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MEMORANDUM

TO: General Rules Committee
Michael Johnson, Senior Staff Attorney

FROM: Jodie Metcalf, Child Support Magistrate/Manager, Expedited Process

DATE: March 14, 2008

SUBJECT: Minority report regarding proposed rule change to allow automatic right to remove a child support magistrate as provided in the Revised proposal of amendments to General Rules of Practice, Title IV, Rules of Family Court Procedure, Part B – Expedited Child Support Process

As the manager of the expedited child support process in Minnesota, I oppose changing the expedited process rules to create an automatic right to remove a child support magistrate. Providing an automatic right to remove a child support magistrate is unnecessary and in direct conflict with the goals of the expedited child support process. It may ultimately impact federal funding. Goals of the expedited process that would be adversely impacted by allowing an automatic right to removal include: being family and user friendly, be a cost effective system; and comply with federal and state laws.

The Expedited Process Rules Committee discussed at length, whether or not to allow an automatic right to remove a child support magistrate. The Committee concluded that the rules as a whole provided sufficient checks and balances and that the adverse impact to the goals and operation of the process would be substantial. The automatic right to removal, allowed in other court proceedings, was specifically precluded (Rule 368.01).

There are fundamental differences between child support magistrates and other judicial officers. These differences obviate the need for an automatic removal provision. Child support magistrates are not elected, but appointed. They serve at the pleasure of the judges of the district(s) where they are appointed. The appointment must be confirmed by the Supreme Court. Currently there are 33 child support magistrates. Eight are full-time employees, the other 25 are contractors. The contract does not obligate the Judicial Branch to assign any work to an

individual magistrate. If the judges of a district are not satisfied with the work of a magistrate, they may stop scheduling that person, may end the contract or may fire that employee. In addition to serving at the pleasure of the judges of the district, the expedited process rules provide the opportunity for review of the magistrate's order. To make this right meaningful for the many self-represented litigants in these cases, several methods are used to assist parties. These include: (1) an explanation of how to get the order reviewed in the notice of filing that is attached to each order issued in the expedited process; (2) fill-in-the-blank forms for a motion for review are available on the courts public website and from any court administrator's office; and (3) the party requesting the review indicates on the form whether they would like the magistrate who issued the order to conduct the review or a district court judge. In addition, the expedited process rules provide for appeal to the Court of Appeals either without filing a motion for review or after filing a motion for review. The fact that the magistrates serve at the pleasure of the district court judges and that the rules provide a meaningful opportunity for review make automatic removal unnecessary. This is important because automatic removal will cause significant delays in an "expedited" process. It will also require more resources to be allocated to travel time, rather than hearing cases and writing orders.

Like the child support magistrates, the expedited child support process itself is different from other district court proceedings. The federal government requires each state to have an expedited process to establish and modify child support. The federal government pays 66% of the costs of the expedited process. As a condition of receiving the federal share of the costs the state must meet certain timing standards. On a statewide basis, 75% of the cases in the expedited process must move from service of process to issuance of an order in six months or less; and 90% of the cases must move from service to order in one year or less. This includes paternity cases and cases involving other states. If a party (the county is a party in these proceedings) exercises their right to automatic removal, a continuance is a virtual certainty. Hennepin is the only county with more than one magistrate available on any given day. Ramsey may have a second magistrate available a few days per week. No other county in the state has even one magistrate available on a daily basis, let alone two magistrates. As a result, a request for automatic removal will require the case to be continued to another day when a different magistrate can be provided. This is particularly difficult outstate where expedited process calendars may be once per month (or once every six weeks). Many outstate districts have a limited pool of magistrates and a large geographic area to cover. If the usual magistrate was removed from a case, there would be substantial delay and significant cost involved in assigning another magistrate.

Please do not amend Rule 368.01. The litigants and the expedited process will lose more than can be gained by allowing automatic removal. I will be happy to appear before the General Rules Committee to answer any questions you may have. Thank you for your consideration.