

GENERAL RULES OF PRACTICE

General Rules of Practice for the District Courts

Adopted September 5, 1991 Effective January 1, 1992
With amendments received through August 1, 2001

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[For text of Title I, see M.S. 2000, Volume 15]

TITLE II - RULES GOVERNING CIVIL ACTIONS

[For text of Part A, see M.S. 2000, Volume 15]

PART B - SCHEDULING

[For text of Rule 111. and Rule 112., see M.S. 2000, Volume 15]

RULE 113. ASSIGNMENT OF CASE(S) TO A SINGLE JUDGE

113.01 Request for Assignment of a Single Case to a Single Judge

(a) In any case that the court or parties believe is likely to be complex, or where other reasons of efficiency or the interests of justice dictate, the chief judge of the district or the chief judge's designee may order that all pretrial and trial proceedings shall be heard before a single judge. The court may enter such an order at any time on its own initiative, in response to a suggestion in a party's informational statement filed under Rule 111, or on the motion of any party, and shall enter such an order when the requirements of Rule 113.01(b) have been met. The motion shall comply with these rules and shall be supported by affidavit(s). In any case assigned to a single judge pursuant to this Rule that judge shall actively use enhanced judicial management techniques, including, but not limited to, the setting of a firm trial date, establishment of a discovery cut off date, and periodic case conferences.

(b) Grounds. Unless the court finds that court management of the claims and/or issues involved has become routine or that the interests of justice require otherwise, the court shall order that all pretrial and trial proceedings shall be heard before a single judge upon a showing that the action is likely to involve one or more of the following:

(1) numerous pretrial motions raising difficult or novel legal issues that will be time consuming to resolve;

- (2) management of a large number of witnesses or substantial amount of documentary evidence;
- (3) management of a large number of separately represented parties;
- (4) the opportunity to coordinate with related actions pending in another court;
- (5) substantial post-judgment judicial supervision.

(Added effective July 1, 1994; amended effective March 1, 2001.)

113.02 Consolidation of Cases Within a Judicial District

A motion for assignment of two or more cases pending within a single judicial district to a single judge shall be made to the chief judge of the district in which the cases are pending, or the chief judge's designee.

(Added effective July 1, 1994; amended effective March 1, 2001.)

113.03 Consolidation of Cases in More Than One District

When two or more cases pending in more than one judicial district involve one or more common questions of fact or are otherwise related cases in which there is a special need for or desirability of central or coordinated judicial management, a motion by a party or a court's request for assignment of the cases to a single judge may be made to the chief justice of the supreme court. A copy of the motion shall be served on the chief judge of each district in which such an action is pending. When such a motion is made, the chief justice may, after consultation with the chief judges of the affected districts and the state court administrator, assign the cases to a judge in one of the districts in which any of the cases is pending or in any other district. If the motion is to be granted, in selecting a judge the chief justice may consider, among other things, the scope of the cases and their possible impact on judicial resources, the availability of adequate judicial resources in the affected districts, and the ability, interests, training and experience of the available judges. As necessary, the chief justice may assign an alternate or back-up judge or judges to assist in the management and disposition of the cases. The assigned judge may refer any case to the chief judge of the district in which the case was pending for trial before a judge of that district selected by the chief judge.

(Added effective July 1, 1994; amended effective March 1, 2001.)

Advisory Committee Comment—2000 Amendments

Rule 113.01 applies to assignment of a single case within a judicial district or county that does not already use a so-called block assignment system whereby cases are routinely assigned to the same judge for all pretrial and trial proceedings. Although parties can request a single-judge assignment in the informational statement under Rule 111, this rule contemplates a formal motion with facts presented supporting the request in the form of sworn testimony. The grounds for the motion in Rule 113.01(b) were derived from rules 1800-1811 of the California Special Rules for Trial Courts, Div. V, Complex Cases. If the court finds that management of the claims or issues has become routine, the matter would not rise to the level of requiring assignment to a single judge. A motion to certify a class, for example, might be routine in terms of court management. Once a class has been certified and the matter becomes a class action, however, the complexity may rise to the level that requires a single judge assignment. Under Rule 113.01(a), the motion is to be made to the chief judge (or his or her designee) of the district in which the case is pending.

Rule 113.02 recognizes that motions for consolidation of cases within a single judicial district may be heard by the chief judge of the district or his or her designee.

Rule 113.03 is new, and is intended merely to establish a formal procedure for requesting the chief justice to exercise the power to assign multiple cases in different districts to a single judge when the interests of justice dictate. The power to assign cases has been recognized by the supreme court in a few decisions over the past decade or so. See, e.g., In

re Minnesota Vitamin Antitrust Litigation, 606 N.W.2d 446 (Minn. 2000); *In re Minnesota Silicone Implant Litigation*, 503 N.W.2d 472 (Minn. 1993); *In re Minnesota L-tryptophan Litigation*, No. C0-91-706 (Minn. Sup. Ct., Apr. 24, 1991); *In re Minnesota Asbestos Litigation*, No. C4-87-2406 (Minn. Sup. Ct., Dec. 15, 1987). The power is derived from the inherent power of the court and specific statutory recognition of that power in Minnesota Statutes, sections 480.16 & 2.724 (1998). The rule is intended to establish a procedure for seeking consideration of transfer by the chief justice. The procedure contemplates notice to interested parties and consultation with the affected judges so that the sound administration of the cases is not compromised. Transfer of cases for coordinated pretrial proceedings is an established practice in the federal court system under 28 U.S.C. section 1407. Although this rule is not as complex as its federal counterpart, its purpose is largely the same - to facilitate the efficient and fair handling of multiple cases. Practice under the federal statute has worked well, and is one of the most important tools of complex case management in the federal courts. See generally DAVID F. HERR, *MULTIDISTRICT LITIGATION: HANDLING CASES BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION* (1986 & Supp. 1996). A companion change is made to MINN. R. CIV. P. 63.03, making it clear that when a judge is assigned by order of the chief justice pursuant to this rule that the judge so appointed may not be removed peremptorily under Rule 63 or the statutory restatement of the removal power contained in Minnesota Statutes, section 542.16 (1998).

(Added effective March 1, 2001.)

Rule 114. Alternative Dispute Resolution

NOTE: Rule 114 is added effective July 1, 1994, and shall supersede Second Judicial District Local Rules 5 and 25 and Fourth Judicial District Local Rule 5 to the extent inconsistent therewith.

[For text of Rule 114.01 to Rule 114.12, see M.S. 2000, Volume 15]

Rule 114.13 Training, Standards and Qualifications for Neutral Rosters

(a) Civil Facilitative/Hybrid Neutral Roster. All neutrals providing facilitative or hybrid services in civil, non-family matters, shall receive a minimum of 30 hours of classroom training, with an emphasis on experiential learning. The training must include the following topics:

(1) Conflict resolution and mediation theory, including causes of conflict and interest-based versus positional bargaining and models of conflict resolution;

(2) Mediation skills and techniques, including information gathering skills, communication skills, problem solving skills, interaction skills, conflict management skills, negotiation techniques, caucusing, cultural and gender issues and power balancing;

(3) Components in the mediation process, including an introduction to the mediation process, fact gathering, interest identification, option building, problem solving, agreement building, decision making, closure, drafting agreements, and evaluation of the mediation process;

(4) Mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, standards of practice and mediator introduction pursuant to the Civil Mediation Act, Minnesota Statutes, section 572.31.

(5) Rules, statutes and practices governing mediation in the trial court system, including these rules, Special Rules of Court, and applicable statutes, including the Civil Mediation Act.

The training outlined in this subdivision shall include a maximum of 15 hours of lectures and a minimum of 15 hours of role-playing.

(b) Civil Adjudicative/Evaluative Neutral Roster. All neutrals serving in adjudicative or evaluative processes or serving as a consensual special magistrate shall receive a minimum of 6 hours of classroom training on the following topics:

(1) Pre-hearing communications between parties and between parties and neutral; and

(2) Components of the hearing process including evidence; presentation of the case; witness, exhibits, and objectives; awards; and dismissals; and

(3) Settlement techniques; and

(4) Rules, statutes, and practices covering arbitration in the trial court system, including Supreme Court ADR rules, special rules of court and applicable state and federal statutes; and

(5) Management of presentations made during early neutral evaluation procedures and moderated settlement conferences.

(c) Family Law Facilitative Neutral Roster.

To qualify for the family law facilitative roster neutrals shall:

(1) Complete or teach a minimum of 40 hours of family mediation training which is certified by the Minnesota Supreme Court. The certified training shall include at least:

(a) four hours of conflict resolution theory;

(b) four hours of psychological issues relative to separation and divorce, and family dynamics;

(c) four hours of the issues and needs of children in divorce;

(d) six hours of family law including custody and visitation, support, asset distribution and evaluation, and taxation as it relates to divorce;

(e) five hours of family economics; and,

(f) two hours of ethics, including: (i) the role of mediators and parties' attorneys in the facilitative process; (ii) the prohibition against mediators dispensing legal advice; and, (iii) a party's right of termination.

Certified training for mediation of custody issues only need not include five hours of family economics. The certified training shall consist of at least forty percent roleplay and simulations.

(2) Complete or teach a minimum of 6 hours of certified training in domestic abuse issues, which may be a part of the 40-hour training above, to include at least:

(a) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;

(b) 3 hours of domestic abuse screening, including simulation or roleplay; and,

(c) 1 hour of legal issues relative to domestic abuse cases; and

(3) Certify on the roster application that they have not had a professional license revoked, been refused membership or practice rights in a profession, or been involuntarily banned, dropped or expelled from any profession.

(d) Family Law Adjudicative Neutral Roster.

To qualify for the family law adjudicative roster neutrals shall have at least five years of professional experience in the area of family law and be recognized as qualified practitioners in their field. Recognition may be demonstrated by submitting proof of professional licensure, professional certification, faculty membership of approved continuing education courses for family law, service as court-appointed adjudicative neutral, including consensual special magistrates, service as referees or guardians ad litem, or acceptance by peers as experts in their field. All neutrals applying to the adjudicative neutral roster shall also complete or teach a minimum of 6 hours of certified training on the following topics:

(1) Pre-hearing communications among parties and between the parties and neutral(s);

(2) Components of the family court hearing process including evidence, presentation of the case, witnesses, exhibits, awards, dismissals, and vacation of awards;

(3) Settlement techniques; and,

(4) Rules, statutes, and practices pertaining to arbitration in the trial court system, including Minnesota Supreme Court ADR rules, special rules of court and applicable state and federal statutes.

In addition to the 6-hour training required above, all neutrals applying to the adjudicative neutral roster shall complete or teach a minimum of 6 hours of certified training in domestic abuse issues, to include at least:

- (1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;
- (2) 3 hours of domestic abuse screening, including simulation or roleplay; and,
- (3) 1 hour of legal issues relative to domestic abuse cases.

(e) **Family Law Evaluative Neutrals.** All neutrals offering early neutral evaluations or non-binding advisory opinions shall have at least five years of experience as family law attorneys, as accountants dealing with divorce-related matters, as custody and visitation psychologists, or as other professionals working in the area of family law who are recognized as qualified practitioners in their field, and shall complete or teach a minimum of 2 hours of certified training on management of presentations made during evaluative processes. Evaluative neutrals shall have knowledge on all issues in which they render opinions.

In addition to the 2-hour training required above, all neutrals applying to the family law evaluative neutral roster shall complete or teach a minimum of 6 hours of certified training in domestic abuse issues, to include at least:

- (1) 2 hours about domestic abuse in general, including definition of battery and types of power imbalance;
- (2) 3 hours of domestic abuse screening, including simulation or roleplay; and,
- (3) 1 hour of legal issues relative to domestic abuse cases.

(f) **Exceptions to Roster Requirements.** Neutral fact-finders selected by the parties for their expertise need not undergo training nor be included on the State Court Administrator's roster.

(g) **Continuing Training.** All neutrals providing facilitative or hybrid services must attend eighteen hours of continuing education about alternative dispute resolution subjects within the three-year period in which the neutral is required to complete the continuing education requirements. All other neutrals must attend nine hours of continuing education about alternative dispute resolution subjects during the three-year period in which the neutral is required to complete the continuing education requirements. These hours may be attained through course work and attendance at state and national ADR conferences. The neutral is responsible for maintaining attendance records and shall disclose the information to program administrators and the parties to any dispute. The neutral shall submit continuing education credit information to the State Court Administrator's office within sixty days after the close of the period during which his or her education requirements must be completed.

(h) **Certification of Training Programs.** The State Court Administrator shall certify training programs which meet the training criteria of this rule.

(Added effective July 1, 1994; amended and renumbered effective July 1, 1997; amended effective March 1, 2001.)

Advisory Committee Comment—2000 Amendments

The provisions for training and certification of training are expanded in these amendments to provide for the specialized training necessary for ADR neutrals. The committee recommends that six hours of domestic abuse training be required for all family law neutrals, other than those selected solely for technical expertise. The committee believes this is a reasonable requirement and one that should significantly facilitate the fair and appropriate consideration of the concerns of all parties in family law proceedings.

Rule 114.13(g) is amended in 2000 to replace the current annual training requirement with a three-year reporting cycle. The existing requirements are simply tripled in size, but

need only be accumulated over a three-year period. The rule is designed to require reporting of training for ADR on the same schedule required for CLE for neutrals who are lawyers. See generally Rule 3 of Rules of the Supreme Court for Continuing Legal Education of Members of the Bar and Rule 106 of Rules of the Board of Continuing Legal Education. Non-lawyer neutrals should be placed by the ADR Board on a similar three-year reporting schedule.

(Added effective July 1, 1997; amended effective March 1, 2001.)

[For text of Rule 114.14 and Code of Ethics, see M.S. 2000, Volume 15]

RULE 114 APPENDIX

CODE OF ETHICS ENFORCEMENT PROCEDURE

Effective August 31, 2000

INTRODUCTION

Inclusion on the list of qualified neutrals pursuant to Minnesota General Rules of Practice 114.12 is a conditional privilege, revocable for cause.

Revisor's Note: Minnesota Supreme Court Order CX-89-1863, dated August 31, 2000, adopting the Rule 114 Code of Ethics Enforcement Procedure provides in part that "The inclusion of advisory comments by the board is made for convenience and does not reflect court approval of the comments made therein."

I. Scope

This procedure applies to complaints against any individual or organization (neutral) placed on the roster of qualified neutrals pursuant to Rule 114.12 or serving as a court appointed neutral pursuant to 114.05(b) of the Minnesota General Rules of Practice.

Advisory Comment

A qualified neutral is subject to this complaint procedure when providing any ADR services. The complaint procedure applies whether the services are court ordered or not, and whether the services are or are not pursuant to Minnesota General Rules of Practice. The Board will consider the full context of the alleged misconduct, including whether the neutral was subject to other applicable codes of ethics, or representing a "qualified organization" at the time of the alleged misconduct.

Minn. Gen. R. Prac. 114.02(b): "Neutral. A 'neutral' is an individual or organization that provides an ADR process. A 'qualified neutral' is an individual or organization included on the State Court Administrator's roster as provided in Rule 114.12. An individual neutral must have completed the training and continuing education requirements provided in Rule 114.13. An individual neutral provided by an organization also must meet the training and continuing education requirements of Rule 114.13. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be on the State Court Administrator's roster."

II. Procedure

A. A complaint must be in writing, signed by the complainant, and mailed or delivered to the ADR Review Board at 25 Constitution Avenue, Suite 140, St. Paul, MN 55155-1500. The complaint shall identify the neutral and make a short and plain statement of the conduct forming the basis of the complaint.

B. The Board shall review the complaint to determine whether the allegations(s), if true, constitute a violation of the Code of Ethics.

C. If the allegations(s) of the complaint do not constitute a violation of the Code of Ethics, the complaint shall be dismissed and the complainant and the neutral shall be notified in writing.

D. If the Board concludes that the allegations of the complaint, if true, constitute a violation of the Code of Ethics, the Board will undertake such review, investigation, and action it deems appropriate. In all such cases, the Board shall send to the neutral, by certified mail, a copy of the complaint, a list identifying the ethical rules which may have been violated, and a request for a written response to the allegations and to any specific questions posed by the Board. It shall not be considered a violation of Rule 114.08(e) of the Minnesota General Rules of Practice or of Rule IV of the Code of Ethics, Rule 114 Appendix, for the neutral to disclose notes, records, or recollections of the ADR process complained of as part of the complaint procedure. Except for good cause shown, if the neutral fails to respond to the complaint in writing within thirty (30) days, the allegations(s) shall be deemed admitted.

E. The Board, at its discretion, may refer the complainant and neutral to mediation conducted by a volunteer qualified neutral to resolve the issues raised by the complainant. Mediation shall proceed only if both the complainant and neutral consent. If the complaint is resolved through mediation, the Board shall dismiss the complaint, unless the resolution includes sanctions to be imposed by the Board. If no agreement is reached in mediation, the Board shall determine whether to proceed further.

F. After review and investigation, the Board shall advise the complainant and neutral in writing of the Board's proposed action on the complaint. Upon request, the neutral shall be entitled to a hearing before a three-member panel of the Board to contest proposed sanctions or findings. The neutral shall have the right to defend against all charges, to be represented by an attorney, and to examine and cross-examine witnesses. The Board shall receive evidence that the Board deems necessary to understand and determine the dispute. Relevancy shall be liberally construed in favor of admission. The Board shall make an electronic recording of the proceedings. The Board at its own initiative, or by request of the neutral, may issue subpoenas for the attendance of witnesses and the production of documents and other evidentiary matter.

G. The neutral or the complainant may appeal the panel decision to the Board, which shall conduct a de novo review of the existing record. An appeal must be filed forty-five (45) days from the date of decision. The party that appeals shall pay for the record to be transcribed. The decision of the Board shall be final.

Advisory Comment

A complaint form is available from the ADR Review Board by calling 651-297-7590 or emailing adr@courts.state.mn.us.

The Board, at its discretion, may establish a complaint review panel comprised of members of the Board. Staff under the Board's direction and control may also conduct investigations.

III. Sanctions

A. The Board may impose sanctions, including but not limited to:

- (1) Issue a private reprimand.
- (2) Designate the corrective action necessary for the neutral to remain on the roster:
- (3) Notify the appointing court and any professional licensing authority with which the neutral is affiliated of the complaint and its disposition.
- (4) Publish the neutral's name, a summary of the violation, and any sanctions imposed.
- (5) Remove the neutral from the roster of qualified neutrals, and set conditions for reinstatement.

B. Sanctions shall only be imposed if supported by clear and convincing evidence.

C. Sanctions against an organization may be imposed for its ethical violation and its member's violation if the member is acting within the rules and directives of the organization.

IV. Confidentiality

A. Unless and until sanctions are imposed, all files, records, and proceedings of the Board that relate to or arise out of any complaint shall be confidential, except:

- (1) As between Board members and staff;
- (2) Upon request of the neutral, the file maintained by the Board, excluding its work product, shall be provided to the neutral;
- (3) As otherwise required or permitted by rule or statute; and
- (4) To the extent that the neutral waives confidentiality.

B. If sanctions are imposed against any neutral pursuant to Section III A (2) - (5), the sanction shall be of public record, and the Board file shall remain confidential.

C. Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Board or staff.

V. Privilege; immunity

A. **Privilege.** A statement made in these proceedings is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the statement.

B. **Immunity.** Board members and staff shall be immune from suit for any conduct in the course of their official duties.

[For text of Part C. to Part E., see M.S. 2000, Volume 15]

PART F - SPECIAL PROCEDURES

[For text of Rule 135. to Rule 144., see M.S. 2000, Volume 15]

Rule 145. Actions on Behalf of Minors and Incompetent Persons

[For text of Rule 145.01 to Rule 145.05, see M.S. 2000, Volume 15]

Rule 145.06 Structured Settlements.

If the settlement involves the purchase of an annuity or other form of structured settlement, the court shall:

- (a) Determine the cost of the annuity or structured settlement to the tortfeasor by examining the proposal of the annuity company or other generating entity;
- (b) Require that the company issuing the annuity or structured settlement:
 - (1) Be licensed to do business in Minnesota;
 - (2) Have a financial rating equivalent to A. M. Best Co. A+, Class VIII or better; and
 - (3) Has complied with the applicable provisions of Minnesota Statutes, sections 549.30 to 549.34;

or that a trust making periodic payments be funded by United States Government obligations;

(c) Order that the original annuity policy be deposited with the court administrator, without affecting ownership, and the policy be returned to the owner of the policy when:

- (1) The minor reaches majority;
- (2) The terms of the policy have been fully performed; or
- (3) The minor dies, whichever occurs first.

(d) In its discretion, permit a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code;

(e) In its discretion, order the tortfeasor or its insurer, or both of them, to guarantee the payments contracted for in the annuity or other form of structured settlement; and

(f) Provide that:

(1) The person receiving periodic payments is entitled to each periodic payment only when the payment becomes due;

(2) That the person shall have no rights to the funding source; and

(3) That the person cannot designate the owner of the annuity nor have any right to control or designate the method of investment of the funding medium; and

(g) Direct that the appropriate party or parties will be entitled to receive appropriate receipts, releases or a satisfaction of judgment, pursuant to the agreement of the parties.

(Amended effective January 1, 1993; amended effective January 1, 1996; amended effective March 1, 2001.)

Cross Reference: Minn. R. Civ. P. 17.

[For text of Rule 145.07, see M.S. 2000, Volume 15]

Advisory Committee Comments—2000 Amendments

This rule is derived from Minnesota Statutes, section 540.08 (1990) and Rule 3 of the Code of Rules for the District Courts.

The Task Force considered it a thoughtful recommendation that a minor's social security number be required to be included on all minor settlement petitions. Such a requirement would make it easier to locate a minor at the time of reaching majority. The Task Force ultimately concluded, however, the privacy interests dictate that the inclusion of this number should not be mandatory. The information may nonetheless be required by the financial institution with which the funds are deposited, and many lawyers will routinely include it in petitions in order to facilitate locating the minor should the need arise.

The 1994 amendment of Rule 145.02(c) allows the filing of medical records in lieu of a full report of each health care provider where those records provide the information necessary to evaluate the settlement. This may be especially appropriate where the injuries are not severe, or where the cost of obtaining reports would represent a substantial portion of the settlement proceeds. The court can, in any case, require any further information or reports deemed necessary to permit the court to discharge its duty to evaluate the overall fairness of the settlement to the minor.

Rule 145.02(d) is new. It is designed to advise the court of factors to take into consideration when approving or disapproving a settlement on behalf of the minor or incompetent person. Rule 145.02(e) is added in 1992 to provide the court in the petition the information necessary for the court to make the determination required by Rule 145.06(a). Although the parties are the obvious source of the cost information necessary to make the cost determination, the rule explicitly requires the petition to include this information. This information must be disclosed by the parties, and not only the party filing the petition, as often the tortfeasor will have the only accurate information on this subject.

Rule 145.03 is new. It addresses a situation where a tortfeasor or insurer has negotiated a settlement with a minor's family or guardian, and court approval of that settlement is necessary. Oftentimes the plaintiff does not wish to incur attorney's fees to obtain that approval, so as a part of the settlement, the tortfeasor or the insurer makes the arrangements to draft and present the petition. The court needs to be satisfied that the settlement is fair. The Task Force discussed at length whether or not a lawyer hired and paid by an insurer or tortfeasor should be permitted to represent the minor or incompetent person to obtain the approval of the court. It was decided that the petitioner should not be compelled to obtain counsel, and that "arranged counsel" may appear, provided that there is full disclosure to the petitioner of the interests of the insurer or tortfeasor.

Rule 145.03(b) is new and is designed to provide a procedure for the court to obtain advice to evaluate the reasonableness of a settlement. The court may appoint a lawyer selected by the petitioner or the court may designate a lawyer of its own choice. In either case, where a referral is made under this section, the lawyer accepting the referral may not represent the petitioner to pursue the claim, should the petition be denied by the court. Rule 145.03(d) provides that the cost of the consultation provided for in Rule 145.03(b) shall be born equally by the petitioner and the tortfeasor or insurer.

Finally, Rule 145.03(d) provides that any opinions rendered by a selected lawyer on behalf of the minor or incompetent person are advisory only.

Rule 145.05(d) expands the types of investments that may be used in managing the settlement proceeds while retaining the requirements of security of investment. It incorporates Minnesota Statutes, section 540.08 (1990) regarding structured settlements, and it allows that settlements may include a medical assurance agreement. A medical assurance agreement is a contract whereby future medical expenses of an undetermined amount will be paid by a designated person or entity.

Rule 145.05(e)(5) requires that funds placed in certificates of deposit or other deposits with fixed maturities have those maturities adjusted so they do not mature after the age of majority. This rule places the burden on the financial institution by the notice to be included in the order for deposit.

Rule 145.06 is new. It establishes criteria for approval of structured settlements, and it requires the court to determine the cost of the annuity to insure that the periodic payments reflect a cost comparable to a reasonable settlement amount. Where a minor or incompetent receives a verdict representing future damages greater than \$100,000 and the guardian determines that a structured settlement pursuant to Minnesota Statutes, section 549.25 (1990) would be in the best interests of the minor or incompetent person, this rule shall apply to the implementation of the election pursuant to the statute. The amendment of the rule in 1995 (effective January 1, 1996) is intended to make it clear that it is important that the original annuity policy be retained by the court administrator, and that this is for the purpose of security, not establishing any ownership interest which might affect the tax treatment of the settlement.

Rule 145.06(b) is modified by amendment in 2000. The amendment is intended to require the court approving a minor settlement that includes a structured settlement provision to verify that the annuity issuer is licensed to do business and that Minnesota Statutes, sections 549.30-.34 (1998) is followed. The amendment is not intended to impose any additional substantive requirements, as compliance with statutes is assumed under the current rule. The rule will require the trial court to verify the fact of compliance, however, and will probably require submitting this information to the court.

(Amended effective January 1, 1993; amended effective January 1, 1994; amended effective January 1, 1996; amended effective March 1, 2001.)

[For text of Parts G., H., and Title III., see M.S. 2000, Volume 15]

TITLE IV - RULES OF FAMILY COURT PROCEDURE

Rule 301. Applicability of Rules

Rules 301 through 313 apply to all proceedings in Family Court. These rules and, where applicable, the Minnesota Rules of Civil Procedure shall apply to family law practice except where they are in conflict with applicable statutes.

(Amended effective March 1, 2001.)

[For text of Rule 302. to Rule 312., see M.S. 2000, Volume 15]

Rule 313. Confidential Numbers and Tax Returns

Rule 313.01 Social Security Number.

Whenever an individual's social security number is required on any pleading or other paper that is to be filed with the court, the social security number shall be

submitted on a separate form entitled Confidential Information Form (see Form 11 appended to these rules) and shall not otherwise appear on the pleading or other paper. As an alternative, the filing party may prepare and file an original and one copy of the pleading or other paper if all social security numbers are completely removed or obliterated from the copy.

(Added effective March 1, 2001.)

Rule 313.02 Tax Returns.

Copies of tax returns required to be filed with the court shall be submitted in a separate envelope marked "CONFIDENTIAL TAX RETURN OF for YEAR(S)"

(Added effective March 1, 2001.)

Rule 313.03 Failure to Comply.

A party who fails to comply with the requirements of this rule may be deemed to have waived their right to privacy in their social security number or tax return filed with the court and the court may impose appropriate sanctions, including costs necessary to prepare an appropriate redacted copy, for a party's failure to comply with this rule in regard to another individual's social security number or tax return.

(Added effective March 1, 2001.)

Advisory Committee Comment—2000 Amendments

Rule 313 is new in 2000 and is designed to facilitate confidential treatment of social security numbers and tax returns in family court proceedings. Confidentiality is required under both state and federal law. See Minnesota Statutes, section 518.146 (1999 Supplement); 2000 Minnesota Laws, chapter 403 (codified as Minnesota Statutes, section 518.5513, subdivision 3); 42 U.S.C., section 666(a)(13), (c)(2)(A); 42 U.S.C., section 405(c)(2)(C)(vii). This rule relieves court administration staff from the daunting task of assuring that social security numbers and tax returns are not inadvertently disclosed and places the primary responsibility for maintaining privacy with the persons submitting the information to the court.

State law also requires the social security number to be included in each child support order. See, e.g., Minnesota Statutes, sections 256.87, subdivision 1a; 257.66; 518.171, subdivision 1(a)(2); 518.5853, subdivision 5 (1998; 1999 Supp.). This rule contemplates that inclusion of social security numbers may appropriately be accomplished by relegating social security numbers to a separate page that is referenced in the order.

(Added effective March 1, 2001.)

EXPEDITED CHILD SUPPORT PROCESS RULES

Effective July 1, 2001

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., section 256.741 (2000), or (2) applied for child support services under Title IV-D of the Social Security Act, 42 U.S.C., section 654(4) (1994). “IV-D case” does not include proceedings where income withholding is the only service applied for or received under Minn. Stat., section 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., chapter 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. section 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., section 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., section 373.052 (2000). Thus, if a county closes its offices under Minn. Stat., 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 354.03. See *Mittelstadt v. Breider*, 286 Minn. 211, 212, 175 N.W.2d 191, 192 (1970) (applying Minn. Stat., 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 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., section 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., section 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 acknowledgment 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., section 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, section 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, section 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., section 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., sections 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., section 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., section 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., sections 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., section 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., section 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., section 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. section 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., section 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., section 484.72, subds. 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, section 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., section 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., section 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., section 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 acknowledgment 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., section 518.5513, subd. 3(a) (2000), if known; and
- (c) be signed and sworn to under oath.

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.

Advisory Committee Comment

Pursuant to Minn. Stat., section 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 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

- (c) 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;
- (f) 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., section 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., section 518.5513, subd. 3(a), if known; and
- (c) be signed and sworn to under oath.

Advisory Committee Comment

Pursuant to Minn. Stat., section 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., section 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., section 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, section 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., section 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., section 518.5513, subd. 3(a), if known; and
- (c) be signed and sworn to under oath.

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.

Advisory Committee Comment

Pursuant to Minn. Stat., section 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 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., section 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., section 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 acknowledgment 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 acknowledgment 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 acknowledgment 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

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. Acknowledgment

Subdivision 1. Generally. Each complaint or motion served and filed in the expedited process shall set forth an acknowledgment 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.

APPENDIX OF FORMS

[For text of Form 1. and Form 2., see M.S. 2000, Volume 15]

FORM 3

APPENDIX A

NOTICE IS HEREBY GIVEN TO THE PARTIES:

I. PAYMENTS TO PUBLIC AGENCY. ACCORDING TO MINNESOTA STATUTES, SECTION 518.551, SUBDIVISION 1, PAYMENTS ORDERED FOR MAINTENANCE AND SUPPORT MUST BE PAID TO THE MINNESOTA CHILD SUPPORT PAYMENT CENTER AS LONG AS THE PERSON ENTITLED TO RECEIVE THE PAYMENTS IS RECEIVING OR HAS APPLIED FOR PUBLIC ASSISTANCE OR HAS APPLIED FOR SUPPORT AND MAINTENANCE COLLECTION SERVICES. Parents mail payments to: P.O. Box 64326, St. Paul, MN 55164-0326. Employers mail payments to: P.O. Box 64306, St. Paul, MN 55164.

II. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS - A FELONY. A PERSON MAY BE CHARGED WITH A FELONY WHO CONCEALS A MINOR CHILD OR TAKES, OBTAINS, RETAINS, OR FAILS TO RETURN A MINOR CHILD FROM OR TO THE CHILD'S PARENT (OR PERSON WITH CUSTODIAL OR PARENTING TIME RIGHTS), ACCORDING TO MINNESOTA STATUTES, SECTION 609.26. A COPY OF THAT SECTION IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

III. NONSUPPORT OF A SPOUSE OR CHILD - CRIMINAL PENALTIES. A person who fails to pay court-ordered child support or maintenance may be charged with a crime, which may include misdemeanor, gross misdemeanor, or felony charges, according to Minnesota Statutes, section 609.375. A copy of that section is available from any district court clerk.

IV. RULES OF SUPPORT, MAINTENANCE, PARENTING TIME.

A. Payment of support or spousal maintenance is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

B. Payment of support must be made as it becomes due, and failure to secure or denial of parenting time is NOT an excuse for nonpayment, but the aggrieved party must seek relief through a proper motion filed with the court.

C. Nonpayment of support is not grounds to deny parenting time. The party entitled to receive support may apply for support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.

D. The payment of support or spousal maintenance takes priority over payment of debts and other obligations.

E. A party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding.

F. Child support or maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made throughout the year as ordered.

G. If the obligor is laid off from employment or receives a pay reduction, support may be reduced, but only if a motion to reduce the support is served and filed with the court. Any reduction will take effect only if ordered by the court and may only relate back to the time that the motion is filed. If a motion is not filed, the support obligation will continue at the current level. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2, paragraph (d).

H. A *Parental Guide to Making Child-Focused Visitation Decisions* is available from any court administrator.

I. The nonpayment of support may be enforced through the denial of student grants; interception of state and federal tax refunds; suspension of driver's, recreational, and occupational licenses; referral to the department of revenue or private collection agencies; seizure of assets, including bank accounts and other assets held by financial institutions; reporting to credit bureaus; interest charging, income withholding, and contempt proceedings; and other enforcement methods allowed by law.

V. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3. UNLESS OTHERWISE PROVIDED BY THE COURT:

A. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.

B. Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party.

C. In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment.

D. Each party has the right of reasonable access and telephone contact with the minor children.

VI. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE. CHILD SUPPORT AND/OR SPOUSAL MAINTENANCE MAY BE WITHHELD FROM INCOME, WITH OR WITHOUT NOTICE TO THE PERSON OBLIGATED TO PAY, WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 518.6111, HAVE BEEN MET. A COPY OF THAT SECTION IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

VII. CHANGE OF ADDRESS OR RESIDENCE. UNLESS OTHERWISE ORDERED, EACH PARTY SHALL NOTIFY THE OTHER PARTY, THE COURT, AND THE PUBLIC AUTHORITY RESPONSIBLE FOR COLLECTION, IF APPLICABLE, OF THE FOLLOWING INFORMATION WITHIN TEN DAYS OF ANY CHANGE: RESIDENTIAL AND MAILING ADDRESS, TELEPHONE NUMBER, DRIVER'S LICENSE NUMBER, SOCIAL SECURITY NUMBER, AND NAME, ADDRESS, AND TELEPHONE NUMBER OF THE EMPLOYER.

VIII. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE. CHILD SUPPORT AND/OR SPOUSAL MAINTENANCE MAY BE ADJUSTED EVERY TWO YEARS BASED UPON A CHANGE IN THE COST OF LIVING (USING THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX MPLS. ST. PAUL, FOR ALL URBAN CONSUMERS (CPI-U), UNLESS OTHERWISE SPECIFIED IN THIS ORDER) WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 518.641, ARE MET. COST OF LIVING INCREASES ARE COMPOUNDED. A COPY OF MINNESOTA STATUTES, SECTION 518.641, AND FORMS NECESSARY TO REQUEST OR CONTEST A COST OF LIVING INCREASE ARE AVAILABLE FROM ANY COURT ADMINISTRATOR.

IX. JUDGMENTS FOR UNPAID SUPPORT; INTEREST. ACCORDING TO MINNESOTA STATUTES, SECTION 548.091:

A. If a person fails to make a child support payment, the payment owed becomes a judgment against the person responsible to make the payment by operation of law on or after the date the payment is due, and the person entitled to receive the payment or

the public agency may obtain entry and docketing of the judgement without notice to the person responsible to make the payment.

B. Interest begins accruing on a payment or installment of child support whenever the unpaid amount due is greater than the current support due.

X. JUDGMENTS FOR UNPAID MAINTENANCE. A JUDGMENT FOR UNPAID SPOUSAL MAINTENANCE MAY BE ENTERED AND DOCKETED WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 548.091, ARE MET. A COPY OF THAT SECTION IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

XI. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT. A JUDGMENT FOR ATTORNEY FEES AND OTHER COLLECTION COSTS INCURRED IN ENFORCING A CHILD SUPPORT ORDER WILL BE ENTERED AGAINST THE PERSON RESPONSIBLE TO PAY SUPPORT WHEN THE CONDITIONS OF MINNESOTA STATUTES, SECTION 518.14, SUBDIVISION 2, ARE MET. A COPY OF THAT SECTION AND FORMS NECESSARY TO REQUEST OR CONTEST THESE ATTORNEY FEES AND COLLECTION COSTS ARE AVAILABLE FROM ANY COURT ADMINISTRATOR.

XII. PARENTING TIME EXPEDITER PROCESS. ON REQUEST OF EITHER PARTY OR ON ITS OWN MOTION, THE COURT MAY APPOINT A PARENTING TIME EXPEDITER TO RESOLVE PARENTING TIME DISPUTES UNDER MINNESOTA STATUTES, SECTION 518.1751. A COPY OF THAT SECTION AND A DESCRIPTION OF THE EXPEDITOR PROCESS IS AVAILABLE FROM ANY COURT ADMINISTRATOR.

XIII. PARENTING TIME REMEDIES AND PENALTIES. REMEDIES AND PENALTIES FOR WRONGFUL DENIAL OF PARENTING TIME ARE AVAILABLE UNDER MINNESOTA STATUTES, SECTION 518.175, SUBDIVISION 6. THESE INCLUDE COMPENSATORY PARENTING TIME; CIVIL PENALTIES; BOND REQUIREMENTS; CONTEMPT; AND REVERSAL OF CUSTODY. A COPY OF THAT SUBDIVISION AND FORMS FOR REQUESTING RELIEF ARE AVAILABLE FROM ANY COURT ADMINISTRATOR.

(Amended effective August 1, 1993; amended effective January 1, 1994; amended effective July 1, 1994; amended effective August 1, 1996; amended effective July 2, 1997; amended effective August 5, 1997; amended effective August 6, 1999; amended effective September 8, 2000; amended effective December 28, 2000; amended effective August 8, 2001.)

[For text of Form 4A. to Form 10., see M.S. 2000, Volume 15]

FORM 11. CONFIDENTIAL INFORMATION FORM

(Gen. R. Prac. 313.01)

State of Minnesota

District Court

County

Judicial District

Case Type:

Case No. _____

Plaintiff/Petitioner

and

CONFIDENTIAL INFORMATION FORM
 (Provided Pursuant to Rule
 313.01 of the Minnesota
 General Rules of Practice)

Defendant/Respondent

NAME

SOCIAL SECURITY NUMBER

Plaintiff/
Petitioner
 1. _____
 2. _____
 3. _____

Defendant/
Respondent
 1. _____
 2. _____
 3. _____

Other Party
(e.g., minor
children)
 1. _____
 2. _____

Information supplied
by: _____
 (print or type name of party submitting
 this form to the court)

Signed: _____

Attorney Reg. #: _____

Firm: _____

Address: _____

Date: _____

(Added effective March 1, 2001.)

*[For text of Title V., see M.S. 2000, Volume 15]***TITLE VI—CONCILIATION COURT RULES***[For text of Rule 501. to Rule 520., see M.S. 2000, Volume 15]***Rule 521. Removal (Appeal) to District Court**

(a) **Trial de novo.** Any person aggrieved by an order for judgment entered in conciliation court after contested trial may remove the cause to district court for trial de novo (new trial). An "aggrieved person" may be either the judgment debtor or creditor.

(b) **Removal Procedure.** To effect removal, the aggrieved party must perform all the following within twenty days after the date the court administrator mailed to that party notice of the judgment order:

(1) Serve on the opposing party or the opposing party's lawyer a demand for removal of the cause to district court for trial de novo. Service shall be by first class mail. Service may also be by personal service in accordance with the provisions for personal service of a summons in district court. The demand for removal shall state whether trial demanded is to be by court or jury, and shall indicate the name, address, and telephone number of the aggrieved party's lawyer, if any. If the aggrieved party is a corporation, the demand for removal must be signed by the party's attorney.

(2) File with the court administrator the original demand for removal with proof of service. The aggrieved party may file with the court administrator within the twenty day period the original and copy of the demand together with an affidavit by the party or the party's lawyer showing that after due and diligent search the opposing party or opposing party's lawyer cannot be located. This affidavit shall serve in lieu of making service and filing proof of service. When an affidavit is filed, the court administrator shall mail the copy of the demand to the opposing party at the party's last known residence address.

(3) File with the court administrator an affidavit by the aggrieved party or that party's lawyer stating that the removal is made in good faith and not for purposes of delay.

(4) Pay to the court administrator as the fee for removal the amount prescribed by law for filing a civil action in district court, and if a jury trial is demanded under Rule 521(b)(1) of these rules, pay to the court administrator the amount prescribed by law for requesting a jury trial in a civil action in district court. A party who is unable to pay the fees may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes, section 563.01.

(c) **Demand for Jury Trial.** Where no jury trial is demanded on removal under Rule 521(b) by the aggrieved party, if the opposing party desires a jury trial that party shall perform all the following within 20 days after the demand for removal was served on the party or lawyer:

(1) Serve a jury trial demand by first class mail upon the aggrieved party or that party's lawyer. Service may also be by personal service in accordance with the provisions for personal service of a summons in district court.

(2) File the original jury trial demand and proof of service with the court administrator.

(3) Pay to the court administrator the amount prescribed by law for requesting a jury trial in a civil action in district court and, if the demand is the first paper filed by the party in the district court proceeding, pay to the administrator the amount prescribed by law for filing a civil action in district court. A party who is unable to pay the fees may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes, section 563.01.

(d) **Removal Perfected; Vacating Judgment; Transmitting File.** When all removal papers have been filed properly and all requisite fees paid as provided under Rule 521(b), the removal is perfected, and the court shall issue an order vacating the order for judgment in conciliation court, and the whole contents of the conciliation court file of the cause shall be filed in district court.

(e) **Limited Removal.**

(1) When a motion for vacation of an order for judgment, or judgment under Rule 520 (a) or (b) of these rules, is denied, the aggrieved party may demand limited removal to the district court for hearing de novo (new hearing) on the motion. Procedure for service and filing of the demand for limited removal and notice of hearing de novo, proof of service of the notice, and procedure in case of inability of the aggrieved party to make service on the opposing party or the opposing party's lawyer shall be in the same manner prescribed in part (b) of this rule, except that the deadline

for effecting limited removal shall be twenty days after the date that the court administrator mails notice of the denial of the motion for vacation of the order for judgment or judgment. The fee payable by the aggrieved party to the court administrator for limited removal shall be the same as the filing fee prescribed by law for filing of a civil action in district court. The court administrator shall then place the matter on the special term calendar for the date specified in the notice. At the hearing in district court, either party may be represented by a lawyer.

(2) A judge other than the conciliation court judge who denied the motion, shall hear the motion de novo (anew) and may (A) deny the motion or (B) grant the motion. In determining the motion the judge shall consider the entire file plus any affidavits submitted by either party or their lawyers.

(3) The court administrator shall send by mail a copy of the order made in district court after de novo hearing to both parties and the venue shall be transferred back to conciliation court.

(Amended effective January 1, 1998; amended effective March 1, 2001.)

Cross Reference: Minn. R. Civ. P. 4.02, 4.06, 5.02, 6.01, 6.02, and 6.05.

Advisory Committee Comment—2000 Amendments

Rule 521(e)(1), as amended in 1997, allows limited removal to district court from a denial of a motion to vacate the order for judgment or judgment made pursuant to Rule 520(a) or (b). To obtain limited removal under Rule 521(e)(1), a party must follow the same procedural steps for obtaining removal under Rule 521(b), except that the event that triggers the twenty-day time period for effecting removal is the date that the court administrator mails the notice of denial of the motion to vacate the order for judgment or judgment. The law requires that an additional three days be added to the time period when notice is served by mail. Wilkins v. City of Glencoe, 479 N.W.2d 430 (Minn. App. 1992).

Under Rule 521(b)(1) as amended in 2000, if the party seeking to remove (appeal) the case to district court is a corporation, the demand for removal must be signed by an attorney authorized to practice law in the district court. This requirement simply restates a requirement recognized by court decision. See World Championship Fighting, Inc. v. Janos, 609 N.W.2d 263 (Minn. App. 2000); rev. denied (Minn. July 25, 2000). A corporation must be represented by a licensed attorney in district court regardless of the fact that the action originated in conciliation court. See Nicolle Restoration, Inc. v. Turnham, 486 N.W.2d 753 (Minn. 1992).

(Amended effective March 1, 2001.)

[For text of Rule 522. to Rule 525., Appendix of Forms, and Title VII. to Title X., see M.S. 2000, Volume 15]