

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

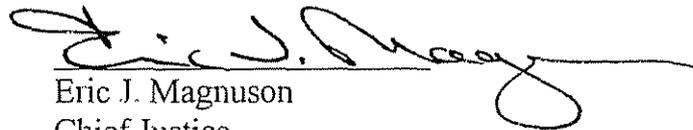
ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON  
PROPOSED AMENDMENTS TO THE MINNESOTA GENERAL RULES OF  
PRACTICE FOR THE DISTRICT COURTS RELATING TO THE EXPEDITED  
CHILD SUPPORT PROCESS

The Supreme Court Advisory Committee on the General Rules of Practice has proposed changes to the General Rules of Practice for the District Courts, Title IV. B. Expedited Child Support Process, and this Court will consider the proposed changes after reviewing comments on the proposed changes. A copy of the committee's report containing the proposed changes is annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide statements in support of or opposition to the proposed changes shall submit twelve copies in writing addressed to Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Martin Luther King Jr. Boulevard, St. Paul, MN 55155, no later than Friday, August 29, 2008.

DATED: June 26, 2008

BY THE COURT:



Eric J. Magnuson  
Chief Justice

OFFICE OF  
APPELLATE COURTS

JUN 27 2008

FILED

**CX-89-1863  
STATE OF MINNESOTA  
IN SUPREME COURT**

**In re:**

**Supreme Court Advisory Committee  
on General Rules of Practice**

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

**Final Report  
June 13, 2008**

**Hon. Elizabeth Anne Hayden  
Chair**

**Hon. Lorie Skjerven Gildea  
Liaison Justice**

**Hon. Steven J. Cahill, Moorhead  
Hon. Joseph T. Carter, Hastings  
R. Scott Davies, Minneapolis  
Hon. Mel I. Dickstein, Minneapolis  
Francis Eggert, Winsted  
Jennifer L. Frisch, Minneapolis  
Karen E. Sullivan Hook, Rochester  
Hon. Lawrence R. Johnson, Anoka  
Hon. Kurt J. Marben, Thief River Falls**

**Hon. Kathryn D. Messerich, Hastings  
Hon. Rosanne Nathanson, Saint Paul  
Dan C. O'Connell, Saint Paul  
Linda M. Ojala, Edina  
Paul Reuvers, Bloomington  
Timothy Roberts, Foley  
Daniel Rogan, Robbinsdale  
Hon. Jon Stafsholt, Glenwood  
Hon. Robert D. Walker, Fairmont**

**Michael B. Johnson, Saint Paul  
Staff Attorney**

**David F. Herr, Minneapolis  
Reporter**

## **Introduction**

The Court's Advisory Committee on General Rules of Practice met a single time in 2008 to follow up on the "remand" of the earlier proposal relating to the expedited child support rules. This Court's December 28, 2007, Order directed the State Court Administrator's Office's Child Support Magistrate Staff to work with the Minnesota Department of Human Services Child Support Enforcement Division, the Anoka County Attorney's Office, and to resolve the then-outstanding issues regarding the expedited process rules and to submit a revised proposal. *See* Order, Promulgation of Amendments to the Minnesota General Rules of Practice for the District Courts ¶ 4, No. CX-89-1863 (Minn. Sup. Ct. Dec. 28, 2007).

Following the Court's direction, the State Court Administrator's Office's Child Support Magistrate ("CSM") Staff did meet and exchange drafts and other information with the Minnesota Department of Human Services Child Support Enforcement Division, the Anoka County Attorney's Office, and several other interested individuals in an attempt to resolve the disagreements regarding proposed amendments to the expedited process rules. Those efforts were successful in resolving some issues and narrowing or focusing others. The CSM Staff submitted a revised report to this advisory committee, and the committee sought input from groups and individuals known to have an interest in these issues and solicited publicly for comment by posting on the courts' website.

The committee recommends that the amendments proposed by the CSM Staff be adopted, with one significant departure (the committee does not recommend adoption of a right to have a duly appointed Child Support Magistrate removed without cause). The committee's recommendations are summarized below.

## **Summary of Committee Recommendations**

The Committee's specific recommendations are briefly summarized as follows:

**Issues upon which the Committee received significant conflicting opinions.**

1. **Removal of Child Support Magistrate as of Right.**

The CSM Staff recommended amendment of Minn. Gen. R. Prac. 368 to create a procedure to remove an assigned CSM as a matter of right. This recommendation attracted substantial controversy, and is not viewed by the advisory committee as one that should be implemented at this time.

2. **Service of Summons and Complaint.**

The CSM Staff recommended that Rule 373.03 be amended to provide for personal service, or alternative personal service be effected on both parents. This recommendation also generated significant controversy, but the advisory committee recommends that it should be adopted.

3. **Timing for Review of CSM Decision.**

The CSM Staff recommended that Rule 377.09 be amended to shorten the time for decision on a motion for review of a CSM decision, either by the CSM or a district court judge upon the request of a party. The rule currently allows 45 days; the amended rule would require decision within 30 days. This proposal also generated some controversy. The advisory committee recommends that this change be implemented.

**Issues upon which there was no significant disagreement.**

1. The bulk of the rule changes may fairly be described as “housekeeping” in nature. They include correcting numerous statutory references in the rules to reflect the amendment and renumbering of the statutes governing child support generally and correcting the nomenclature used in the rules to that now used by statute.
2. The advisory committee recommends an additional rule amendment, not raised in the CSM Staff report, dealing with the procedure for hearing challenges for cause. This recommendation provides that a motion to remove the judge be filed with the administrator, to be

heard by a district judge chambered in or assigned to the county where the matter is pending. This procedure will obviate sending the matter to the chief judge of the district and will allow the matter to be presented to a suitable district judge expeditiously.

### **Discussion of Contested Issues**

- 1. Removal of Child Support Magistrate as of Right.** This issue is simply presented: Rule 63.03 of the Minnesota Rules of Civil Procedure allows for the removal of an assigned judge without a showing of cause. The CSM Staff recommended that a similar right be incorporated into the Expedited Child Support Process. This recommendation generated substantial objection and discussion in the advisory committee. The objections focused primarily on the practical impact of allowing removal without a showing. Because there is a very limited pool of CSM's, including many counties having only part-time CSM's shared among multiple counties, the exercise of a "peremptory" removal is extremely disruptive and can result in relatively significant delays that would defeat the purpose of the expedited process and possibly endanger federal funding.

Balanced against the certain cost of peremptory removal, in terms of disruption of the expedited process, additional expense, and delay the advisory committee found limited evidence that creation of a right to remove is needed. There are relatively few appeals from CSM decisions, and these appeals are reviewed de novo by the district court. Additionally, because the majority of CSM's are contract employees, they can be "removed" administratively simply by not assigning cases to them or by not renewing their contracts. The committee views this as a significant means of ensuring fair and professional service by CSM's, militating against the proposed rule change.

The committee recommends that the peremptory challenge right not be engrafted into the Expedited Process rules.

In the course of analyzing the procedure for removal of CSM's, the advisory committee determined a change in the rules would be useful as to the removal of CSM's for cause. The existing rules provide for removal for cause, to be heard by the CSM and reviewed by the Chief Judge of the District. Minn. Gen. R. Prac. 368.02, subd. 2. This rule is patterned on the procedure of Minn. Gen. R. Prac. 106 for the review of decisions by the chief judge of a district judge's denial of a motion to remove on the basis of actual prejudice or bias.

2. **Service of Process.** The Expedited Process committee recommends that Rule 370.03, subd. 2, be amended to require personal service on both parents, replacing the existing rule's provision allowing mailed service on the presumed child support obligee (but requiring personal service on the presumed obligor). This change engendered opposition from program administrators and some county attorneys, largely because of the additional expense and delay that personal service would require.

The advisory committee concludes that the recommendation that personal service be effected on both parents should be accepted. The change is dictated, in part, by legislative changes that result in determination of relative obligations of both parents, and the amounts in dispute can be substantial. The committee also noted that the procedures for modification of support determinations in the expedited process are onerous enough that it is important that both parents receive actual notice at the inception of the proceedings. Due process may require that service, and arguments of cost and expediency do not stand up to the requirement of constitutionally sufficient notice to parties whose substantial rights may be affected by the proceedings. The advisory committee does not presume to determine the limits of due process or to determine whether service by mail might be sufficient in

some circumstances. The committee believes a better rule will be to serve all interested parties by a means consistent with that used for service of process in other civil actions; because of the stakes involved, the committee believes service by mail is probably not adequate.

- 3. Timing of Decision.** The Expedited Process committee recommends shortening the time limit in Rule 377.09, subd. 1, for issuance of a decision on a motion seeking review of a CSM decision from 45 to 30 days. This change is part of an initiative of the Judicial Council to make time limits more uniform throughout the court rules and administrative procedures. The change was opposed by several district judges, including members of the advisory committee, largely on the grounds that the deadlines will impose additional burdens on district court judges at a time when the courts are severely constrained by budget limitations and cutbacks. While these concerns are compelling, a majority of the advisory committee concluded that the justification of uniformity is compelling, and the modest shortening of the time period is consistent with the overall goal of expedited resolution of child support questions in these cases.

### **Effective Date**

The committee believes these rules should be adopted as soon as practicable. The committee was advised by the Minnesota Department of Human Services Child Support Enforcement Division that a substantial period of time would be required for implementation, although it appears that a shorter time delay would be feasible. The Court should expect guidance on this issue during the public comment period on these rules. Ultimately, the committee would defer to the judgment of the State Court Administrator on what a reasonable but still expedited implementation schedule would be.

**Style of Report**

The specific recommendation is reprinted in traditional legislative format, with new wording underscored and deleted words ~~struck through~~.

Respectfully submitted,

MINNESOTA SUPREME COURT  
ADVISORY COMMITTEE ON GENERAL  
RULES OF PRACTICE

**Recommendation:**            **This Court should amend the rules for the expedited child support process as set forth below.**

**Introduction**

By memorandum dated July 23, 2007, Deanna J. Dohrmann, Staff Attorney with Court Services, Family Services, State Court Administrator's Office, and Jodie Metcalf, Manager of the Child Support Magistrate Unit (CSM Staff), initially recommended changes to the Rules of the Expedited Child Support Process. Those proposed rules included technical amendments as well as modest substantive amendments to the rules based on experience gained by the child support process. The Advisory Committee in 2007 reviewed those proposed changes and recommended them to this Court for adoption.

Following submission of this advisory committee's November 26, 2007, Final Report, some controversy arose regarding the rules recommended by the CSM Staff and in turn recommended to by Court for adoption by this committee. Because of that controversy, by order dated December 28, 2007, the Court directed the State Court Administrator's Office's Child Support Magistrate Staff to work with the Minnesota Department of Human Services Child Support Enforcement Division, the Anoka County Attorney's Office, and other interested parties to resolve the then-outstanding issues regarding the expedited process rules and to submit a revised proposal. *See* Order, Promulgation of Amendments to the Minnesota General Rules of Practice for the District Courts ¶ 4, No. CX-89-1863 (Minn. Sup. Ct. Dec. 28, 2007).

The CSM Staff followed that mandate, conducted numerous meetings, and submitted a revised proposal dated March 7, 2008, to the advisory committee. That proposal included a Minority Report dated March 13, 2008, authored by the Minnesota Department of Human Services, which opposed changing Rule 370.03 to eliminate the provision permitting a person who is receiving public assistance or

who has applied for child support services to be served by mail. A second Minority Report was submitted by Jodie Metcalf, Child Support Magistrate and Manager of the Expedited Child Support Process. That minority report dissented from the recommendation that the rules be amended to create a right to remove an assigned CSM without cause. Finally, CSM staff submitted a supplemental note correcting certain errors in the definition of the term “child support” so that it mirrors the statutory definition, reinstating the definition of “support” which is a broader term, and clarifying the time frame for serving responsive motions.

The advisory committee believes the proposed amendments are suitable for adoption, although the committee believes that the proposed right to remove an assigned CSM without cause should not be adopted. The committee’s specific recommendations are set forth below.

### **Specific Recommendations**

1. The rules should be amended as follows:

#### **RULE 352. DEFINITIONS**

##### **Rule 352.01. Definitions**

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

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

(b) “Child support” means basic support; child care support; and medical support. Medical support includes the obligation to carry health care coverage, costs for health care coverage, and unreimbursed / uninsured medical expenses.

(bc) “Child support magistrate” means an individual appointed by the chief judge of the judicial district to preside over matters in the expedited process.

15 “Child support magistrate” also means any family court referee or district court  
16 judge presiding over matters in the expedited process.

17 **(ed)** “County agency” means the local responsible for child support  
18 enforcement.

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

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

24 **(fg)** “IV-D case” means any proceeding where a party has either (1)  
25 assigned to the State rights to child support because of the receipt of public  
26 assistance as defined in Minn. Stat. § 256.741 (2000), or (2) applied for child  
27 support services under Title IV-D of the Social Security Act, 42 U.S.C. § 654(4)  
28 (19942006). “IV-D case” does not include proceedings where income  
29 withholding is the only service applied for or received under Minn. Stat. §  
30 518.6111 (2000) 518A.53 (2006).

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

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

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

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

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

45           **(l)**    “**Support**” means child support, as defined in this rule; ~~child-care~~  
46 ~~support; medical support, including medical and dental insurance, and~~  
47 ~~unreimbursed medical and dental expenses~~; expenses for confinement and  
48 pregnancy; arrearages; reimbursement; past support; related costs and fees; and  
49 interest and penalties. “Support” also means the enforcement of spousal  
50 maintenance when combined with ~~child~~ basic support, child care support, or  
51 medical support.

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**Advisory Committee Comment—2008 Amendment**

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Rule 352.01 is amended to reflect the recodification, effective on January  
55 1, 2007, of portions of the relevant statutes, that became part of Minn. Stat. ch.  
56 518A. Rule 352.01(b) provides a new definition for “child support,” replacing  
57 the definition of “support” formerly set forth in Rule 352.01(l).

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**RULE 354. COMPUTATION OF TIME**

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**Rule 354.03. “Business Day” Defined**

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

74 **Advisory Committee Comment—2008 Amendment**

75 In 2006 the Minnesota Supreme Court addressed the ambiguity in the  
76 rules and the ambiguity between the rules and statutes over how Columbus Day  
77 should be treated. Columbus Day is only optionally a state holiday (by statute  
78 the different branches can elect to treat it as a holiday) but is uniformly a  
79 federal and U.S. Mail holiday. Because the rules generally allow service by  
80 mail, the Court in *Commandeur LLC v. Howard Hartry, Inc.*, 724 N.W.2d 508  
81 (Minn. 2006), ruled that where the last day of a time period occurred on  
82 Columbus Day, service by mail permitted by the rules was timely if mailed on  
83 the following day on which mail service was available. The amendment to  
84 Rule 354.03 makes it clear that Columbus Day is a “legal holiday” for all  
85 purposes in these rules, even if that is not necessarily so by the statutory  
86 definition. Minn. Stat. § 645.44, subd. 5 (2008).

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90 **RULE 355. METHODS OF SERVICE**

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93 **Rule 355.02. Types of Service**

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95 **Subdivision 1. Personal Service.**

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97 **(b) By Whom Served.** Unless otherwise ordered by the child support  
98 magistrate, personal service shall be made only by the sheriff or by any other  
99 person who is at least 18 years of age who is not a party to the proceeding.  
100 Pursuant to Minn. Stat. § ~~518.5513 (2000)~~ 518A.46, subd. 2(c)(4), an employee of  
101 the county agency may serve documents on parties.

102 \*\*\*

103 **Subd. 2. Service by U.S. Mail.** Service by U.S. mail means mailing a  
104 copy of the document by first-class mail, postage prepaid, addressed to the person  
105 to be served at the person’s last known address. Service by mail shall be made  
106 only by the sheriff or by any other person who is at least 18 years of age who is  
107 not a party to the proceeding. Pursuant to Minn. Stat. § ~~518.5513 (2000)~~ 518A.46,  
108 subd. 2(c)(4), an employee of the county agency may serve documents on the  
109 parties.

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### **Rule 361.02. Exchange of Documents**

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#### **Advisory Committee Comment—2008 Amendment**

Rule 355.02, subs. 1 & 2, are amended to reflect the recodification, effective on January 1, 2007, of portions of the relevant statutes, that became part of Minn. Stat. ch. 518A.

## **RULE 361. DISCOVERY**

### **Subdivision 1. Documents Required to be Provided Upon Request.** If a

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

(a) Verification of income, ~~health/dental insurance costs and availability of dependent health care coverage~~, child care costs, and expenses.

(b) Copies of last three months of pay stubs.

(c) A copy of last two years' State and Federal income tax returns with all schedules and attachments, including Schedule Cs, W-2s and/or 1099s.

(d) Written verification of any voluntary payments made for support of joint child.

(e) Written verification of any other court-ordered child support obligations for a nonjoint child.

(f) Written verification of any court-ordered spousal maintenance obligation.

142 **RULE 363. DEFAULT**

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145 **Rule 363.04. Order Not Accepted**

146 The child support magistrate may reject an order filed pursuant to Rule  
147 363.02 if the child support magistrate finds the order contrary to law, or  
148 unreasonable and unfair. If the child support magistrate rejects the order, the child  
149 support magistrate shall prepare a notice of deficiency, stating the reason(s) why  
150 the order cannot be signed. The notice of deficiency shall inform the initiating  
151 party of the following options:  
152

153 (a) to file and serve any missing documents;

154 (b) to file a revised order;

155 (c) to file a revised order and attach any missing or additional  
156 documents;

157 (d) to appear at a hearing, notice of which shall be issued by the court  
158 administrator to all parties;

159 (e) to appear at any previously scheduled hearing; or

160 (f) to withdraw the matter without prejudice.

161 The court administrator shall mail the notice of deficiency to the initiating  
162 party. The initiating party shall either correct the deficiency or set the case on for  
163 a hearing and serve notice of the date, time, and location of the hearing upon all  
164 parties pursuant to Rule 364. If the initiating party submits a revised order that  
165 raises new issues beyond the scope of the complaint or motion, amended pleadings  
166 shall be served ~~and filed~~ on all parties and filed pursuant to Rule 370.06 or Rule  
167 372.06 within 10 days from the date the notice of deficiency was mailed. If the  
168 noninitiating party chooses to respond to the amended pleadings, the response  
169 must be served and filed within 10 days from service of the amended pleadings. If  
170 the initiating party fails to schedule a hearing or comply with the notice of

171 deficiency within forty-five (45) days of the date the notice was mailed, the child  
 172 support magistrate shall dismiss the matter without prejudice.  
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174  
 175 Advisory Committee—2008 Amendment  
 176 Rule 363.04 is amended to create specific time limits for setting a case on  
 177 for hearing following receipt of a notice of deficiency in an order proposed by  
 178 an initiating agency or to serve amended pleadings. The amendment also  
 179 establishes a specific time limit for responding to an amended pleading that  
 180 may be served.

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183 **RULE 368. REMOVAL OF A PARTICULAR**  
 184 **CHILD SUPPORT MAGISTRATE**

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186 **Rule 368.01. Automatic Right to Remove Precluded**

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

192 **Rule 368.02. Removal for Cause**

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194 **Subdivision 1. Procedure.** Any party may serve upon the other parties  
 195 and file with the court a request to remove the child support magistrate assigned to  
 196 hear the matter. If the assigned child support magistrate denies the request to  
 197 remove, upon written request the chief judge of the judicial district shall determine  
 198 whether cause exists to remove the assigned child support magistrate. If the chief  
 199 judge of the judicial district is the subject of the request to remove, the assistant  
 200 chief judge shall determine whether cause exists to remove the child support  
 201 magistrate. A request to remove shall be filed with the court and served upon the  
 202 parties. To effect removal, a party shall serve upon the other parties and file with  
 203 the court a request to remove the child support magistrate for cause within ten (10)  
 204 days of service of notice of the name of the magistrate assigned to hear the matter

205 or within ten (10) days of discovery of prejudice. If assignment of a child support  
206 magistrate is made less than ten (10) days before the hearing, the request to  
207 remove shall be made as soon as practicable after notice of assignment is given.

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

212 **Subd. 3. Review of Denial of Removal.** If the child support magistrate  
213 denies the request to remove, upon written request filed with the Court  
214 Administrator in that district, a district judge assigned to or chambered in the  
215 district shall determine whether cause exists. If that judge is the child support  
216 magistrate, the request for removal for cause shall be heard by a different judge in  
217 that district.

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**Advisory Committee Comment—2008 Amendment**

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Rule 368.02, subd. 1, is amended to clarify the procedure for removal of  
221 an assigned child support magistrate from hearing a matter. Subdivision 3 is a  
222 new provision, designed to provide a more streamlined mechanism for review  
223 of a magistrate's decision not to order removal. The review of that decision is  
224 to be heard by a district judge who either had chambers in the county where the  
225 expedited child support case is pending or to a judge assigned to that county.  
226 This procedure obviates submission of the matter to the Chief Judge,  
227 recognizing that the Chief Judge may be far removed from the county where  
228 the case is pending.

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

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236 **Rule 369.02. Role of Employees of County Agency**

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240 **Subd. 3. County Attorney Direction Not Required.** Without direction  
from the county attorney, employees of the county agency may perform the duties

241 listed under Minn. Stat. § ~~518.5513, subd. 2(e) (2000)~~ 518A.46, subd. 2(c). In  
242 addition, employees of the county agency may testify at hearings at the request of  
243 a party or the child support magistrate.

244 \*\*\*

245 Advisory Committee Comment—2008 Amendment  
246 Rule 369.02, subd. 3, is amended to update the statutory references to  
247 reflect the recodification, effective on January 1, 2007, of portions of the  
248 relevant statutes, that became part of Minn. Stat. ch. 518A.  
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## 250 II. PROCEEDINGS

### 251 RULE 370. ESTABLISHMENT OF SUPPORT PROCEEDINGS

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#### 255 Rule 370.02. Content of Summons, Complaint, Supporting Affidavit, and 256 Request for Hearing Form

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

- 262 (a) state detailed facts supporting the request for relief;
- 263 (b) provide all information required by Minn. Stat. § ~~518.5513, subd.~~  
264 ~~3(a) (2000)~~ 518A.46, subd. 3(a), if known; and
- 265 (c) be signed and sworn to under oath.

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268 Advisory Committee Comment—2008 Amendment  
269 Rule 370.02, subd. 3, is amended to update the statutory reference to  
270 reflect the recodification, effective on January 1, 2007, of portions of the  
271 relevant statutes, that became part of Minn. Stat. ch. 518A. Pursuant to Minn.  
272 Stat. § ~~518.5513, subd. 3(a)~~ 518A.46, subd. 3(b), for all cases involving  
273 establishment or modification of support, the pleadings are to contain specific  
274 information. At times, it may be necessary to attach additional supporting  
275 documents. Each county should establish its own local policy regarding the  
276 attachment of supporting documents.  
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278 **Rule 370.03. Service of Summons and Complaint**

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

288 **Rule 370.04. Filing Requirements**

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291 **Subd. 2. Responding Party.** If a noninitiating party responds with a  
292 written answer pursuant to Rule 370.05, the following shall be filed with the court  
293 no later than five (5) days before any scheduled hearing or, if no hearing is  
294 scheduled, within ~~fourteen (14)~~ twenty (20) days from the date the last party was  
295 served:

- 296 (a) the original written answer; and  
297 (b) a financial affidavit pursuant to Minn. Stat. § 518A.28; and  
298 (c) proof of service upon each party pursuant to Rule 355.04.

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301 **RULE 371. PARENTAGE ACTIONS**

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

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

- 308 (a) state detailed facts supporting the request for relief, including the  
309 facts establishing parentage;
- 310 (b) provide all information required by Minn. Stat. § ~~518.5513, subd.~~  
311 ~~3(a)~~ 518A.46, subd. 3(a) (2006), if known; and
- 312 (c) be signed and sworn to under oath.

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**Advisory Committee Comment—2008 Amendment**

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**Rule 371.04. Filing Requirements**

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

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

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

- (a) the original written answer along with a financial affidavit pursuant to Minn. Stat. § 518A.28; or
- (b) a request for blood or genetic testing; and
- (c) proof of service upon each party pursuant to Rule 355.04.

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340 **Rule 371.05 Response**

341

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

345 (a) contact the initiating party to discuss settlement; or

346 (b) within ~~fourteen (14)~~ twenty (20) days of service of the summons and  
347 complaint, serve upon all parties one or more of the written responses pursuant to  
348 subdivision 2.

349 \*\*\*

350

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

354

355 **Rule 372.01. Commencement**

356

357 \*\*\*

358 **Subd. 2. Other Motions.** Except as otherwise provided in these rules, all  
359 proceedings shall be commenced in the expedited process by service of a notice of  
360 motion, motion, and supporting affidavit. Service shall be made at least fourteen  
361 (14) days prior to the scheduled hearing.

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

364

\*\*\*

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

366 (a) state detailed facts supporting the request for relief;

367 (b) for motions to modify support and motions to set support, provide all  
368 information required by Minn. Stat. § ~~518.5513, subd. 3(a)~~ 518A.46, subd. 3(a), if  
369 known; and

370 (c) be signed and sworn to under oath.

371 \* \* \*

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**Advisory Committee Comment—2008 Amendment**

Pursuant to Minn. Stat. § ~~518.5513, subd. 3(a)~~ 518A.46, subd. 3(a)  
(~~2006~~), for all cases involving establishment or modification of support, the  
pleadings are to contain specific information. At times, it may be necessary to  
attach additional supporting documents. Each county should establish its own  
local policy regarding the attachment of supporting documents.

380 \* \* \*

381 **Rule 372.05. Response**

382  
383

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

**Subd. 2. Hearing Date Not Included in the Notice of Motions to  
Modify and Motions to Set Support.** If the notice of motion does not contain a  
hearing date, within fourteen (14) days from service of the motion, a noninitiating  
party shall either:

396 (a) request a hearing by returning the request for hearing form to the  
397 initiating party; or

398 (b) ~~within fourteen (14) days of service of the notice of motion and~~  
399 ~~motion,~~ serve upon all other parties a responsive motion or counter motion.

400 The initiating party shall schedule a hearing upon receipt of a request for  
401 hearing form, a responsive motion, or counter motion. Failure of the noninitiating  
402 party to request a hearing, to serve a responsive motion, or to appear at a  
403 scheduled hearing shall not preclude the matter from going forward, and the child

404 support magistrate may issue an order based upon the information in the file or the  
405 evidence presented at the hearing.

406 **Subd. 3. Other Motions.** Except as otherwise provided in these rules, all  
407 responsive motions shall be served upon all parties at least five (5) days prior to  
408 the hearing. A responsive motion raising new issues shall be served upon all  
409 parties at least ten (10) days prior to the hearing.

410

411 **Advisory Committee Comment—2008 Amendment**  
412 Rule 372.05, subd. 2, is amended to apply the 14-day deadline for  
413 responding to a motion to either of the permitted responses; to request a hearing  
414 or to file a responsive motion or counter-motion. Rule 372.05, subd. 3 is added  
415 to clarify the deadlines for submitting responsive motions.

416

417 \* \* \*

418

### 419 **III. REVIEW AND APPEAL**

420

421 \* \* \*

### 422 **RULE 377. PROCEDURE ON A MOTION TO** 423 **CORRECT CLERICAL MISTAKES, MOTION** 424 **FOR REVIEW, OR COMBINED MOTION**

425

426 \*\*\*

#### 427 **Rule 377.09. Basis of Decision and Order**

428

429 **Subdivision 1. Timing.** Within ~~forty-five (45)~~ thirty (30) days of the close  
430 of the record, the child support magistrate or district court judge shall file with the  
431 court an order deciding the motion. In the event a notice to remove is granted  
432 pursuant to Rule 368, the ~~forty-five (45)~~ thirty (30) days begins on the date the  
433 substitute child support magistrate or district court judge is assigned. The record  
434 shall be deemed closed upon occurrence of one of the following, whichever occurs  
435 later:

- 436 (a) filing of a response pursuant to Rule 377.04;
- 437 (b) filing of a transcript pursuant to Rule 366;

438 (c) withdrawal or cancellation of a request for transcript pursuant to  
439 Rule 366; or

440 (d) submission of new evidence under subdivision 4.

441 If none of the above events occur, the record on a motion for review or  
442 combined motion shall be deemed closed thirty one (31) ~~forty-six (46)~~ days after  
443 service of the notice of filing as required by Rule 365.04, despite the requirements  
444 of Rule 354.04. For a motion to correct clerical mistakes and none of the above  
445 events occur, the record shall be deemed closed 15 days after service of the motion  
446 to correct clerical mistakes.

447 **Subd. 2. Decision.**

448 \*\*\*

449 (b) **Motion for Review.** The child support magistrate or district court  
450 judge shall make an independent review of any findings or other provisions of the  
451 underlying decision and order for which specific changes are requested in the  
452 motion. The child support magistrate or district court judge ~~shall~~ may affirm the  
453 order without making additional findings, unless If the court determines that the  
454 findings and order are not supported by the record or the decision is contrary to  
455 law. ~~The~~ child support magistrate or district court judge may issue an order:

456 (1) denying in whole or in part the motion for review;

457 (2) approving, modifying, or vacating in whole or in part, the decision  
458 and order of the child support magistrate; or

459 (3) scheduling the matter for hearing and directing the court  
460 administrator to serve notice of the date, time, and location of the hearing upon the  
461 parties.

462 \*\*\*

463

464 **Advisory Committee Comment—2008 Amendment**

465 Rule 377.09, subd. 2(b) is amended to correct language of the existing  
466 Rule that could be interpreted to have a mandatory meaning not intended by the  
467 Drafters. The revised rule allows the child support magistrate to affirm an  
468 order without findings, but does not require that. The rule is intended to adopt  
469 expressly a de novo standard of review. The reviewing court need not make

470 findings if the decision is to affirm. De novo review is consistent with the  
471 reported decisions construing the former rule. *See, e.g. Kilpatrick v. Kilpatrick*,  
472 673 N.W.2d 528, 530 n.2 (Minn. Ct. App. 2004); *Davis v. Davis*, 631 N.W.2d  
473 822, 825 (Minn. Ct. App. 2001); *Blonigen v. Blonigen*, 621 N.W. 2d 276, 280  
474 (Minn. Ct. App. 2001), *review denied* (Minn. Mar. 13, 2001).  
475

## 476 477 IV. FORMS

### 478 479 RULE 379. FORMS

480 \*\*\*  
481

#### 482 ~~Rule 379.05. Exception from Rules Governing Civil Actions~~

483 ~~Subdivision 1. Informational Statement. The Informational Statement~~  
484 ~~required by Minn. Gen. R. Prac. 304.02 is not required to be filed in cases brought~~  
485 ~~in the expedited process.~~  
486

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

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OFFICE OF  
APPELLATE COURTS

APR 25 2008

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April 25, 2008

Frederick Grittner  
Clerk of the Appellate Courts  
305 Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155

Re: *Proposed Amendments to the General Rules of Practice for the District Courts*  
*Title IV, Expedited Child Support Rules*

Dear Mr. Grittner;

The recommendation to the General Rules Committee dated July 23, 2007, included a proposal to add a new definition for "child support" and to remove the definition of "support". In reviewing this proposal, it has been discovered that the last sentence in the new definition for "child support" is overly broad. The current definition of "support" (Rule 352.01(1)) includes the following:

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

The recommendation to move this language to the definition of "child support" is not appropriate. "Child support" has a specific definition under the statutes and the intent is to add a definition for "child support" in the rules that mirrors the statute (See Minn. Stat. § 518A.26, subd. 20). The broader definition of "support" should include the reference to confinement and pregnancy expenses, arrearages, past support, costs and fees, and interest and penalties, and not under "child support." The last sentence should also remain under the definition of "support." We respectfully recommend keeping a definition for "support" and amending its definition slightly, as drafted below, and to amend the new definition of "child support" to mirror the statutory language.

## RULE 352. DEFINITIONS

### Rule 352.01. Definitions

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

\*\*\*

(b) “Child support” means basic support; child care support; and medical support. Medical support includes the obligation to carry health care coverage, costs for health care coverage, and unreimbursed / uninsured medical expenses.

\* \* \*

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

Under the Expedited Rules, motions to modify support and motions to set support have different time frames for service from other motions. Motions to modify and motions to set may be served without a hearing date in the Expedited Process. If no hearing is requested by any responding party, a proposed order is submitted to the magistrate for review, who then either signs the order or rejects it. This option is not available for other motions. The recommendation dated July 23, 2007, sets forth a proposal to clarify the time frame for serving other motions by amending Rule 372.01, subdivision 2 by adding the sentence “Service shall be made at least fourteen (14) days prior to the scheduled hearing.” The objective was, and remains, to clarify that motion practice under the Expedited Rules follows two different time frames for service depending on whether the motion was one for modification or to set support (20 days service) or some other motion. The initial thought was that a service time frame for responsive motions was not necessary since Rule 351.01 states the General Rules of Practice apply unless inconsistent with these rules. After reviewing the proposal previously submitted, we also recommend amending Rule 372.05 by adding another subdivision that specifically sets forth the time frame for serving a response to a motion other than a motion to modify or motion to set. The original recommendation, with this addition, clarifies the service time frames for other motions.

The last recommendation is to expand the title of subdivision 1 and 2 of Rule 372.05 as a means to emphasize motions to modify and motions to set support have a different process from other motions heard in the expedited process. The proposed changes are set out below.

### Rule 372.05. Response

Subdivision 1. Hearing Date Included in the Notice of Motions to Modify and Motions to Set Support.

**Subd. 2. Hearing Date Not Included in the Notice of Motions to Modify and Motions to Set Support.** If the notice of motion does not contain a hearing date, within fourteen (14) days from service of the motion, a noninitiating party shall either:

(a) request a hearing by returning the request for hearing form to the initiating party;

or

(b) ~~within fourteen (14) days of service of the notice of motion and motion;~~ serve upon all other parties a responsive motion or counter motion.

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

**Subd. 3. Other Motions.** Except as otherwise provided in these rules, all responsive motions shall be served upon all parties at least five (5) days prior to the hearing. A responsive motion raising new issues shall be served upon all parties at least ten (10) days prior to the hearing.

We respectfully request the General Rules Committee consider making these additional changes to the rules.

Respectfully,



Deanna J. Dohrmann  
Staff Attorney



Jodie Metcalf  
Child Support Magistrate / Manager