions Precluded

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

Rule 377.02. Timing of Motion

To bring a motion to correct clerical mistakes, the aggrieved party shall perform items (a) through (e) as soon as practicable after discovery of the error. To bring a motion for review or a combined motion, the aggrieved party shall perform items (a) through (f) within twenty (20) days of the date the court administrator served that party with the notice form as required by Rule 365.04.

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

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

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

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

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

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

Rule 377.03. Content of Motion

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 377.04. Response to Motion

Subdivision 1. Timing of Response to Motion. A responding party may respond to a motion to correct clerical mistakes or a motion for review, but is not required to respond if the party is in agreement with the motion. Any response shall state why the relief requested in the motion should or should not be granted. If a responding party wishes to raise other issues, the responding party must set forth those issues as a counter motion in the response. To respond to a motion to correct clerical mistakes the party shall perform items (a) through (e) within ten (10) days of the date the party was served with the motion. To respond to a motion for review or a combined motion the party shall perform (a) through (f) within thirty (30) days of the date the party was served with the notice under Rule 365.04. To respond to a counter motion, the party

shall perform items (a) through (f) within forty (40) days of the date the party was served with the notice under Rule 365.04.

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

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

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

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

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

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

Subd. 2. Content of Response to Motion

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 377.05. Calculation of Time

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

Subd. 2. Timing for Service of Motion for Review or Combined Motion. To calculate the time to serve a motion for review or combined motion, three (3) days shall be added to the twenty (20) days for a total of twenty-three (23) days within which to serve a motion when the notice form as required by Rule 365.04 is served by mail.

Subd. 3. Timing for Response to Motion for Review or Combined Motion. To calculate the time to serve a response to a motion for review or combined motion, three (3) days shall be added to the thirty (30) days for a total of thirty-three (33) days within which to respond when the notice form as required under Rule 365.04 is served by mail. If the motion for review or combined motion is served by mail, an additional three (3) days shall be added to the thirty-three (33) days for a total of thirty-six (36) days within which to respond.

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

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

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

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

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

Rule 377.08. Decision and Order Not Stayed

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

Rule 377.09. Basis of Decision and Order

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

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

If none of the above events occur, the record shall be deemed closed forty-six (46) days after service of the notice of filing as required by Rule 365.04, despite the requirements of Rule 354.04.

Subd. 2. Decision.

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

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

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

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

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

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

Subd. 5. No Right to Hearing. A hearing shall not be held unless ordered by the child support magistrate or district court judge. The child support magistrate or district court judge may order a hearing upon motion of a party or on the court's own initiative. A party's motion shall be granted only upon a showing of good cause. In the event the child support magistrate or

district court judge decides to conduct a hearing, the child support magistrate or the district court judge shall direct the court administrator to schedule a hearing date and to serve notice of the date, time, and location of the hearing upon all parties and the county agency.

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

Rule 377.10. Notice of Order or Judgment

Within five (5) days of receipt of an order issued as a result of a motion to correct clerical mistakes, a motion for review, or a combined motion, the court administrator shall serve a notice of filing of order or notice of entry of judgment upon each party by U.S. mail, along with a copy of the order or judgment. The notice shall state that the parties have a right to appeal to the court of appeals under Rule 378. If the order was issued by a district court judge, the court administrator shall provide a copy of the order to the child support magistrate.

Rule 377.11. Effective Date; Final Order

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

RULE 378. APPEAL TO COURT OF APPEALS

Rule 378.01. Generally

An appeal may be taken to the court of appeals from a final order or judgment of a child support magistrate or from a final order deciding a motion for review under Rule 376. Such an appeal shall be taken in accordance with the procedures set forth in the Minnesota Rules of Civil Appellate Procedure within sixty (60) days of the date the court administrator serves upon the parties the notice of filing of order or notice of entry of judgment. If any party brings a timely motion to correct clerical mistakes under Rule 375 or a timely motion for review under Rule 376, the time for appeal is extended for all parties while that motion is pending. Once the last such pending motion is decided by the child support magistrate or district court judge, the sixty (60) days to appeal from the final order or judgment of a child support magistrate or from a final order deciding a motion to correct clerical mistakes or a motion for review runs for all parties from the date the court administrator serves upon the parties the notice of filing of order or notice of entry of judgment disposing of that motion. A notice of appeal filed before the disposition of a timely motion to correct clerical mistakes or for review is premature and of no effect, and it does not divest the child support magistrate of jurisdiction to dispose of the motion. Except as otherwise provided in these rules, the Minnesota Rules of Civil Appellate Procedure shall govern the taking and processing of such appeals.

Advisory Committee Comment

Timing. Under Minn. R. Civ. App. P. 104.01, the sixty (60) days in which to bring an appeal to the court of appeals begins to run on the date of service by any party of written notice of filing of an appealable order or on the date on which an appealable judgment is entered. The Advisory Committee intends that Rule 378 supersede the appellate rule to provide that the sixty (60) days to appeal begins to run from the time the court administrator serves the written notice of filing of order or notice of entry of judgment.

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

IV. FORMS

RULE 379. FORMS

Rule 379.01. Court Administrator to Provide Forms

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

Rule 379.02. Substantial Compliance

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

Advisory Committee Comment

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

Rule 379.03. Modification of Forms

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

Rule 379.04. Acknowledgement

Subdivision 1. Generally. Each complaint or motion served and filed in the expedited process shall set forth an acknowledgement by the party or the party's attorney. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or pro se party is certifying that to the best of the person's knowledge, information, and belief:

- (a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

- (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief; and
- (e) the court may impose an appropriate sanction upon the attorneys, law firms, or parties that violate the above stated representations to the court, or are responsible for the violation.

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

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

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

Rule 379.05. Exception from Rules Governing Civil Actions

Subdivision 1. Informational Statement. The Informational Statement required by Minn. Gen. R. Prac. 304.02 is not required to be filed in cases brought in the expedited process.

Subd. 2. Prehearing Statement. The Prehearing Statement required by Minn. Gen. R. Prac. 305.01 is not required to be filed in cases brought in the expedited process.