

STATE OF MINNESOTA  
IN SUPREME COURT  
C4-99-404

Order Promulgating Amendments to the  
Rules of the Expedited Child Support Process

ORDER

The Supreme Court Advisory Committee on Rules of the Expedited Child Support Process has recommended certain amendments to the Rules of the Expedited Child Support Process.

By order dated May 22, 2003, the Court solicited comments on the proposed amendments to be filed no later than June 20, 2003.

The Court has reviewed the comments received and the proposed amendments and is fully advised in the premises.

IT IS HEREBY ORDERED that:

1. The attached amendments to the Rules of the Expedited Child Support Process be, and the same are, prescribed and promulgated to be effective on November 1, 2003.
2. These amendments shall apply to all actions or proceedings pending on or commenced on or after the effective date.
3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the statements made therein.

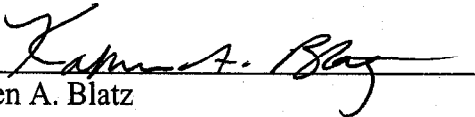
Dated: September 23, 2003

BY THE COURT:

OFFICE OF  
APPELLATE COURTS

SEP 24 2003

FILED

  
Kathleen A. Blatz  
Chief Justice

# Amendments to the Rules of the Expedited Child Support Process

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## RULE 353. TYPES OF PROCEEDINGS

### Rule 353.01. Types of Proceedings

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#### Subd. 2. Permissive Proceedings.

(a) **County Option.** 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) **Parentage Actions.** Any order issued pursuant to Rule 353.01, subd. 2(b) shall address the financial issues if appropriate, whether or not agreed upon by the parties.

**(1) Complete Order.** ~~When establishing parentage, Notwithstanding subdivision 3, a child support magistrate has the authority to establish the parent-child relationship, legal and physical custody, parenting time, and the legal name of the child when:~~

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

If all of the otherwise prohibited issues above have been resolved on a permanent basis, the child support magistrate shall issue an order which shall be a final determination of all claims raised in the parentage action.

**(2) Partial Order.**

**(A) Minimal Requirements.** If the parties at least agree to the parent-child relationship and temporary or permanent physical custody, the child support magistrate shall issue an order:

- (1) establishing the parent-child relationship; and
- (2) establishing temporary or permanent physical custody.

**(B) Further Agreed Upon Issues.** The order of the child support magistrate shall also establish parenting time and the legal name of the child if the parties so agree.

The order is final as to the parent-child relationship. The order is also final as to any agreement concerning permanent legal or physical custody, parenting time, name of the child, and any financial issues decided by the child support magistrate. If there is no agreement concerning permanent legal and/or physical custody, parenting time, or the legal name of the child, those issues shall be referred to the district court. The issues referred to district court are considered pending before the district court and are not final until the district court issues an order deciding those issues. The order of the child support magistrate referring the remaining issues to district court is not appealable pursuant to Rule 378. This rule shall not limit the right to appeal the district court's order. When one or more issues are referred to district court, service of the summons and complaint in the expedited process is sufficient for the matter to proceed in district court.

**(3) Order When Parent-Child Relationship Not Resolved.** In an action to establish parentage, if the parties do not agree to the parent-child relationship and the temporary

or permanent physical custody, the child support magistrate shall make findings and issue an order as follows.

(A) **Blood or Genetic Testing Not Completed.** When the issue of the parent-child relationship is not resolved and genetic testing has not been completed, the child support magistrate shall order genetic testing and shall continue the hearing in the expedited process to allow the tests to be completed and the results to be received.

(B) **Blood or Genetic Testing Completed.** When genetic testing has been completed, if the parties still disagree about the parent-child relationship, the child support magistrate shall refer the entire matter to district court for further proceedings. The child support magistrate may set temporary support pursuant to Rule 371.11, subd. 2.

(c) **Change of Venue.** Upon motion by a party for a change of venue, a child support magistrate shall issue the following order:

(1) 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.

(2) If any party disputes a motion to change venue, the child support magistrate shall issue an order referring the matter to district court and the court administrator shall schedule the matter for hearing. The court administrator shall mail notice of the date, time, and location of the hearing to all parties.

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

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

## **Rule 353.02. Procedure When Prohibited Issues**

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**Subd. 2. Multiple Issues in District Court.** If a proceeding is commenced in district court, the district court judge ~~should attempt to~~ shall 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 it is in the best interests of the parties 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, and shall provide the date, time, and location of the continued hearing. 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. After the district court judge has issued a final order in the matter, subsequent review or motions may be heard in 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, all parties, including the county agency, may agree in writing to refer the entire matter to district court without first appearing before the child support magistrate. Notice of the agreement must be filed with the court at least five (5) days prior to the scheduled hearing in the expedited process. The child support magistrate shall issue an order referring the entire matter to district court. Absent an agreement by all parties and upon the child support magistrate's own initiative or motion of a party or upon the child support magistrate's own initiative, 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. A child support magistrate's order that refers a matter to the district court calendar shall provide the date, time, and location of the continued hearing.

## **RULE 355. METHODS OF SERVICE; FILING**

## RULE 361. DISCOVERY

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### 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.~~

**Subdivision 1. Documents Required to be Provided Upon Request.** If a complaint or motion has been served and filed in the expedited process, a party may request any of the documents listed below. The request must be in writing and served upon the appropriate party. The request may be served along with the pleadings. A party shall provide the following documents to the requesting party no later than ten (10) days from the date of service of the written request.

- (a) Verification of income, health/dental insurance costs and availability, child care costs, and expenses.
- (b) Copies of last three months of pay stubs.
- (c) A copy of last two years' State and Federal income tax returns with all schedules and attachments, including Schedule Cs, W-2s and/or 1099s.
- (d) Written verification of any voluntary payments made for support.
- (e) Written verification of any other court-ordered child support obligations.

**Subd. 2. Remedies for Non-compliance.** If a party does not provide the documents, the party shall be prepared to explain the reason for the failure to the child support magistrate. If the magistrate determines that the documents should have been provided, the magistrate may impose the remedies available in Rule 361.04.

**Subd. 3. Financial Statement.** If a complaint or motion has been served, any party may request in writing that a financial statement be completed by a party, other than a county agency, and submitted five (5) days prior to hearing, or if no hearing is scheduled, within ten (10) days from the request being served. Failure to comply is subject to remedies under Rule 361.04. Where a financial statement requests supporting documentation, it shall be attached.

**Subd. 4. Redaction of Social Security Numbers.** Social security numbers must be blackened out from any documents provided under this rule.

**Rule ~~361.04~~ 361.03. 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. If the discovery motion is granted, the requesting party must serve the approved discovery requests upon the responding party and the discovery responses are due ten (10) days following service of the discovery request, unless otherwise ordered.

**Subd. 2. Objections to Discovery ~~Noncompliance with Discovery.~~** If a party objects to discovery that party may serve and file a motion within five (5) days of service of discovery. The motion may be decided without a hearing unless the child support magistrate determines that a hearing is necessary. 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~~ 361.04. Discovery Remedies**

**Subdivision 1. Motions to Compel.** If a party fails to comply with an approved request for discovery or a request for documents under Rule 361.02, 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 notify the other parties of the opportunity to respond within five (5) days. The motion shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary.

**Subdivision. 2 1. Options Available to the Child Support Magistrate.** When deciding a discovery related motion or issue, or in the event a party fails to provide documents requested under Rule 361.02, the child support magistrate may:

- (a) direct order 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 3. Failure to Comply with Discovery Order.** If a party fails to comply with an order issued pursuant to Rule 361.04~~3~~, subd. 2, or Rule 361.04, ~~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~~ 361.05. 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.

Social Security numbers must be blackened out from any documents provided under this rule.

**Rule ~~361.03~~ 361.06. Subpoenas**

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

**Subd. 2. Service of Subpoenas Shall be by Personal Service.** Except as noted in this subdivision, all subpoenas issued by the district court, shall be personally served by the sheriff or by any other person who is at least 18 years of age who is not a party to the action. Employees of the county agency may personally serve subpoenas. The person being served shall, at the time of service, be given the fees and mileage allowed by Minn. Stat. § 357.22 (2000). When the subpoena is requested by the county agency, fees and mileage need not be paid. The cost of service, fees, and expenses of any witnesses who have been served subpoenas shall be paid by the party at whose request the witness appears. The person serving the subpoena shall provide proof of service by filing the original subpoena with the court, along with an affidavit of personal service.



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

### **RULE 364. HEARING PROCESS**

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#### **Rule 364.09. Right to Present Evidence**

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**Subd. 3. Necessary Preparation Required.** The parties shall exchange copies of documents five (5) days before the hearing. If the exchange is not completed within the required time frame ~~e~~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 child support magistrate shall have discretion in determining whether evidence that was not timely exchanged prior to the hearing should or should not be admitted ~~parties are encouraged to exchange copies of exhibits before the hearing begins.~~

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

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#### **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, issuing orders of direct contempt, and issuing orders to show cause.

### **RULE 371. PARENTAGE ACTIONS**

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#### **Rule 371.03. Service of Summons and Complaint**

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

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

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**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~~ at least fourteen (14) days ~~of service of the notice of motion and motion~~ prior to the hearing. 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.

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

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**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 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.