

STATE OF MINNESOTA

IN SUPREME COURT

C9-85-1134

PETITION FOR FORMATION OF
SUPREME COURT COMMITTEE
FOR ENACTMENT OF
UNIFORM RULES OF PROCEDURE
FOR FAMILY COURT DISSOLUTION MATTERS
IN THE STATE OF MINNESOTA

OFFICE OF
APPELLATE COURTS
FILED

JUN 12 1985

WAYNE TSCHIMPERLE
CLERK

Mary Catherine Lauhead
Chair, Uniform Rules Committee
of the Family Law Section of the
Minnesota State Bar Association
Attorney I.D.# 61086
3985 Clover Avenue
Saint Paul, Minnesota 55110
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I

Petitioner brings this petition for the formation of a Supreme Court Committee for the enactment of the Uniform Rules of Procedure for Family Court in Dissolution of Marriage Matters in the State of Minnesota for and on behalf of the Family Law Section of the Minnesota State Bar Association. Said Petition is further brought in Petitioner's capacity of the Chair of the Uniform Rules Committee of the Family Law Section of the MSBA.

II

By formal resolution, the Family Law Section of the Minnesota State Bar Association approved the adoption of the Uniform Rules submitted for consideration by the Committee at the monthly meeting of October 20, 1984. Said Rules are appended hereto as Exhibit I and fully incorporated herein by reference.

III

By formal resolution, the Minnesota County Judges Association approved the Uniform Rules submitted for consideration by the Committee through its representative, the Honorable Eugene L. Kubes, Referee of Ramsey County Family Court Division, at its meeting in December, 1984.

IV

Upon information and belief, Petitioner would further assert that said Uniform Rules have been adopted, albeit on an informal basis, by the Family Courts of Ramsey and Hennepin Counties, both of which Family Court Divisions are part of District Court. Petitioner understands that the approval and

endorsement of said Uniform Rules occurred by action taken by the Family Court Judges. Said Rules were approved in Ramsey County in approximately February of 1985 and in Hennepin County in approximately May of 1985.

IV

The members of the Uniform Family Court Rules Committee are as follows:

Honorable Gary L. Crippen
Judge of Appellate Court
1300 Amhoist Tower
St. Paul, MN 55101
(296-2581)

Honorable Eugene L. Kubes
Family Court Referee
1700 Courthouse
St. Paul, MN 55102
(298-4875)

Honorable Edward J. Cass
Judge of Washington County
Washington County Courthouse
Stillwater, MN 55082
(439-3220)

Honorable Milton G. Dunham
Family Court Referee
552 Hennepin County Govt. Ctr.
Minneapolis, MN 55487
(348-6350)

Joanne T. Swanson, Esq.
Control Data Business Center
245 East 6th Street, Suite 252
St. Paul, MN 55101
(222-1101)

Christine M. Leick, Esq.
Arthur, Chapman & Michaelson, P.A.
1219 Marquette Avenue
Minneapolis, MN 55403
(339-3500)

Yvonne Moore, Esq.
201 West Burnsville Pkwy.
Burnsville, MN 55337
(894-1225)

Desmond Pratt, Esq.
Suite 808, Title Insurance Bldg.
Minneapolis, MN 55401
(333-1771)

Lynnel Jones, Esq.
430 Oak Grove Street
Suite 26
Minneapolis, MN 55403
(870-4366)

Jack Bell, Esq.
3585 North Lexington Ave.
Suite 155
Arden Hills, MN 55112
(484-8580)

Barbara J. Gislason, Esq.
118 East Main Street
Anoka, MN 55303
(421-5151)

Thomas Loftus, Chair
MSBA Family Law Section
Ex officio member
Suite 113, Fidelity Bank Bldg.
14300 Nicollet Court
Burnsville, MN 55337
(435-6222)

Martin L. Swaden
Co-Chair, Minnesota Trial Lawyers
1616 Park Avenue
Minneapolis, MN 55404
(339-9121)

Kathleen Worner Kisson
Co-Chair, MTLA
6550 York Avenue South
Edina, MN. 55435
(929-0041)

Nancy K. Jones
Co-Chair, Hennepin County
Family Law Committee
2000-A Hennepin County Govt. Ctr.
Minneapolis, MN 55487
(348- 8371)
Assistant Hennepin County Attorney
Support and Enforcement Division

John A. Warchol
Chair, Ramsey County
Family Law Committee
2345 Rice Street, #220
Saint Paul, Mn. 55113
(481-1585)

Patricia O'Gorman
President, Washington County Bar
7200 80th Street South 208
Cottage Grove, Mn. 55016
(459-6644)

Mary Louise Klas, Past Chair
MSBA, Family Law Section
208 Midwest Federal Building
Midwest Federal Building
Saint Paul, Mn. 55101
(291-1419)

V

Petitioner believes that it would be of great benefit to the practicing family lawyers, the family court divisions of the district and county courts in Minnesota and the public to have updated Rules consistent with recent statutory enactments published and implemented in the State of Minnesota as a whole. Petitioner would point out that the current Rules were adopted by the County Court Judges Association in 1978. Further, due to Ramsey and Hennepin having their Family Court Divisions as a part of the District Court structure, there presently exists ambiguity as to the application of such Rules to those two counties.

WHEREFORE, Petitioner would pray for the following relief from the Supreme Court:

1. For an Order appointing a Committee for the enactment of the Uniform Rules of Procedure for Family Court Dissolution Matters in the State of Minnesota, with a mandate to submit a

set of Uniform Rules of Procedure for publication and public hearing to enable the enactment of such rules in a timely fashion.

2. For such other and further relief as the Court may deem equitable.

Respectfully submitted:

Dated: June 11, 1985

Mary Catherine Lauhead
Mary Catherine Lauhead
Petitioner on behalf of
the Uniform Rules Committee and
the Family Law Section of the
Minnesota State Bar Association
Attorney I.D. # 61086
3985 Clover Avenue
Saint Paul, Minnesota, 55110
(612) 426-0870

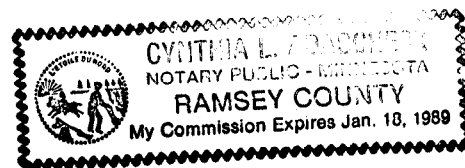
STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Mary Catherine Lauhead, being duly sworn, upon oath, deposes and states that she is the Petitioner in the above proceeding for the formation of a Supreme Court Committee for enactment of Uniform Rules of Procedure for Family Court Dissolution Matters in the State of Minnesota; that she has read the foregoing Petitioner, and upon information and belief, of her own knowledge, would assert that the contents thereof are true and correct.

Mary Catherine Lauhead
Mary Catherine Lauhead

Subscribed and sworn to before
me this 11th day of June, 1985.

Cynthia L. Adascheck
Cynthia L. Adascheck
Notary Public



UNIFORM RULES OF PROCEDURE FOR FAMILY COURT MATTERS

PREAMBLE

These rules are designed to assist the Court and practitioners of Family Law by clarifying the procedures, and practice of District and County Courts in the area of Family Law. The intent of these rules is to achieve a degree of uniformity without sacrificing the individual nature of every domestic relations matter. Compliance with these rules will substantially aid in achieving the best results. These rules may not cover every conceivable situation and the practitioner must also be guided by pertinent statutes, case law, and the Minnesota Rules of Civil Procedure. The Minnesota Rules of Civil Procedure for the District and County Courts of Minnesota, the Special Rules of Practice of Family Court in particular Judicial Districts, where applicable, and these Rules shall apply to Family Law Practice except where in conflict with applicable statutes.

RULE I. GENERAL

Rule 1.01. Responsibility of Parties Appearing Pro Se

Whenever these rules require that an act be done by counsel or by an attorney, the same duty is required of a party appearing Pro Se. An attorney dealing with a party appearing Pro Se may treat such party as an attorney in service of pleadings.

Rule 1.02. Guardian Ad Litem

Whenever the Court, pursuant to M.S. Chapters 518.165 and 257.60, appoints a guardian ad litem to represent the interests of a child or children, such appointment shall be pursuant to the requirements of M.R.C.P. 17.02. Copies of all pleadings and other documents already served and all relevant correspondence, reports, and other documents shall be furnished forthwith to the guardian ad litem by the parties. Subsequent to the appointment, all documents required to be served upon the parties shall also be served upon the guardian ad litem.

The guardian ad litem shall be entitled to initiate and respond to motions, conduct discovery, call witnesses, cross-examine witnesses, make oral and written arguments and appeal on behalf of the child or children. Except upon a showing of exigent circumstances, the guardian ad litem shall submit any recommendations in writing at least ten (10) days prior to any hearing at which such recommendations will be made.

Rule 1.03. Substitution or Withdrawal of Counsel

Where an attorney has been substituted for counsel of record, a notice of substitution of attorney and consent of

Exhibit 1

counsel of record or notice of appearance shall be filed with the Clerk of Court and served upon the opposing counsel of record. No attorney of record shall withdraw without the consent of the client, order of the Court, properly executed withdrawal, or substitution of attorney. In the event that an attorney has not withdrawn, service of all pleadings upon the existing attorney of record shall constitute proper service and adequate notice to the opposing party. When a party has discharged his attorney of record or when such attorney has properly withdrawn, such party shall be treated as appearing pro se until a substitution of counsel has been properly executed and filed for record. (See Atwood v. Atwood, 253 Minn. 185, 91 NW2d 728 [1958].)

Rule 1.04. Time

Time is governed by Rule 6 of the M.R.C.P. Times limited by these Rules for good cause shown may be shortened. Shortening of such times shall be the exception and not the rule and only upon Order of the Court upon demonstration of unusual circumstances.

Rule 1.05. Jurisdictional Limitation of Relief

Where personal service has not been made upon the opposing party in the State of Minnesota so as to confer upon the Court in personam jurisdiction, relief shall be limited to: A decree of either dissolution, separate maintenance or annulment; custody of children within the jurisdiction of the Court; and a division of property - real and personal - located within the State of Minnesota, provided that statutory procedures and Rules of Civil Procedure have been followed with respect to said property. (Allegrezza v. Allegrezza, 236 Minn. 464, 53 NW2d 133, [1952] Rule 4.041, M.R.C.P.)

Rule 1.06. Attendance at Hearings: Writs of Attachment; Continuance

Upon the failure of a party to appear in response to a personally served Order compelling personal appearance, the Court may, at its discretion, order the arrest of said party upon a Writ of Attachment or grant the relief requested.

**RULE II. JURISDICTIONAL
MATTERS - FORM OF
PLEADINGS**

Rule 2.01. Requirements of Order to Show Cause

All Orders to Show Cause shall state with particularity the time and place of the hearing, the name of the Judge or Referee, if known, and other provisions as may be appropriate to the individual case.

Comment-1985

See Appendix for form of order to show cause (Form 201).

Rule 2.02. Motion: Procedure

(a) Custody. Request for interim custody hearings will be assigned hearing time (check local procedure in the respective district) upon the calendar of the Court. If the matter cannot be adequately heard in the time allotted, the hearing shall be utilized as a pre-hearing conference which will determine the need for additional time. Requests for an evidentiary hearing pursuant to M.S. Chapter 518.131 Subd. 18 shall be by motion.

(b) Other Motions. All applications for temporary relief and motions, except for custody, contempt proceedings or motions to vacate a Judgment and Decree, shall be submitted on affidavits, with income documentation, and argument of counsel, unless otherwise ordered by the Court based upon good cause shown.

(c) All motions and orders to show cause shall be accompanied by appropriate supporting affidavits. The paragraphs of the affidavits should be specific and factual; where possible, they should be numbered to correspond to the paragraphs of the motion.

Rule 2.03. Application for Temporary Relief, Motions and Affidavit: Form

The form of Application for Temporary Relief shall be as prescribed in Rule 9, Part I, Code of Rules for the District Courts of Minnesota M.S.A. Volume 27(B). Either party may serve and file supplemental affidavits providing said narrative affidavits are relevant and material to the temporary hearing.

RULE III. SETTING OF CASES

Rule 3.01. Motions; Hearings on Applications for Temporary Relief

Dates for hearings of motions, including hearings on Applications for Temporary Relief, shall be obtained by scheduling a time with the local assignment clerk and filing the proper Note of Issue, if required, with the Clerk of Court.

Rule 3.02. Notification of Settlement, Continuance or Cancellation of Scheduled Matters.

Counsel shall notify the Clerk of Court and other counsel immediately upon settlement, continuance or cancellation of any matter for which time has been allotted in order to allow rescheduling of court time.

Rule 3.03. Proceeding by Default

In proceedings in which the default has occurred and in which the Summons and Petition, with proof of service thereof and Note of Issue have been duly filed, the Clerk of Court shall place the matter on the appropriate default calendar. The note of issue shall contain the title of the proceedings and the names and addresses of all counsel and parties.

Rule 3.04. Default Trial; Notice

Where the defaulting party has appeared in an action by a pleading other than an answer or personally without a pleading, and has not affirmatively waived notice of the other party's right to a default trial, the defaulting party shall be notified in writing within ten (10) days after the filing of a default note of issue, of the intention to proceed to judgment. (See Rules 55.01 and 5.02 of M.R.C.P.)

Such notice shall be as follows:

You are hereby notified that the petitioner has applied for a final hearing to be held not sooner than three (3) days from the date of this notice. You are further notified that the Court will be requested to enter a default decree of dissolution of your marriage at the hearing which will be scheduled by the Clerk of Court.

A default hearing will not be held until such notice has been mailed to the respondent at his last known address and an affidavit of service by mail has been filed.

Rule 3.05. Default Involving Stipulation

Whenever a stipulation settling all issues has been executed by the parties, a default note of issue shall be filed, together with the stipulation and an affidavit of non-military status of the defaulting party or a waiver by said party of his right under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, if not included in the stipulation.

In all stipulations where a party appears pro se, the following waiver shall be executed by that party:

I have been advised of my rights to have counsel of my choice, and I hereby expressly waive that right, and have freely and voluntarily signed the foregoing stipulation.

Rule 3.06. Default Not Involving Stipulation

At the final hearing of all default cases where a stipulation has not been filed, the Court shall be provided

with an Affidavit of Default and of Non-Military Status of the defaulting party, or a waiver by that party of any rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

Rule 3.07. Final Hearing, Contested Proceeding

Upon a filing of a contested note of issue, the Clerk of Court shall place the proceeding upon the contested final hearing calendar and notify all counsel of all subsequent hearing dates. A request for a continuance must be approved by the authorized court personnel only after notice to all parties.

RULE IV. PREHEARING CONFERENCE

Rule 4.01. Purpose

The purpose of the prehearing conference is to secure final settlement of the proceeding or, in the alternative, to define and to narrow the issues remaining to be determined and to establish the time needed for final hearing.

Rule 4.02. Prehearing Statement

Each party shall complete a prehearing conference statement which shall be served on all counsel and filed at least ten (10) days prior to the date of the prehearing conference.

Comment-1985

See appendix for form of pretrial statement (Form 402).

Rule 4.03. Stipulation; Default Hearings

If a stipulation is reduced to writing before the prehearing conference, the case will be heard as a default at the time scheduled for the conference.

Rule 4.04. Attendance

Both parties and counsel shall be present at the prehearing conference, except that when a stipulation has been filed, only the party obtaining the Decree need appear.

Rule 4.05. Sanctions

Failure to comply with the above rules relating to prehearing conferences may result in the case being stricken from the contested calendar or the pleadings being stricken and the matter scheduled as a default hearing without further notice to the defaulting party.

RULE V. FINDINGS AND DECREE

Rule 5.01. Money Judgments

Except as provided by statute, money judgments for unpaid permanent spousal maintenance, child support and attorney fees may be entered only upon notice of motion and motion scheduled for hearing before the Court. Money judgments for unpaid temporary spousal maintenance, child support and attorney fees may be incorporated into the Judgment and Decree.

Rule 5.02. Stipulations Entered in Open Court; Preparation of Findings

Findings of Fact, Conclusions of Law, and Order for Judgment which are drafted by counsel based upon a stipulation entered upon the record shall bear the notation "approved as to form" followed by the signatures of counsel for both parties and the public assistance agency, if required, before being presented to the Court for approval and signature.

Rule 5.03. Decree with Public Assistance

When a party is receiving public assistance, the judgment and decree shall direct that all payments of child support and spousal maintenance shall be made to the appropriate agency and that child support and maintenance may be withheld from income in accordance with M.S. Chapter 518.611. The party obtaining the judgment and decree shall serve a copy thereof on the agency.

Rule 5.04. Findings; Decree; Preparation

In a default matter, proposed findings of fact, conclusions of law, order for judgment and judgment and decree shall be submitted to the Court by counsel in advance of or at the final hearing.

Rule 5.05. Findings; Decree; Contents

All Findings of Fact, Conclusions of Law and Order for Judgment shall contain a statement of the facts upon which any proposed child support payments are based including, but not limited to, the net incomes of the parties and the applicable child support guideline percentages, pursuant to M.S. Chapter 518.17 (5) and M.S. Chapter 518.551 (5) (e). If any deviation from the statutory guidelines is proposed, a statement of the facts to support the deviation shall be included.

RULE VI. CONTEMPT PROCEDURE

Rule 6.01. Moving Papers; Service; Notice

Contempt proceedings shall be initiated by an Order to Show Cause personally served upon a party together with a

Notice of Motion and Motion accompanied by appropriate supporting affidavits.

Rule 6.02. Order to Show Cause and Motions; Affidavits

The Order to Show Cause shall direct the opposing party to appear and show cause why he should not be held in contempt of court and why the moving party should not be granted the relief requested in the Notice of Motion and Motions. The Order to Show Cause shall contain at least the following:

(a) A reference to the specific Order of the Court alleged to have been violated and the date of entry;

(b) A quotation of the specific applicable provision(s) ordered;

(c) The alleged failure(s)

The Affidavit of the moving party shall clearly and specifically set forth each alleged violation of the Order with particularity. Where the alleged violation is a failure to pay sums of money, the affidavit shall state the kind of payments in default and shall specifically set forth the amounts due, paid and unpaid for each failure. See Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212 (1968); Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675 (1975).

The response shall be by affidavit of the responding party which shall set forth the nature, date and amount of payments, if any. The responsive affidavit shall set forth with particularity any defenses which the responding party will present to the Court.

Rule 6.03. Hearing; Procedure

The party alleged to be in contempt must personally appear before the court and shall be afforded the opportunity to resist the motion for contempt by sworn testimony. The Court will not act upon affidavit alone, absent express waiver by the responding party of his right to offer sworn testimony. (Hopp v. Hopp, supra; Clausen v. Clausen, supra).

An attorney must be appointed to represent an indigent defendant facing civil contempt for failure to pay child support, but only when the court reaches a point in the proceedings that incarceration is a real possibility. After appointment, a trial de novo shall be conducted on the issue of contempt. (Cox v. Slama, 355 N.W.2d 401, [Minn, 1984]).

Rule 6.04. Default of Conditions and Suspended Sentence

Where the Court has entered an Order in Contempt with a suspended sentence and there has been a default of the conditions for suspension, the following procedure must be followed before a writ of attachment will be entered or bench warrant will be issued:

(a) An affidavit of default of the conditions of the Order must be served upon the defaulting party and filed with the Clerk of Court.

(b) If the default is not cured, an affidavit of non-compliance and request for writ of attachment must be personally served upon the defaulting party and filed with the Clerk of Court.

(c) A proposed Recommendation and/or Order for Writ of Attachment shall be submitted to the Judge or Referee who conducted the contempt hearing.

Comment-1985

See Appendix for form of affidavit of non-compliance and request for writ of attachment (Form 604A), findings and recommendation and order for writ of attachment (Form 604B), affidavit of compliance and order for release from confinement (Form 604C).

RULE VII. STATUTORY REQUIREMENTS

Rule 7.01. Title of Proceeding

The form for a title of Family Court proceedings is set out in M.S. Chapter 518.005(2).

Rule 7.02. Contents of Petition or Complaint

The requirements for the Petition or Complaint in the following procedures are as follows:

- | | |
|---|---|
| A - Dissolution of Marriage or Legal Separation | M.S. Chapter 518.10 M.S. Chapter 518.147 |
| B - Domestic Abuse Proceeding | M.S. Chapter 518B |
| C - Custody Proceeding | M.S. Chapter 518.156 |
| D - Adjudication of Paternity | M.S. Chapter 257 |
| E - Support Proceeding under the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) | M.S. Chapter 518C |

Except for proceedings under the Uniform Parentage Act (M.S. Chapter 257.51-74), all proceedings that involve custody issues must comply with the jurisdictional requirements of the Uniform Child Custody Jurisdiction Act (M.S. Chapter 518A).

Such additional information pertinent to the real and personal property, financial circumstances, income of the parties and other issues in dispute as may materially assist the Court in achieving a just result should be set forth with particularity. (See M.S. Chapter 518.54, Subd. 5).

Comment-1985

See Appendix for Form 702A (2) in compliance with M.S. Chapter 518.147 for filing at initiation of proceeding.

Rule 7.03. Notice of Public Assistance

If a party to a proceeding for dissolution, legal separation, parentage or custody is receiving or applies for public assistance, the notice required by M.S. Chapter 518.551 shall be filed within ten days of commencement of the proceeding or application for public assistance.

Rule 7.04. Judgment Providing for Child Support and/or Spousal Maintenance

A - All judgments and decrees which include awards of child support and/or spousal maintenance, unless otherwise directed by the Court, shall include the following provisions:

"That both parties are hereby notified that:

(a) Payment of support and/or spousal maintenance is to be as ordered herein, 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 rights of visitation is not an excuse for non-payment, but the aggrieved party must seek relief through a proper motion filed with the Court.

(c) The payment of support and/or spousal maintenance takes priority over payment of debts and other obligations.

(d) A party who remarries after dissolution and accepts additional obligations of support does so with full knowledge of his or her prior obligations under this proceeding.

(e) Child support and/or spousal 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 regularly throughout the year as ordered."

B. NOTICE IS HEREBY GIVEN THAT CHILD SUPPORT AND SPOUSAL MAINTENANCE PAYMENTS WILL BE WITHHELD FROM INCOME IF THE PAYMENTS ARE IN ARREARS 30 DAYS AND NOTICE IS SERVED UPON THE PERSON RESPONSIBLE TO MAKE THE PAYMENTS, GIVING HIM OR HER 15 DAYS TO EITHER PAY THE ARREARS OR REQUEST THE COURT TO MODIFY THE CHILD SUPPORT OR SPOUSAL MAINTENANCE PAYMENTS, PURSUANT TO MINN. STAT. SEC. 518.611, as specified in the Concurrent Order for Wage Withholding or attached Appendix A.

C. THE CHILD SUPPORT ORDERED HEREIN SHALL BE ADJUSTED EVERY TWO YEARS BASED UPON A CHANGE IN THE COST-OF-LIVING EFFECTIVE ON THE FIRST DAY OF MAY OF THIS YEAR, AS PROVIDED IN M.S. CHAPTER 518.641. THE AMOUNT OF THE ADJUSTMENT SHALL BE DETERMINED BY USING THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U). ANY COST-OF-LIVING ADJUSTMENT PROVIDED FOR HEREIN SHALL BE COMPOUNDED. NO ADJUSTMENT FOR COST-OF-LIVING SHALL BE MADE UNTIL the conditions specified in the Concurrent Order for Wage Withholding (or attached Appendix A) are met.

D. A JUDGMENT FOR UNPAID CHILD SUPPORT OR SPOUSAL MAINTENANCE WILL BE ENTERED AGAINST THE PERSON RESPONSIBLE TO MAKE PAYMENTS, AS PROVIDED BY M.S. CHAPTER 548.091, after the conditions specified in the Concurrent Order for Wage Withholding (or attached Appendix A) are met.

E. BOTH PARTIES HAVE BEEN NOTIFIED OF THE PROVISIONS OF M.S. CHAPTER 609.26 THAT ANY PERSON WHO ACTS TO DEPRIVE THE OTHER PARENT OF CUSTODIAL, PARENTAL, OR VISITATION RIGHTS CAN BE CHARGED WITH A FELONY, as specified in attached Appendix A.

F. THE PERSON RESPONSIBLE TO MAKE CHILD SUPPORT PAYMENTS SHALL NAME EACH CHILD AS A BENEFICIARY ON WHATEVER MEDICAL, HOSPITALIZATION OR DENTAL INSURANCE OR PLAN IS AVAILABLE TO THE PERSON RESPONSIBLE TO MAKE CHILD SUPPORT PAYMENTS ON A GROUP BASIS THROUGH HIS OR HER EMPLOYER OR UNION (M.S. Chapter 518.551, Subd. 8).

Comment-1985

See Appendix for form of appendix A (Form 704A), a concurrent order for wage withholding (Form 704B), a sample notice for implementation of biannual cost of living adjustment (Form 704C) and cost of living adjustment formula (Form 704D).

RULE VIII. REVIEW OF RECOMMENDED ORDERS
AND FINDINGS OF REFEREES
(Applies to Hennepin and Ramsey Counties)

Rule 8.01. Procedure for Obtaining Review

Notice of review of any recommended order or finding of a referee by a District Court judge shall be by notice of review served and filed within ten (10) days after service of notice by a party of the filing of the referee's recommended order or findings. Where written findings and orders are issued contemporaneously with the court appearance associated therewith, and the parties receive copies of such order, the ten day period shall run from the date of the court appearance. In addition to fulfilling the requirements of M.S. Chapter 484.70, Subd. 7(c), the party requesting a review of the recommended order or findings by the referee shall schedule a date for the review hearing with the assignment clerk. This date shall be included in the notice of review.

Rule 8.02. Scope of Review

The review shall be based upon the record. (See Peterson v. Peterson, 308 Minn. 297, 242 N.W.2d 88 [1976]; McCarthy v. McCarthy, 344 N.W.2d 414 [Minn., 1984]).

Rule 8.03. Transcript of the Record

If the review is to include a transcript of the hearing, the moving party shall provide opposing counsel with notice of the request for the transcript.

FORM 201 - ORDER TO SHOW CAUSE

In all Order to Show Cause the following information shall be contained:

(a) The statement: It is further ordered that you personally appear before the Honorable _____, on the day of _____ at _____ o'clock in Room _____ (place and address of hearing), to show cause, if any you have, why the Petitioner or Respondent should not have exclusive occupancy of the premises now occupied by both of you. (May be omitted in the event occupancy of the homestead is not in issue.)

(b) It is further ordered that all responsive pleadings shall be served and filed not later than two (2) days prior to the scheduled hearing, exclusive of the intervening Saturdays, Sundays, and legal holidays; that the Court may in its discretion disregard any responsive pleadings served and filed less than two (2) days prior to such hearing, and rule on the motion or matter in question.

(c) It is further ordered that Petitioner and Respondent are hereby restrained from annoying, molesting or interfering with the other in any manner whatsoever during the pendency of this action, either in or out of the home, either in person, by agent or by telephone.

(d) It is further ordered that Petitioner and Respondent are hereby restrained from selling, transferring or encumbering any of the assets owned by the parties herein except in the ordinary course of business.

(e) It is further ordered that the Petitioner and Respondent are hereby enjoined from changing any insurance coverage as to amount or beneficiary.

(f) It is further ordered that you, (name of Respondent), the above-named Respondent, bring to court with you on the date hereinabove set forth, a verified statement of your earnings for the past six (6) months, or in the alternative, your pay stubs for the past six (6) months.

(g) Such other provisions as may be appropriate to the individual case.

FORM 402 - PRETRIAL STATEMENT

STATE OF MINNESOTA

COUNTY/DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

FAMILY COURT DIVISION

In re the marriage of:

_____,
Petitioner,

and

_____,
Respondent.

PRETRIAL STATEMENT

Court File No. _____

(a) The following schedule shall be completed and filed no later than ten (10) days before the pre-hearing conference. (b) Values of property should be based upon appraised, verified or stipulated values. (c) Encumbrances or indebtedness on real or personal property must be current balances. (d) Counsel should be prepared to verify all figures herein.

1. Employment

a. Name of employer: _____

b. Occupation: _____

c. Length of employment: _____ years.

d. Income:

Gross income per _____ is \$ _____

Deductions:

Federal Income Tax \$ _____

State Withholding _____

Social Security (FICA) _____

Mandatory Pension _____

Deductions _____

Union Dues _____

Dependent Health _____

Insurance Coverage _____

Individual Health/ _____

Hospitalization _____

Coverage or Medical _____

Expense Deductions _____

not to exceed \$25 _____

per month _____

Other: _____

TOTAL DEDUCTIONS: _____

Net Income Per _____ is \$ _____

e. Income figures are predicated upon:

Exemptions # _____ Married _____ Single _____

(Check one)

NOTE: If you have more than one employer attach an itemization of other income in accordance with 1d above.

f. **Employment benefits:** Identify all benefits in addition to wages including: bonus paid or due, automobile or travel expense, membership, etc., which are paid by employer.

2. **Other Income:**

- a. Interest income per _____ is _____.
- b. Dividend income per _____ is _____.
- c. Temporary child support per _____ is _____.
- d. Temporary maintenance per _____ is _____.
- e. Other income: _____.

NOTE: Other income is defined as any monies received or due since the commencement of this action reportable on federal income tax returns.

3. (Petitioner's/Respondent's) projected monthly living expenses (Please specify on attached Exhibit A) \$ _____

4. **Real Estate:**

a. **Homestead**

- 1. Date acquired _____.
- 2. Purchase price _____.
- 3. Monthly payment (incl. PIIT) _____.
- 4. Present fair market value _____.
- 5. First Mortgage balance _____.
- 6. Second Mortgage _____ or Home Improvement Loan _____.
- 7. Other encumbrances _____.
- 8. Net value _____.

b. **Other Real Estate**

- 1. If you own real estate other than your homestead, attach information sought by question 4a. and further identify nature of property, i.e. lake cabin, vacant land, rental property, etc., as a separate exhibit for all real estate.

5. **Personal Property:**

a. **Household Contents:**

- 1. In the possession of Petitioner:
 - Fair market value _____
 - Encumbrance _____
 - Net Value _____
- 2. In possession of Respondent:
 - Fair market value _____
 - Encumbrance _____
 - Net Value _____

- b. Stocks, bonds, etc. _____
- c. Cash, savings, bank accounts _____
- d. Receivables and claims _____

NOTE: If questions b, c, or d are applicable, attach list fully identifying (i.e., Twin City Federal, Account #, balance) as a separate exhibit.

| | | | |
|--|---------------|---------------|---------------|
| e. Automobiles: | a. _____ | b. _____ | c. _____ |
| | make,model,yr | make,model,yr | make,model,yr |
| Market Value | _____ | _____ | _____ |
| Encumbrance | _____ | _____ | _____ |
| Mnthly payment | _____ | _____ | _____ |
| Net Value | _____ | _____ | _____ |
| f. Boats, motors, campers, snowmobiles, power equipment, jewelry, etc. | a. _____ | b. _____ | c. _____ |
| | make,model,yr | make,model,yr | make,model,yr |
| Market Value | _____ | _____ | _____ |
| Encumbrance | _____ | _____ | _____ |
| Mnthly payment | _____ | _____ | _____ |
| Net Value | _____ | _____ | _____ |

6. Non-Marital Claims of _____.

a. Asset _____

1. When acquired _____
2. How acquired _____
3. Purchase Price _____
4. Present fair market value _____
5. Encumbrance (if any) _____

b. Other: If you have other non-marital claims, attach information sought by question 6a as a separate exhibit for all nonmarital claims.

7. Life Insurance:

| | | | |
|-------------------|----------|----------|----------|
| Company | a. _____ | b. _____ | c. _____ |
| Policy # | _____ | _____ | _____ |
| Coverage Afforded | _____ | _____ | _____ |
| Insured | _____ | _____ | _____ |
| Beneficiary | _____ | _____ | _____ |
| Cash Value | _____ | _____ | _____ |

8. Pension Plan and/or Profit Sharing Plan -

- a. Commencement date of plan: _____
- b. Date Payments commence: _____
- c. Total amount vested: _____
- d. Present cash value: _____

9. Joint Debts:

| | | | |
|-----------------------------------|----------|----------|----------|
| Creditor | a. _____ | b. _____ | c. _____ |
| Total Amt Owning | _____ | _____ | _____ |
| Mnthly payment | _____ | _____ | _____ |
| When incurred | _____ | _____ | _____ |
| Item Purchased or Reason for Debt | _____ | _____ | _____ |
| Creditor | d. _____ | e. _____ | f. _____ |
| Total Amt Owning | _____ | _____ | _____ |
| Mnthly payment | _____ | _____ | _____ |
| When incurred | _____ | _____ | _____ |
| Item Purchased or Reason for Debt | _____ | _____ | _____ |

10. Custody:

- a. Which party presently has custody: _____
- b. Is issue of child custody seriously contested: _____
- c. Temporary child support per month is: \$ _____
- d. Set forth the amount your client deems appropriate for child support on a per month per child basis: \$ _____
- e. If custody is disputed, each party shall also submit a plan regarding custody, with respect to each child, including visitation schedules for the noncustodial parent, to include weekly, holiday and vacation schedules.

Dated: _____

The statements contained herein are true, and complete to the best of my knowledge.

Petitioner-Respondent

ATTORNEY FOR _____

FORM 604A - AFFIDAVIT OF NON-COMPLIANCE AND REQUEST FOR WRIT OF ATTACHMENT

STATE OF MINNESOTA

COUNTY/DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

FAMILY COURT DIVISION

_____,

Petitioner,

AFFIDAVIT OF NON-COMPLIANCE AND REQUEST FOR WRIT OF ATTACHMENT

and

_____.

Court File No. _____

Respondent.

STATE OF MINNESOTA)

) ss.

COUNTY OF _____)

_____, being first duly sworn upon oath,

deposes and says:

1. That (he/she) is _____

_____.

2. That an Order in Contempt was entered by this Court in the action herein on _____, 198__, finding (Petitioner/Respondent) in constructive civil contempt of court and imposing a sentence of _____ (____) days in the _____ County Workhouse.

3. That execution of the aforesaid sentence was stayed for a period of _____ (months/days) provided that (Petitioner/Respondent) faithfully carry out the provisions of said Order.

4. That an Affidavit of Default dated _____, 198___, was duly served upon (Petitioner/Respondent) on _____, 198___, in accordance with said Order in Contempt; that over _____ days for correction of said default have passed; and that (Petitioner/Respondent) continues in default as of the date of this Affidavit.

5. That there is no evidence that (Petitioner/Respondent) has voluntarily turned himself in to serve said sentence, either in the Court file or per inquiry of _____ in the Control Room of the _____ County Workhouse on _____, 198___.

6. That, as of the date of this Affidavit (Petitioner/Respondent) is in default as follows:

- a. \$_____ current support
- b. \$_____ arrearage payments
- c. \$_____ attorney fees and costs

Further affiant saith not.

Subscribed and sworn to
before me this _____ day
of _____, 198___.

REQUEST FOR WRIT OF ATTACHMENT

(Petitioner/Respondent) respectfully requests that the Court vacate its stay of execution of the sentence herein by

ordering issuance of a Writ of Attachment for the arrest and incarceration of (Petitioner/Respondent) to serve said sentence.

The name of the person to be contacted for satisfaction of the default is:

(name) _____
(street) _____
(city) _____

(Petitioner's/Respondent's) home address is _____
_____.

He is employed at _____
located at _____.

Attorney for _____

_____ vs. _____ File No. _____

FORM 604B - FINDINGS AND RECOMMENDATION AND ORDER
FOR WRIT OF ATTACHMENT

STATE OF MINNESOTA

COUNTY/DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

FAMILY COURT DIVISION

_____ ,

Petitioner,

and

_____ ,

Respondent.

FINDINGS AND RECOMMENDATION
AND ORDER FOR WRIT
OF ATTACHMENT

Court File No. _____

RECOMMENDATION FOR WRIT

WHEREAS, the (Petitioner/Respondent) in the action herein was found in constructive civil contempt of court by Order of this Court dated _____ 198____, and execution of the sentence imposed was stayed on condition of performance of certain provisions of said Order; and

WHEREAS, an Affidavit of Non-compliance has been filed with the Court showing that (Petitioner/Respondent) has not complied with the conditions for stay of sentence, has been notified of his default, and has neither cured his default, filed any motion, nor voluntarily surrendered himself to serve said sentence,

IT IS RECOMMENDED

That a Writ of Attachment for the arrest of the (Petitioner/Respondent) be issued forthwith, and that a copy of the Order for Writ be provided to the _____ County Workhouse.

Dated: _____

Referee of Family Court

ORDER FOR WRIT OF ATTACHMENT

Upon the foregoing recommendation of the Referee of Family Court in this action,

IT IS ORDERED:

1. That a Writ of Attachment for the arrest of _____ be issued forthwith.
2. That upon arrest, he/she shall be brought immediately before this court, for hearing at the first available time, to show cause why the stay of sentence should not be revoked and he/she be incarcerated in the _____ County Workhouse, as directed in this court's order in contempt.
3. That he/she be allowed to secure his/her release by carrying out the conditions for stay of sentence of the Order in Contempt entered herein on _____, 198____, through the date of release.
4. That (Petitioner/Respondent) shall provide a copy of said Order in Contempt to the Keeper of the _____ County Workhouse together with a copy of the Affidavit of Non-compliance filed herein, showing the extent of the default in this matter.
5. That upon (Petitioner's/Respondent's) performing the terms for release, (Petitioner/Respondent) shall provide an Affidavit of Compliance to the Court forthwith, as the basis for an order for Release from Confinement.

BY THE COURT:

Dated: _____

Judge of District Court

_____ vs. _____ File No. _____

FORM 604C - AFFIDAVIT OF COMPLIANCE AND ORDER FOR RELEASE

STATE OF MINNESOTA

COUNTY/DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

FAMILY COURT DIVISION

Petitioner,

AFFIDAVIT OF COMPLIANCE AND ORDER FOR RELEASE

and

Court File No. _____

Respondent.

STATE OF MINNESOTA)

) ss.

COUNTY OF _____)

_____, being first duly sworn upon oath, deposes and says:

1. An Order for Writ of Attachment for the arrest and incarceration of the (Petitioner/Respondent) was entered herein on _____, 198__; and that he/she was subsequently incarcerated in the _____ County Workhouse.

2. The (Petitioner/Respondent) has performed all conditions necessary for his/her release as of the date of this Affidavit. (In the alternative, state terms of compromise agreement.)

3. That (Petitioner/Respondent) through (name of attorney), respectfully requests that the (Petitioner/Respondent) be released from confinement subject to continued stay of sentence so long as he/she performs the

terms and conditions specified in the Order in Contempt entered on _____, 198__.

Further affiant saith not.

Subscribed and sworn to before me this ___ day of _____, 198__.

Notary Public

ORDER FOR RELEASE FROM CONFINEMENT

WHEREAS, the (Petitioner/Respondent) was incarcerated in the _____ County Workhouse pursuant to this Court's Order for Writ of Attachment; and

WHEREAS, the (Petitioner/Respondent) has provided the Court with an Affidavit of Compliance stating that (Petitioner/Respondent) has performed all conditions necessary for his/her release from confinement; (In the alternative: the parties have executed a stipulation of conditions for his release);

IT IS ORDERED THAT:

1. The Keeper of the _____ County Workhouse release the (Petitioner/Respondent) (name), from confinement forthwith, and that said release is subject to his future performance of the conditions for stay of sentence ordered in this Court's Order in Contempt entered on _____, 198__.

2. The Order in Contempt shall continue in full force and effect. (In the alternative: state conditions of any compromise agreement).

3. That (Petitioner/Respondent) shall serve a copy of this Order upon the Keeper of the _____ County Workhouse by U.S. Mail at _____.

The underlying facts were found by me after due hearing and the foregoing Order thereon is recommended.

BY THE COURT:

Judge of District Court

Dated: _____

_____ vs. _____ File No. _____



Minnesota Department of Health
 Vital Records Section
 717 Delaware St. S.E.
 P.O. Box 9441
 Minneapolis, MN 55440
 (612) 623-5121

FORM 702 A (2)

**REPORT OF
 DISSOLUTION OF MARRIAGE
 OR ANNULMENT**

Minnesota Statutes 518.147 (1984) requires that this form be completed by the petitioner or the moving party, if other than the petitioner, and filed with the Clerk of Court.

The statistical uses of information from records of marriage dissolution are many and varied. Coupled with data from other vital statistics records, they provide information for researchers to analyze current changes in patterns of marriage and dissolution, to predict the future course of events in fertility and population change, and to relate the results of these investigations to various social and economic problems. Your cooperation in providing this information will contribute to a better understanding of the impact of marriage dissolution in Minnesota.

Neither this report form, nor information contained in this form, shall be admissible in evidence in this or any subsequent proceeding.

| | | | | | |
|----------------|---|---|---|--------------------|-------|
| HUSBAND | Husband Name (First) (Middle) (Last) | | | | |
| | Usual Residence — Street Address | | City or Township | County | State |
| | Birthplace (State or Foreign Country) | Date of Birth (Mo., Day, Yr.) | Race | Income per Month | |
| | Number of this Marriage (First, second, etc.) | | If previously married, how many ended by: Death: Annulment: | | |
| | Education (specify only highest grade completed) Elementary or Secondary (0-12) College (1-4 or 5+) | | | | |
| WIFE | Wife Name (First) (Middle) (Last) | | | Last Name at Birth | |
| | Usual Residence — Street Address | | City or Township | County | State |
| | Birthplace (State or Foreign Country) | Date of Birth (Mo., Day, Yr.) | Race | Income per Month | |
| | Number of this Marriage (First, second, etc.) | | If previously married, how many ended by: Death: Annulment: | | |
| | Education (specify only highest grade completed) Elementary or Secondary (0-12) College (1-4 or 5+) | | | | |
| HISTORY | Place of this marriage — City | | County | State | |
| | Date of this Marriage (Mo., Day, Yr.) | Date Couple Separated (Mo., Day, Yr.) | Number of children ever born alive of this marriage (specify) | | |
| | Ages of children of this marriage — specify each: 1st: 2nd: 3rd: 4th: 5th: 6th: | | | | |
| DECREE | Date of Decree (Mo., Day, Yr.) | Type of Decree (Dissolution or Annulment) | | County of Decree | |
| | Maintenance awarded to <input type="checkbox"/> Husband <input type="checkbox"/> Wife <input type="checkbox"/> None Awarded | Amount of Maintenance per Month | | | |
| | Child Support awarded to <input type="checkbox"/> Husband <input type="checkbox"/> Wife <input type="checkbox"/> None Awarded | Amount of Child Support per Month | | | |
| | Describe Custody Arrangements (husband, wife, joint, other—specify): | | | | |

APPENDIX **A**

NOTICE IS HEREBY GIVEN TO THE PARTIES:

1. THAT CHILD SUPPORT OR SPOUSAL MAINTENANCE PAYMENTS OR ARREARS OF CHILD SUPPORT OR ARREARS OF SPOUSAL MAINTENANCE WILL BE WITHHELD FROM INCOME, AS PROVIDED BY MINNESOTA STATUTES 518.611, ONLY AFTER ALL OF THE FOLLOWING CONDITIONS HAVE BEEN MET:

- a. The person entitled to receive the payment or the public authority determines that the person responsible to make the payment is at least 30 days in arrears;
- b. The person entitled to receive the payment or the public authority serves written notice of its determination of arrearage on the person responsible to make the payment at least 15 days before service of the determination and a copy of the court's order for withholding on the payor of funds;
- c. Within the 15 day period, the person responsible to make the payment has either failed to pay all arrearages or to move the court, under section 518.64, to modify the order respecting the amount of maintenance or support and, ex parte, to stay service on the payor of funds until the motion to modify is heard; and
- d. The person entitled to receive the payment or the public authority serves a copy of the determination of arrearage and a copy of the court's withholding order on the payor of funds;
- e. The person entitled to receive the payment shall also serve on the public authority a copy of the determination of arrearage, a copy of the court's withholding order and an application to use the public authority's collection services.

2. THE CHILD SUPPORT ORDERED HEREIN SHALL BE ADJUSTED EVERY TWO YEARS BASED UPON A CHANGE IN THE COST-OF-LIVING EFFECTIVE ON THE FIRST DAY OF MAY OF THIS YEAR, AS PROVIDED IN MINNESOTA STATUTES 518.641. THE AMOUNT OF THE ADJUSTMENT SHALL BE DETERMINED BY USING THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX, MINNEAPOLIS-ST. PAUL, FOR ALL URBAN CONSUMERS (CPI-U). ANY COST-OF-LIVING ADJUSTMENT PROVIDED FOR HEREIN SHALL BE COMPOUNDED. NO ADJUSTMENT FOR COST-OF-LIVING SHALL BE MADE UNLESS THE FOLLOWING CONDITIONS ARE MET:

- a. The person entitled to receive the payment or the public authority serves a notice of its application for adjustment by mail on the person responsible to make the payment at his last known address at least 20 days before the effective date of the cost-of-living adjustment;
- b. Said notice shall inform the person responsible to make the child support payments that an adjustment in payment shall become effective on the first day of May; and
- c. The cost-of-living adjustment shall be automatic unless the person responsible to make the payment requests a court hearing on the issue of whether the adjustment should take effect and to stay imposition of the adjustment pending the outcome of the hearing. Notice of said court hearing shall be served on the person entitled to receive the payment and the public authority involved, if any.

3. THAT A JUDGMENT FOR UNPAID CHILD SUPPORT OR SPOUSAL MAINTENANCE WILL BE ENTERED AGAINST THE PERSON RESPONSIBLE TO MAKE THE PAYMENT, AS PROVIDED BY MINNESOTA STATUTE 518.091, ONLY AFTER ALL OF THE FOLLOWING CONDITIONS HAVE BEEN MET:

- a. The person entitled to receive the payment or the public authority determines that the person responsible to make the payment is at least 30 days in arrears;
- b. The person entitled to receive the payment or the public authority serves a copy of an affidavit of default and notice of intent to enter judgment on the person responsible to make the payment by mail at his last known post office address. Service shall be deemed complete upon mailing in the manner designated. The affidavit shall state full name, occupation, place of residence, and last known post office address of the person responsible to make the payment, the name and post office address of the person entitled to receive the payment, the date of the first unpaid amount, the date of the last unpaid amount, and the total amount unpaid;
- c. The person responsible to make the payment fails within 20 days after mailing of the notice either to pay all unpaid amount or to request a hearing on the issue of whether arrears claimed owing have been paid and to seek, ex parte, a stay of entry of judgment; and
- d. Not less than 20 days after service on the person responsible to make the payment in the manner provided, the person entitled to receive the payment or public authority files with the clerk the affidavit of default together with proof of service and, if payments have been received by the person entitled to receive the payment or public authority since execution of the affidavit of default, a supplemental affidavit setting forth the amount of payment received.

4. MINNESOTA STATUTES 609.26: DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS

Subdivision 1. Whoever intentionally does any of the following acts may be charged with a felony and, upon conviction, may be sentenced as provided in subdivision 6:

- (1) conceals a minor child from the child's parent or other person having the right to visitation or custody, where the action manifests an intent substantially to deprive that parent or other person of his rights to visitation or custody;
- (2) takes, obtains, retains, or fails to return a minor child in violation of a court order which has transferred legal custody under chapter 260 to the commissioner of public welfare, a child placing agency, or the county welfare board;
- (3) takes, obtains, retains, or fails to return a minor child from or to the parent or other person having the right to visitation or custody under a court order, where the action manifests an intent substantially to deprive that parent or other person having the right to visitation or custody of his rights to visitation or custody; or
- (4) takes, obtains, retains, or fails to return a minor child from or to a parent or other person having the right to visitation or custody after commencement of an action relating to child visitation or custody but prior to the issuance of an order determining custody or visitation rights, where the action manifests an intent substantially to deprive that parent or other person having the right to visitation or custody of his rights to visitation or custody.

Subd. 2 **DEFENSES** No person violates subdivision 1 if the action:

- (1) is taken to protect the child or the person taking the action from physical or emotional harm or sexual assault;
- (2) is consented to by the parent, stepparent, or legal custodian seeking prosecution; or
- (3) is otherwise authorized by a court order.

The defenses provided in this subdivision are in addition to and do not limit other defenses available under this chapter or chapter 611.

Subd. 3 **VENUE** A person who violates this section may be prosecuted and tried either in the county in which the child was taken, concealed, or detained or in the county of lawful residence of the child.

Subd. 4 **RETURN OF CHILD; COSTS** A child who has been concealed, obtained, or retained in violation of this section shall be returned to the person having lawful custody of the child or shall be taken into custody pursuant to section 260.165, Subdivision 1, paragraph (c), clause (2). In addition to any sentence imposed, the court may assess any expense incurred in returning the child against any person convicted of violating this section. The court may direct the appropriate county welfare agency to provide counseling services to a child who has been returned pursuant to this subdivision.

Subd. 5 **DISMISSAL OF CHARGE** A felony charge brought under this section shall be dismissed if:

- (a) the person voluntarily returns the child within 14 days after he takes, detains, or fails to return the child in violation of this section; or
- (b) (1) the person taking the action and the child have not left the state of Minnesota; and (2) within a period of 14 days after taking the action, (i) a motion or proceeding under chapters 518, 518A, 518B, or 518C is commenced by the person taking the action, or (ii) the attorney representing the person taking the action has consented to service of process by the party whose rights are being deprived, for any motion or action pursuant to chapters 518, 518A, 518B, or 518C.

Subd. 6 **PENALTY** Except as otherwise provided in subdivision 5, whoever violates this section may be sentenced to imprisonment for not more than one year and one day or to payment of a fine of \$3,000, or both.

5. HEALTH INSURANCE OR PLAN, AS PROVIDED BY MINNESOTA STATUTES 518.551 SUBDIVISION 8

The person responsible to make child support payments shall name each child as a beneficiary on whatever medical, hospitalization or dental insurance or plan is available to the person responsible to make child support payments on a group basis through his or her employer or union.

FORM 704B - ORDER FOR WITHHOLDING FROM INCOME

STATE OF MINNESOTA

COUNTY/DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

FAMILY COURT DIVISION

In re the marriage of:

Petitioner,

and

Respondent.

ORDER FOR WITHHOLDING
FROM INCOME

Court File No. _____

The above entitled matter came on for hearing as a default matter on _____, 198__, before the Honorable _____, Judge of District Court, Family Court Division, at the _____ County Courthouse, City of _____, County of _____, State of Minnesota.

This Concurrent Order for Wage Withholding is being entered simultaneously with the (Temporary Order for Relief/ Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree) dated _____, 198__. As a result of said hearing, the Court makes the following

ORDER:

1. That the sum of _____ Hundred Dollars and no/100 (\$000.00) representing child support ordered by the Court shall be withheld from the (Respondent's/Petitioner's) income on a monthly basis by (his/her) present employer, or

other payor of funds, _____

_____ located at _____, and any future employer, or other payor of funds and shall be remitted monthly to the _____ County Support and Collections, Attention: Accounting Department, (fill in the appropriate address of the agency) in accordance with the provisions of Minnesota Statutes. Pursuant to Minnesota Statutes Chapter 518.611, Subd 6, this withholding shall have priority over an attachment, execution, garnishment or wage assignment unless otherwise ordered by the Court. The Court file number above or the accounting file number and the obligor's name shall be included with each remittance.

2. Cost of Living Adjustment. Pursuant to Minnesota Statutes Chapter 518.641, the child support obligation of the obligor shall increase biennially on a percentage basis commencing May 1, 198___ and every two years thereafter on May 1 of that year which shall be applied to the base amount of child support described in paragraph ___ of the (Temporary Order for Relief/Judgment and Decree) in accordance with the Consumer Price Index for Urban Consumers (CPI-U), unless obligor fails to have a comparable increase in (his/her) net disposable income over the previous year. In the event obligor's net disposable income did not have a comparable percentage increase with the escalation of the Consumer Price Index, child support would increase in a percentage amount equivalent to the percentage increase in obligor's income. In any event, the child support obligation of the obligor

would not decrease below the sum provided for in paragraph ____ of the (Temporary Order for Relief/Judgment and Decree), absent a material change in the parties' respective circumstances and the further order of this Court.

Net income shall be defined as gross income less:

- (a) federal withholding tax;
- (b) state income tax;
- (c) social security deductions;
- (d) mandatory pension deductions;
- (e) union dues;
- (f) dependent health insurance coverage;
- (g) individual health/hospitalization or medical expense deductions not to exceed \$25 per month.

3. The parties have been notified that CHILD SUPPORT AND/OR SPOUSAL MAINTENANCE WILL BE WITHHELD FROM INCOME ONLY AFTER ALL OF THE FOLLOWING CONDITIONS HAVE BEEN MET:

(a) _____ County Support and Collections Services or the obligee determines that the obligor is at least thirty (30) days behind in the payment of child support or spousal maintenance;

(b) _____ County Support and Collections Services or the obligee serves written notice of its determination that child support and/or spousal maintenance payments are thirty (30) days in arrears on the obligor.

(c) Within fifteen (15) days after service of the notice the obligor either fails to pay all past due payments or to move the Court, under M.S. Chapter 518.64, to modify the order respecting the amount of child support and/or spousal maintenance and, ex parte, to stay service of withholding on the employer or other payor of funds until the motion to modify is heard; and

(d) Not sooner than fifteen (15) days after service of written notice in paragraph (b) on the obligor, _____ County Support and Collections Services or the obligee serves a copy of its determination of a thirty (30) day delinquency and a copy of the Court's withholding order on the employer or other payor of funds, who will then be obligated to withhold payments from income and

forward the amount withheld to _____ County Support and Collections.

4. The parties and the employer or other payor of funds are further notified that **NO EMPLOYER MAY DISCHARGE, SUSPEND OR OTHERWISE PENALIZE OR DISCIPLINE AN EMPLOYEE BECAUSE THE EMPLOYER MUST WITHHOLD SUPPORT OR MAINTENANCE MONEY, Minnesota Statutes Chapter 518.611.**

5. In the event the obligee performs service on the employer or other payor of funds under paragraph 2(d), the determination and order shall also be served upon _____ County Support and Collections Services, together with an application to use collection services. Minnesota Statutes Chapter 518.611, Subd. 2(e).

6. Withholding amounts are also governed by the federal Consumer Credit Protection Act which limits withholding from aggregate disposable earnings. (15 USC Sec. 1673)

7. Service of this Order shall be by United States Mail by attorney for the (Petitioner/Respondent) mailing one (certified/conformed) copy of this Order to counsel for the (Petitioner/Respondent). Such service by mail shall be good and proper service for all purposes.

BY THE COURT:

Dated: _____

JUDGE OF DISTRICT COURT

FORM 704C - NOTICE FOR IMPLEMENTATION OF
BIENNIAL COST OF LIVING ADJUSTMENT

Date

Obligor's Name
Address

Re: Notice for Implementation of Cost-of-Living Adjustment
Court File: In Re the Marriage of: _____,
Petitioner and _____, Respondent.
Court File No: _____

Dear _____ :

Please be advised that a cost-of-living adjustment will become effective on the first day of May of this year. The adjustment is more fully explained and consistent with the terms of paragraph ____ of the _____.

Prior to the effective date of the adjustment, you have the opportunity to schedule a court hearing on whether the cost-of-living adjustment should take effect and obtain an ex parte stay of the imposition of the cost-of-living adjustment pending the outcome of the hearing. Forms for your use in requesting a hearing are available from the Clerk of Court. The cost-of-living adjustment upon the child support obligation of \$_____ ordered by the court will otherwise become automatic if you fail to schedule such a hearing and obtain an ex parte court order.

My calculations as to the amount of the adjustment are enclosed. By such computations, you should be paying \$_____ for your child support obligation starting on May 1, 19____, in equal installments of \$_____ on the first and fifteenth days of each month. If the calculations are satisfactory, please sign and date the attachment, and, after you make a copy for your records, please mail it back to me. The original document shall be filed with the court.

Sincerely,

Name

FORM 704 D - COST OF LIVING ADJUSTMENT FORMULA

STATE OF MINNESOTA

COUNTY/DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

FAMILY COURT DIVISION

In Re the Marriage of:

_____ ,

Petitioner,

and

_____ ,

Respondent.

COST OF LIVING ADJUSTMENT

Court File No. _____

This cost-of-living adjustment in child support has been calculated pursuant to MSA Section 518.641 and paragraph _____ of the Judgment and Decree of Dissolution dated _____ and entered on _____.

- Step 1. Total child support payable before adjustment. \$ _____
- Step 2. CPI-U for April of this year (Use February CPI-U if April is not yet available). _____
- Step 3. CPI-U for April of two years ago. _____
- Step 4. Subtract the number in Step 3 from the number in Step 2. _____
- Step 5. Divide the number in Step 4 by the number in Step 3. _____
- Step 6. Multiply the number in Step 5 by the number in Step 1 and round off to two decimal places. _____
- Step 7. Add the number in Step 6 to the number in Step 1. _____

The undersigned hereby agree that the sum set forth in Step 7 above is the total amount of child support payable on the first of May for the next two years until another biannual cost-of-living adjustment of the child support obligation or further order of the court.

Dated: _____

Dated: _____

Signed: _____
Petitioner

Signed: _____
Respondent