

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

**ORDER ESTABLISHING 12/10/99 DEADLINE FOR SUBMITTING  
COMMENTS ON PROPOSED AMENDMENTS TO THE  
GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS**


WHEREAS, the Supreme Court Advisory Committee on the General Rules of Practice for the District Courts has proposed changes to the General Rules of Practice, and these changes are either housekeeping or non-controversial in nature; and

WHEREAS, this Court will consider the proposed changes without a hearing after soliciting and reviewing comments on the proposed changes;

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed changes shall submit twelve copies in writing addressed to the Clerk of the Appellate Courts, 25 Constitution Avenue, St. Paul, Minnesota 55155, no later than Friday, December 10, 1999. A copy of the committee's report containing the proposed changes is annexed to this order.

Dated: November 8, 1999

BY THE COURT:

  
\_\_\_\_\_  
Kathleen A. Blatz  
Chief Justice

OFFICE OF  
APPELLATE COURTS

NOV 08 1999

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CX-89-1863  
STATE OF MINNESOTA  
IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

NOV - 2 1999

In re:

Supreme Court Advisory Committee  
on General Rules of Practice

FILED

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Recommendations of Minnesota Supreme Court  
Advisory Committee on General Rules of Practice

Final Report

November 1, 1999

Hon. James H. Gilbert, Chair

Suzanne Alliegro, Saint Paul  
Hon. G. Barry Anderson, Saint Paul  
Steven J. Cahill, Moorhead  
Hon. Lawrence T. Collins, Winona  
Daniel A. Gislason, New Ulm  
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David F. Herr, Minneapolis  
Reporter

Michael B. Johnson, Saint Paul  
Staff Attorney

# **ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE**

## **Summary of Committee Recommendations**

The Court's Advisory Committee on General Rules of Practice met twice during 1999 to consider and evaluate various suggestions made by members of the public, the bench, and the bar of Minnesota. The rules continue to work well in practice, and these recommendations are relatively modest in scope.

**Summary of Advisory Committee Recommendations.** The advisory committee recommends that Rule 144 be amended to clarify its required procedures and to address its operation under recent court decisions. The committee has also identified a number of minor changes that truly stand as "housekeeping" amendments. This would correct statutory cross-references or citations or conform the rules to other amendments made since their adoption. The committee also recommends that the interim child support rules be incorporated into the general rules, either now or at the time those rules are adopted less provisionally.

In addition to the specific recommendations for rule amendments contained in this report, the committee also addressed a number suggestions for amendments that the committee believes either should not be made or should be monitored for possible future adoption. These recommendations are just as carefully considered and made to the court.

**Corporate Representation in Unlawful Detainer Actions.** The committee considered a suggestion favoring statewide adoption of the procedure followed in Housing Court in Hennepin and Ramsey Counties allowing representation of corporations by non-lawyers. Although there is some appeal to making this rule uniform statewide, the committee believes that the present rule in fact is fairer and more consistent. Hennepin and Ramsey Counties have separate Housing Courts for housing matters; the other districts hear these matters on regular district court calendars. Under the Court's guidance in *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753 (Minn. 1992), corporations can only appear in district court through an attorney-at-law. It appears undesirable to allow corporations to appear in district court only through an attorney in one type of case and to forbid it in other, possibly less momentous, cases on the same calendar. That inconsistency seems even more worthy of avoiding than the inconsistency between counties or districts.

**Legislative Modification of ADR Process.** The committee considered the fact that the Minnesota Legislature adopted amendments to MINN. STAT. §§ 518.091 & 543.22 that would add requirements for disclosure of information about ADR in summons used in marital dissolution matters (§ 518.091) and all civil actions (§ 543.22). The statute refers to the General Rules of Practice, and places a notice requirement into the summons form. This notice is presently required by MINN. GEN. R. PRAC. 114.03 to be given by the Court Administrator after the parties have appeared and identified all case participants and their addresses pursuant to MINN. GEN. R. PRAC. 104. Moreover, the parties are required under MINN. GEN. R. PRAC. 114.04 to meet and discuss ADR processes and report the results of their discussion in their informational statement submitted to the court under MINN. GEN. R. PRAC. 111.02(j). The committee does not view this as a wise or welcome modification to the ADR procedures presently in place, but does not believe any specific rule amendment is necessary at this time, at least to the general rules of practice. It is possible that, if this statute remains in effect, that Form 1 of the Minnesota Rules of Civil Procedure should reference this additional requirement for form of the summons.

**Timing and “Counting Backwards”.** The committee took up the recommendation of the Court’s advisory committee on the rules of civil procedure that it look at the counting of time periods for motion practice under MINN. GEN. R. PRAC. 115. This issue relates to an MSBA proposal to amend the rules to clarify them and establish an express procedure for “counting backwards” when deadlines are determined by counting back in time from a fixed event, such as a hearing date. The civil rules committee recommended to this Court that the MSBA proposal not be implemented, at least not as an amendment to Rule 6 of the Rules of Civil Procedure, and suggested that this committee might address whether the specific provisions for briefing motions in MINN. GEN. R. PRAC. 115 should be modified. This committee concluded that, since the problem identified in the MSBA proposal resulted from ambiguity in MINN. R. CIV. P. 6, any amendment to address the problem should be made in that rule. We therefore suggest that this Court may wish to have the Civil Rules Advisory Committee revisit the MSBA proposal.

## **Other Issues.**

**Eighth District ADR Program.** The committee considered a proposal from the Eighth District for an ADR settlement program. The discussion around this issue raised a number of potentially significant issues. The program appears to be working well in that district, and also appears to be the type of hybrid ADR process contemplated and encouraged by MINN. GEN. R. PRAC. 114. It does not appear that a formal rule is necessary for the use of this procedure, and the committee does not recommend creating a formal rule where the program can be made available to litigants as an available ADR mechanism through notice to the parties under the existing rule.

If the Eighth District program were considered for statewide implementation, this committee believes some consideration should be given to the details of the program, including funding of the program, the role of judges, the potential for misperception of the judicial role and the appearance of diversion of limited judicial resources, and related issues. This analysis will be facilitated by the experience gained in the Eighth District.

**Rejection of Documents for Filing.** The committee again encountered this year, as it has in a number of prior years, instances where apparent difficulty with the operation of the Rules is caused not by the Rules, but by what appears to be overzealous or incorrect application of them by some court administrators. Specifically, there continue to be instances where court administrators reject documents for filing or, in some instances, have removed from briefs or affidavits various attachments that the administrators deemed inappropriate for filing either because of their size, format, or nature. The Committee continues to be of the view that although the Rules should guide the parties as to what they should or should not file, and what format they should be in, courts, and not court administrators, should make assessments on a case-by-case basis as to the consequences of the actual filings made. This is an issue that may be handled better in the process of continuing education for state court personnel or through channels other than rule amendments, however.

**Taxation of Costs.** The committee considered a suggestion that MINN. R. CIV. P. 54.04 be modified to establish an explicit deadline for appealing to the district judge from an administrator's decision on the taxation of costs. The committee would recommend that this be addressed to this Court's committee on the civil rules. The existing mechanism appears to be an anomaly in a set of rules with ubiquitous deadlines, but there is some benefit to having

the taxation of costs an open question. There also exists not deadline for seeking to tax costs in the first instance, and that situation may also benefit the overall resolution of cases by permitting the taxation of costs to be held in abeyance.

**Removal of Judges by Notice.** The committee considered, briefly, the question of whether the Minnesota General Rules of Practice should be modified to deal with notices to remove judges. As the Court is aware, the Conference of Chief Judges has floated a proposal to abolish the notice to remove and replace it with a “request for recusal.” The civil rules committee had addressed some of the problems under the existing rules, although it did not recommend any rule amendments at this time. This issue is a very large issue, and is certain to be controversial. It is not, primarily, or certainly solely, an issue relating to the general rules. Notices to remove are governed both by statute and by other rules. *Compare* MINN. STAT. ' 542.16 (1998) *with* MINN. R. CIV. P. 63.03; MINN. R. CRIM. P. 26.03, subd. 13(4). This broad issue should be addressed by the Court in some broader forum than this committee, though we are willing to assist as may be helpful.

**Sanctions for Failure to Follow Rules.** The committee discussed again problems relating to First District policies imposing fines on lawyers for not filing a statement of the case, certificate of representation, or notice of settlement within the deadlines specified in the rules. Although the First District has suspended its policy, it asked the committee to consider a statewide policy to ensure compliance with the deadlines. The committee is opposed to imposition of automatic fine by administrators as a penalty for not meeting these deadlines. Other methods of handling these matters are available, and it has not been demonstrated that these methods are inadequate. For example, if a party fails to file an informational statement, the court could hold a scheduling conference, by telephone if desired. Alternatively, the court could issue a scheduling order based on the information submitted by another party, and if the neglectful party later moves to amend the scheduling order, the court can consider whether sanctions are appropriate under the circumstances.

The committee is aware, and has always supported the practice, of orders issued on a case-by-case basis notifying a party that their failure to comply with a specific filing requirement may result in sanctions unless it is cured in a reasonable time. The sanctions must, however, be reasonable under the circumstances. While relatively modest sanctions may be appropriately identified in advance (i.e., identified in the order as the sanction for

failure to cure), more severe sanctions such as precluding further filings may be appropriate only in the most unusual circumstances.

**Effective Date.** The committee believes that these changes may be implemented shortly after adoption by the Court. The amendments recommended in this report do not require significant “lead time.” It would be desirable for the rules to be adopted with an effective date of January 1, 2000, if feasible. We do not believe that these recommendations are likely to be controversial.

Respectfully submitted,

MINNESOTA SUPREME COURT  
ADVISORY COMMITTEE ON GENERAL  
RULES OF PRACTICE

**Recommendation 1: Minnesota Rule 144 on Wrongful Death Actions to Modify the Notice Required.**

**Introduction**

Wrongful death actions are governed by statute and the procedures for these actions are provided by Rule 144 of the general rules. The amendments recommended here would clarify the procedure in these actions following this Court’s decision in *Wynkoop v. Carpenter*, 574 N.W.2d 422 (Minn. 1998). In that case, the Court confronted a problem of notice under a statute that does not expressly define what persons or classes of persons are entitled to notice. See MINN. STAT. ' 573.02 (1998). The Court applied the definition of “heirs” from the intestacy statute, and thereby created a larger class of parties entitled to notice. The committee believes this change will obviate extensive and unnecessary (and potentially expensive) searches for “all heirs.”

The new Rule 144.06 conforms the rule to the decision in *Stroud v. Hennepin County Medical Center*, 544 N.W.2d 42, 48-49 (Minn. App. 1996), *rev’d on other grounds*, 556 N.W.2d 552, 553-55, nn. 3 & 5 (Minn. 1996), where the court held that the failure to list and obtain signatures of all next of kin did not invalidate trustee's appointment and commencement of a wrongful death action. It appears advantageous to the committee to have the rule explicitly state this saving provision.

**Specific Recommendation**

1 **RULE 144. ACTIONS FOR DEATH BY WRONGFUL ACT**

2 **Rule 144.01 Application for Appointment of Trustee**

3 Every application for the appointment of a trustee of a claim for death by wrongful  
4 act under Minn. Stat. ' 573.02, shall be made by the verified petition of the surviving spouse  
5 or one of the next of kin of the decedent. The petition shall show the dates and places of the  
6 decedent's birth and death; the decedent's address at the time of death; the name, age and



7 address of the decedent's surviving spouse ~~and each next of kin~~, children, parents,  
8 grandparents, and siblings; and the name, age, occupation and address of the proposed  
9 trustee. The petition shall also show whether or not any previous application has been made,  
10 the facts with reference thereto and its disposition shall also be stated. The written consent  
11 of the proposed trustee to act as such shall be endorsed on or filed with such petition. The  
12 application for appointment shall not be considered filing of a paper in the case for the  
13 purpose of any requirement for filing a certificate of representation or informational  
14 statement.

#### 15 **Rule 144.02 Notice and Hearing**

16 The petition for appointment of trustee will be heard upon such notice, given in such  
17 form and in such manner and upon such persons as may be determined by the court, unless  
18 waived by ~~all next of kin~~ the next of kin listed in the petition or unless the court determines  
19 that such notice is not required.

20 \* \* \*

#### 21 **Rule 144.05 Distribution of Proceeds**

22 Application for the distribution of money recovered under Minn. Stat. § 573.02 shall  
23 be by verified petition of the trustee. Such petition shall show the amount which has been  
24 received upon action or settlement; a detailed statement of disbursements paid or incurred, if  
25 any; the amount, if any, claimed for services of the trustee and of the trustee's lawyer; the  
26 amount of the funeral expenses and of demands for the support of the decedent; the name,  
27 age and address of the surviving spouse and each next of kin required to be listed in the  
28 petition for appointment of trustee and all other next of kin who have notified the trustee in  
29 writing of a claim for pecuniary loss, and the share to which each is entitled.

30 If an action was commenced, such petition shall be heard by the court in which the  
31 action was tried, or in the case of settlement, by the court in which the action was pending at  
32 the time of settlement. If an action was not commenced, the petition shall be heard by the  
33 court in which the trustee was appointed. The court hearing the petition shall approve,  
34 modify, or disapprove the proposed disposition and shall specify the persons to whom the  
35 proceeds are to be paid.

36 The petition for distribution will be heard upon notice, given in form and manner and  
37 upon such persons as may be determined by the court, unless waived by all next of kin listed  
38 in the petition for distribution or unless the court determines that such notice is not required.  
39 The court by order, or by decree of distribution, will direct distribution of the money to the  
40 persons entitled thereto by law. Upon the filing of a receipt from each distributee for the  
41 amount assigned to that distributee, the trustee shall be discharged.

42 The foregoing procedure will, so far as can be applicable, also govern the distribution  
43 of money recovered by personal representatives under the Federal Employers' Liability Act  
44 (45 U.S.C. §51) and under Minn. Stat. § 219.77.

45 **Rule 144.06 Validity and Timeliness of Action**

46 The failure to name the next of kin in a petition required by Rule 144.01 or the failure  
47 to notify or obtain a waiver from the next of kin shall have no effect on the validity or  
48 timeliness of an action commenced by the trustee.

49 **Advisory Committee Comment~~C1992~~ Amendment**

50 This rule is derived from Rule 2 of the Code of Rules for the District Courts.  
51 The Task Force has amended the rule to refer to “next of kin” rather than “heirs.”  
52 Minn. Stat. § 573.02 makes no requirements as to who must receive notification of  
53 petitions for appointment of trustees or for orders for distribution. Amendments to  
54 Rule 144.01, 144.02, and 144.05 codify the longstanding practice of requiring  
55 petitioners to name and notify only the decedent's surviving spouse and close relatives,  
56 not "all next of kin," which under *Wynkoop v. Carpenter*, 574 N.W.2d 422 (Minn.  
57 1998), and recent changes to Minnesota's intestacy statute would include distant  
58 relatives such as nieces, nephews, aunts, uncles, and cousins. These amendments  
59 address only the matter of notification and are not intended to reduce substantive rights  
60 of any next of kin.

61 The Task Force considered the advisability of amending Rule 144.05 to  
62 require the court to consider and either approve, modify, or disapprove the settlement  
63 itself, in addition to the disposition of proceeds as required under the existing rule.  
64 Although it appears that good reasons exist to change the rule in this manner, the  
65 Minnesota Supreme Court has indicated that the trial court has no jurisdiction to  
66 approve or disapprove the settlement amounts agreed upon by the parties. The court  
67 can only approve the distribution of those funds among the heirs and next of kin. *See*  
68 *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 200 n. 1 (Minn.  
69 1986).

70 The final sentence of ~~the~~ Rule is 144.05 was added in 1992 to make it clear  
71 that it is the filing of papers in the actual wrongful death action, and not papers relating  
72 to appointment of a trustee to bring the action, that triggers the scheduling requirements  
73 of the rules, including the requirement to file a certificate of representation and parties  
74 (Rule 104) and an informational statement (Rule 111.02).

75 Rule 144.06 codifies existing law holding that failure to notify some next of  
76 kin does not void an appointment." *See Stroud v. Hennepin County Medical Center*,  
77 544 N.W.2d 42, 48-49 (Minn. App. 1996) (failure to list and obtain signatures of all  
78 next of kin did not invalidate trustee's appointment and commencement of a wrongful  
79 death action), *rev'd on other grounds*, 556 N.W.2d 552, 553-55, nn. 3 & 5 (Minn. 1996)  
80 (trustee's original complaint effectively commenced wrongful death action despite her  
81 improper appointment).

**Recommendation 2: Various Rules Should Be Amended to Conform Them to Statutory Changes and Other Rule Amendments.**

**Introduction**

A number of the General Rules of Practice require "housekeeping" amendments. These include correction of statutory references to reflect amendments to the statutes, renumbering of rules, and conforming the General Rules to reflect amendments that have been made in other court rules. None of these changes is expected to be controversial in any way.

77 **Specific Recommendation**

78 **RULE 111. SCHEDULING OF CASES**

79 **Rule 111.01 Scope**

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81 (d) Unlawful detainer actions pursuant to Minn. Stat. ' ' ~~566.01~~ 504B.281, et seq.;

\* \* \*

82 **Advisory Committee CommentC1999 Amendments**

83 Rule 111.01(d) is amended in 1999 to reflect the fact that MINN. STAT. §  
84 566.01, et seq. were replaced by § 504B.281. This change is not intended to have any  
85 substantive effect other than to correct the statutory reference.

86 **PART H. MINNESOTA CIVIL TRIALBOOK**

87 \* \* \*

88 **Section 6. Voir Dire of Jurors**

89 \* \* \*

90 **(f) Alternates.** ~~In any trial the court may allow alternate jurors to be seated. The~~  
91 ~~alternate or alternates shall be the last juror or jurors seated. Any alternates shall be excused~~  
92 ~~before the jury retires to deliberate and shall not participate in deliberations unless all parties~~  
93 ~~agree on the record or in writing to have alternates participate in deliberations.~~

**Task Force Advisory Committee Comment-1999 Adoption Amendments**

Subsections (a), (b), (d), and (f) are derived from existing TRIALBOOK ¶¶ 11-15.

Subsection (c) is derived from the analogous provision of the rules of criminal procedure, MINN. R. CRIM. P. 26.02(3)(a)(4). The present provisions relating to jury selection are spread among numerous different sets of rules. The civil rules have not heretofore specified a time for exercise of peremptory challenges. Some judges ask a party conducting voir dire examination before the conclusion of the jury selection process to "pass the jury for cause." This section will make it clear that challenges for cause can be made at any time, even after voir dire by other parties.

Although the section provides for administration of oaths to jurors, an affirmation should be used as to any juror or panel member preferring it.

Section 6(f) dealing with alternates is deleted in 1999 to conform this rule to the abolition of alternates under the Rules of Civil Procedure. MINN. R. CIV. P. 47.02 was abrogated by the 1998 amendments to the Rules of Civil Procedure, effective January 1, 1999.

**TITLE VII. HOUSING COURT RULES-HENNEPIN AND RAMSEY COUNTIES**

**RULE 602. HOUSING COURT REFEREE**

The housing court referee may preside over all actions brought under Minnesota Statutes Chapters ~~504 and 566~~ 504B, criminal and civil proceedings related to violations of any health, safety, housing, building, fire prevention or housing maintenance code, escrow of rent proceedings, landlord and tenant damage actions, and actions for rent and rent abatement, unless the matter has been removed for hearing before a judge.

\* \* \*

**Advisory Committee Comment-1999 Amendments**

The former chapters 504 and 566 were consolidated into and replaced by a new chapter 504B. This change is not intended to have any substantive effect other than to correct the statutory reference.

**RULE 604. COMPLAINT**

**(a) Contents of Complaint.** The plaintiff in an unlawful detainer case shall file with the court administrator a complaint containing the following:

\* \* \*

126 (3) A statement of how plaintiff has complied with Minnesota Statutes § ~~504.22~~  
127 504B.181 by written notice to the defendant, by posting or by actual knowledge of the  
128 defendant;

129 \* \* \*

130 **Advisory Committee CommentC1999 Amendments**

131 The former statute § 504.22 was replaced by a new statute § 504B.181. This  
132 change is not intended to have any substantive effect other than to correct the statutory  
133 reference.

134 **RULE 605. RETURN OF SUMMONS**

135 All summons shall be served in the manner required by Minn. Stat. Ch. ~~560~~ 504B and  
136 the affidavit of service shall be filed with the court by 3:00 o'clock p.m. 3 business days prior  
137 to the hearing or the matter may be stricken. The affidavit must contain the printed or typed  
138 name of the person who served the summons.

139 \* \* \*

140 **Advisory Committee CommentC1999 Amendments**

141 The former chapter 560 was replaced by a new chapter 504B. This change is  
142 not intended to have any substantive effect other than to correct the statutory reference.

143 **RULE 606. FILING OF AFFIDAVITS**

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145 **Advisory Committee CommentC1999 Amendments**

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147 This rule is amended to conform the service requirements to the service  
148 provisions of MINN. STAT. § ~~566.06~~ 504B.331 (Supp. 1999). The procedure of the  
149 revised rule also streamlines the procedure for issuance, service, and filing of process,  
150 and should permit service to be accomplished at a lower cost.

**Recommendation 3: Adopt a Special Rule for Mediation in Conciliation Court in Hennepin County**

**Introduction**

The Committee recommends that the Court approve the adoption of the following rule as Local Rule 2 for the Fourth Judicial District. This rule is not currently needed in other districts, so there is no reason to adopt it as a state-wide rule. The committee does believe that, as is true for other ADR processes, neutrals should not be required to be certified as neutrals under MINN. GEN. R. PRAC. 114. (The committee’s recommendation is reflected in the interlining of language in recommended Rule 2.4.)

**Specific Recommendation**

(For this rule only, legislative markings are included only to show changes from the rule as proposed. The entire rule would be a new rule.)

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**SPECIAL RULES OF PRACTICE  
FOR THE DISTRICT COURTS**

150

**FOURTH JUDICIAL DISTRICT**

151

**RULE 2 MEDIATION IN CONCILIATION COURT**

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**Rule 2.1 Scope of Rule**

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This rule applies to all conciliation court cases in the fourth judicial district.

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**Rule 2.2 Notice and Explanation**

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The court may require the parties to participate in court sponsored mediation prior to their initial hearing in conciliation court. The court administrator shall notify parties that their case has been assigned to the mediation calendar and provide them with an explanation of the procedures. The notice and explanation may be in the form of a flyer or other attachment to be mailed or served with the summons and complaint.

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**Rule 2.3 Attendance; Confidentiality**

Attendance at, and confidentiality of, mediation sessions is governed by Rules 114.07 and 114.08 of the General Rules of Practice for the District Court.

**Rule 2.4 Mediator Assignment, Qualifications and Communications**

Mediators shall be assigned by the court. ~~Absent a request by the parties, only qualified neutrals included on the state court administrator's civil neutral roster as provided in Rule 114.12 of the General Rules of Practice for the District Court may serve as mediators.~~ Communications between parties and the mediator is governed by Rule 114.10 of those rules.

**Rule 2.5 Funding**

The parties shall not be required to pay for mediation services under this rule.

**Rule 2.6 Failure to Reach Settlement**

If the parties are unable to agree to a settlement of their dispute during the mediation session, the conciliation court shall promptly hear the case on the same day as the mediation session.

**Rule 2.7 Settlement Agreement**

If a settlement agreement is reached, all parties, the mediator, and the referee or judge will sign a mediated settlement agreement that includes the following terms:

- (a) either party may rescind the agreement within seventy-two hours after signing it;
- (b) parties must keep the court advised of their current address;
- (c) if the terms of the settlement agreement are not met by the deadline agreed to, a party may request entry of judgment by filing an affidavit of non-compliance with the court;
- (d) after a hearing to determine compliance issues, a judge may order that final judgment be entered in conciliation court effective immediately, and the judgment may be immediately transcribed to district court; and
- (e) the parties agree to waive the thirty-day period for enforcement of a judgment set forth in Rule 518(b) of the General Rules of Practice for the District courts.

**Rule 2.8 Non-Compliance Hearing; Judgment**

Upon the filing of an affidavit of non-compliance with the court, the court administrator shall schedule a non-compliance hearing and advise the parties by mail of the date, time, and location of the hearing. If after the hearing the judge determines that a party failed to comply with the terms of the settlement agreement, the judge shall order that final judgment be entered in conciliation court effective immediately. Upon entry, the judgment may be immediately transcribed to, and enforced in, district court.

**Advisory Committee Comment-1999 Adoption**

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196           The mandatory mediation program authorized under rule 2 began as a pilot  
197 project in 1996. See Order, In re Fourth Judicial District Pilot Program for Mandatory  
198 Mediation in Conciliation Court, No. CX-89-1863 (Minn. Sup. Ct., Oct. 29, 1996).  
199 The pilot project was successful in resolving conciliation court cases in a manner that  
200 minimized delay and financial burdens for litigants. REPORT TO THE MINNESOTA  
201 SUPREME COURT AND MINNESOTA CONFERENCE OF CHIEF JUDGES ON HENNEPIN COUNTY  
202 DISTRICT COURT MANDATORY MEDIATION PROJECT, pp. 7-11 (June 30, 1997). As a  
203 result, the program was permanently established in 1999, with directions that the  
204 program should be codified in a published court rule. See Order, In re Fourth Judicial  
205 District Pilot Program for Mandatory Mediation in Conciliation Court, No. CX-89-  
206 1863 (Minn. Sup. Ct., Mar. 23, 1999).

207           The references in Rules 2.3 and 2.4 to selected portions of Rule 114 of the  
208 General Rules of Practice for the District Court recognize that Rule 114 is generally not  
209 applicable to conciliation court cases. Only specific provisions of Rule 114 are made  
210 applicable to conciliation court mediation under this Rule 2.

211           The committee considered recommending this rule for statewide adoption, but  
212 does not believe that step would be warranted because this program is not being  
213 considered for use in other districts and because the advisory committee has not fully  
214 analyzed its operation in Hennepin County or its potential operation in other districts.



**Recommendation 4: Interim Expedited Child Support Process Rule.**

**Introduction**

The committee believes it would be desirable for the Interim Expedited Child Support Process Rules, adopted by Order re: Promulgation of Interim Rules of Expedited Child Support Process, No. C4-99-404 (Minn. Sup. Ct., June 23, 1999), be incorporated as part of the General Rules of Practice. This numbering will facilitate the ready location of the rules by parties needing access to them, and would be consistent with the longstanding recommendation of this advisory committee that proliferation of separate rules of procedure not be adopted. The committee believes these rules can practically and usefully be numbered as part of the family court series of rules, assigning them numbers beginning with Rule 350. This recommendation could be implemented either immediately or following the Court’s advisory committee on those rules reports on or before March 1, 2000.

**Specific Recommendation**

212 **RULE 351. SCOPE; PURPOSE; TYPES OF PROCEEDINGS**

213 **Rule 351.01. Scope**

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

218 **Advisory Committee Comment**

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

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

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### **Rule 351.02. Purpose of Expedited Child Support Process**

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

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

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#### **Advisory Committee Comment**

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

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### **Rule 351.03. Types of Proceedings**

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

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

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

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

- 267 Subd. 3. Prohibited Proceedings. The following proceedings must not be conducted  
268 in the expedited child support process:
- 269 (a) cases that are not IV-D cases;
  - 270 (b) establishment, modification, or enforcement of custody or visitation;
  - 271 (c) establishment or modification of spousal maintenance;
  - 272 (d) issuance, modification, or enforcement of orders for protection under  
273 Minnesota Statutes Chapter 518B;
  - 274 (e) resolution of property issues;
  - 275 (f) establishment of parentage, when contested; and
  - 276 (g) contempt proceedings, when contested.

277 **Advisory Committee Comment**

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

283 Contested and Uncontested Parentage and Contempt Proceedings. Rule  
284 351.03, subdivisions 2 and 3, both relate to parentage and contempt proceedings. The  
285 legislation establishing the expedited child support process provides that "[a]t the  
286 option of the county, the expedited process may include contempt actions or actions  
287 to establish parentage." 1999 Minn. Laws ch. 196, art. 1, § 1(d) (referring to  
288 Minnesota Statutes § 484.702, subdivision 1(d) (Supp. 1999)). While the legislation  
289 does not distinguish between contested and uncontested parentage and contempt  
290 proceedings, the Advisory Committee believes that the Legislature did not intend for  
291 jury trials and contested parentage or contempt proceedings to be conducted in the  
292 expedited child support process. For that reason, Rule 351.03, subdivision 3, prohibits  
293 contested parentage and contempt proceedings, while subdivision 2 permits  
294 uncontested contempt and parentage proceedings at the option of the county. Nothing  
295 in these rules is intended to preclude the complete resolution of uncontested parentage  
296 proceedings in the expedited child support process.

297 **Rule 351.04. Procedure When Multiple Issues**

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

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

307 Subd. 3. Multiple Issues in Expedited Child Support Process. If a proceeding is  
308 commenced in the expedited child support process and the response, motion, or counter

309 motion raises one or more issues identified in Rule 351.03, subdivision 3, the child support  
310 magistrate assigned to the matter must refer all issues to district court for decision by a  
311 district court judge.

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**Advisory Committee Comment**

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

321 **RULE 352. DEFINITIONS**

322 **Rule 352.01. Definitions**

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

324 (a) "Child support magistrate" means any individual appointed by the chief judge  
325 of the judicial district to preside over matters in the expedited child support process. "Child  
326 support magistrate" also means any family court referee or district court judge presiding over  
327 matters in the expedited child support process.

328 (b) "County agency" means the local public authority responsible for child  
329 support enforcement.

330 (c) "County attorney" means the attorney who represents the county agency,  
331 whether that person is employed by the office of the county attorney or under contract.

332 (d) "Initiating party" means the person or county agency starting the proceeding  
333 in the expedited child support process.

334 (e) "IV-D case" means any proceeding where a party has either (i) assigned to the  
335 State rights to child support because of the receipt of public assistance as defined in Minnesota  
336 Statutes § 256.741, or (ii) applied for child support services under title IV-D of the Social  
337 Security Act, 42 U.S.C. § 654(4). "IV-D case" does not include proceedings where the party  
338 has applied for income withholding only services under Minnesota Statutes § 518.6111.

339 (f) "Non-initiating party" means the person or county agency responding to the  
340 complaint or motion.

341 (g) "Party" means any person or county agency with a legal right to participate in  
342 the proceedings.

343 (h) "Support" means child support, child care support, spousal maintenance when  
344 combined with child support, medical support including expenses for confinement and  
345 pregnancy, arrearages, reimbursement, related costs and fees, and interest and penalties.

346 **RULE 353. COMPUTATION OF TIME**

347 **Rule 353.01. Generally**

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

351 **Rule 353.02. Time Periods Less Than Seven Days**

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

354 **Rule 353.03. “Business Day” Defined**

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

361 **Advisory Committee Comment**

362 State-Level Judicial-Branch Holidays. The legal holidays listed in Rule  
363 353.03 are based upon Minnesota Statutes § 645.44, subdivision 5, which defines state-  
364 level judicial-branch holidays. The statute further provides that when New Year's Day  
365 (January 1), Independence Day (July 4), Veteran's Day (November 11), or Christmas  
366 Day (December 25) falls on a Sunday, the following day (Monday) shall be a holiday,  
367 and that when New Year's Day, Independence Day, Veteran's Day, or Christmas Day  
368 falls on a Saturday, the preceding day (Friday) shall be a holiday. Minnesota Statutes '   
369 645.44, subdivision 5, also authorizes the judicial branch to designate certain other days  
370 as holidays. The Judicial Branch Personnel Plan designates the Friday after  
371 Thanksgiving as a holiday.

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

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

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

388 **RULE 354. FILING FEE**

389 **Rule 354.01. Collection of Filing Fee**

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

394 **Advisory Committee Comment**

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

403 **Rule 354.02. Waiver of Filing Fee**

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

411 **Advisory Committee Comment**

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

416 **RULE 355. SERVICE AND FILING**

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

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

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

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

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

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

438 **Rule 355.02. Types of Service**

439 Subdivision 1. Personal Service.

- 440 (a) Upon Whom.
  - 441 (1) Upon an Individual. Personal service upon an individual in the state  
442 shall be accomplished by delivering a copy of the summons and complaint, notice, motion, or  
443 other document to the individual personally or by leaving a copy at the individual's dwelling  
444 house or usual place of abode with some person of suitable age and discretion then residing  
445 therein. If the individual has, pursuant to statute, consented to any other method of service or  
446 appointed an agent to receive service, or if a statute designates a state official to receive  
447 service, service may be made in the manner provided by such statute. If the individual is  
448 confined to a state institution, personal service shall be accomplished by also serving a copy  
449 of the document upon the chief executive officer at the institution. Personal service upon an  
450 individual outside the state shall be accomplished according to the provisions of Minnesota  
451 Statutes chapter 518C.
  - 452 (2) Upon the County Agency. Personal service upon the county agency  
453 shall be accomplished by serving the director of the county human services department.

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

457 Subd. 2. Service by Publication.

458 (a) Service. Service by publication means the publication in full of the summons or  
459 notice in the regular issue of a qualified newspaper, once each week for three weeks. Service  
460 by publication shall be permitted only upon order of a child support magistrate. The child  
461 support magistrate may order service by publication upon the filing of an affidavit by the  
462 serving party or the serving party's attorney stating that the person to be served is not a resident  
463 of the state or cannot be found within the state, the efforts that have been made to locate the  
464 other party, and either that the serving party has mailed a copy of the summons or notice to  
465 the other party's place of residence or that such residence is not known to the serving party.

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

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

473 (a) Service. In any proceeding authorized by these rules, service may be made by  
474 mailing a copy of the summons and complaint, notice, motion, or other document by first-  
475 class mail, postage prepaid addressed to the person to be served at the person's last known  
476 address. In addition, any party serving a summons and complaint must also include two  
477 copies of a notice and acknowledgment of service by mail conforming substantially to Form  
478 22 set forth in the Rules of Civil Procedure, along with a return envelope, postage prepaid,  
479 addressed to the sender.

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

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

491 **Advisory Committee Comment**

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



495 **Rule 355.03. Completion of Service**

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

499 **Rule 355.04. Proof of Service**

500 Subdivision 1. Parties. Service must be proved by the certificate of the sheriff  
501 making personal service, by the affidavit of any other person making personal service, by an  
502 acknowledgment of service of the party or party's attorney served by U.S. mail, by an  
503 affidavit of service by U.S. mail or by facsimile service, or, if served by publication, by the  
504 affidavit of the printer or the printer's designee. The proof of service must describe what was  
505 served, state how the document was served, upon whom it was served, and the date, time,  
506 and place of service.

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

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

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

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

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

525 Subd. 4. Filing by Facsimile Transmission.

526 (a) Generally. Any paper may be filed with the court administrator by facsimile  
527 transmission. Filing is deemed complete at the time that the court administrator receives the  
528 facsimile transmission. The facsimile has the same force and effect as the original. Only

529 facsimile transmission equipment that satisfies the published criteria of the Supreme Court  
530 may be used for filing in accordance with this rule.

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

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

536 (2) the original signed document; and

537 (3) the applicable filing fee, if any.

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

## 542 **RULE 356. COURT INTERPRETERS**

### 543 **Rule 356.01. Appointment Mandatory**

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

### 549 **Rule 356.02. “Person Handicapped in Communication” Defined**

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

#### 556 **Advisory Committee Comment**

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

## 560 **RULE 357. INTERVENTION**

**Rule 357.01. Public Authority**

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

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

569 **Rule 357.02. Other Individuals**

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

574 Subd. 2. Procedure. A person seeking permissive intervention under subdivision  
575 1 must file with the court and serve upon all parties a motion to intervene. The motion  
576 must state:

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

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

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

590 **Rule 357.03. Effect of Intervention**

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

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

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**Rule 358.01. Right to Representation**

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

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**Advisory Committee Comment**

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

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

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

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

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

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

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

623 **RULE 359. TELEPHONE AND INTERACTIVE VIDEO**

624 **Rule 359.01. Telephone and Interactive Video Permitted**

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

632 **Advisory Committee Comment**

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

636 **Rule 359.02. Procedure**

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

645 **Rule 359.03. In-Court Appearance Not Precluded**

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

648 **RULE 3610. ADMINISTRATION OF EXPEDITED CHILD SUPPORT  
649 PROCESS; CHILD SUPPORT MAGISTRATES**

650 **Rule 3610.01. Administration of Expedited Process**

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

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**Advisory Committee Comment**

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Rule ~~364~~0.01 does not permit a judicial district to opt out of the expedited child support process. Rather, Rule ~~364~~0.01 simply indicates that the chief judge of the district must decide who will be responsible for administering the expedited child support process within each judicial district.

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**Rule ~~364~~0.02. Use and Appointment of Child Support Magistrates**

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

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**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.

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**Rule ~~364~~0.03. Minimum Qualifications**

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

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

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**Rule ~~364~~0.04. Residence**

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

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**Rule ~~364~~0.05. Application Process**

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Each person who is not a family court referee or a district court judge who wishes to serve as a child support magistrate must complete an application developed by

686

687 the state court administrator. Applications must be processed under the policy  
688 established by the state court administrator.

689 **Advisory Committee Comment**

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

694 **Rule 3610.06. Training**

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

701 **Advisory Committee Comment**

702 Rule 3640.06 does not require training for district court judges  
703 whose sole function in the expedited child support process is to decide  
704 motions for review pursuant to Rule 3722.

705 **Rule 3610.07. Continuing Education**

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

708 **Rule 3610.08. Conflict of Interest**

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

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

712 (b) a guardian ad litem in any family law matter, as defined in the comment  
713 to Rule 901.01 of the Rules of Guardian Ad Litem Procedure, in any county in which  
714 the person serves as a child support magistrate.

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

717 **Rule 3610.09. Code of Judicial Conduct**

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

722 **Advisory Committee Comment**

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

728 **Rule 3610.10. Impartiality**

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

733 **Rule 3610.11. Periodic Evaluation**

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

739 **Advisory Committee Comment**

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



747 **RULE 3611. EMPLOYEES OF THE COUNTY AGENCY**

748 **Rule 3611.01. County Attorney Direction Required**

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

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

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

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

780 **Advisory Committee Comment**

781 Although Rule 3611.01 provides that the county attorney is  
782 required to provide legal supervision of and direction to employees of the  
783 county agency, nothing in these rules is intended to require the county  
784 attorney to be present at every hearing. The county attorney determines  
785 which hearings the county attorney will attend.

786 **Rule 3641.02. County Attorney Direction Not Required**

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

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

801 **Rule 3641.03. Performance of Duties Not Practice of Law**

802 Performance of the duties prescribed in Rules 3641.01 and 3641.02 by employees  
803 of the county agency does not constitute the unauthorized practice of law for purposes of  
804 these rules or Minnesota Statutes ' 481.02, subdivision 8.

805 **RULE 3642. INITIATION OF PROCEEDINGS**

806 **Rule 3642.01. Establishment of Parentage and Support**

807 Subdivision 1. Summons and Complaint.

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

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

822 summons must identify the name, address, and telephone number of the person to contact  
823 to discuss settlement.

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

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

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

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

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

847 **Rule 3612.02. Modification and Enforcement of Support**

848 Subdivision 1. Motion.

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

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

853 (2) modification or enforcement of support;

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

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

857 (b) Content of Motion. The motion must state that any non-initiating party  
858 has a right to a hearing and that such non-initiating party may schedule a hearing by  
859 contacting the court administrator to obtain a date and then serving upon all parties  
860 written notice of the date, time, and location of the hearing. The motion must also state  
861 that if the non-initiating party fails to serve the initiating party a written response to the  
862 motion within twenty (20) days as required under Rule 13, the child support magistrate

863 may proceed to default and may sign the proposed order without further notice or hearing  
864 as permitted under Rule ~~361~~4. The motion must also state in plain language the facts and  
865 grounds supporting what the initiating party wants the child support magistrate to order.  
866 The motion must also state that the case can be settled informally. When the county  
867 agency is the initiating party, the motion must identify the name, address, and telephone  
868 number of the person to contact to discuss settlement. If the motion does not include a  
869 proposed order, the motion must include a specific hearing date. A separate notice of  
870 motion is not required.

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

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

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

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

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

#### 890 **Rule ~~361~~2.03. Enforcement by Motion for Contempt**

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

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

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

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

907 **Advisory Committee Comment**

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

910 **RULE 3613. RESPONSE TO SUMMONS AND COMPLAINT OR MOTION**

911 **Rule 3613.01. Timing**

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

917 **Rule 3613.02. Written Response Required**

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

923 **Rule 3613.03. Filing of Response**

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

926 **Rule 3613.04. Scheduling of Hearing**

927 The initiating party must schedule a hearing under Rule 3619.01 if an  
928 objection to the request for relief or to the provisions of a proposed order is received  
929 or if a request for a hearing is received. The non-initiating party may schedule a  
930 hearing. To schedule a hearing, a party must contact the court administrator to obtain

931 a hearing date and then serve upon all parties written notice of the date, time, and  
932 location of the hearing.

933 **RULE 3614. DEFAULT**

934 **Rule 3614.01. Procedure**

935 Subdivision 1. Timing. If the non-initiating party has been duly served with  
936 the summons and complaint or motion and there has been no response within the time  
937 period prescribed by Rule 3613.01, the initiating party may submit the case to the  
938 child support magistrate as a default proceeding.

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

945 **Rule 3614.02. Hearing**

946 Subdivision 1. Hearing Not Required. Except in establishment of parentage  
947 cases, if the child support magistrate makes the findings required in Rule 3614.03, the  
948 magistrate may sign the proposed order without further notice or hearing.  
949 Establishment of parentage cases must proceed according to subdivision 2(b).

950 Subd. 2. Hearing Required

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

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

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

965 **Rule ~~3614~~4.03. Signing of Proposed Order**

966 A child support magistrate may sign a proposed order if the child support  
967 magistrate finds that the non-initiating party:  
968 (a) was properly served with the summons and complaint or motion;  
969 (b) was notified of the requirement to respond in writing within twenty  
970 (20) days of service of the summons and complaint or motion;  
971 (c) failed to timely respond in writing;  
972 (d) was notified of the opportunity to be heard and the method for  
973 requesting a hearing; and  
974 (e) did not request a hearing or was notified of the date, time, and location  
975 of the hearing and failed to appear.

976 **Rule ~~3614~~4.04. Proposed Order Not Accepted**

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

983 **Advisory Committee Comment**

984 Default in Establishment of Parentage Proceedings. Minnesota  
985 Statutes § 257.651 provides that “[i]n an action to determine the existence of  
986 the father and child relationship under sections 257.51 to 257.74, if the  
987 alleged father fails to appear at a hearing after service duly made and proved,  
988 the court shall enter a default judgment or order of paternity.” However, in  
989 *Bartlow v. Brinkman*, 378 N.W.2d 790 (Minn. 1985), the Minnesota  
990 Supreme Court held that in paternity proceedings “default should not be  
991 entered, upon objection, merely on the allegations and verifications  
992 contained in the complaint. It should be entered only after the allegations  
993 have been verified in open court under oath before a trial judge.” *Id.* at 795.  
994 The court stated that upon request of the defendant, the court “should require  
995 the mother of the child to be placed on the stand in open court and be  
996 required to testify under oath to verify the allegations of the complaint.” *Id.*  
997 While the Advisory Committee is aware that default hearings are not  
998 specifically required in establishment of parentage cases, given the potential  
999 outcome of such cases the Advisory Committee nevertheless chose to require  
1000 hearings in such cases.

1001 **RULE ~~3615~~5. PREHEARING INFORMAL RESOLUTION**

1002 **Rule ~~3615~~5.01. Informal Discussions**

1003 The parties may confer informally by telephone or in person in an attempt to  
1004 settle the case prior to a hearing.

1005 **Rule 3615.02. Settlement Conference**

1006 Subdivision 1. Procedure. On its own initiative or at the request of a party,  
1007 the county agency may schedule a settlement conference between the parties. A  
1008 notice of the date, time, and place of the settlement conference must be served by  
1009 U.S. mail upon the parties by the county agency no later than five (5) days before the  
1010 settlement conference. The scheduling of a settlement conference will not void the  
1011 requirement that a hearing be held within sixty (60) days of service of the summons  
1012 and complaint or motion.

1013 Subd. 2. Domestic Abuse. The parties are not required to participate in any  
1014 settlement conference when one of the parties claims to be the victim of domestic  
1015 abuse by the other party or when the county agency determines that there is probable  
1016 cause that one of the parties or a child of the parties has been physically abused or  
1017 threatened with physical abuse.

1018 Subd. 3. Documentation. Each party must bring to the settlement conference  
1019 all documentation establishing the party's income and expenses, including the party's  
1020 most recent pay stubs, verification of employment status from employer(s), copies of  
1021 regular monthly bills such as utility statements, rental statements, loan payment  
1022 statements, and any other documents available to prove the claimed income or  
1023 expenses.

1024 **Advisory Committee Comment**

1025 Rule 3645 relates to settlement conferences between the parties,  
1026 not between the parties and the child support magistrate. Rule 3645 is not  
1027 intended to require a pre-hearing conference between the child support  
1028 magistrate and the parties as provided in Rule 16 of the Rules of Civil  
1029 Procedure or Rule 305 of the Rules of General Practice for Family Court  
1030 Procedure.

1031 **RULE 3616. SETTLEMENT**

1032 **Rule 3616.01. Procedure**

1033 The parties may settle the case at any time before a hearing.

1034 **Rule 3616.02. Proposed Consent Order**

1035 Subdivision 1. Preparation and Signing. If the parties reach an agreement,  
1036 one of the parties must prepare a proposed consent order. If the county agency is a  
1037 party, the county agency must prepare the proposed consent order. All parties to the  
1038 agreement, including the county agency, must sign the proposed consent order. The  
1039 proposed consent order must state that the parties have waived their right to a hearing.



1040 Subd. 2. Filing. The proposed consent order must be filed with the court  
1041 administrator, who shall submit it to the child support magistrate for review and  
1042 signature. When submitting the consent order to the child support magistrate, all  
1043 pleadings and affidavits of service must be submitted to the child support magistrate.  
1044 If the county agency is not a party, other parties must submit copies of the  
1045 information used to prepare the consent order.

1046 Subd. 3. Approval of Proposed Order. The child support magistrate may  
1047 approve the consent order by signing it or may reject it and proceed under Rule  
1048 3546.03.

1049 **Advisory Committee Comment**

1050 Rule 3646.02 provides that background information used in  
1051 preparing the proposed consent order be sent to the child support magistrate.  
1052 However, if the proposed consent order is not filed, the non-pleading  
1053 documents should be returned to the county agency.

1054 **Rule 3616.03. Order Not Accepted**

1055 The child support magistrate may reject a proposed order on the grounds that  
1056 it is not supported by the evidence submitted or is contrary to law. If the child  
1057 support magistrate rejects the proposed consent order, the child support magistrate  
1058 must give written notice to the parties of the deficiencies. The child support  
1059 magistrate may direct the parties to submit the missing documentation, appear at the  
1060 previously scheduled hearing time, or schedule a hearing, giving notice of the date,  
1061 time, and location to the parties.

1062 **Rule 3616.04. Exception from Alternative Dispute Resolution**

1063 Alternative dispute resolution, as provided in Rule 310 of the Rules of Family  
1064 Court Procedure, does not apply to cases brought in the expedited child support  
1065 process.

1066 **RULE 3617. DISCOVERY**

1067 **Rule 3617.01. Witnesses**

1068 Each party may call witnesses to testify at the hearing. Any party intending to  
1069 call a witness must at least five (5) days before the hearing provide to the other parties  
1070 written notice of the witness' name and address and provide a brief summary of the  
1071 testimony to be given by each witness.

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### **Rule 3617.02. Exchange of Documents**

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

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#### **Advisory Committee Comment**

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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.

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### **Rule 3617.03. Subpoenas**

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

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

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

1111 **Rule ~~36~~7.04. Other Discovery**

1112 Any additional means of discovery available under the Minnesota Rules of  
1113 Civil Procedure may be allowed by order of the child support magistrate. The party  
1114 seeking discovery must bring a motion before the child support magistrate for an  
1115 order permitting additional means of discovery. The motion must include the reason  
1116 for the request and must notify the other parties of the opportunity to respond within  
1117 five (5) days. The party seeking discovery has the burden of showing that the  
1118 discovery is needed for the proper presentation of the party's case, is not for purposes  
1119 of delay or harassment, and that the issues or amounts in controversy are significant  
1120 enough to warrant the discovery. The child support magistrate may order such other  
1121 discovery as is deemed appropriate or may deny the motion without the need for any  
1122 hearing on the matter.

1123 **Rule ~~36~~7.05. Noncompliance with Request for Discovery**

1124 Subdivision 1. Decision by Child Support Magistrate. If the parties cannot  
1125 agree on acceptable exchange of information, the parties must exchange what can be  
1126 agreed upon and be prepared to explain the disagreement to the child support  
1127 magistrate. If time permits before the date set for the hearing, any party may schedule  
1128 a prehearing conference, with five (5) days notice to the other parties, or the parties  
1129 may jointly submit the matter to the child support magistrate for a ruling without a  
1130 hearing. If no action is taken prior to the contested hearing, the dispute will be  
1131 decided at the hearing.

1132 Subd. 2. Burden of Proof. The party seeking discovery has the burden of  
1133 showing that the discovery is needed for the proper presentation of the party's case, is  
1134 not for purposes of delay or harassment, and that the issues or amounts in controversy  
1135 are significant enough to warrant the discovery. In ruling on a discovery motion, the  
1136 child support magistrate must recognize all privileges recognized at law.

1137 Subd. 3. Options Available to Child Support Magistrate. When ruling on a  
1138 discovery motion, the child support magistrate may:

- 1139 (a) direct the parties to exchange specified documents or information;
- 1140 (b) deny the discovery request;
- 1141 (c) affirm or quash the subpoena;
- 1142 (d) issue a protective order;
- 1143 (e) continue the hearing;
- 1144 (f) conduct the hearing and keep the record open to allow for further  
1145 exchange of information or response to the information provided at the hearing; or
- 1146 (g) order other discovery allowable under the Minnesota Rules of Civil  
1147 Procedure, if appropriate.

1148 Subd. 4. Failure to Comply with Discovery Order. If a party fails to comply  
1149 with an order made under subdivision 3, the child support magistrate may make a  
1150 further order as follows:

1151 (a) an order that the subject matter of the order for discovery or any other  
1152 relevant facts must be taken as established for the purposes of the case in accordance  
1153 with the claim of the party requesting the order;

1154 (b) an order refusing to allow the party failing to comply to support or  
1155 oppose designated claims or defenses, or prohibiting that party from introducing  
1156 designated matters in evidence; or

1157 (c) any other order appropriate in the interests of justice.

1158 **Rule 3617.06. Filing of Discovery Requests and Responses Precluded**

1159 Copies of a party's request for discovery and the responses to those requests  
1160 must not be filed with the court administrator unless:

1161 (a) ordered by the child support magistrate;

1162 (b) filed in support of any motion; or

1163 (c) introduced as evidence in the hearing.

1164 **RULE 3618. REMOVAL OF A PARTICULAR CHILD SUPPORT**  
1165 **MAGISTRATE**

1166 **Rule 3618.01. Automatic Right to Remove Precluded**

1167 No party has an automatic right to remove a child support magistrate.

1168 **Rule 3618.02. Removal for Cause**

1169 Subdivision 1. Procedure. Any party may serve on the other parties and file  
1170 with the court administrator a request to remove the child support magistrate assigned  
1171 to hear the matter. If the assigned child support magistrate denies the request to  
1172 remove, the chief judge of the judicial district must determine whether cause exists to  
1173 remove the assigned child support magistrate. If the chief judge of the judicial district  
1174 is the subject of the request to remove, the assistant chief judge must determine  
1175 whether cause exists to remove the child support magistrate. A request to remove  
1176 must be filed with the court administrator and served upon the parties within ten (10)  
1177 days of service of notice of the name of the magistrate assigned to hear the matter or  
1178 within ten (10) days of discovery of prejudice. If assignment of a child support  
1179 magistrate is made less than ten (10) days before the hearing, the request to remove  
1180 must be made as soon as practicable after notice of assignment is given.

1181 Subd. 2. Removal for Cause. Cause to remove a child support magistrate  
1182 requires an affirmative showing of prejudice. A showing that the child support

1183 magistrate might be excluded for bias from acting as a juror in the matter constitutes  
1184 an affirmative showing of prejudice.

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**Advisory Committee Comment**

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

1194 **RULE 3619. HEARING PROCESS**

1195 **Rule 3619.01. Timing of Hearing**

1196 In the event the parties are unable to resolve the matter, a hearing must be held  
1197 no sooner than twenty (20) days and no later than sixty (60) days after service of the  
1198 summons and complaint or motion.

1199 **Rule 3619.02. Notice of Hearing**

1200 Subdivision 1. Timing. The initiating party must contact the court  
1201 administrator to obtain a hearing date and shall serve upon all parties by U.S. mail a  
1202 notice of hearing no later than fourteen (14) days before the hearing.

1203 Subd. 2. Content. The notice of the hearing should, if possible, include the  
1204 name of the child support magistrate assigned to the case. No child support  
1205 magistrate will be assigned to, or preside over, a case if that magistrate is interested in  
1206 its determination or might be excluded for prejudice.

1207 **Rule 3619.03. Continuance of Hearing**

1208 Subdivision 1. Request by Party. Upon agreement of the parties or a showing  
1209 of good cause, the child support magistrate may grant a request for continuance of a  
1210 hearing. The order granting a continuance may be stated in writing or orally on the  
1211 record. Unless time does not permit, a request for continuance of the hearing must be  
1212 made in writing to the child support magistrate and must be served upon all parties.  
1213 In determining whether good cause exists, due regard will be given to the ability of  
1214 the party requesting a continuance to effectively proceed without a continuance.

1215 Subd. 2. Discretion of Child Support Magistrate. During a hearing, if it  
1216 appears in the interest of justice that further testimony should be received and  
1217 sufficient time does not remain to conclude the testimony, the child support  
1218 magistrate must either order the additional testimony be taken by deposition or

1219 continue the hearing to a future date. Oral notice on the record of the future hearing  
1220 date or directing testimony to be taken by deposition is sufficient.

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**Advisory Committee Comment**

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Rule 3619.03 provides that a continuance may be granted for good cause. Examples of good cause include: death or incapacitating illness of a party or attorney of a party; lack of proper notice of the hearing; a substitution of the attorney of a party; a change in the parties or pleadings requiring postponement; an agreement for a continuance by all parties provided that it is shown that more time is clearly necessary. Good cause does not include: intentional delay; unavailability of counsel due to engagement in another judicial or administrative proceeding unless all other members of the attorney's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; and failure of the attorney to properly utilize the statutory notice period to prepare for the hearing.

1236 **Rule 3619.04. Explanation of Hearing Purpose and Procedure**

1237 At the beginning of each hearing the child support magistrate must explain the  
1238 purpose of the hearing and the process and procedures to be used during the hearing.

1239 **Rule 3619.05. Hearings Open to Public**

1240 Except as otherwise provided in these rules or by statute, all hearings are open  
1241 to the public. For good cause shown, child support magistrates have the discretion to  
1242 exclude members of the public from attending hearings.

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**Advisory Committee Comment**

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

1247 **Rule 3619.06. Record of Hearing**

1248 Each child support magistrate must ensure that an accurate record is made of  
1249 each hearing over which the magistrate presides.

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**Advisory Committee Comment**

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

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state court administrator and must be operated and monitored by a person who meets the minimum qualifications promulgated by the state court administrator.

1259 **Rule 3619.07. Right to Present Evidence**

1260 Subdivision 1. Generally. Each party may present evidence, rebuttal  
1261 testimony, and argument with respect to the issues.

1262 Subd. 2. Testimony and Documents Permitted. Evidence may be presented  
1263 through documents and testimony of the parties or other witnesses. Testimony may be  
1264 given in narrative fashion by witnesses or by question and answer. Any party may be a  
1265 witness and may present witnesses. All oral testimony must be under oath or  
1266 affirmation. The child support magistrate may exclude witnesses from the hearing  
1267 room so that they cannot hear the testimony of other witnesses.

1268 Subd. 3. Necessary Preparation Required. Each party must bring to the hearing  
1269 all evidence, both oral and written, the party intends to present. Each party must have  
1270 enough copies of each exhibit the party intends to offer so that a copy can be provided  
1271 to all other parties and the child support magistrate at the time of the hearing. The  
1272 parties are encouraged to exchange copies of exhibits before the hearing begins.

1273 **Rule 3619.08. Evidence**

1274 Subdivision 1. Type of Evidence Admissible. The child support magistrate  
1275 may admit any evidence that possesses probative value, including hearsay, if it is the  
1276 type of evidence on which reasonable, prudent persons are accustomed to rely in the  
1277 conduct of their serious affairs. The child support magistrate must give effect to the  
1278 rules of privilege recognized by law. Evidence that is incompetent, irrelevant,  
1279 immaterial, or unduly repetitious must be excluded.

1280 Subd. 2. Evidence Part of Record. Only evidence that is offered and received  
1281 during the hearing or submitted following the hearing with the permission of the child  
1282 support magistrate may be considered in rendering a decision, including, but not limited  
1283 to, testimony, affidavits, exhibits, and financial worksheets.

1284 Subd. 3. Documents. Ordinarily, copies or excerpts of documents instead of  
1285 originals may be received or incorporated by reference. The child support magistrate  
1286 may require the original or the complete document if there is a genuine question of  
1287 accuracy or authenticity, or if it would be unfair to admit the copy instead of the  
1288 original. The financial worksheets prepared by the employee of the county agency are  
1289 admissible without requiring foundation testimony or appearance of the employee of the  
1290 county agency.

1291 Subd. 4. Notice of Facts. The child support magistrate may take notice of  
1292 judicially cognizable facts, but must do so on the record and with the opportunity for  
1293 any party to contest the facts so noticed.

1294 **Rule 3619.09. Burden of Proof**

1295 The party proposing that certain action be taken must prove the facts at issue by  
1296 a preponderance of the evidence, unless the substantive law provides a different burden  
1297 or standard. A party asserting an affirmative defense has the burden of proving the  
1298 existence of the defense by a preponderance of the evidence.

1299 **Rule 3619.10. Examination of Adverse Party**

1300 A party may call an adverse party or any witness for an adverse party, and ask  
1301 leading questions, cross-examine, and impeach that witness.

1302 **Rule 3619.11. Role of Child Support Magistrate**

1303 The child support magistrate may ask questions of witnesses to ensure  
1304 sufficient evidence to make the required findings.

1305 **Advisory Committee Comment**

1306 The intent of Rule 3619.11 is to require the child support  
1307 magistrate to proactively solicit information so as to be able to make  
1308 sufficient findings.

1309 **Rule 3619.12. Discretion to Leave Record Open**

1310 At the conclusion of a hearing, the child support magistrate may leave the record  
1311 open and request or permit submission of additional information. Unless otherwise  
1312 ordered by the child support magistrate, such additional information must be submitted  
1313 to the court administrator within ten (10) days of the conclusion of the hearing. The  
1314 record is considered closed either at the conclusion of the hearing or upon submission  
1315 by the parties of any additional information authorized or requested by the child  
1316 support magistrate. Documents submitted after the due date or without permission of  
1317 the child support magistrate must be returned to the sender and must not be  
1318 considered by the child support magistrate when deciding the case.



1319 **RULE 3720. DECISION AND ORDER OF CHILD SUPPORT MAGISTRATE**

1320 **Rule 3720.01. Timing**

1321 Within thirty (30) days of the close of the record the child support magistrate  
1322 must file with the court administrator the decision and order. The child support  
1323 magistrate may serve the parties with the order at the hearing

1324 **Rule 3720.02. Effective Date; Final Order**

1325 The decision and order of the child support magistrate is effective and final  
1326 when signed by the child support magistrate.

1327 **Rule 3720.03. Notice of Filing of Order or Notice of Entry of Judgment**

1328 Subdivision 1. Service by Court Administrator. Upon receipt of the decision  
1329 and order of the child support magistrate the court administrator must promptly serve a  
1330 notice of filing of order or notice of entry of judgment upon each party by U.S. mail,  
1331 together with a copy of the order or judgment if a copy of the order was not served at  
1332 the hearing. The state court administrator must draft a "notice" form setting forth the  
1333 information required in subdivision 2.

1334 Subd. 2. Content of Notice.

1335 (a) Right to Bring Motions or Appeal. The notice required in subdivision 1  
1336 must state that:

1337 (1) Under Rule 21 each party has a right to bring a motion to correct  
1338 clerical mistakes, typographical errors, or errors in mathematical calculations set forth in  
1339 the decision and order of the child support magistrate, and that such a motion must be  
1340 decided by the child support magistrate who issued the decision and order. If a party  
1341 intends to bring both a motion to correct clerical mistakes and a motion for review,  
1342 those motions must be combined and brought pursuant to Rule 22. A party may not  
1343 bring a motion to review an order filed following a Rule 21 motion to correct clerical  
1344 errors.

1345 (2) Under Rule 22 each party has a right to bring a motion for review  
1346 of the decision and order of the child support magistrate, and that at the request of the  
1347 party the motion may be decided either by the child support magistrate who issued the  
1348 decision and order or by a district court judge. If a district court judge issued the  
1349 decision and order in question, that judge must also decide the motion for review; or

1350 (3) Under Rule 24 each party has a right to appeal a final order or  
1351 judgment of the child support magistrate directly to the court of appeals.

1352 (b) Right to Respond to Motions and Appeals. The notice required by  
1353 subdivision 1 must also state that the other parties have a right to respond to motions to  
1354 correct clerical mistakes, motions for review, and appeals.

1355 (c) Costs and Fees. The notice required by subdivision 1 must also state  
1356 that the child support magistrate has authority to award the opposing party costs and

1357 fees if the magistrate determines that a motion to correct clerical mistakes or a motion  
1358 for review is not made in good faith or is brought for purposes of delay or harassment.

1359 Subd. 3. Court Administrator Computes Dates. The court administrator must  
1360 compute the time and set forth in the notice of filing of order or in the notice of entry  
1361 of judgment the last day for bringing a motion for review, as well as the last day for  
1362 bringing any response to such motion.

1363 **Advisory Committee Comment**

1364 Timing and Procedure for Bringing Motions. The timing for bringing  
1365 a motion for review differs from the timing for bringing an appeal to the court  
1366 of appeals. Under Rule 3722, the time within which to bring a motion for  
1367 review is twenty (20) days, which begins to run on the date the court  
1368 administrator serves the notice of filing of order or notice of entry of judgment.

1369 Timing and Procedure for Bringing an Appeal to Court of Appeals.  
1370 Rule 104.01 of the Rules of Civil Appellate Procedure provides that the time  
1371 within which to bring an appeal to the court of appeals is sixty (60) days which  
1372 begins to run on the date of service by any party upon any other party of written  
1373 notice of the filing of the order or judgment. The Advisory Committee intends  
1374 that Rule 3724.01 supersede appellate Rule 104.01 to provide that the sixty (60)  
1375 days begins to run from the time the court administrator serves the written  
1376 notice of filing of the order or notice of entry of judgment.

1377 Court Administrator to Compute Time. Rule 3722 establishes a  
1378 twenty (20) day time period for bringing a motion for review. The twenty (20)  
1379 days is measured from the date the court administrator serves the notice of filing  
1380 of order or notice of entry of judgment, and Rule 353 requires that an additional  
1381 three days be added to the time period when service is by U.S. mail.  
1382 Computing the deadline for bringing motions can be difficult and confusing for  
1383 lay persons. Rule 3720.03, subdivision 3, attempts to alleviate this problem by  
1384 requiring the court administrator to perform the computation and specify the  
1385 resulting date in the notice. The court administrator must not compute the time  
1386 for bringing an appeal to the court of appeals.

1387 Options For Review and Appeal. A party may choose to bring a  
1388 motion to correct clerical mistakes, a motion for review, or a combined motion,  
1389 or may choose to appeal directly to the court of appeals thus bypassing the first  
1390 two options. However, if a party chooses the option of appealing directly to the  
1391 court of appeals without first bringing a motion for review, such an appeal will  
1392 be limited to determining whether the evidence sustains the findings of fact (to  
1393 which the "clearly erroneous" standard of review applies) and whether the  
1394 findings support the conclusions of law and the judgment. *Kahn v. Tronnier*,  
1395 547 N.W.2d 425, 428 (Minn. App. 1996), review denied (Minn. July 10, 1996).  
1396 Thus, although a motion for review is very important to obtaining the broadest  
1397 possible appellate review, it is not an absolute prerequisite to appealCa litigant  
1398 can choose to file a direct appeal from the order of the child support magistrate,  
1399 but the appeal will be limited to issues within that narrower scope of review.

1400 **RULE 3721. MOTION TO CORRECT CLERICAL MISTAKES**

1401 **Rule 3721.01. Motion**

1402 Subdivision 1. Party or Child Support Magistrate May Initiate. Clerical  
1403 mistakes, typographical errors, and errors in mathematical calculations in orders,  
1404 judgments, or other parts of the record arising from oversight or omission may be  
1405 corrected by the child support magistrate at any time upon the magistrate's own  
1406 initiative or upon motion of any party after notice to all parties. A motion to correct  
1407 such clerical mistakes must be made in good faith and not for purposes of delay or  
1408 harassment. A motion to correct such clerical mistakes must be decided by the child  
1409 support magistrate who issued the decision and order. If an appeal has been made to the  
1410 court of appeals, a child support magistrate may correct clerical mistakes, typographical  
1411 errors, and errors in mathematical calculations only upon order of the appellate court.

1412 Subd. 2. Combined Motions. If a party intends to bring both a motion to  
1413 correct clerical mistakes and a motion for review brought under Rule 3722, the  
1414 combined motion must be brought within the time prescribed by Rule 3722.02,  
1415 subdivision 1. At the request of the party, such a combined motion may be decided  
1416 either by the child support magistrate who issued the decision and order or by a district  
1417 court judge.

1418 Subd. 3. Motion for Review Precluded Following Motion to Correct. A party  
1419 may not bring a motion to review an order filed following a Rule 3721 motion to correct  
1420 clerical errors.

1421 **Rule 3721.02. Procedure**

1422 Subdivision 1. Motion. To bring a motion to correct clerical mistakes, the  
1423 aggrieved party must perform all of the following:

- 1424 (a) serve a motion to correct clerical mistakes on the other parties and  
1425 county agency by U.S. mail or by personal service. The state court administrator will  
1426 develop a form entitled "motion to correct clerical mistakes" which the court  
1427 administrator must provide to any party who requests one. The motion must state the  
1428 reason each correction is requested and that the motion is made in good faith and not for  
1429 purposes of delay or harassment;
- 1430 (b) file with the court administrator the original motion;
- 1431 (c) file with the court administrator proof of service of the motion upon the  
1432 other parties and the county agency; and
- 1433 (d) order a transcript of the hearing under Rule 3723, if the party desires to  
1434 submit such a transcript.

1435 Subd. 2. Response to Motion. A responding party may, but is not required to,  
1436 respond to a motion to correct clerical mistakes. To respond, the party must perform all  
1437 of the following within ten (10) days of the date the party was served with notice of the  
1438 motion to correct clerical mistakes:

1439 (a) serve a response to motion on the opposing parties and county agency by  
1440 U.S. mail or by personal service. The state court administrator will develop a form  
1441 entitled "response to motion to correct clerical mistakes" which the court administrator  
1442 must provide to any party who requests one. In the response to motion, the party must  
1443 state why the motion to correct clerical mistakes should not be granted and that the  
1444 response to motion is made in good faith and not for purposes of delay or harassment;  
1445 (b) file with the court administrator the original response to motion;  
1446 (c) file with the court administrator proof of service of the response to  
1447 motion upon the opposing party and the county agency; and  
1448 (d) order a transcript of the hearing under Rule 37~~2~~3, if the party desires to  
1449 submit such a transcript.

1450 **Rule 37~~2~~1.03. Decision and Order Not Stayed**

1451 The decision and order of the child support magistrate remains in full force and  
1452 effect and is not stayed pending a motion to correct clerical mistakes or a combined  
1453 motion.

1454 **Rule 37~~2~~1.04. Basis of Decision**

1455 Subdivision 1. Timing. The child support magistrate must file with the court  
1456 administrator an order regarding the motion to correct clerical mistakes within thirty  
1457 (30) days of the later of the following events: the filing of any response to motion,  
1458 receipt of a transcript, or the submission of new evidence under subdivision 4.

1459 Subd. 2. Decision. The child support magistrate may issue an order denying the  
1460 motion to correct clerical mistakes or may issue an order making such corrections as  
1461 deemed appropriate. If the motion is denied, the child support magistrate must  
1462 specifically state in the order that the findings, decision, and order are affirmed.

1463 Subd. 3. Motion Decided Upon Court File. The child support magistrate must  
1464 decide the motion to correct clerical mistakes based upon the court file, including, but  
1465 not limited to, motions, affidavits, exhibits, and worksheets.

1466 Subd. 4. Additional Evidence Discretionary. When bringing or responding to a  
1467 motion to correct clerical mistakes, the parties must not submit any new evidence unless  
1468 the child support magistrate, upon written or oral notice to all parties, requests  
1469 additional evidence.

1470 Subd. 5. No Right to Hearing. No hearing will be held, and the parties will not  
1471 be allowed to appear before the child support magistrate, unless the magistrate upon the  
1472 magistrate's own initiative or upon motion of a party orders a hearing. The motion will  
1473 be granted only upon a showing of good cause. In the event the child support  
1474 magistrate decides to conduct a hearing, the magistrate shall direct the court  
1475 administrator to schedule a hearing date and to serve notice of the date, time, and  
1476 location of the hearing upon all parties and the county agency.

1477 Subd. 6. Costs and Fees. The child support magistrate may award the opposing  
1478 parties costs and fees incurred in responding to a motion to correct clerical mistakes that  
1479 the magistrate determines is not made in good faith or is brought for purposes of delay  
1480 or harassment.

1481 **Rule 3721.05. Notice of Order or Judgment**

1482 Upon receipt of an order issued as a result of a motion to correct clerical  
1483 mistakes, the court administrator must promptly serve a notice of filing of order or  
1484 notice of entry of judgment upon each party by U.S. mail, along with a copy of the  
1485 order or judgment. The notice must state that the parties have a right to appeal to the  
1486 court of appeals under Rule 3724.

1487 **Rule 3721.06. Effective Date; Final Order**

1488 The order of the child support magistrate is effective and final when signed by  
1489 the child support magistrate.

1490 **RULE 3722. MOTION FOR REVIEW**

1491 **Rule 3722.01. Motion**

1492 Any party may bring a motion for review of the decision and order or judgment  
1493 of the child support magistrate. A motion to correct clerical mistakes may be combined  
1494 with a motion for review as authorized under Rule 3721.01, subdivision 2. At the  
1495 request of either party, the motion for review may be brought before either the child  
1496 support magistrate who issued the order or a district court judge. If a district court judge  
1497 issued the order in question, that judge must also decide the motion for review.

1498 **Advisory Committee Comment**

1499 A party may make a motion for review regarding any type of order,  
1500 including a default order, a consent order, or an order issued following a  
1501 hearing.

1502 **Rule 3722.02. Procedure**

1503 Subdivision 1. Motion. To bring a motion for review or a combined motion,  
1504 the party must perform all of the following within twenty (20) days of the date the court  
1505 administrator served that party with the notice of filing of order or notice of entry of  
1506 judgment:

1507 (a) serve a motion for review on the other parties and county agency by U.S.  
1508 mail or by personal service. The state court administrator will develop a form entitled

1509 "motion for review" which the court administrator must provide to any party who  
1510 requests one. In the motion, the party must state the reason(s) review is requested,  
1511 describe the specific changes requested, and identify the evidence to support the  
1512 changes. The motion must establish that it is made in good faith and not for purposes of  
1513 delay or harassment and must identify whether the motion is to be decided by the child  
1514 support magistrate or a district court judge;  
1515 (b) file with the court administrator the original motion;  
1516 (c) file with the court administrator proof of service of the motion upon the  
1517 other party and the county agency;  
1518 (d) if the party has not already done so, pay to the court administrator the  
1519 filing fee required by Rule 354.01; and  
1520 (e) order a transcript of the hearing under Rule 3723, if the party desires to  
1521 submit such a transcript.

1522 Subd. 2. Response to Motion. A responding party may, but is not required to,  
1523 respond to a motion for review. To respond, the party must perform all of the  
1524 following within thirty (30) days of the date the court administrator served that party  
1525 with the notice of filing of order and notice of entry of judgment:

1526 (a) serve a response to motion on the opposing parties and county agency by  
1527 U.S. mail or by personal service. The state court administrator will develop a form  
1528 entitled "response to motion for review " which the court administrator must provide to  
1529 any party who requests one. In the response to motion, the party must state why the  
1530 motion for review should not be granted and that the response to motion is made in  
1531 good faith and not for purposes of delay or harassment;  
1532 (b) file with the court administrator the original response to motion;  
1533 (c) file with the court administrator proof of service of the response to  
1534 motion upon the opposing party and the county agency ;  
1535 (d) if the party has not already done so, pay to the court administrator the  
1536 filing fee required by Rule 354.01; and  
1537 (e) order a transcript of the hearing under Rule 3723, if the party desires to  
1538 submit such a transcript.

1539 **Rule 3722.03. Notice of Assignment of District Court Judge**

1540 If a party requests that the motion for review be decided by a district court  
1541 judge, upon the filing of a motion containing such a request, the court administrator  
1542 must notify the parties of the name of the judge to whom the motion has been assigned.

1543 **Rule 3722.04. Decision and Order Not Stayed**

1544 The order of the child support magistrate remains in full force and effect and  
1545 is not stayed pending a motion for review or a combined motion.

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**Rule ~~372~~2.05. Basis of Decision**

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

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Subd. 2. Decision. The child support magistrate or district court judge must make an independent review of any findings or other provisions of the child support magistrate's decision and order for which specific changes are requested in the motion. The child support magistrate or district court judge may approve or modify the decision and order of the child support magistrate, or may remand the matter to the child support magistrate with instructions. If any findings or other provisions of the child support magistrate's decision and order are approved without change, the child support magistrate or district court judge must specifically state in the order that those findings and other provisions are affirmed but need not make specific findings or conclusions as to each point raised in the motion. If any findings or other provisions of the child support magistrate's decision and order are modified, the child support magistrate or district court judge need only make specific findings or conclusions with respect to the provisions that are modified.

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

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

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Subd. 5. Transcript. A transcript of the hearing in dispute is not required, but may be ordered by a party. If the party chooses to submit a transcript, it must be ordered according to the procedure in Rule ~~372~~3. If a party orders a transcript, the motion must state the date the transcript was ordered.

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

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Subd. 7. Costs and Fees. The child support magistrate may award the opposing parties costs and fees incurred in responding to a motion for review, if the magistrate or

1585 district court judge determines that the motion for review is not made in good faith or  
1586 is brought for purposes of delay or harassment.

1587 **Rule 3722.06. Notice of Order or Judgment**

1588 Upon receipt of an order issued as a result of a motion for review, the court  
1589 administrator must promptly serve a notice of filing of order or notice of entry of  
1590 judgment upon each party by U.S. mail, along with a copy of the order or judgment.  
1591 The notice must state that the parties have a right to appeal to the court of appeals  
1592 under Rule 3724.

1593 **Rule 3722.07. Effective Date; Final Order**

1594 The order of the child support magistrate or district court judge is effective and  
1595 final when signed by the child support magistrate or district court judge.

1596 **RULE 3723. TRANSCRIPT**

1597 **Rule 3723.01. Ordering of Transcript**

1598 Any party may request a transcript of any proceeding held before the child  
1599 support magistrate as permitted in Rule 3721.02, subdivision 2(d), or Rule 3722.05,  
1600 subdivision 5. A request for a transcript must be made to the court administrator at the  
1601 earliest possible time. The party requesting the transcript must pay for the transcript and  
1602 must serve a copy on the other parties and the county agency, if a party. Ordering and  
1603 submission of a transcript does not delay the due dates for the submissions described in  
1604 Rule 3722.02. The transcriber must file the original transcript with the court.

1605 **RULE 3724. APPEAL TO COURT OF APPEALS**

1606 **Rule 3724.01. Generally**

1607 An appeal may be taken to the court of appeals from a final order or judgment of  
1608 a child support magistrate or from a final order deciding a motion for review under Rule  
1609 3722. Such an appeal must be taken in accordance with the Minnesota Rules of Civil  
1610 Appellate Procedure within sixty (60) days of the date the court administrator serves  
1611 upon the parties the notice of filing of order or notice of entry of judgment. If any party  
1612 brings a timely motion to correct clerical mistakes under Rule 3721 or a timely motion  
1613 for review under Rule 3722, the time for appeal is extended for all parties while that  
1614 motion is pending. Once the last such pending motion is decided by the child support  
1615 magistrate or district court judge, the sixty (60) days to appeal from the final order or  
1616 judgment of a child support magistrate or from a final order deciding a motion for  
1617 review runs for all parties from the date the court administrator serves upon the parties  
1618 the notice of filing of order or notice of entry of judgment disposing of that motion. A  
1619 notice of appeal filed before the disposition of a timely motion to correct clerical



1620 mistakes or for review is premature and of no effect, and it does not divest the child  
1621 support magistrate of jurisdiction to dispose of the motion. Except as otherwise  
1622 provided in these rules, the Minnesota Rules of Civil Appellate Procedure shall govern  
1623 the taking and processing of such appeals.

1624 **Advisory Committee Comment**

1625           Timing. Under Rule 104.01 of the Rules of Civil Appellate  
1626 Procedure, the sixty (60) days in which to bring an appeal to the court of  
1627 appeals begins to run on the date of service by any party of written notice of  
1628 filing of an appealable order or on the date on which an appealable judgment  
1629 is entered. The Advisory Committee intends that Rule ~~3724~~.01 supersede the  
1630 appellate rule to provide that the sixty (60) days to appeal begins to run from  
1631 the time the court administrator serves the written notice of filing of order or  
1632 notice of entry of judgment.

1633           Scope of Review. A party may choose to bring a motion to correct  
1634 clerical mistakes, or a motion for review, or to appeal directly to the court of  
1635 appeals thus bypassing the first two options. However, if a party chooses the  
1636 option of appealing directly to the court of appeals without first bringing a  
1637 motion for review, such an appeal will be limited to determining whether the  
1638 evidence sustains the findings of fact (to which the "clearly erroneous"  
1639 standard of review applies) and whether the findings support the conclusions  
1640 of law and the judgment. Kahn v. Tronnier, 547 N.W.2d 425, 428 (Minn.  
1641 App. 1996), review denied (Minn. July 10, 1996). Thus, although a motion  
1642 for review is very important to obtaining the broadest possible appellate  
1643 review, it is not an absolute prerequisite to appeal -- a litigant can choose to  
1644 file a direct appeal from the order of the child support magistrate, but the  
1645 appeal will be limited to issues within that narrower scope of review.

1646 **RULE 3725. FORMS**

1647 **Rule 3725.01. Court Administrator to Provide Forms**

1648           Whenever a court administrator is required to provide forms under these rules,  
1649 those forms must be provided to the parties in the most accessible method for the  
1650 parties, including fax, electronic mail, in person, or by U.S. mail, or in alternate formats.

1651 **Rule 3725.02. Substantial Compliance**

1652           The forms developed by the state court administrator and by the department of  
1653 human services for use in the expedited child support process, or forms substantially in  
1654 compliance with such forms, are sufficient for purposes of these rules.

1655 **Advisory Committee Comment**

1656           The Advisory Committee encourages use of the standardized forms  
1657 developed by the state court administrator and department of human services.  
1658 However, regardless of such standardized forms, attorneys representing the  
1659 parties and the county attorney representing the interests of the county agency  
1660 retain professional responsibility for the form and content of pleadings and

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other legal documents used in the expedited child support process. Attorneys may modify these standardized forms or, in their discretion, may prepare other pleadings to address the factual or legal issues in each case that are not adequately covered by the standardized forms.

1665 **Rule 3725.03. Modification of Forms**

1666 The attorney signing pleadings has discretion to modify the standardized forms  
1667 to address the factual and legal issues that cannot be covered by standardized forms.

1668 **Rule 3725.04. Exception from Rules Governing Civil Actions**

1669 Subdivision 1. Informational Statement. The Informational Statement required  
1670 by Rule 304.02 of the Rules of Family Court Procedure is not required to be filed in  
1671 cases brought in the expedited child support process.

1672 Subd. 2. Prehearing Statement. The Prehearing Statement required by Rule  
1673 305.01 of the Rules of Family Court Procedure is not required to be filed in cases  
1674 brought in the expedited child support process.

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