The Expedited Child Support Process: Where Good Lawyers Go Bad

By Jodie Metcalf

As a family law lawyer, you know there are rules of family court. The rules found in Title IV of the Minnesota Rules of General Practice for District Courts are labeled "The Rules of Family Court Procedure." Many, if not most, lawyers consider Rules 301 to 314 as the "Family Court Rules." Unfortunately, many do not realize that Rules 301 to 314 are only Part A of Title IV.

Title IV also has a **Part B, the Expedited Child Support Process Rules.** Rules 351 to 378, which comprise Part B, govern proceedings in the expedited child support process. Rules 301 to 314 in Part A do not apply to matters handled in the expedited process (with a few exceptions). This article will point out the most common mistakes lawyers (including good, experienced family law lawyers) make when handling cases in the expedited child support process. All relate to failure to follow the rules of the expedited child support process.

Mistake #1: Referring a case from district court to the expedited process without putting a specific date, time and location for hearing in the referring order as required by the rules. *Rule 353.02, subd. 2, provides (in pertinent part): "…If the district judge refers the support issues to the magistrate, the referral shall include a clear statement of the issues referred and a description of additional information needed, and shall provide the date, time and location of the continued hearing."*

Many lawyers place a single statement in the dissolution order: "The issue of child support is referred to the magistrate (or to the expedited process)." This does NOT meet the rule requirement and often results in the issue of child support never being heard or being significantly delayed. Merely stating that the matter is referred to the expedited process does not magically set the matter for hearing. Failure to include in the dissolution order the date, time and location of the hearing in the expedited process may result in no child support ordered until a motion is filed.

Mistake #2: Trying to have a non IV-D case heard in the expedited process. *Minn. Stat. § 484.702, subd. 1(b) states (in pertinent part): "cases that are not IV-D cases may not be conducted in the expedited process." Rule 353.01, subd. 3, provides (in pertinent part): "Prohibited Proceedings and Issues: The following proceedings and issues shall not be conducted or decided in the expedited process: (a) non IV-D cases . . . ."*

A case becomes a IV-D case in one of two ways: 1) a party applies for non-public assistance services (either party may do this), or 2) a party applies for and receives one of the following forms of public assistance with the child(ren) in his/her household– cash assistance (MFIP grant or DWP – Diversionary Work Program), child care assistance , medical assistance (including TEFRA), or MinnesotaCare.

A case does not automatically become a IV-D case because a parent receives social security benefits (RSDI or SSI), general assistance, section 8 housing, food assistance, reduce school lunches, etc. If the non-custodial parent receives cash (MFIP), medical assistance, Minnesota Care, or child care assistance for a nonjoint child, that does not make the case involving a joint child(ren) a IV-D case.

If a case became a IV-D case because one party was receiving some form of public assistance with the child(ren) in his/her household, it remains a IV-D case when public assistance closes unless/until that person asks in writing that the IV-D case be closed. If any money is owed for public assistance expended, the county will continue to collect it because that part of the case remains an open IV-D case due to the amounts owed for public assistance.

When lawyers refer a non IV-D case to the expedited process or schedule a non-IV-D case in the expedited process, the time of the court and your client(s)is wasted because no hearing will be held.

Mistake #3: Missing the service timeline for motions to modify or set support. *Rule 372.01, subd. 1, which applies to motions to modify an existing support order and motions to set support where it was reserved in a prior order, provides: "Service shall be made at least twenty (20) days prior to any scheduled hearing." If serving by mail, add three days for mailing. (Rule 354.04)*

Child support cases require service to be at least 20 days prior to the hearing. This is different from the family court rules in Part A, which require only a 14 day notice (plus three if mailed) for a motion.

Mistake #4: Conducting discovery without an order from the magistrate. *Rule 361 governs discovery in the Expedited Process. Start with Minn. Stat. § 518A.28, which requires both parties to serve and file a financial affidavit, disclosing all sources of gross income and relevant supporting documentation. Rule 361.02 specifies a list of documents to be provided upon request if a complaint or motion has been filed. Rule 361.02, subd. 3, allows any party to request a financial statement from a party (other than the county) if a complaint or motion has been filed. Rule 361.03 provides that "Any additional means of discovery available under the Minnesota Rules of Civil Procedure may be allowed only by order of the child support magistrate."*

Discovery is different in the expedited process. Do not send requests for production of documents or interrogatories, and/or notice a deposition for a case scheduled for the expedited process unless you have first obtained an order from the magistrate. To obtain that order, you need to file a motion. You must specify why the requested discovery is needed for the party's case and explain how the issues or amounts in dispute justify the requested discovery. Formal discovery in the expedited process should be rare.

Mistake #5: Requesting oral testimony or not expecting that oral testimony will be taken. *Rule 364.01 provides that any party has a right to a hearing. Rule 364.09 states each party has a right to present evidence, rebuttal testimony, and argument with respect to the issues.*

Generally, unless there is an agreement or the parties stipulate to the facts in the record, there will be oral testimony (i.e., an evidentiary hearing) at an expedited child support process hearing. On more than one occasion an attorney has "requested oral testimony" as permitted by Rule 303.03(d) as part of their motion. Rule 303.03(d) however, does not apply in the Expedited Process. Even if no one has "requested oral testimony" you still need to prepare your client and yourself for oral testimony. If your case does not meet the standard for discovery (as noted above), remember that you can ask questions at the hearing.

Mistake #6: Ignoring the jurisdictional limits of the expedited process and the magistrate. *Rule 353.01, subd. 3, lists the proceedings and issues prohibited in the expedited process.*

Parties cannot stipulate to subject matter jurisdiction. Either a court has it or it does not. Magistrates do not have subject matter jurisdiction to order the following: establishment, modification, or enforcement of custody or parenting time; establishment or modification of spousal maintenance; issuance, modification, or enforcement of orders for protection (this includes modification of child support in an OFP) ; division of marital property; determination of parentage; evidentiary hearings to establish custody, parenting time, or the legal name of the child; evidentiary hearings in contempt matters; matters of criminal contempt; motions to change venue; enforcement proceedings prohibited in Rule 373.01; matters of criminal non-support; motions to vacate a paternity adjudication (that includes a Recognition of Paternity); and constitutionality of the statutes and rules.

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- Child Support Magistrate/Manager
- Court Services Division
- State Court Administrator's Office
- Minnesota Judicial Branch