

CX-89-1863
STATE OF MINNESOTA
IN SUPREME COURT

JUN 13 2008

FILED

In re:

Supreme Court Advisory Committee
on General Rules of Practice

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

Final Report
June 13, 2008

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Liaison Justice

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Introduction

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

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

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

Summary of Committee Recommendations

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

Issues upon which the Committee received significant conflicting opinions.

1. Removal of Child Support Magistrate as of Right.

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

2. Service of Summons and Complaint.

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

3. Timing for Review of CSM Decision.

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

Issues upon which there was no significant disagreement.

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

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

Discussion of Contested Issues

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

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

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

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

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

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

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

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

Effective Date

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

Style of Report

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

Respectfully submitted,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE ON GENERAL
RULES OF PRACTICE

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

Introduction

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

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

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

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

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

Specific Recommendations

1. The rules should be amended as follows:

RULE 352. DEFINITIONS

Rule 352.01. Definitions

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

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

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

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

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

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

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

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

24 **(fg) “IV-D case”** means any proceeding where a party has either (1)
25 assigned to the State rights to child support because of the receipt of public
26 assistance as defined in Minn. Stat. § 256.741 (2000), or (2) applied for child
27 support services under Title IV-D of the Social Security Act, 42 U.S.C. § 654(4)
28 ~~(1994)~~2006). “IV-D case” does not include proceedings where income
29 withholding is the only service applied for or received under Minn. Stat. §
30 ~~518.6111 (2000)~~ 518A.53 (2006).

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

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

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

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

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

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

52
53 **Advisory Committee Comment—2008 Amendment**

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

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61 **RULE 354. COMPUTATION OF TIME**

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

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

Advisory Committee Comment—2008 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 should be treated. Columbus Day is only optionally a state holiday (by statute the different branches can elect to treat it as a holiday) but is uniformly a federal and U.S. Mail holiday. 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 (2008).

* * *

RULE 355. METHODS OF SERVICE

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Rule 355.02. Types of Service

Subdivision 1. Personal Service.

(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, subd. 2(c)(4), an employee of the county agency may serve documents on parties.

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, subd. 2(c)(4), an employee of the county agency may serve documents on the parties.

* * *

111
112 **Advisory Committee Comment—2008 Amendment**

113 Rule 355.02, subds. 1 & 2, are amended to reflect the recodification,
114 effective on January 1, 2007, of portions of the relevant statutes, that became
115 part of Minn. Stat. ch. 518A.
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118 **RULE 361. DISCOVERY**
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120 * * *

121 **Rule 361.02. Exchange of Documents**
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123 **Subdivision 1. Documents Required to be Provided Upon Request.** If a
124 complaint or motion has been served and filed in the expedited process, a party
125 may request any of the documents listed below. The request must be in writing
126 and served upon the appropriate party. The request may be served along with the
127 pleadings. A party shall provide the following documents to the requesting party
128 no later than ten (10) days from the date of service of the written request.

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

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

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

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

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

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

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141

142 **RULE 363. DEFAULT**

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144 * * *

145 **Rule 363.04. Order Not Accepted**

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

- 153 (a) to file and serve any missing documents;
154 (b) to file a revised order;
155 (c) to file a revised order and attach any missing or additional
156 documents;
157 (d) to appear at a hearing, notice of which shall be issued by the court
158 administrator to all parties;
159 (e) to appear at any previously scheduled hearing; or
160 (f) to withdraw the matter without prejudice.

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

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—2008 Amendment

Rule 363.04 is amended to create specific time limits for setting a case on for hearing following receipt of a notice of deficiency in an order proposed by an initiating agency or to serve amended pleadings. The amendment also establishes a specific time limit for responding to an amended pleading that may be served.

**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

Subdivision 1. Procedure. ~~Any party may serve upon the other parties and file with the court a request 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 to remove shall be filed with the court and served upon the parties. To effect removal, a party shall serve upon the other parties and file with the court a request to remove the child support magistrate for cause 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 to remove shall be made as soon as practicable after notice of assignment is given.

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

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

Advisory Committee Comment—2008 Amendment

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

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

Rule 369.02. Role of Employees of County Agency

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

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

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245 **Advisory Committee Comment—2008 Amendment**

246 Rule 369.02, subd. 3, is amended to update the statutory references to
247 reflect the recodification, effective on January 1, 2007, of portions of the
248 relevant statutes, that became part of Minn. Stat. ch. 518A.

250 **II. PROCEEDINGS**

251
252 **RULE 370. ESTABLISHMENT OF SUPPORT PROCEEDINGS**

253
254 ***

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

257
258 ***

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

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

266 * * *

267
268 **Advisory Committee Comment—2008 Amendment**

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

278 **Rule 370.03. Service of Summons and Complaint**

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280
281 **Subd. 2. How Served.** The summons and complaint, and if required the
282 supporting affidavit and request for hearing form, shall be served upon the parties
283 by personal service, or alternative personal service, pursuant to Rule 355.02,
284 unless personal service has been waived in writing. Where the county agency is
285 the initiating party, ~~the party~~ a non-parent who is receiving assistance from the
286 county or who has applied for child support services from the county may be
287 served by any means permitted under Rule 355.02.

288 **Rule 370.04. Filing Requirements**

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290
291 **Subd. 2. Responding Party.** If a noninitiating party responds with a
292 written answer pursuant to Rule 370.05, the following shall be filed with the court
293 no later than five (5) days before any scheduled hearing or, if no hearing is
294 scheduled, within ~~fourteen (14)~~ twenty (20) days from the date the last party was
295 served:

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

299 ***

300
301 **RULE 371. PARENTAGE ACTIONS**

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303
304 **Rule 371.02. Content of Summons, Complaint, and Supporting Affidavit**

305 * * *

306
307 **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—2008 Amendment

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

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

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

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

340 **Rule 371.05 Response**

341
342 **Subdivision 1. Response Options.** In addition to appearing at the hearing
343 as required under Rule 371.10, subd. 1, a noninitiating party may do one or more
344 of the following:

- 345 (a) contact the initiating party to discuss settlement; or
346 (b) within ~~fourteen (14)~~ twenty (20) days of service of the summons and
347 complaint, serve upon all parties one or more of the written responses pursuant to
348 subdivision 2.

349 ***

350
351 **RULE 372. MOTIONS TO MODIFY,**
352 **MOTIONS TO SET SUPPORT,**
353 **AND OTHER MATTERS**

354
355 **Rule 372.01. Commencement**

356 ***
357

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

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

364 ***

365 **Subd. 3. Content of Supporting Affidavit.** A supporting affidavit shall:
366 (a) state detailed facts supporting the request for relief;
367 (b) for motions to modify support and motions to set support, provide all
368 information required by Minn. Stat. § ~~518.5513, subd. 3(a)~~ 518A.46, subd. 3(a), if
369 known; and
370 (c) be signed and sworn to under oath.

371 * * *

Advisory Committee Comment—2008 Amendment

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

* * *

Rule 372.05. Response

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

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

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

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

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

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

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

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

Advisory Committee Comment—2008 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. Rule 372.05, subd. 3 is added to clarify the deadlines for submitting responsive motions.

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III. REVIEW AND APPEAL

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

Rule 377.09. Basis of Decision and Order

Subdivision 1. Timing. Within ~~forty-five (45)~~ thirty (30) 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)~~ thirty (30) 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;
- (b) filing of a transcript pursuant to Rule 366;

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

(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 thirty one (31) ~~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, ~~the~~ the child support magistrate or district court judge may issue an order:

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

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

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

Advisory Committee Comment—2008 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).

IV. 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.~~