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

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 this Court will consider the proposed changes without a hearing after soliciting and 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 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. Dr. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, no later than Friday, December 14, 2007.

DATED: November 8th, 2007

BY THE COURT:

Russell A. Anderson
Chief Justice

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
November 6, 2007

Hon. Elizabeth Anne Hayden
Chair

Hon. G. Barry Anderson
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
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Hon. Rosanne Nathanson, Saint Paul
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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 has convened on several occasions during 2007 to consider issues relating to the General Rules of Practice. The most prominent of the issues the committee has addressed relates to the current rules limiting the use of cameras in Minnesota courtrooms. On that issue, the committee reports that it is continuing its process of gathering information and information and expects to make a recommendation to the court within the next few months.

The committee has also examined other issues and reports on those issues now. These issues include two on which rule revisions are recommended, and several as to which the committee does not recommend any action. The committee has reexamined an issue relating to a recommended rule on testimony of child witnesses, and now recommends that no rule be adopted (withdrawing its earlier recommendation on that subject). Finally, the committee recommends that one proposed rule, relating to interpreters, receive further and broader consideration. Each of these recommendations is summarized in the following section.

Summary of Committee Recommendations

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

Recommendations that the rules be amended or a new rule adopted

1. The Court should implement amendments to the Code of Ethics Enforcement Procedure for Rule 114 neutrals as recommended by this Court's ADR Review Board

2. The procedure for streamlining uncontested marriage dissolution proceedings for marriages without children, adopted in 2003 as Minn. Gen. R. Prac. 302.01, should be extended to apply to marriages with children.

As an additional part of this recommendation, Form 12 of Title IV of the rules will need to be revised. The committee believes, however, that the vast majority of the forms in the General Rules should be removed from the rules themselves, and instead maintained and made available on the Court Administrator's website. This procedure would allow the maintenance of these forms on an ongoing basis without requiring review by the advisory committee or formal orders of the Court to implement. Changes are included in this report that address the forms in Title IV of these rules. Future reports will address other forms.

3. This Court should amend the rules for the expedited child support process in accordance with recommendations of Court Services Staff or Family Services, and the State Court Administrator's Office.

4. Rule 803 should be amended to make its language more precisely describe the duties of jury commissioners. These changes are essentially technical and minor in nature.

Recommendations that proposed rule changes not be adopted

5. The committee withdraws its recommendation, contained in its October 20, 2006, Report (filed as this Report is captioned) that a new Rule 12 be adopted, and recommends that no such rule be adopted at this time. That rule would have provided a special rule for dealing with child witnesses.

6. The committee considered a proposal to revise Rule 119, relating to motions for attorney fees. The committee believes the rule as currently written does not require revision.

7. The committee considered expressed concerns about the interplay of Rule 144, dealing with wrongful death cases, and Rule 145, dealing with minor settlements, and the different court approval processes required by those rules. The committee concludes that the rules do not conflict and that no amendment to either rule is needed.

Recommendation that one proposal receive broader attention.

8. The committee considered one proposed rule, on recommendation from the evidence advisory committee, that should receive further and broader consideration. That rule would require any proceedings in which an interpreter is used to be recorded by audio- or video-recorded so as to permit review of the interpretation.

   The concern over occasional interpretation issues, particularly in situations where no certified interpreter is available, is one that potentially interferes with the parties' rights to a fair trial, and should be studied further. The committee also believes this proposal presents potential resource issues that should be reviewed by the State Court Administrator as well as unresolved issues relating to the procedures to be followed to allow review of claimed interpreter errors.

Cameras in Courtrooms

The committee is continuing to confer and hear from witnesses on the issues surrounding the accessibility of Minnesota courtrooms to cameras and audio recording equipment of news media. The committee believes it will be able to make a recommendation to the Court during the second quarter of 2008.

Effective Date

The committee believes these amendments can be adopted, after public hearing if the Court determines a hearing is appropriate, in time to take effect on January 1, 2008.

Style of Report

The specific recommendations are 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 1: **The Code of Ethics Enforcement Procedure of the ADR Review Board should be amended as recommended by that Board and its staff.**

Introduction

This Court's ADR Review Board has recommended minor modifications to the Code of Ethics Enforcement Procedure for which it has responsibility. These amendments largely conform the code to current practice before the board. These amendments are appropriate for implementation by the Court, in the opinion of this advisory committee.

Specific Recommendation

Specific Recommendation 1. The Code of Ethics Enforcement Procedure should be amended as follows:

CODE OF ETHICS
ENFORCEMENT PROCEDURE

*** * ***

Rule II. Procedure

*** * ***

B. The State Court Administrator's Office, in conjunction with one ADR Review Board member shall review the complaint and recommend ~~to determine~~ whether the allegations(s), if true, constitute a violation of the Code of Ethics, and whether to refer the complaint to mediation. The State Court Administrator's Office and ADR Review Board member may also request additional information from the complainant if it is necessary prior to making a recommendation.

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

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

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

* * *

Advisory Committee Comments—2007 Amendments

Rule II. B. is amended in 2007 to implement a streamlined process so that one ADR Review Board member together with state court administration staff can make initial determinations. This will allow the process to proceed instead of waiting for monthly board meetings. Rule II.E. is amended to clarify that the parties may voluntarily elect mediation in addition to mediation being offered by the Board.

Rule IV. Confidentiality

* * *

D. Accessibility to records maintained by district court administrators relating to complaints or sanctions about neutrals ~~parenting time expeditors~~ shall be consistent with this rule.

Advisory Committee Comments—2007 Amendments

Rule IV. D. is amended in 2007 to clarify that accessibility to district court information about sanctions is consistent with Rule 114 for all neutrals. In addition to maintaining local rosters of parenting time expediters, district courts receive notice of sanctions imposed by the ADR Review Board.

Recommendation 2: **The streamlined procedure for using a combined Joint Petition, Agreement, and Judgment and Decree in Rule 302.01(b), now available for marriage dissolution proceedings in marriages without children, should be made available by rule amendment for use in any marriage dissolution case.**

Introduction

In 2003 this committee recommended that Rule 302.01 be amended to create a procedure that allowed uncontested marriage dissolution actions to be commenced and adjudicated by a combined Joint Petition, Agreement, and Judgment and Decree. This recommended change was ordered by the court and has operated well since adoption. Following requests from several lawyers, the committee revisited this rule, with specific reference to whether this streamlined procedure should be made available in proceedings for dissolution of a marriage with children when the parties have reached agreement on all issues. The committee is satisfied that this rule should be amended to allow the combined document to be used in any uncontested proceeding.

Specific Recommendations

Specific Recommendation 1. Rule 302.01 should be amended as follows:

RULE 302. COMMENCEMENT; CONTINUANCE; TIME; PARTIES

Rule 302.01 Commencement of Proceedings

* * *

(b) Joint Petition.

(1) No summons shall be required if a joint petition is filed. Proceedings shall be deemed commenced when both parties have signed the verified petition.

(2) Where the parties to a proceeding agree on all ~~property~~ issues, ~~have no children together, the wife is not pregnant, and the wife has not give birth since the date of the marriage to a child who is not a child of the husband,~~ the parties may proceed using a joint petition, agreement, and judgment and decree for marriage dissolution. ~~without children. Form 12 appended to these rules is a sufficient form for this purpose.~~

(3) Upon filing of the "Joint Petition, Agreement and Judgment and Decree," and Form 11.1 appended to Title I of these rules, and a Notice to the Public Authority if required by Minn. Stat. § 518.551, subd. 5, the court administrator shall place the matter on the appropriate ~~default~~ calendar ~~for approval without hearing~~ pursuant to Minn. Stat. § 518.13, subd. 5. A Certificate of Representation and Parties and documents required by Rules 306.01and 306.02 shall not be required if the "Joint Petition, Agreement and Judgment and Decree" ~~provided in Form 12~~ published by the state court administrator is used.

(4) The state court administrator shall maintain, publish and regularly update, or provide references to, forms that may be used by parties for purposes of this rule. Court Administrators in each Judicial District shall make the forms ~~"Joint Petition, Agreement and Judgment and Decree for Marriage Dissolution Without Children"~~ available to the public at a reasonable cost~~, as a fill-in-the-blank form~~.

Advisory Committee Comments—2007 Amendments

Rule 302(b) is amended to expand the availability of the streamlined procedure allowing a marriage dissolution to proceed by use of a single pleading that combines a joint petition, marital termination agreement, and judgment and decree. The prior rule allowed this procedure only in marriages with no children; the amendment allows its use in marriage dissolution proceedings with children where the parties have agreed on all issues. The combined form permits the parties to proceed more expeditiously and make it easier for the parties and the court to verify that the judgment and decree to be entered by the court conforms to the parties' agreement.

The rule also deletes the reference to the former Rule 12 as part of a transition to maintain practice forms related to practice under the rules by court administration and available on the courts' website [www. mcourts.gov] rather than as part of the rule.

Specific Recommendation 2. Form 12 should be deleted from the rules.

The combined Joint Petition, Agreement, and Judgment and Decree form, currently Form 12, will need to be revised or split into separate versions to permit its use in marriages either with or without children. In accordance with the recommendation made elsewhere in this report, Form 12 should be removed from the rules, and should be maintained by the state court administrator. Dissolution forms are currently maintained on the state court website (www.mncourts.gov).

Specific Recommendation 3. The following modifications are necessary to remove the forms from Title IV of the rules and transfer their oversight to the state court administrator. All forms in Title IV should also be removed from the rules.

Rule 303.02 Form of Motion

* * *

(b) Application for Temporary Relief. When temporary financial relief is initially requested, such as child support, maintenance and attorney's fees, the application for temporary relief form developed by the state court administrator ~~set forth at form 1 appended to these rules~~ shall be served and filed by the moving and responding parties. Additional facts, limited to relevant and material matters, shall be added ~~at paragraph 10 of~~ to the application form or by supplemental affidavit. Sanctions for failure to comply include, but are not limited to, the striking of pleadings or hearing.

Rule 304.02 The Party's Informational Statement

(a) Timing. Within 60 days after filing an action or, if a temporary hearing is scheduled within 60 days of the filing of the action, then within 60 days after a temporary hearing is initially scheduled to occur, whichever is later, each party shall submit, on a form to be available from the court and developed by the state court administrator ~~(see Forms 9A and B appended to these rules)~~, the information needed by the court to manage and schedule the case.

* * *

(c) Unrepresented Parties. Parties not represented by a lawyer may use forms developed specially by the state court administrator for unrepresented parties ~~shall, instead of providing the information required above on Form 9A, provide substantially the information required on Form 9B~~.

Rule 305.01 Prehearing Statement

Each party shall complete a prehearing conference statement substantially in the form developed by the state court administrator ~~set forth at form 2 appended to these rules~~ which shall be served upon all parties and mailed to or filed with the court at least 10 days prior to the date of the prehearing conference.

Rule 306.01 Scheduling of Final Hearing

Except when proceeding under Rule 302.01 (b) by Joint Petition, Agreement and Judgment and Decree, to place a matter on the default calendar for final hearing or for approval without hearing pursuant to Minnesota Statutes, section 518.13, subdivision 5, the moving party shall submit a default scheduling request substantially in the form developed by the state court administrator ~~set forth in Form 10 appended to these rules~~ and shall comply with the following, as applicable:

*** * ***

RULE 311. FORMS

The forms developed by the state court administrator ~~contained in the Appendix of Forms~~ are sufficient under these rules.

Advisory Committee Comment

The responsibility for forms development and review is being handed off to the state court administrator to permit more effective forms management and review. This process is already followed for the expedited process. Gen. R. Prac. 379.02.

Recommendation 3: The Expedited Child Support Process Rules should be updated to reflect changes in the process and various statutory changes.

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, recommended changes to the Rules of the Expedited Child Support Process. These rules include technical amendments as well as modest substantive amendments to the rules based on experience gained by the child support process. The advisory committee has reviewed these proposed changes, believe they are appropriate for adoption, and accordingly recommend them to the Court.

Specific Recommendations

Specific Recommendation 1. Rule 352.01 should be amended as follows:

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; medical support, including the obligation to carry health care coverage, costs for health care coverage, and unreimbursed / uninsured ~~health-related~~ medical 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 basic support, child care support, or medical support.

(c) "Child support magistrate" means an individual appointed by the chief judge of the judicial district to preside over matters in the expedited process. "Child support magistrate" also means any family court referee or district court judge presiding over matters in the expedited process.

~~**(c) "County agency"** means the local public authority responsible for child support enforcement~~

(d) "County attorney" means the attorney who represents the ~~county agency~~ public authority, whether that person is employed by the office of the county attorney or under contract with the office of the county attorney.

* * *

(f) "IV-D case" means any proceeding where a party has either (1) assigned to the state rights to child support because of the receipt of public assistance as defined in Minn. Stat. § 256.741 (2000), or (2) applied for child support services under Title IV-D of the Social Security Act, 42 U.S.C. § 654(4) (1994). "IV-D case" does not include proceedings where income withholding is the only service applied for or received under Minn. Stat. § ~~518.6111 (2000)~~ 518A.53 (2006).

* * *

(k) "Public authority" means the local unit of government, acting on behalf of the state, that is responsible for child support enforcement or the Department of Human Services, Child Support Enforcement Division.

(~~k~~l) "Response" means a written answer to the complaint or motion, a "request for hearing" form, or, in a parentage matter, a "request for blood or genetic testing" form.

~~**(l) "Support"** means child support; child care support; medical support, including medical and dental insurance, and unreimbursed medical and dental expenses; expenses for confinement and pregnancy; arrearages; reimbursement;~~

~~past support; related costs and fees; and interest and penalties. "Support" also means the enforcement of spousal maintenance when combined with child support, child care support, or medical support.~~

Advisory Committee Comment—2007 Amendment

Rule 352.01(f) is amended to reflect the recodification, effective on January 1, 2007, of portions of the relevant statutes, to become part of Minn. Stat. ch. 518A.

Specific Recommendation 2. Rule 353.02, subds. 1 & 3 should be amended to replace "county agency" with "public authority" as follows:

RULE 353. TYPES OF PROCEEDINGS

Rule 353.01. Types of Proceedings

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Rule 353.02. Procedure When Prohibited Issues

Subdivision 1. Generally. These rules do not prevent a party, upon timely notice to all parties and to the ~~county agency~~ public authority, from commencing a proceeding or bringing a motion in district court if the proceeding or motion involves one or more issues identified in Rule 353.01, subd. 1, and one or more issues identified in Rule 353.01, subd. 3.

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Subd. 3. Prohibited Issues in Expedited Child Support Process. If a proceeding is commenced in the expedited process and the complaint, motion, answer, responsive motion, or counter motion raises one or more issues identified in Rule 353.01, subd. 3, all parties, including the ~~county agency~~ public authority, may agree in writing to refer the entire matter to district court without first appearing before the child support magistrate. Notice of the agreement must be

filed with the court at least five (5) days prior to the scheduled hearing in the expedited process. The child support magistrate shall issue an order referring the entire matter to district court. Absent an agreement by all parties and upon motion of a party or upon the child support magistrate's own initiative, the child support magistrate assigned to the matter shall, either before or at the time of the hearing, decide whether to:

* * *

Specific Recommendation 3. Rule 354.03 should be amended to include reference to "Columbus Day" as a legal holiday, given the recent decision of *Commandeur LLC v. Howard Hartry, Inc.*, 724 N.W.2d 508 (Minn. 2006):

RULE 354. COMPUTATION OF TIME

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Rule 354.03. "Business Day" Defined

A "business day" means any day that is not a Saturday, Sunday, or legal holiday. As used in these rules, "legal holiday" means New Year's Day, Martin Luther King's Birthday, Washington's and Lincoln's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, 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.

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Advisory Committee Comment—2007 Amendment

In 2006 the Minnesota Supreme Court addressed the ambiguity in the rules and the ambiguity between the rules and statutes over how Columbus Day, a day that is not only optionally a state holiday but is a federal and U.S. Mail holiday should be treated. Because the rules generally allow service by mail, the Court in *Commandeur LLC v. Howard Hartry, Inc.*, 724 N.W.2d 508

(Minn. 2006), ruled that where the last day of a time period occurred on Columbus Day, service by mail permitted by the rules was timely if mailed on the following day on which mail service was available. The amendment to Rule 354.03 makes it clear that Columbus Day is a "legal holiday" for all purposes in these rules, even if that is not necessarily so by the statutory definition, Minn. Stat. § 645.44, subd. 5 (2006).

Specific Recommendation 4. Rule 355 should be amended as follows:

RULE 355. METHODS OF SERVICE

Rule 355.01. Generally

Subdivision 1. Service Required. Except for ex parte motions allowed by statute or these rules, every paper or document filed with the court shall be served on all parties and the ~~county agency~~ public authority.

Subd. 2. Service Upon Attorney for Party. If a party, other than the ~~county agency~~ public authority, is represented by an attorney as shown by a certificate of representation in the court file, service shall be made upon the party's attorney, unless personal service upon the represented party is required under these rules. Except where personal service upon the ~~county agency~~ public authority is required under these rules, service upon the ~~county agency~~ public authority shall be accomplished by serving the county attorney.

Rule 355.02. Types of Service

Subdivision 1. Personal Service.

(a) Upon Whom.

*** * ***

(2) Upon the ~~County Agency~~ Public Authority. Personal service upon the ~~county agency~~ public authority shall be accomplished by serving the director of the county human services department or the director's designee.

(b) By Whom Served. Unless otherwise ordered by the child support magistrate, personal service shall be made only by the sheriff or by any other

person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minn. Stat. § ~~518.5513 (2000)~~ 518A.46 (2006), an employee of the county agency may serve documents on parties.

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Subd. 2. Service by U.S. Mail. Service by U.S. mail means mailing a copy of the document by first-class mail, postage prepaid, addressed to the person to be served at the person's last known address. Service by mail shall be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minn. Stat. § ~~518.5513 (2000)~~ 518A.46 (2006), an employee of the ~~county agency~~ public authority may serve documents on the parties.

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Specific Recommendation 5. Rule 360.01 should be amended to replace "county agency" with "public authority" as follows:

RULE 360. INTERVENTION

Rule 360.01. ~~County Agency~~ Public Authority

Subdivision 1. Intervention as a Matter of Right. To the extent allowed by law, the ~~county agency~~ public authority may, as a matter of right, intervene as a party in any matter conducted in the expedited process. Intervention is accomplished by serving upon all parties by U.S. mail a notice of intervention. The notice of intervention and affidavit of service shall be filed with the court.

Subd. 2. Effective Date. Intervention by the ~~county agency~~ public authority is effective when the last person is served with the notice of intervention.

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Specific Recommendation 6. Rule 361 should be amended as follows:

RULE 361. DISCOVERY

Rule 361. 01. Witnesses

Any party may call witnesses to testify at any hearing. Any party intending to call a witness other than an employee of the ~~county agency~~ public authority or any party to the proceeding shall, at least five (5) days before the hearing, provide to the other parties and the ~~county agency~~ public authority written notice of the name and address of each witness.

Rule 361.02. Exchange of Documents

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 obligation~~s~~ for a nonjoint child.

(f) Written verification of any court-ordered spousal maintenance obligation for a former spouse.

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

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Rule 361.06. Subpoena

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

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Specific Recommendation 7. Rule 362.02 should be amended by replacing "county agency" with "public authority":

RULE 362. SETTLEMENT

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Rule 362.02. Signing of Order

Subdivision 1. Preparation and Signing. If the parties reach an agreement resolving all issues, one of the parties shall prepare an order setting forth the terms of the agreement. If the parties are not represented by counsel and the ~~county agency~~ public authority is a party, the ~~county agency~~ public authority shall prepare the order. All parties to the agreement, including the ~~county agency~~ public authority, shall sign the original order. The order shall state that the parties have:

(a) waived the right to a hearing;

(b) waived the right to counsel where a party is not represented by counsel; and

(c) received and reviewed all documents used to prepare the order.

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Specific Recommendation 8. Rule 363 should be amended as follows:

RULE 363. DEFAULT

* * *

Rule 363.02. Procedure

The initiating party may proceed by default if:

(a) all noninitiating parties have been properly served with the summons or notice of motion;

(b) the summons or notice of motion did not contain a hearing date; and

(c) there has been no written answer or return of the request for hearing form from any party within twenty (20) days from the date the last party was served.

The initiating party shall file an order with the court within forty-five (45) days from the date the last noninitiating party was served with the summons and complaint or notice of motion and motion. The initiating party shall also file with the court a current affidavit of default and a current affidavit of non-military status. If an order is not filed with the court within forty-five (45) days, the court administrator shall mail a notice to all parties that the matter shall be scheduled for hearing unless the initiating party files an order along with all necessary documents within ten (10) days from the date notice was mailed. If the initiating party fails to file the necessary documents within the allotted ten (10) days, the court administrator shall set the matter on for hearing and serve upon all parties and the ~~county agency~~ public authority by U.S. mail at least fourteen (14) days before the scheduled hearing, notice of the date, time, and location of the hearing.

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Rule 363.04. Order Not Accepted

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

(a) to file and serve any missing documents;

(b) to file a revised order;

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

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

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

(f) to withdraw the matter without prejudice.

The court administrator shall mail the notice of deficiency to the initiating party. The initiating party shall either correct the deficiency or set the case on for a hearing and serve notice of the date, time, and location of the hearing upon all parties pursuant to Rule 364. If the initiating party submits a revised order that raises new issues beyond the scope of the complaint or motion, amended pleadings shall ~~be served and~~ filed and served on all parties ~~pursuant to Rule 370.06 or Rule 372.06~~ within 10 days from the date the notice of deficiency was mailed. If the noninitiating party chooses to respond to the amended pleadings, the response must be served and filed within 10 days from service of the amended pleadings. If the initiating party fails to schedule a hearing or comply with the notice of deficiency within forty-five (45) days of the date the notice was mailed, the child support magistrate shall dismiss the matter without prejudice.

Advisory Committee Comment—2007 Amendment

Rule 356.043 is amended to include an explicit deadline for serving and filing any response to a notice of deficiency. The ten-day period runs from the date of mailing the notice of deficiency. The rule also creates a ten-day deadline for responding to any amended pleadings served in response to a notice of deficiency, but this period runs from service, not mailing.

Specific Recommendation 9. Rule 364.02 and Rule 364.10, subd. 3 should be amended to replace "county agency" with "public authority" as follows:

RULE 364. HEARING PROCESS

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Rule 364.02. Scheduling of Hearing

The initiating party shall schedule a hearing if a written answer or a request for hearing form is received. The initiating party shall contact the court administrator or the court administrator's designee to obtain a hearing date and shall serve upon all parties and the ~~county agency~~ public authority by U.S. mail at least fourteen (14) days before the scheduled hearing, notice of the date, time, and location of the hearing.

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Rule 364.10. Evidence

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Subd. 3. Documents. Ordinarily, copies or excerpts of documents instead of originals may be received or incorporated by reference. The child support magistrate may require the original or the complete document if the copy is not legible, there is a genuine question of accuracy or authenticity, or if it would be unfair to admit the copy instead of the original. Any financial documents prepared by the employee of the ~~county agency~~ public authority are admissible without requiring foundation testimony or appearance of the employee of the county agency.

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Specific Recommendation 10. Rule 366.01, subd. 2 should be amended to replace "county agency" with "public authority" as follows:

RULE 366. TRANSCRIPT

Rule 366.01. Ordering of Transcript

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Subd. 2. Clerical or Review Requests. If a party chooses to request a transcript for purposes of bringing or responding to a motion to correct clerical mistakes, a motion for review, or a combined motion, a request for transcript form shall be filed with the court within the time required under Rule 377.02 and 377.04. The party requesting the transcript must make satisfactory arrangements for payment with the transcriber within thirty (30) days of ordering the transcript or the request for the transcript shall be deemed cancelled. The requesting party may withdraw that party's request for a transcript any time prior to the time transcription has begun. The transcriber shall file the original with the court and serve each party, including the ~~county agency~~ public authority if a party, with a copy. The transcriber shall also file with the court an affidavit of service verifying that service has been made upon all parties. Ordering and filing of a transcript does not delay the due dates for the submissions described in Rule 377.02 and Rule 377.04. Filing of the transcript with the court closes the record for purposes of Rule 377.09, subd. 1.

Specific Recommendation 11. Rule 369 should be amended as follows:

RULE 369. ROLE OF COUNTY ATTORNEY AND EMPLOYEES OF THE ~~COUNTY AGENCY~~ PUBLIC AUTHORITY

Rule 369.01. Role of County Attorney

Subdivision 1. Approval as to Form and Content. The county attorney shall review and approve as to form and content all legal documents prepared by employees of the ~~county agency~~ public authority for use in the expedited process or in district court.

Subd. 2. Attendance at Hearings. The ~~county agency~~ public authority shall appear through counsel. However, the county attorney may authorize an employee of the ~~county agency~~ public authority to appear on behalf of the county attorney to present an agreement or stipulation reached by all the parties. An employee of the ~~county agency~~ public authority shall not advocate a position on behalf of any party. The county attorney is not required to be present at any hearing to which the ~~county agency~~ public authority is not a party.

Rule 369.02. Role of Employees of ~~County Agency~~ Public Authority

Subdivision 1. County Attorney Direction. Under the direction of, and in consultation with, the county attorney, and consistent with Rules 5.3 and 5.5 of the Minnesota Rules of Professional Conduct, employees of the ~~county agency~~ public authority may perform the following duties:

(a) meet and confer with parties by mail, telephone, electronic, or other means regarding legal issues;

(b) explain to parties the purpose, procedure, and function of the expedited child support process and the role and authority of nonattorney employees of the ~~county agency~~ public authority regarding legal issues;

*** * ***

(i) exercise other powers and perform other duties as permitted by statute or these rules.

Employees of the ~~county agency~~ public authority shall not represent the ~~county agency~~ public authority at hearings conducted in the expedited process.

Subd. 2. Support Recommendations Precluded. Employees of the ~~county agency~~ public authority may not offer recommendations regarding support at the hearing unless called as a witness at the hearing. Computation and presentation of support calculations are not considered recommendations as to support.

Subd. 3. County Attorney Direction Not Required. Without direction from the county attorney, employees of the ~~county agency~~ public authority may perform the duties listed under Minn. Stat. § ~~518.5513, subd. 2(c) (2000)~~ 518A.46, subd. 2(c) (2006). In addition, employees of the county agency may testify at hearings at the request of a party or the child support magistrate.

Subd. 4. Performance of Duties Not Practice of Law. Performance of the duties identified in Rule 369.02 by employees of the ~~county agency~~ public authority does not constitute the unauthorized practice of law for purposes of these rules or Minn. Stat. § 481.02 (2000).

Specific Recommendation 12. Rule 370 should be amended as follows:

II. PROCEEDINGS

RULE 370. ESTABLISHMENT OF SUPPORT PROCEEDINGS

*** * ***

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

Subdivision 1. Content of Summons. A summons shall:

(a) state the name of the court;

*** * ***

(k) be signed by the initiating party or that party's attorney.

If there is reason to believe that domestic violence exists or if an order for protection has been issued, the party may provide an alternative address and telephone number. Pursuant to Minn. Stat. § 518.005, subd. 5 (2000), in all actions in which public assistance is assigned or the ~~county agency~~ public authority is providing services to a party or parties to the action, information regarding the location of one party may not be released by the ~~county agency~~ public authority to any other party if the ~~county agency~~ public authority has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

*** * ***

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

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

(b) provide all information required by Minn. Stat. § ~~518.5513, subd. 3(a) (2000)~~ 518A.46, subd. 3(a) (2006), if known; and

(c) be signed and sworn to under oath.

Advisory Committee Comment—2007 Amendment

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

*** * ***

Rule 370.03. Service of Summons and Complaint

Subdivision 1. Who is Served. All parties, and the ~~county agency~~ public authority even if not a party, shall be served pursuant to subdivision 2.

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

Rule 370.04. Filing Requirements

*** * ***

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

(a) the original written answer; ~~and~~

(b) a financial affidavit pursuant to Minn. Stat. § 518A.28; and

(c) proof of service upon each party pursuant to Rule 355.04.

*** * ***

Specific Recommendation 13. Rule 371 should be amended as follows:

RULE 371. PARENTAGE ACTIONS

*** * ***

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

Subdivision 1. Content of Summons. A summons shall:

(a) state the name of the court;

*** * ***

(j) be signed by the initiating party or that party's attorney.

If there is reason to believe that domestic violence exists or if an order for protection has been issued, a party may provide an alternative address and telephone number. Pursuant to Minn. Stat. § 257.70(b) (2000), in all actions in which public assistance is assigned or the ~~county agency~~ public authority is providing services to a party or parties to the action, information regarding the location of one party may not be released by the ~~county agency~~ public authority to any other party if the ~~county agency~~ public authority has knowledge that a protective order with respect to the other party has been entered or has reason to believe that the release of the information may result in physical or emotional harm to the other party.

*** * ***

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

(a) state detailed facts supporting the request for relief, including the facts establishing parentage;

(b) provide all information required by Minn. Stat.. § ~~518.5513, subd. 3(a)~~ 518A.46, subd. 3(a) (2006), if known; and

(c) be signed and sworn to under oath.

Advisory Committee Comment—2007 Amendment

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

Rule 371.03. Service of Summons and Complaint

Subdivision 1. Who is Served. The biological mother, each man presumed to be the father under Minn. Stat. § 257.55 (2000), each man alleged to

be the biological father, and the ~~county agency~~ public authority even if not a party, shall be served pursuant to subdivision 2.

* * *

Rule 371.04. Filing Requirements

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

(a) the original summons;

* * *

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.

* * *

Rule 371.05 Response

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

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

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

* * *

Rule 371.10. Hearing Procedure

*** * ***

Subd. 2. Exception. If all parties, including the ~~county agency~~ public authority, sign an agreement that contains all statutory requirements for a parentage adjudication, including a statement that the parties waive their right to a hearing, the hearing may be stricken. The matter shall not be stricken from the court calendar until after the child support magistrate reviews and signs the agreement. The court administrator shall strike the hearing upon receipt of the agreement signed by the child support magistrate.

*** * ***

Specific Recommendation 14. Rule 372 should be amended as follows:

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

Rule 372.01. Commencement

* * *

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

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

*** * ***

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

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

(b) for motions to modify support and motions to set support, provide all information required by Minn. Stat. § ~~518.5513, subd. 3(a)~~ 518A.46, subd. 3(a) (2006), if known; and

(c) be signed and sworn to under oath.

*** * ***

Advisory Committee Comment—2007 Amendment

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

Rule 372.03. Service of Notice of Motion and Motion

Subdivision 1. Who is Served. All parties, and the ~~county agency~~ public authority even if not a party, shall be served pursuant to subdivision 2.

*** * ***

Rule 372.05. Response

*** * ***

Subd. 2. Hearing Date Not Included in the Notice of Motion. 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.

*** * ***

Advisory Committee Comment—2007 Amendment

Rule 372.05, subd. 2, is amended to apply the 14-day deadline for responding to a motion to either of the permitted responses: to request a hearing or to file a responsive motion or counter-motion.

Specific Recommendation 15. Rule 377 should be amended as follows:

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

*** * ***

Rule 377.02. Timing of Motion

To bring a motion to correct clerical mistakes, the aggrieved party shall perform items (a) through (e) as soon as practicable after discovery of the error. To bring a motion for review or a combined motion, the aggrieved party shall perform items (a) through (f) within twenty (20) days of the date the court administrator served that party with the notice form as required by Rule 365.04.

(a) Complete the motion to correct clerical mistakes form, motion for review form, or combined motion form.

(b) Serve the completed motion for clerical mistakes form, motion for review form, or combined motion form upon all other parties and the ~~county agency~~ public authority. Service may be made by personal service or by U.S. mail pursuant to Rule 355.02.

*** * ***

Rule 377.04. Response to Motion

Subdivision. 1. Timing of Response to Motion. A party may respond to a motion to correct clerical mistakes or a motion for review. Any response shall state why the relief requested in the motion should or should not be granted. If a responding party wishes to raise other issues, the responding party must set forth

those issues as a counter motion in the response. To respond to a motion to correct clerical mistakes the party shall perform items (a) through (e) within ten (10) days of the date the party was served with the motion. To respond to a motion for review or a combined motion the party shall perform (a) through (f) within thirty (30) days of the date the party was served with the notice under Rule 365.04. To respond to a counter motion, the party shall perform items (a) through (f) within forty (40) days of the date the party was served with the notice under Rule 365.04.

(a) Complete the response to motion to correct clerical mistakes form, response to motion for review form, or response to combined motion form.

(b) Serve the completed response to motion for clerical mistakes form, response to motion for review form, or response to combined motion form upon all other parties and the ~~county agency~~ public authority. Service may be made by personal service or by U.S. mail pursuant to Rule 355.02.

* * *

Rule 377.09. Basis of Decision and Order

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

(a) filing of a response pursuant to Rule 377.04;

*** * ***

(d) submission of new evidence under subdivision 4.

If none of the above events occur, the record on a motion for review or combined motion shall be deemed closed forty-six (46) days after service of the notice of filing as required by Rule 365.04, despite the requirements of Rule

354.04. For a motion to correct clerical mistakes and none of the above events occur, the record shall be deemed closed 15 days after service of the motion to correct clerical mistakes.

Subd. 2. Decision.

*** * ***

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

*** * ***

Advisory Committee Comment—2007 Amendment

Rule 377.09, subd. 2(b) is amended to correct language of the existing rule that could be interpreted to have a mandatory meaning not intended by the drafters. The revised rule allows the child support magistrate to affirm an order without findings, but does not require that. The rule is intended to adopt expressly a de novo standard of review . The reviewing court need not make findings if the decision is to affirm. De novo review is consistent with the reported decisions construing the former rule. *See, e.g.*, *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. Ct, App. 2004); *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. Ct. App. 2001); *Blonigen v. Blonigen*, 621 N.W.2d 276, 280 (Minn. Ct. App. 2001), *review denied* (Minn. Mar. 13, 2001)."

Specific Recommendation 16. Rule 379 should be amended as follows:

4. FORMS

RULE 379. FORMS

*** * ***

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

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

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

Recommendation 4: **The court should amend Rule 806 to make its language more precisely state the obligations of jury commissioners.**

Introduction

In its 2006 report this advisory committee recommended that Minn. Gen. R. Prac. 803 be amended to clarify that a jury commissioner should not be made responsible for the representativeness of any jury source list, as the commissioner has no ability to control the composition of these lists. A jury commissioner does have control over the use of those lists to assemble a jury pool that is representative of the relevant adult population. Because Rule 806 contains language similar to that in Rule 803 before the amendment recommended in 2006, the committee believes Rule 806 should now be amended to make it clear that the jury commissioner's responsibility is to report on the overall results of his or her efforts to maintain representative juror pools.

Specific Recommendation

Specific Recommendation 1. Rule 806 should be amended as follows:

RULE 806. JURY SOURCE LIST

* * *

(e) The jury commissioner shall review the jury source list once every four years for its ~~representativeness and~~ inclusiveness and the jury pool for its representativeness of the adult population in the county and report the results to the chief judge of the judicial district.

(f) If the chief judge, or designee, determines that improvement is needed in either the ~~representativeness or~~ inclusiveness of the jury source list or the representativeness of the jury pool, appropriate corrective action shall be ordered.

Advisory Committee Comment—2007 Amendment

Rules 806(e) & (f) are amended to state the jury commissioner's responsibility more precisely. Because a jury commissioner does not have control over the composition of the jury source list, the rule should not impose a duty relating to the source list. It shifts that responsibility, however, to require the jury commissioner assess the representitiveness of the jury pool as a whole, not the constituent lists. This amendment is not intended to lessen in any way the representitiveness of jury pools. This change is similar in purpose and form to the amendment of Minn. Gen. R. Prac. 803, effective January 1, 2007.

Minnesota Department of **Human Services**

December 13, 2007

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

Re: Minnesota Supreme Court Order CX-89-1863

Dear Mr. Grittner:

Enclosed, please find the original and twelve (12) copies of the Statement of Minnesota Department of Human Services in the above-referenced matter. The Minnesota Department of Human Services (DHS) respectfully submits the statement for the Court's review and consideration pursuant to Minnesota Supreme Court order CX-89-1863, dated November 8, 2007.

Although DHS supports the general recommendation that the Expedited Child Support Process Rules be updated to reflect statutory changes, DHS must respectfully oppose some of the proposed amendments to the Ex Pro Rules and the effective date.

DHS is concerned that:

- There are unintended consequences due to changes made to the definitions, and
- DHS can not implement some of the proposed amendments by January 1, 2008 due substantial programming needed to implement the changes.

Respectfully,

Wayland Campbell, Director of Child Support Enforcement Division
State of Minnesota Department of Human Services

STATE OF MINNESOTA
IN SUPREME COURT
CX-89-1863

In re:

Supreme Court Advisory Committee
on General Rules of Practice

COMMENTS ON PROPOSED AMENDMENTS TO THE MINNESOTA GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

December 13, 2007

Statement of
Minnesota Department of Human Services

The Minnesota Department of Human Services (DHS) respectfully submits this statement for the Court's review and consideration pursuant to Minnesota Supreme Court order CX-89-1863, dated November 8, 2007. This statement concerns the Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice, Final Report, dated November 6, 2007, a copy of which is annexed to the Court's November 8, 2007, order. Specifically, DHS' statement addresses the Committee's recommendation that the Court adopt the proposed amendments to the Expedited Child Support Process Rules. Final Report, *Recommendation 3: The Expedited Child Support Process Rules should be updated to reflect changes in the process and various statutory changes*, pp. 13-37.

DHS supports the general recommendation that the Expedited Child Support Process Rules (Ex Pro Rules) be updated to reflect statutory changes. However, if certain proposed amendments to the Ex Pro Rules are adopted and effective January 1, 2008, there would be unintended consequences affecting administration of Minnesota's child support program at both the state and county levels and DHS could not implement some of the proposed amendments by January 1, 2008. Therefore, DHS opposes some of the proposed amendments to the Ex Pro Rules as set forth in Recommendation 3, as well as the proposed January 1, 2008, effective date.

This statement briefly describes DHS' interest in this matter, identifies certain of the proposed amendments DHS opposes and states the reasons for its opposition.

DHS' Interest

DHS is Minnesota's designated IV-D[1] Agency pursuant to federal child support enforcement program law. Federal law requires each state to establish and operate its child support program in accordance with a state plan submitted to and approved by the federal Office of Child Support Enforcement. 42 U.S.C. §654; 45 C.F.R. §301.12-13. The state plan for child support must provide that it shall be in effect in all political subdivisions of the state, and provide for the designation of a single and separate organizational unit within the state to administer the plan. 42 U.S.C. §654(3). Federal law defines "IV-D Agency" as the single and separate organizational unit in the state that has the responsibility for administering or supervising the administration of the state plan under title IV-D of the Social Security Act. 45 C.F.R. §301.1.

As the state's IV-D agency responsible for administering and supervising the administration of the state's child support program, DHS, through its Child Support Enforcement Division (CSED), is responsible for:

- Operating the statewide child support computer and data base system (known as "PRISM") in accordance with federal requirements;
- Gathering and maintaining statewide data on the child support program to ensure the state's compliance with federal law and program performance requirements;
- Operating the state's centralized child support payment center in accordance with federal requirements;
- Receipting, allocating and disbursing federal and state child support funding in accordance with federal requirements;
- Providing training and assistance to county child support staff, including county attorneys, to ensure all establishment and enforcement actions are carried out in a uniform manner and in compliance with state and federal law; and,
- Creating, updating and maintaining forms and documents, including court pleadings, for county child support enforcement staff use.

Federal law also requires the state to have in effect an expedited process, encompassing both administrative and judicial procedures, for establishing, enforcing and modifying support orders, and establishing certain paternity orders in IV-D cases. The law requires that the state ensure that actions taken within the expedited process meet certain federally-mandated timeframes and that the procedures protect parties' due process rights. 45 C.F.R. §303.101.

In carrying out these statutory and federally-mandated duties to supervise the administration of the state's child support program, DHS works closely with its partners in the child support enforcement area, including the State Court Administrator's Office, the Minnesota County Attorneys Association, the Minnesota Family Support Recovery Council, and county child support enforcement program staff and supervisors. This coordination ensures that Minnesota's child support program efficiently and effectively serves its customers, complies with applicable law and meets federal program requirements. As such, DHS maintains a substantial and unique

[1] "IV-D" refers to Title IV-D of the Social Security Act (codified at Title 42 U.S.C., Ch. 7, subch. IV, part D).

interest in the expedited child support process and the court rules governing disposition of IV-D cases in that process.

DHS Opposition to Proposed Amendments

DHS opposes the proposed amendments because throughout the Ex Pro Rules, the Rules replace the term "county agency" with the newly-defined term "public authority." The proposed amendments to the definitions in Rule 352.01 entirely strike the definition of "county agency." Additionally, they add a definition of the term "public authority." As proposed, the amended Rule 352.01(k) would define "public authority" to mean "the local unit of government, acting on behalf of the state that is responsible for child support enforcement or the Department of Human Services, Child Support Enforcement Division." By defining "public authority" to mean either the local unit of government *or* DHS-CSED, the proposed amendments blur important distinctions between the two entities and their respective roles and responsibilities in administering the state's child support program.

Further, the proposed amendment to Rule 352.01(d) re-defines "county attorney" to mean the attorney "who represents the public authority." This is problematic in light of the proposed amendments entirely deleting the definition of and references to "county agency" and, in its place, substituting the new definition of "public authority," which includes DHS-CSED. The proposed amended definitions permit the reasonable interpretation that the county attorney represents DHS in addition to or instead of the county. The Committee likely did not intend this result.

The proposed amendments to the definitions of "county agency," "county attorney" and "public authority" create the likelihood of confusion when applied to other of the Ex Pro Rules. For instance, under amended Rule 355 concerning service methods and process, it appears to give a party a choice between serving the county agency or DHS when only the county agency should be served. Similarly, amended Rule 369, entitled "Role Of County Attorney and Employees Of The Public Authority," does not clearly distinguish between county agency employees and DHS employees. As a result, it appears that the county attorney has supervisory responsibility for DHS employees' work and actions. This also appears to be a result the Committee did not intend.

Finally, the proposed amended definitions create problems with regard to certain statutory references. Specifically, Rules 369 and 370 refer to Minn. Stat. §518A.46. That statute concerns non-attorney employee's of the "county agency," whereas Rules 369 and 370 refer to employees of the "public authority."

As the state agency responsible for supervising the administration of the state child support program, DHS has an interest in ensuring that the respective players' roles, responsibilities and duties are clearly defined and maintained. DHS opposes the proposed amendments because they do not clearly define those roles.

DHS Opposition To January 1, 2008 Effective Date

DHS opposes the proposed January 1, 2008 effective date of the amended Ex Pro Rules. As stated above, DHS is responsible for providing various documents and notices for use by county child support enforcement staff and the public. DHS provides these documents through the statewide child support computer and data base

system known as PRISM. The proposed amendments to the Rules, in particular those modifying timeframes for service of pleadings and responses, would require changes to at least 23 DHS documents.

Implementing these changes to the documents will require substantial DHS time and resources to reprogram PRISM to comply with the proposed Ex Pro Rules. In addition to changing the programming for the affected documents, implementing these changes will also require corresponding communication to end users, such as county staff and the public, and training of county child support staff. Because of the substantial business and resource implications involved, DHS respectfully requests that the Court delay the effective date of any Ex Pro Rule amendments until at least March 1, 2008.

MINNESOTA DISABILITY LAW CENTER

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MEMORANDUM

To: Frederick Grittner, Clerk of the Appellate Courts

From: Emily Teplin, Minnesota Disability Law Center

Date: December 12, 2007

Re: CX-89-1863, Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice, Video Recording of Proceedings in Which Interpreters Are Used

SUMMARY

In its Final Report of November 6, 2007, the Minnesota Supreme Court Advisory Committee on General Rules of Practice ("Advisory Committee") recommended addressing further consideration to developing a rule to require proceedings in which an interpreter is used to be audio or video recorded. The Minnesota Disability Law Center (MDLC)—a statewide project of the Legal Aid Society of Minneapolis providing free civil legal assistance to individuals with disabilities—encourages the Advisory Committee to consider video recording in the courtroom to ensure due process for participants whose primary language is American Sign Language (ASL), a visual-gestural language entirely distinct from English.

Because of the unique needs of deaf and hard-of-hearing people, the time is ripe for developing rules that compel or allow the court to video record the testimony and interpretation of witnesses and litigants communicating in ASL. Such video recording is an important aspect of ensuring due process for these individuals. We would like to participate in the process of developing rules regarding courts' video recording of signed testimony.

Some state courts have already experimented with video recording of deaf witnesses. The District of Columbia has used a video camera to record the testimony of deaf defendants in cases likely to attract attention from the general public. As another example, a Wisconsin trial court relied upon a team of four interpreters and video recording—replaying signed testimony when questions arose about the accuracy of interpretation—to ensure an accurate trial record. Minnesota should take the lead and implement procedures, including video recording signed testimony, to ensure due process for deaf and hard-of-hearing people.

I. Due Process Concerns for Litigants and Witnesses Who Communicate in ASL

Both federal and state laws require government entities to ensure effective communication with and program access for deaf and hard-of-hearing people who use their services. *See* 42 U.S.C. §12131, *et seq.*; 28 C.F.R. § 35.160(a); Minn. Stat. §363A.12, *et seq.* Minnesota state law explicitly provides that, for both civil and criminal legal proceedings, the court will provide sign language interpreters for individuals with hearing disabilities. *See* Minn. Stat. § 546.42-546.44 (requiring the presiding judicial officer to appoint a qualified interpreter "throughout the proceedings"); Minn. Stat. § 611.30-611.33 (applying to criminal proceedings). Rule 8 of the General Rules of Practice defines qualifications for interpreters and creates a roster of qualified interpreters.

Having an interpreter present in the courtroom, however, does not ensure that the deaf litigant or witness will understand what is being said or that his testimony will be interpreted accurately. ASL and English are distinct languages with separate grammatical structures and syntax. Many English words—particularly those used in the legal context—do not have a corresponding sign in ASL. Michele LaVigne & McCay Vernon, *An Interpreter Isn't Enough: Deafness, Language, and Due Process*, 2003 Wis. L. Rev. 843, 848 (2003) ("Even a highly educated, highly literate deaf person will be forced to fill in blanks when she is subjected to the typical high-velocity American courtroom."); *State v. Hindsley*, 237 Wis.2d 358, 370 (Wis. App. 2000) (finding that while the deaf defendant sometimes used English to communicate "his daily needs and necessities," he was unable to comprehend abstract legal concepts when "transliterated" into a signed English) (internal citations omitted). Further, deaf people who suffer from "language deficiency" may not comprehend even a qualified ASL interpreter. For these individuals, "an interpreter alone cannot possibly satisfy even minimal notions of due process." LaVigne & Vernon, *supra*, 2003 Wis. L. Rev. at 849.

State courts and court administrators in other states have recognized the unique demands on ASL interpreters in the courtroom. *See, e.g.*, Supreme Court of Wisconsin, Office of Court Operations, The Wisconsin Court Interpreters Handbook 10 ("Even professional interpreters cannot achieve effective communication all the time for all deaf or hard-of-hearing people who sign."); Memorandum Decision, *Wahid v. Long Island Railroad Co.*, 840 N.Y.S.2d 861, 867 (N.Y. Sup. Ct. Aug. 9, 2007) ("[I]n a volatile and intense courtroom setting, where attorneys pose numerous questions and are quick to burst to objections, the demands upon an ASL on-site interpreter are immense."); *id.* at 864 (*citing* Elaine Costello, Random House Webster's American Sign Language Legal Dictionary iv (2003)) ("The task of using sign language in a legal setting is far more complex than in any other circumstance. The meanings of otherwise

ordinary terms have unique meanings when used in the legal arena."). Further, in contrast to interpreters of foreign languages, ASL interpreters in the courtroom are generally expected to interpret testimony simultaneously, rather than consecutively, despite best practices encouraging consecutive ASL interpretation.

Unless a judge is highly skilled in ASL, she will not have the linguistic expertise to determine whether an interpreter's interpretation is accurate. In a trial, the jury or judge's decision may hang on a single piece of testimony. When a hearing person testifies in English, on appeal litigants may cite to the official record to prove what was or was not said in a hearing or trial. By contrast, when a deaf person testifies in ASL, the official record reflects only an interpreter's determination of what was signed. The due process concerns behind the interpreter statutes cannot be adequately addressed without additional protections. A video record of signed testimony—in conjunction with other protections—can help to ensure that deaf individuals have access to court proceedings and due process equal to that offered people who are not deaf.

II. The Scope of the Problem

The difficulty of determining the scope of the problem reflects the problem itself. According to the Minnesota State Court Administrator's Office, for the period November 2006-November 2007, ASL was the fourth most commonly used foreign language in Minnesota courts; there were several hundred "court events" during that period for which ASL interpreters were provided. Because the only record of signed testimony is the oral interpretation from court interpreters, "the condition of deaf and hard-of-hearing defendants in court remains invisible. . . . [A] transcript can mask even the most inept interpretation or the most confused defendant." LaVigne & Vernon, *supra*, 2003 Wis. L. Rev. at 924.

An example from a recent case in Ramsey County provides a telling illustration. The defendant, a deaf man, was charged with Obstruction of Legal Process with Force. His testimony was communicated in ASL and interpreted simultaneously by a team of court interpreters. An additional interpreter sat at defense counsel's table to facilitate attorney-client conversations.

At one point, defense counsel's interpreter quickly indicated to defense counsel that an interpreter error had been made. The prosecutor immediately objected, stating that the interpreter's comment was inappropriately loud and that the jury may have heard it. The judge convened a side bar to discuss the appropriateness of the counsel table interpreter's intervention. No determination was made regarding the accuracy of the defendant's statement, and the court was adjourned for a recess. The jury returned a guilty verdict on the lesser included charge of Obstruction of Legal Process. In a conversation with the jury foreman directly after the case concluded, he stated that the jury's decision primarily rested on that one piece of testimony from the defendant—testimony that may not have been interpreted accurately.

The consequences of such errors are grave. In the case described above, a video record would have assisted the interpreters in clarifying the defendant's testimony. It would have helped to ensure that the jury heard exactly what the defendant actually said, and that he received the process that was due.

III. Video recording ASL Testimony in Conjunction with Other Protections

Video recording can give the skilled interpreter "the opportunity to review [her work] during a break in the proceedings and to take remedial steps [where necessary]." LaVigne & Vernon, *supra*, 2003 Wis. L. Rev. at 923. It may also assist courts, practitioners, and deaf and hard-of-hearing community members in better assessing the effectiveness of communication occurring in courtrooms. *Id.*

Scholars, practitioners, interpreters, and others with expertise in ensuring courtroom accessibility for deaf and hard-of-hearing people recommend video recording the testimony of deaf litigants along with other safeguards. One consistent recommendation is that court procedures should allow and support is an active role for a qualified interpreter at counsel's table to facilitate privileged attorney-client communications and "monitor" the court interpreters, allowing counsel to lodge immediate objections to potentially misinterpreted testimony. *See* Registry of Interpreters for the Deaf, *Legal Standard Practice Paper* 3 (last updated 2007); *see generally* Carla M. Mathers, Sign Language Interpreters in Court: Understanding Best Practices (2006). Counsel's table interpreters, as well as the court interpreters, would be much better equipped to address misinterpretations with a video record.

In a situation such as the trial in Ramsey County described above, where the counsel's table interpreter did immediately note the potentially misinterpreted testimony, video recording could have aided the proceedings interpreters and counsel's table interpreter in an "instant replay" capacity, clarifying the defendant's ability to understand the questions and her testimony.

Courts may employ audio recording to promote due process and accuracy of the record when witnesses testify in a foreign spoken language. *See, e.g., State v. Van Pham*, 234 Kan. 649, 659 (Kans. 1984) (discussing the trial judge's instruction that all foreign language testimony be tape recorded "so that should a conflict arise [among the interpreters present] as to the proper translation it could be played back until we could arrive at what the proper translation was") (*cited in* LaVigne & Vernon, *supra*). Absent a record of the interpreting, appellate courts are disinclined to note interpreting errors. *See, e.g., State v. Fung*, 907 P.2d 1192, 1194 (Utah App. 1995). The same is true absent video recording of deaf litigants' testimony.

IV. *Conclusion*

A recent case in Wisconsin, in which a couple's parental rights were nearly terminated when the court failed to ensure effective communication, underscores the need for a comprehensive re-assessment of how state courts ensure effective communication for deaf and hard-of-hearing people. *See* Mary Zahn, *Court Leaves Deaf Parents in the Dark*, Milwaukee Journal-Sentinel Online (Dec. 4, 2007). The importance of accurate interpretation to ensure equal participation in court proceedings for people who do not communicate primarily in English cannot be overstated. As the Ninth Circuit has found, "an incorrect or incomplete translation is the functional equivalent of no translation." *Perez-Lastor v. I.N.S.*, 208 F.3d 773, 777 (9th Cir. 2000).

We urge the Advisory Committee to consider mandatory or discretionary video recording of witnesses who communicate in ASL, in addition to other rules and procedures that together can promote the ideals of due process fundamental to our judicial system.

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December 13, 2007

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Re: Comments on Proposed Amendments to the Minnesota General Rules of Practice for the District Courts
Supreme Court File No. CX-89-1863

Dear Mr. Grittner:

These comments represent the consensus of opinion among the six assistant county attorneys in the Anoka County Attorney's Office practicing full-time in the area of child support, and they relate to the proposed modification of the rules for the Expedited Child Support Process, at Title IV, Part B. Twelve copies of these comments are submitted.

Our concerns are not with the proposed amendments, but with two of the present rules not addressed by the amendments:

(1) Rule 368, respecting the removal of child support magistrates: we believe that automatic removal should be allowed; and,

(2) Rule 370.03, respecting service of process in establishment cases: we believe that personal service upon custodial parents should be required.

Our understanding is that the Supreme Court is soliciting not only statements in support or opposition to the amendments proposed, but comment generally as to the General Rules of Practice, including other amendments that might be made.

FIRST COMMENT, RESPECTING RULE 368:

The present rule, at Rule 368.01, disallows automatic removal of a child support magistrate, family court referee, or district court judge presiding over a matter in the expedited child support process. To the best of our knowledge, a single automatic removal is permitted in all other kinds of civil proceedings, as provided in Minn. R. Civ. P., Rule 63.03. Once that right has been exercised, *subsequent removals must be for demo*nstrated cause, and approved by the chief judge of the district. We would prefer substitution of the general rule for the special rule currently in effect.

The general rule represents a studied compromise, similar to the right of peremptory challenge to jurors in criminal matters. Automatic removal is efficient, in comparison to removal for cause, because it does not require judicial review. Further, it is a gesture of good will, in effect telling the litigant that the court presumes his or her first objection is in good faith.

Probably the special rule was adopted in the interest of making the Expedited Process more efficient, by eliminating one of the steps between *filing and adjudication. The Expedited* Process must meet federal guidelines as to timeliness of outcomes. By requiring proof of disqualification, the present rule discourages litigants from requesting removal. However, *barring automatic removal also induces two inefficient results:* litigants with serious objections will undertake the more costly and time-consuming procedure to remove for cause; and, litigants who believe they did not receive a fair hearing are more likely to request review or appeal from the decisions of the decision-maker whom they distrusted at the outset.

We propose that Rule 368 be amended as follows:

RULE 368. REMOVAL OF A PARTICULAR CHILD SUPPORT MAGISTRATE

~~**Rule 368.01 Automatic Right to Remove Precluded**~~

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

Rule 368.02 ~~Removal for Cause~~Notice to Remove

Subdivision 1. Procedure. Any party may serve upon the other parties and file with the court a ~~request~~notice to remove the child support magistrate assigned to hear the matter. ~~If the assigned child support magistrate denies the request to remove, upon written request the chief judge of the judicial district shall determine whether cause exists to remove the assigned child support magistrate. If the chief judge of the judicial district is the subject of the request to remove, the assistant chief judge shall determine whether cause exists to remove the child support magistrate.~~ A ~~request~~notice to remove shall be filed *with the court and served* upon the parties within ten (10) days of service of notice of the name of the magistrate assigned to hear the matter or within ten (10) days of discovery of prejudice. If assignment of a child support magistrate is made less than ten (10) days before the hearing, the ~~request~~notice to remove shall be ~~made~~filed as soon as practicable after notice of assignment is given

Upon the filing of a notice to remove, the chief judge of the judicial district shall assign any other child support magistrate within the district to hear the matter.

Subd. 2. ~~Grounds to Remove~~Removal for Cause. ~~Removal of a child support magistrate requires~~After a party has once disqualified a child support magistrate assigned to hear a matter, that party may disqualify a substitute child support magistrate assigned to hear the matter, *but only by making an affirmative* showing of prejudice. A showing that the substitute child support magistrate might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice. The party shall serve upon the other parties and file with the court a request to remove the substitute child support magistrate for cause. The request to remove shall be filed with the court and served upon the parties within ten (10) days of service of notice of the name of the substitute magistrate assigned to hear the matter or within ten (10) days of discovery of prejudice. If assignment of a substitute magistrate is made less than ten (10) days before the hearing, the request to remove shall be filed as soon as practicable after notice of assignment is given. If the substitute child support magistrate denies the request to remove, *upon written request the chief judge of* the judicial district shall determine whether cause exists to remove the substitute child support magistrate. If the chief judge of the judicial district is the substitute child support magistrate, the assistant chief judge shall determine whether cause exists to remove the substitute child support magistrate.

Note that the definition of *child support magistrate* includes individuals appointed by the *chief judge of the judicial district* to hear matters in the expedited process and any family court referee or district court judge hearing matters in the expedited process. Rule 352.01(b).

We might have proposed more simply that Rule 368 be deleted. Then, by default, Rule 63.03 would govern removal of assigned decision-makers *in the Expedited Process. However,* we understand that the Rules for the Expedited Child Support Process were designed to state all the procedures applicable to the Expedited Process in a single location in the rules.

SECOND COMMENT, RESPECTING RULE 370.03:

Fundamental due process requires personal notice to potential obligors that they may be required by a court to pay child support. In the absence of personal notice, the courts lack personal jurisdiction to impose such obligations and contempt authority to enforce them. In cases involving establishment of support under Minn. Stat. § 256.87, *the current Expedited* Process Rules permit service by U.S. mail upon parties who receive public assistance or child support services from the county. Rule 370.03. However, the new statutory child support guidelines make both parents potential obligors. We believe that the Expedited Process Rules should require personal service of complaints to establish child support obligations upon both parents unless a parent is a signed co-plaintiff or executes an informed waiver of personal service.

New statutory child support guidelines went into effect on January 1, 2007. Minn. Stat. ch. 518A (2007).

In theory, the new guidelines require the court to *determine combined support* obligations for the parents, and to assign to each parent a share of those obligations in

proportion to his or her share of the parents' combined Parental Income for Child Support calculated under the statute.

In practice, custodial parents are not ordered to pay basic support unless parenting time is more or less equal. However, under the new guidelines the custodial parent is frequently ordered to pay a share of the cost of health care coverage for the child or children. This occurs when the non-custodial parent is ordered to obtain and maintain the coverage, usually through an employer. In many cases, the public authority responsible for enforcement of support will simply set off the custodial parent's share of the cost of coverage against the basic support due from the non-custodial parent. In some cases, the set-off leaves a net responsibility that the custodial parent must pay.

As a result of fluid employment and other circumstances, it is rarely possible to know in advance which parent will be required to provide health coverage and what shares each parent will have to pay.

Further, child support obligations are constantly subject to modification. Changes in custody, parenting-time, employment, the availability of health-care coverage, and the administration of public assistance, among others, can affect the calculation of support obligations and the possible imposition of a support obligation upon a custodial parent. It is impossible to foresee these changes, and it is extremely easy to overlook the failure to provide personal service of a child support complaint at the outset of the action, especially after one or more modifications have already taken place.

Hence, both in theory and practice the current statutory child support guidelines may require the court to impose an affirmative obligation to pay support upon the custodial parent.

The present rules were devised before this new reality came into being. As a result, the rules did not accommodate the fundamental due process requirement of personal notice to the custodial parent in a proceeding that may result in imposition of an affirmative obligation for support upon that parent.

Note that the same issue does not arise in parentage actions, where personal service is always required. Rule 371.03. Probably the drafters knew that continued custody in the birth mother was not a foregone outcome and that custody might pass to the alleged father following adjudication.

We propose that Rule 370.03 be revised as follows:

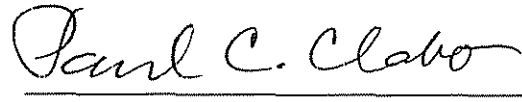
Rule 370.03 Service of Summons and Complaint

Subdivision 1. Who is Served. All parties, and the county agency even if not a party, shall be served pursuant to subdivision 2.

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

Respectfully submitted,

ROBERT M.A. JOHNSON
ANOKA COUNTY ATTORNY



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December 18, 2007

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Re: Proposed Amendments to the General Rules of Practice for the District Courts

Dear Mr. Grittner;

Jodie Metcalf, Child Support Magistrate and Manager, and I respectfully submit these comments on the Proposed Amendments to the General Rules of Practice for the District Courts.

By memorandum to the General Rules Committee dated July 23, 2007, we recommended changes to the Rules of the Expedited Child Support Process, which consisted mostly of technical amendments and modest substantive amendments to the rules. Due to inadvertent consequences, the recommendation to delete the term "county agency" and replace it with the term "public authority" is not appropriate for adoption. It is our understanding that the Department of Human Services, child support enforcement agency, has submitted comments in opposition to two specific recommendations: replacing the term "county agency" with "public authority; and the effective date. We agree with their concerns regarding the use of the term "public authority", as it will lead to unintended consequences, and that recommendation should not be adopted. At this time, we are not submitting an alternative recommendation.

DHS has expressed their concerns to us regarding the effective date of January 1, 2008, as this time frame puts undue hardships upon their agency in making program changes to documents that would require changes if the recommendations to Rules 363.04, 370.04, and 371.05 are adopted. We support DHS in their request to delay the effective date to allow adequate time for DHS to make the necessary program changes.

There also appears to be three other technical changes to the rules that were not previously included in our memorandum to the Committee that we would like to submit at this time. Rule 302.01(b)(3) references Minn. Stat. § 518.551, subd. 5. This section has been recodified to section 518A.44 and the rule should be amended to reflect this change. Rule 302.04(a) contains the acronym R.U.R.E.S.A. In 1997, Minnesota adopted the Uniform Interstate Family Support Act and the acronym should be changed from R.U.R.E.S.A. to U.I.F.S.A. Rule 304.01(d) references Minn. Stat. ch. 518A, which was the former chapter for the Uniform Child Custody Jurisdiction Act. The U.C.C.J.A. was recodified to chapter 518D in 1999 and the reference to chapter 518A should be amended accordingly. Rule 304.01(e) references the acronym R.U.R.E.S.A., and as stated above, should be amended to reflect the correct acronym of U.I.F.S.A.

Respectfully,

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Staff Attorney

Jodie Metcalf
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