Top Ten Things I Forgot or Never Knew About Paternity and Child Support

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Something to Contemplate:
Are you new to child support? Have you been doing child support for longer than you care to admit? Even those of us who have been doing child support since before Ex Pro (and even Ad Pro) should take time periodically to reflect on what the laws require to obtain and enforce a child support order. Whether you are an attorney, a child support worker, a supervisor, or a judicial officer, we all should think about whether the short cuts or efficiencies we have developed over time are sound under the law.

There are good intentions behind the short cuts and efficiencies counties and judicial officers have come up with over the years. But, while the IV-D Child Support Program is to be efficient and user-friendly, the Minnesota Appellate Courts have consistently held that certain requirements such as due process or the rights of parties cannot be sacrificed in the pursuit of efficiency. We invite you to use this list and these materials as a starting place for your reflection.

I. Things About Inquiry and Investigation:

A. County Attorney Signature Required – Every pleading (summons, complaint, motion, etc.) from the county must be signed by the County Attorney or an Assistant County Attorney. This includes motions to correct and motions for review. Rule 11.01 of the Minnesota Rules of Civil Procedure states:

> Every pleading, written motion, and other similar document shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party.

B. County Attorney Signature is a Certification Under Rule 11 – As an attorney, you are certifying to the court that: (1) the factual allegations made in the pleadings have evidentiary support; and (2) that the claims made are based on law. Rule 11.02 of the Minnesota Rules of Civil Procedure states:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or

other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances (emphasis added),

> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> (3) the allegations and other factual contentions have evidentiary support (emphasis added) or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

C. There are Sanctions – Failure to follow Rule 11.02 can lead to sanctions (penalties) against the attorney. Rule 11.03 of the Minnesota Rules of Civil Procedures states:

> If, after notice and a reasonable opportunity to respond, the court determines that Rule 11.02 has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated Rule 11.02 or are responsible for the violation.

D. Approved as to Form and Content – Rule 369 of the Rules of General Practice (Rules of the Expedited Child Support Process – Family Court Rules, Part B) states:

> 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 for use in the expedited process or in district court.

E. What Investigation is "Reasonable Under the Circumstances"? –

1. *Allegations must have evidentiary suppo*rt – If/when you have to prove the allegations in your complaint, what will you use? The child support officer has access to much information and can assert that information in an affidavit. However, care must be taken to make sure it is correct and correctly included in the affidavit. A child support officer should not assert facts of which the CSO has no direct knowledge. Great care is needed in the following areas:

   a. *Paternity Affidavit* – A CSO cannot provide the allegation of sexual contact for any case except for the CSO's own case. In a paternity case, the child support officer has no direct knowledge of whether sexual intercourse occurred. Testimony or an affidavit from a person who has actual knowledge of the fact is required. The percentage likelihood in a genetic test is based in part on a presumption of sexual intercourse. Without that, the percentage likelihood of paternity would be far lower.

      Minnesota Statutes, section 257.63, subdivision 1 addresses evidence related to paternity. This evidence includes:

      i. Evidence of sexual intercourse between the mother and alleged father (ALF);
      ii. Expert opinion relating to the statistical probability of the ALF's paternity based upon the duration of the pregnancy;
      iii. Genetic and blood test results;
      iv. Medical or anthropological evidence based on tests performed by experts. The Court may, based on the request of a party, require the child, mother and the man to participate in testing; and
      v. All other relevant evidence.

      Minnesota Statutes, section 257.651 provides that if the alleged father fails to appear at a hearing, the court shall enter a default judgment or order of paternity. This does not change the requirement that the facts of the case must be proven. Unless one of the parents (typically the mother) (a) signed the complaint and motion; OR (b) signed a paternity affidavit making the necessary allegations which was filed with the pleadings; OR (c) appears to testify; a default order will not be entered due to lack of evidence to support the order.

   b. *Proof of Marriage* –

      i. Do not solely rely on what the parties say or on what is listed in PRISM (or even on the birth record).

      ii. Marriages in other states or other countries and cultural marriages may be difficult. "The validity of a marriage normally is determined by the

law of the place where the marriage is contracted. If valid by that law the marriage is valid everywhere unless it violates a strong public policy of the domicile of the parties." *In re Kinkead's Estate*, 239 Minn. 27, 30, 57 N.W.2d 628, 631 (1953). As cited by the Court of Appeals in *In Re the Marriage of Yang v. Fang*, April 27, 2015 unpublished decision A14-1158.

c. *Affidavit of Arrears* – If some or all of the arrears alleged occurred before the case was a IV-D case, you will need a detailed affidavit from the party claiming the arrears showing the amount due each month, the amount paid, and the balance due as of each month. Additionally, a child support worker can provide information regarding payments that were made through the IV-D program as PRISM maintains a business record of such payments.

d. *Proof of Child Care* – Minnesota Statutes, section 518A.40, subdivision 3 states: "The court must require verification of employment or school attendance and documentation of child care expenses…" (emphasis added). This is not optional, it is required by law.

e. *Proof of Public Assistance* – This includes public assistance that the child receives, and the public assistance both parents receive.

f. *Proof of a Valid ROP* – Obtain verification from the interface with the Minnesota Department of Health (MDH) so you know the ROP was filed and not just signed. A certified copy of the ROP is not needed if there is sufficient proof that it was signed and filed. However, remember that a ROP is not valid unless it is filed by MDH, so a copy provided by a party is not sufficient.

g. *Income/Employment Information* – The best information is obtained directly from employers. DEED printouts from PRISM are also available. But, be aware that while DEED is better than nothing, it is not always accurate or updated (it is generally about a quarter behind). There may be information on MAXIS too.

h. *Interstate Transmittals/General Testimony* – This is a sworn statement of the parent. It sometimes has information in the sworn statement about child care, but note that child care is not a separate "box" to check on the general testimony document.

i. *Proof of Disability* – Try to get proof from the social security administration or the veteran's administration, and not just rely on the party's say so. IV-A may have information through MAXIS.

II. Things About Civil Procedure and Constitutional Law:

IV-D Child Support law is derived from federal and state law, and has roots in statutes, rules, and case law. Sometimes we can get so entrenched in the details about how to prove a minor detail about a case, we forget the big picture.

A. Equal Services for Public Assistance and Nonpublic Assistance Cases Alike – The Child Support Enforcement Amendments of 1984, Public Law 98-378 (codified by 42 U.S.C. 651 and 654, and 45 C.F.R. 302.33) set forth several mandatory practices and improvements to improve the IV-D Child Support Program. An important mandatory practice change was that all children are eligible to receive IV-D services whether or not they receive public assistance.

> For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for assistance under a State program funded under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. 42 U.S.C. 651

When families leave public assistance programs, they must be offered continued services as a nonpublic assistance case without the need to apply for services or pay an application fee.

To summarize, everything relating to establishing and enforcing an obligation available for a family receiving welfare must also be available and provided equally to non-welfare families. This means that counties must follow through with paternity cases, modify orders, and enforce orders for all families, regardless of how they came into the IV-D program.

B. Jurisdiction – The boundaries of legal authority or power. A lack of jurisdiction is a lack of authority or power. When the court does not have jurisdiction, orders are either void or voidable. A court may dismiss the legal action for lack of jurisdiction before issuing an order. However, if an order is issued, the order may need to be vacated.

1. *Subject Matter Jurisdiction* – The court's authority and power to decide certain types of cases or issues as granted by the Constitution, statutes, and rules. Parties cannot agree to give the court subject matter jurisdiction over their case or issues where the court does not have jurisdiction by law.

2. *Personal Jurisdiction* – The court's authority and power over a person rather than a type of case or particular issue. Personal jurisdiction may be gained by service of process upon the party while physically present in the state in which the court is located, but may also be gained through long-arm jurisdiction. A party may consent to personal jurisdiction.

3. *Minimum Contacts – The Shoe Still Fits – International Shoe v. Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945) – A state may exercise personal jurisdiction over an out-of-state party, so long as that party has "sufficient minimum contacts" with the forum state from which the complaint arises, so that the exercise of jurisdiction "will not offend traditional notions of fair play and substantial justice…".

   There is a two-prong test for minimum contacts under *Impola v. Impola*, 464 N.W.2d 296, 299 (Minn. Ct. App. 1990):

   a. First Prong – Are the long-arm standards met?
      1) Was the party personally served in Minnesota?
      2) prenatal expenses or support for the child?
      3) Is the child living in Minnesota because of the actions of the party?
      4) Did the party engage in sexual intercourse so that the Will the party consent to Minnesota jurisdiction
      5) Did the party live in Minnesota with the child?
      6) Did the party live in Minnesota and provide
      7) conception of the child may have occurred in Minnesota?
      8) Did the party sign a Minnesota Recognition of Parentage?
      9) Is there another basis consistent with the Minnesota or Federal Constitution for the exercise of personal jurisdiction?

      Minn. Stat. § 518C.201. If yes to any of these, you are good to go, if not, see the second prong.

   b. Second Prong – Would taking an action in Minnesota offend traditional notions of fair plan a substantial justice?

4. *In Rem Jurisdiction* – The "thing" or "issue" must have a connection to the geographical area where the action is taken. An example is that "marriage" is an issue over which the State of Minnesota District Courts have jurisdiction even if personal jurisdiction is lacking. Thus, a dissolution can be granted, but the issues of maintenance and child support may not be. NOTE: Watch for dissolution actions that had service by publication – review that case closely for personal jurisdiction vs. in rem jurisdiction.

C. Venue – The particular place (county) in which a court with jurisdiction may hear and determine a case. Sometimes there is more than one venue where the case can be heard in court, but when pursuing a legal action on a case, the court case can only be venued in one county. Venue laws relevant to child support are:

1. *Paternity* – County where the Defendant (ALF, Presumed Father, Husband, Respondent) or child reside or is found. *Minn. Stat. § 257.59.*

2. *Dissolution* – County of either spouse. *Minn. Stat. § 518.09.*

3. *Establishment of Support* – County of either party. *Minn. Stat. §§ 256.87 and 542.09*.

D. Due Process – First imagined by the Magna Carta 800 years ago, the Minnesota and United States Constitutions have Due Process Clauses. Due process is the balance of the power of the government over the rights of its citizens. These rights apply to all actions taken by IV-D agencies, including those actions taken under the "administrative authority[1]."

1. *Procedural Due Process* – The Minnesota and United States Constitutions provide that a citizen is entitled to notice and opportunity to be heard when the government is proceeding to deny a citizen of life, liberty, or property interests. It is the procedure that must be followed by the government in civil and criminal proceedings.

2. *Substantive* – The 5th and 14th Amendments of the Minnesota and United States Constitutions prohibit the government from depriving a citizen of their fundamental rights by requiring that the government has a legitimate interest to act, and that the action is fair and reasonable.

E. Scope of the Action – A subsequent motion to set or modify is limited to the issues in the original complaint/petition.

1. *Establishment* – Usually limited to support from one specific party to the other specific party (i.e. Respondent to Petitioner). Typically not universal from any party to any party that can be changed if the child moves between parents.

2. *Paternity* – Limited to the named children (not subsequently born children).

3. *Dissolution* – Often a broad petition, generally stating to establish support, not just Respondent to pay to Petitioner support as is true in establishment actions. NOTE: Pro se dissolutions sometimes omit any reference to support, so support may not be in the scope of that action.

[1] Minnesota Statutes, section 518A.46(f) states that "The administrative actions under this subdivision are subject to due process safeguards, including requirements for notice, opportunity to contest the action, and opportunity to appeal the order to the judge, judicial officer, or child support magistrate."

4. *Domestic Abuse* – Similar to an establishment action, but is limited in duration. For example, if the OFP lasts for 1 year, the support ordered therein lasts for 1 year.

5. *Custody* – Similar to a dissolutions, but also may not refer to support.

III. Things about Drafting or Reviewing Pleadings:

A. When the County Initiates an Action –

1. *Counties initiate only two types of cases* – The two case types are those pursuant to Minnesota Statutes, section 256.87 establishment cases and paternity cases. Counties do not initiate dissolution cases or custody cases.

2. *Support cases are limited in scope* – Custody and parenting time cannot be addressed in Minnesota Statutes, section 256.87 support cases.

3. *Pleadings must address all required issue*s – Minnesota Statutes, section 257.66, subdivision 3 requires the judgment or order for paternity to contain/decide certain issues, and therefore the pleadings in a paternity case MUST address those issues. Specifically:
    i. the issue of paternity
    ii. the legal name of the child
    iii. custody (legal and physical)
    iv. parenting time
    v. the duty of support

    The Court MAY require contribution to pregnancy and confinement (birth) expenses and genetic testing costs. However, case law that indicates that there is no statute of limitations on birth expenses.[2] The "duty to support" and ongoing child support (basic, child care and medical – including division of medical expenses) and includes past support (limited by subd. 4 to 2 years).

B. When the County Takes an Action in an Existing Case –

1. *Read the underlying plea*dings –

    a. Check to be sure the court that issued the order had jurisdiction over the subject matter and all parties.

    b. Watch out for "in rem" dissolutions. If the issue of child support was reserved because the court did not have jurisdiction over one of the parties or the subject matter, you may NOT bring a motion to establish child support pursuant to that order.

[2] *Cnty of Redwood on Behalf of Baab v. Tisue,* No. C1-88-1272, 1988, WL 120230 at 1 (Minn. Ct. App. Nov. 15, 1988).

2. *Understand the scope of the underlying action* – The scope of the actions to establish child support under Minnesota Statutes, section 256.87 does not include the issues of custody or parenting time, initially or at a future time. Provisions addressing custody and/or parenting time cannot be added even by agreement of the parties. Other than the limited exception for approval of agreements in initial paternity actions, CSMs do not have subject matter jurisdiction to order custody or parenting time, even if the parties agree.

C. When is a New Action Needed?

1. *Role Reversals* – Role reversals in paternity and § 256.87 support case types nearly always require a new action to be initiated when a child moves to live with the child support obligor. You may be able to establish support in a role reversal in a dissolution or sometimes in a paternity (if the scope of the original petition was broad enough in the prayer for relief). Keep in mind that Minnesota Statutes, section 518A.26, subdivision 14 includes a presumption that a person who has primary physical custody is not an obligor unless the court makes specific written findings to overcome this presumption.

2. *Subsequent joint children require a new action* – Establishing child support for a subsequently born child should NOT be done as a modification of an existing order. Seeking support for a new child is relief that goes beyond the scope of the original petition or complaint and requires personal service to expand the scope of the original action.

   A subsequently born child is not in the scope of the original action. Always initiate either a new establishment or a new paternity action; do not simply do a modification based on a change of circumstances to add the child to the order. Seeking support for a new child is relief that goes beyond the scope of the original complaint and requires personal service to expand the scope.

   If the original court file and the second court file are of the same case type (i.e. both are support or both are paternity) you may be able to merge (consolidate) the court files and have one order for support. This requires a motion to modify the first action at the same time as the initiation of the second action. Do not merge a support file with a paternity file. The scope of each action is different and confidentiality issues are different.

D. Who to Name as Parties When Initiating an Action –

1. *In paternity cases – See* Minnesota Statutes, section 257.60*:*
   a. Biological mother;
   b. Each man presumed to be the father under section 257.55;
   c. Each man alleged to be the biological father;
   d. Public agency responsible for child support enforcement;

e. The parent of the mother or father if the mother or father has died or is a minor;
f. Caretaker (when the caretaker has court ordered custody instead of a parent);
g. Child for disestablishment or lump sum or if the mother denies the existence of a father child relationship is alleged. If child is made a party, a guardian ad litem must be appointed to represent the child;
h. If the case involves a compromise or a lump sum payment, the Commissioner of the Department of Human Services shall be made a party.

2. *In § 256.87 Establishment Cases – See* Minnesota Statutes, section 256.87, subdivisions 1 and 5 –

a. Public Assistance Cases – Minnesota Statutes, section 256.87, subdivision 1 – "The action…shall be brought in the name of the county …against the parent for the recovery of the amount of public assistance…"

b. Nonpublic Assistance Cases – Minnesota Statutes, section 256.87, subdivision 5 – "A person or entity having physical custody of dependent child not receiving public assistance has a cause of action for child support against the child's noncustodial parents." The "person or entity" who has this cause of action must be a petitioner.

E. Relief, Facts, and Grounds for Relief in the Complaint/Petition – The complaint/petition/motion (pleadings) shall state the relief the initiating party wants the judicial officer to order and shall state the facts and grounds supporting the request for relief. If you do not include a hearing date (applies to establishment and modification only – all paternities must include a hearing date), the pleadings shall also include a supporting affidavit which shall state detailed facts supporting the request for relief, provide all information required by Minnesota Statutes, section 518A.46, subdivision 3(a), if known, and be signed and sworn to under oath (under penalty of perjury under the amended rules).

1. *Information Required in Pleadings* – Minnesota Statutes, section 518A.46, subdivision 3(a) provides that in establishment or modification of support cases, the initiating party shall include the following information, if known:
   a. Names, addresses, and dates of birth of the parties[3]
   b. Social Security numbers of the parties and minor children of the parties which shall be considered private information and shall be available only to the parties, the court, and the public authority;

[3] If the husband is not the biological father and the Minnesota Courts do not have jurisdiction over him because there is no long arm or minimum contacts basis, Minnesota Statutes, section 257.60 provides that "if not subject to the jurisdiction of the court, [the presumed father] shall be given notice of the action in a manner prescribed by the court and shall be given an opportunity to be heard."

c. Other support obligations of the obligor;
d. Names and addresses of the parties' employers
e. Gross income of the parties as calculated in section 518A.29;
f. Amounts and sources of any other earnings and income of the parties;
g. Types and amounts of public assistance received by the parties;
h. Any other information relevant to the computation of the child support obligation under section 518A.34.

2. *Information required on all IV-D Cases* – Minnesota Statutes, section 518A.46, subdivision 3(b) provides that for all matters scheduled in the expedited process, whether or not initiated by the public authority, the non-attorney employee of the public agency shall file with the court and serve on the parties the following information:
    a. Information pertaining to the income of the parties available from the Department of Employment and Economic development (DEED);
    b. A statement of the amount of monthly child support, medical support, child care, and arrears currently being charged the obligor on Minnesota IV-D cases;
    c. A statement of the types and amount of any public assistance, received by the parties; and any other information relevant to the determination of support that is known by the public authority and that has not otherwise been provided by the parties;
    d. The information must be filed with the court at least five days before any hearing involving child support, medical support, or child care reimbursement issues.

F. Who to Serve and How –

1. *Who to serve* – All named parties (including custodial parents and relative caretakers who are named parties).

2. *How to serve* –

    a. *To initiate an action* – Expedited Process Rule 370.03 addresses how to serve for establishment (§ 256.87 support) cases, and Rule 371.03 addresses this for paternity cases. Both rules provide that the parties shall be served by personal service or alternative personal service, unless personal service has been waived in writing. If mail service pursuant to a waiver is returned as undeliverable, it is not good and sufficient service[4]. Personal service on one party as substitute service on the other party is NOT sufficient service.

[4] This is different than returned mail for subsequent actions. When parties are ordered to keep their addresses up to date with the court and the public authority and they do not, if a modification motion is served by mail and is returned, it is still sufficient service. However, consider whether locate is needed and whether the county should proceed on a motion when there is returned mail.

b. *Modification or enforcement in an existing action* – Rule 372.03 provides that the parties may be served by U.S. mail, facsimile, or by personal service. For service by mail in the Expedited Process, if a party is serving another party, Rule 355.02, subdivision 2 requires that another person who is not a party to the action and is over the age of 18 puts the documents in the mail and fills out an affidavit of service. However, employees of a county can serve by mail, even if the county is a party to the action.

c. *Electronic Services and Filing* – Rules amendments effective July 1, 2015, will allow service of subsequent pleadings through the electronic file and serve (EFS) system, if the party or attorney has signed up for electronic service on the case. This does not change the personal service requirement for the original pleadings to initiate a case.

3. *School or Employer to Make Person to be Served Available* – Minnesota Statutes, section 543.20 allows an individual to be served with certain child support related documents at their place of employment or where they attend school. NOTE: Read the statute before you use it.

4. *Locate, Locate, Locate* – Minnesota Statutes, section 256.978 sets out the organizations that may be contacted to obtain locate information (i.e. employers, utility companies, insurance companies, etc.).

5. *No Service of Child Support Actions on Legal Holidays* – Remember Columbus Day and Election Day are days the government is open for business, but service cannot happen because they are legal holidays.

IV. Things About Obtaining Enforceable and Fair Orders:

Paternity and child support orders must stand for the duration of a child's minority, and sometimes well into the child's adulthood. Thus, when a child support order doesn't "fit" the family anymore, it needs to be changed.

A hearing is not always required in the Expedited Process. When a hearing is not required, counties need to ensure that there is enough information and evidence to support a default order. Parties do not always appear, thus even when a hearing is required counties need to ensure that there is enough information and evidence to support a default order.

A. <u>Calculating Support: One Size Does Not Fit All</u> – The policy set by the Federal IV-D Program and from The National Child Support Enforcement Association (NCSEA) is to set realistic orders and to keep the order realistic throughout the life of the case. The child support program in Minnesota and nationally is good at establishing orders. However, both programs struggle in current collections. Uncollected orders do not help children.

1. *Best Order or "Right Sized" Order* – At the 2012 NCSEA Conference, Commissioner Vicki Turetsky, Office of Child Support Enforcement, stated:

   > Let's not start our relationship with the noncustodial parent with a fiction and promoting the compliance gap. Let's recognize the subsistence of both parents and increase engagement with both parents. When the parents think of us, they will think of us as a help rather than a hindrance.

   NCSEA also adopted a policy position in 2012 that provides that child support orders should reflect actual income of parents and orders should be modified so that they continue to reflect current circumstances.

   Studies show that setting a realistic order based on actual, not imputed income, increases compliance over time. If an order is unrealistic, low-income NCPs can become discouraged from getting and keeping jobs and arrears accumulate. Studies also show that early intervention improves compliance with orders. Early intervention includes calling NCPs to find out what is going on, providing job search assistance, and doing quick modification or contempt actions.

2. *Information in pleadings can become stale quickly* – State income can lead to unenforceable orders. So, if there is a hearing, bring updated information to the hearing, for example:
   - REI (Unemployment)
   - DEED (Department of Economic Security)
   - MAXIS PA Status
   - Incarceration dates
   - Employment Verification
   - Education Verification

3. *Imputing Potential Income*[5] – Minnesota Statutes, section 518A.32 describes when and how to impute potential income to a parent who is voluntarily unemployed, underemployed, or employed on less than a full-time basis, or there is no "direct evidence" of income.

   Parents are not considered voluntarily unemployed, underemployed, or employed on less than a full-time basis when the reason they are will lead to an increase in income, is a bona fide career change that outweighs the adverse effect of less income, and they are physically or mentally incapacitated or due to incarceration (except when incarceration is for nonpayment of support). (subd. 3)

[5] Thanks to Theresa Farrell-Strauss, Senior Attorney, Hennepin County Attorney's Office, for information from the presentation entitled "Getting the Orders right and Keeping it right: How Best Orders, Deviations, and Modifications are Important for Families and the Counties", MCAA Child Support Conference, May 2013.

Parents might not be considered voluntarily unemployed, underemployed, or employed on less than a full-time basis if the parent stays at home with the joint child, and that was happening before the action. Also to be considered are employment-related expenses and child care and transportation expenses, the child's age and health, the availability of child care providers, and the parent's employment history and availability of jobs in the community. (subd. 5)

There is a rebuttable presumption that parents can be employed on a full-time basis at 40 hours per week, except in jobs that have a regular work week of less than 40 hours per week. Minn. Stat. § 518A.32, subd. 1. However, effective March 1, 2016, the law has changed to having a 30 hour per week presumption when imputing income.[6]
If parents receive TANF cash, no potential income can be imputed. However, if the parent who receives TANF cash also has earnings, those earnings are considered in the child care calculation. (subd. 4)

If parents are self-employed, and they can show that their income is lower because of "economic conditions," that parent might not be considered voluntarily unemployed, underemployed, or employed on less than a full-time basis. (subd. 6)

There are three ways to determine potential income:

1) probable earnings based on employment potential, recent work history, jobs they qualify for that are available in the community;
2) the amount of unemployment or worker's compensation benefits received;
3) the higher of 150% of the federal or state minimum wage. (subd. 2)

NOTE: The 150% of minimum wage is another thing that changed in the 2015 legislative session. The method is based on 100% of minimum wage. See footnote 6 for more details.

4. *Special Considerations with Potential Income* – Studies show that using actual income, not imputed income, naturally results in higher rates of current collection and a reduction in arrears accrual. What factors should be considered to rebut the presumption of ability to work full time?

[6] Sec. 70. Minnesota Statutes 2014, section 518A.32, subdivision 2, is amended to read:
Subd. 2. **Methods.** Determination of potential income must be made according to one of three methods, as appropriate:
(1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;
(2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or
(3) the amount of income a parent could earn working 30 hours per week at 100 percent of the current federal or state minimum wage, whichever is higher.
EFFECTIVE DATE. This section is effective March 1, 2016.

The goal is to distinguish between a parent who is actively evading child support and a parent who has a limited ability. Consider:

a. Age of the parent
b. Education level
c. Criminal history
d. Work history – does one or two quarters of guidelines income equate to ability to work full time?
e. Availability of full-time employment in the community
f. Availability of transportation
g. Availability of affordable and stable housing.
h. What does voluntary mean?
i. Lack of self-employment evidence results in the use of potential Income. Does that correlate with lack of ability?

5. *Zero Dollar ($0.00) Orders* – Counties are required to obtain $0.00 orders. Setting a case aside because the ultimate result will be a reservation or a $0.00 order has a negative impact on performance (see section IX below), and a missed opportunity to get the family together at the table to promote the support needed by both parents. This is not optional.

6. *Percentage Orders* – Self-represented parties or private attorneys sometimes obtain orders based on a percentage of income. Minnesota Statutes, section 518A.44 provides that "the court shall determine and order child support in a specific dollar amount." However, the statute further provides that the court can order child support as a percentage share of the parent's "net bonuses, commissions, or other forms of compensation, in addition to, or if the obligor receives no base pay, in lieu of, an order for a specific dollar amount."

   If the county receives a percentage order that is unenforceable, it is a best practice to communicate this with the parties (or attorneys), and either suggest they modify the order or seek a modification of the order through the county. There is a presumption in favor of a modification when the child support obligation is a percentage order. Minn. Stat. § 518A.39, subd. 2(4). *See also Herrley v. Herrley,* 452 N.W.2d 711 (Minn. Ct. App. 1990) and *Klingenschmitt v. Klingenschmidtt,* 580 N.W.2d 512 (Minn. Ct. App. 1998).

7. *Deviations* – The Minnesota Child Support Guidelines are a rebuttable presumption. The guidelines are a starting point, but in many cases, there is no need to go further into the analysis. The legislature anticipated that there would be deviations from the guidelines and provide in the guidelines that "[a]mong other reasons, deviation from the presumptive child support obligation… is intended to encourage prompt and regular payments of child support and to prevent either parent or the joint children from living in poverty." Minn. Stat. § 518A.43, subd. 1.

Additionally, family law, including child support, is based on equity. "Family dissolution remedies, including remedies in child support decisions, rely on the district court's inherent equitable powers." *Holmberg v. Holmberg*, 588 N.W.2d 720 (Minn. 1999). Equity is about doing the right thing and being fair. The child support guidelines should not be applied blindly.

It is appropriate to consider deviations both in the county's pleadings or motions, and by the court if not pled or moved by a party. Minnesota Statutes, section 518A.43, subdivision 1 states that "the court must take into consideration the following [deviation] factors in setting or modifying child support" including:

a. all earnings, income, circumstances and resources of each parent, including real and personal property;
b. the extraordinary financial needs and resources, physical and emotional condition, and educational needs of the child to be supported;
c. the standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;
d. whether the child resides in a foreign country;
e. which parent receives the tax dependency exemption and the financial benefit from it;
f. the parents' debts; and
g. the obligor's total payments for court-ordered child support exceed the wage garnishment limitations in section 571.922.

Debts owed to private creditors can be considered in a deviation if the debt was reasonably incurred for the necessary support of the child or parent, or for the necessary generation of income. The deviation based on private debt must not exceed 18 months in duration, and at the end of the up to 18 months, the child support increases to the amount ordered by the court. The party claiming the debt must provide a sworn schedule with supporting documentation showing the original debt amount, the current balance, monthly payments, and the number of months until the debt will be paid in full. NOTE: Private debts cannot be considered in public assistance cases. Minn. Stat. § 518A.43, subd. 2.

Deviations require additional findings. Minnesota Statutes, section 518A.37, subdivision 2 states that when deviating, the court must include written findings about each parent's gross income, each parent's PICS, the guideline support amount, the reasons for the deviation, and how the deviation serves the best interests of the child. Additionally, when ordering a downward deviation in public assistance cases, the court must find that the failure to deviate downward would cause extreme hardship on the obligor.

B. County Initiated Actions – If the county is the initiating party, or the county has a financial interest in the case, the county must see the case through. Particularly in paternity adjudication cases, additional hearings are sometimes required to follow up on a custody evaluation or for an evidentiary hearing or trial on non-financial issues such as custody, parenting time, or the child's name.

1. *County's Waiver to Appear or Failure to Appear* – If the county does not appear at the hearing without first arranging the nonappearance with the court, the court has the right to dismiss the county's action. Sometimes this means dismissal of even the paternity adjudication of the father and child relationship.

   One never knows what will be addressed at the hearing – unenforceable order provisions like collection of private school tuition or extracurricular activities are sometimes ordered and hard to get out from under when the county waived its appearance. Consider whether the county has the right to ask the court to reconsider unenforceable order provisions when the county waived its appearance at the hearing.

   Additionally, remember that the choice to appear or not to appear at hearings cannot be based on whether the case is a public assistance versus a nonpublic assistance case. Counties must provide equal services for both case types and as such, a policy to only appear on public assistance cases is in violation of the equal services requirement of the federal laws.

2. *COLA Contests* – Even though COLA contest hearings seem routine and are scheduled for hearing based upon the obligor's motion to contest the COLA, keep in mind COLA is an administrative action taken by the county (so the county is the initiating party). The contesting party may win by default if the party fails to appear and defend the action the County took to obtain a COLA. Additionally, the contesting party may bring proof of income that may lead to a modification for a more enforceable order. Thus, the county must appear at the COLA contests. Remember, anytime a child support worker appears at a hearing as a witness, a county attorney must be there to represent the child support worker.

3. *Enforcement Remedy Contests* – Enforcement remedy contests like driver's license and FIDM are also based on an administrative action initiated by the county. Therefore, similar to COLA contests, the county must appear at the hearing to defend the action initiated by the county. The contesting party could win by default if the county fails to appear to defend the action initiated by the county. While the CSMs sometimes ask questions to clarify the record, the CSM cannot take the place of an "initiating party" and defend the county's action.

C. When are Hearings Required or Not Required? –

1. *Paternity Adjudications Require a Hearing* – Whether initiated in District Court or the Expedited Process, paternity adjudication cases require a hearing, except when the parties enter into a written stipulation and waive their right to a hearing. Minn. R. Gen. Prac. 371.10. When a paternity adjudication is initiated in the Expedited Process, the summons must include the date, time, and location of the hearing.

2. *No Hearing Required for Establishments, Motions to Set, and Modifications* – When initiated in the Expedited Process, establishments, motions to set, and modifications do not require a hearing. If a hearing date is not included in the summons or motion, a "request for hearing form" must be served. If the summons or motion does not contain a hearing date, the parties may request a hearing (return the form or call to request a hearing), or serve a written answer or responsive motion. If a hearing is requested, or if the answer or responsive motion contains a hearing date, the county schedules a hearing date and sends a notice of hearing to the parties at the last known addresses.

3. *Default Process* – When a hearing is not required and the county opts not to include a hearing date in the summons or motion, certain things must be done and considered.

   a. *Process* – When a party does not request a hearing, the county is responsible to file a proposed order with the court within 45 days from the date the last party was served. An affidavit of default and current affidavit of nonmilitary status must be filed. If that does not occur within 45 days, the court administrator mails a notice to all parties providing that if a proposed default order and related documents are not filed within 10 days, the matter will be set on for hearing.

   b. W*hat is a Request for Hearing?* – A party may request a hearing either by returning the request for hearing form or by calling the child support office or county attorney's office to request a hearing. Sometimes a party calls and requests a hearing, but when the process is explained and questions are answered, they withdraw their request for hearing. In this situation, the affidavit of default cannot state in court or in a document filed with the court that nobody responded or contacted the county. Rather, testimony or the affidavit of default must provide that the party contacted the county, but did not request a hearing.

   c. *No new issues* – A default order cannot include new issues or relief. Amended pleadings or motions may be necessary if there are new issues or alternative relief requested. However, an address change of a party is not considered to be a new issue. The county should explain that the address has changed in the affidavit of default or in an attached letter.

d. *Should we use the Default Process Anymore?* – The Federal Child Support Office, NCSEA and other experts encourage child support programs to move away from the default process. Studies show that orders obtained by default are often the most difficult to enforce. When jurisdictions have taken efforts to reduce the use of a default process, they have experienced an increase in current collections. Efforts spent on collecting default orders reduces resources that are available to set and collect enforceable child support orders. NCSEA's policy statement provides that "[p]resumed or default orders should occur in limited circumstances."

D. Stipulations… try them. They work! – The Expedited Process Rules encourage settlement. Rule 362, subdivision 1 requires the county to prepare stipulations if an agreement is reached. Additionally, pleadings state that if a party would like to resolve the case, they should contact the county.

When the "Administrative Process" was the law, parties could request settlement conferences or the county would set a settlement conference for certain cases. These settlement conferences were generally conducted after the service of the pleadings or motion, on a date before the hearing. The settlement conferences resulted in stipulated agreements based on new or updated information brought to the conference by the parties. A stipulation was drafted by the county and the hearing was not needed.

After the "Administrative Process" was deemed unconstitutional, the formal rule about settlement conferences was not included in the Expedited Process Rules. However, nothing in the Expedited Process rules suggests that settlement conferences are not allowed. Rather, a notice to informally resolve the case is included in all Expedited Process pleadings and motions.[7]

Most counties conduct some sort of settlement conference on the day of the hearing. But, with limited resources and time and emotions running high right before the hearing, agreements may prove difficult. A settlement conference (including phone conferences) in advance of the hearing date may produce more agreements. Settlement conferences can be scheduled under the direction of the county attorney. Whether the county attorney appears at the conference is up to each county.

Even if the settlement conference does not result in a written stipulation, the parties were engaged in the process and the county had a chance to educate the parties about the program in a less formal setting, which will likely lead towards a more positive relationship and more buy-in even to contested issues.

[7] Be aware of domestic abuse orders and safety concerns. The county should not invite parties into the office to meet together for a settlement conference or to appear by telephone together if there is a domestic abuse order or safety concerns.

V. Things About Paternity:

A. Pleadings – The County must have a basis by which to proceed with a paternity adjudication. For a public assistance case where the custodial parent is not cooperating, sanctioning may be appropriate to obtain compliance with naming and identifying the alleged father. For a nonpublic assistance case, if the applicant for services fails to cooperate, the county can close the case.

Enough evidence must be set forth in the pleadings to prove the case. Evidence can include an affidavit of the custodial parent that alleges enough information (names the ALF, alleges sexual contact – where and when, provides whether there are any other ALFs or presumed fathers, were there genetic tests, etc.). If there is not enough evidence and the parties fail to appear at the hearing, the county cannot proceed by default. Unless a child support or financial worker was present when the child was conceived, his or her allegations about paternity are not enough.

B. Good Cause – If good cause is claimed by the custodial parent, all efforts by the county to obtain or enforce a paternity adjudication or the enforcement or establishment of a child support order must be put on hold while the investigation is pending. If good cause is granted, the custodial parent is no longer required to cooperate with the county, and all efforts by the county to obtain or enforce a paternity adjudication or the enforcement or establishment of a child support order must be stopped.

The finding of good cause lasts for one year and a request can be renewed on a yearly basis without the need to prove new facts. Good cause can be claimed and granted at any stage of the child support case.

If the ALF or presumed father applies for IV-D services to establish paternity, the county cannot participate and the application and fee must be returned. The ALF or presumed father has the right to proceed in District Court on a private basis.

C. Requirement for a paternity adjudication order – Pursuant to Minnesota Statutes, section 257.66, the paternity adjudication order must address all of the following:
   a. Legal and physical custody
   b. Parenting time
   c. The child's name
   d. Ongoing child support (basic, medical, child care)
   e. Past support
   f. Pregnancy and confinement expenses
   g. Mother's and Father's names, social security numbers (confidential information sheet), dates of birth,and places of birth (if known)
   h. Whether or not the birth record should be amended to include the father's name and/or change the child's surname

D. Expedited Process Referral – If a county initiates a paternity action in the Expedited Process, the CSM can issue a paternity adjudication order that addresses child support and custody and parenting time and the child's name. However, if certain issues are contested, such as custody, parenting time, and/or the child's name, those issues must be referred to the District Court.

If there is no agreement regarding custody, parenting time, or the child's name, the CSM does not have jurisdiction to decide these issues and must refer the case to district court. Minn. R. Gen. Prac. 353.02, subd. 3.

1. *Time, date, and issues* – The referral must include a date, time, and location of the next hearing and a clear statement of the issues to be addressed by the District Court, therefore the parties are not required to file motions relating to these issues.

2. *Agreement to the adjudication and temporary custody* – If the parties agree on the paternity adjudication issue (legal relationship between the father and child) and on temporary physical custody, the CSM can enter an order establishing the parent-child relationship and address the agreed-upon issues, and issue an order referring the case to the District Court for resolution of the contested issues. If there are genetic test results of 92% or greater, the CSM can address temporary child support.

   NOTE: It is a best practice to get temporary child support set because of the length of time it may take to resolve all of the contested issues, which could ultimately require more past support to be ordered.

3. *No agreement to the adjudication and/or temporary custody* – If the parties do not agree as to the paternity adjudication issue (legal relationship between the father and child) or on temporary physical custody, the case must be referred to the District Court for all issues.

4. *Seeing the case through to completion after the referral* – As the initiating party, the county must see the case through to its completion, even for contested issues being referred to the District Court. In *Morey v. Peppin*, 375 N.W.2d 19 (Minn. 1985), the county initiated a paternity adjudication action which resulted in the establishment of the father and child relationship, but did not address custody and parenting time. In a footnote, the Minnesota Supreme Court stated that the court "trusts that the county attorney's failure to request a custody order in this case is an isolated occurrence which will not be repeated." The county risks that the District Court will dismiss the action (including the establishment of the father and child relationship and temporary child support) if the county fails to appear at the District Court stage of the case without making arrangements to not appear in advance.

5. *There is no statutory or presumed custody to the mother in a paternity adjudication* – In a paternity adjudication case, there is not a statutory custody presumption of the mother having legal and physical custody. Minnesota Statutes, section 257.541, subdivision 1 provides that the mother retains sole legal and physical custody of the child until paternity has been established or until custody is determined in a separate action. This means that as soon as the father and child relationship part of the paternity adjudication is ordered, the court must address the issue of custody. Until that happens, there is no determination of custody and there is no presumption or statutory custody to the mother.

   There is sometimes a misunderstanding about "statutory custody" as it applies to ROPs versus paternity adjudications. After the parents sign and file a ROP, until an order issued stating otherwise, the mother of the child retains a presumption of statutory legal and physical custody of the child. Minn. Stat. § 257.75, subd. 3. The father has the right to separately petition the court for custody rights, and at that time, it must be treated as an initial determination of custody. Minn. Stat. § 257.541, subd. 3.

6. *Genetic Tests* – The issue of genetic tests encourages a great deal of debate amongst child support professionals[8]. Some argue that genetic tests should be done in most paternity cases due to the availability of inexpensive and painless and scientifically certain genetic tests, the significant exclusion rates[9], and based on a review of the statutes rules and case law in Minnesota. The complexity and emotional nature of decisions that need to be made later in the child's life if genetic tests are done later in the child's live prove the adjudicated father is not the biological father is another compelling argument.

[8] Ramsey County requires genetic tests in all paternity adjudications it pursues. Other counties do the same or request the tests when there are multiple alleged or presumed fathers or doubt about who the biological fathers are. Since 2004, the Ramsey County's Genetic Testing Policy is in all paternity adjudication cases initiated by the county, voluntary genetic tests will be requested from the parties. If they do not voluntarily cooperate, the county will request an order from the court. Unmarried parents are offered ROPs at the hospital and at the county office, but when the ROP is not signed or if the parents want genetic tests before signing a ROP, the county will proceed with a paternity adjudication. Despite seeking genetic tests at the beginning of every paternity adjudication case initiated by the county, Ramsey County does not offer genetic tests in post-decree motions unless the parties agree or if a party requests and the court orders it.

[9] **Exclusion Rates:**

Exclusion Rates in IV-D Cases		**2010**	**2011**	**2012**	**2013**	**2014**
National	Rate	24.87%	--	24.97%	--	25.9%
Minnesota	Rate	23.02%	22.56%	23.40%	22.10%	22.49%
Ramsey County	Rate	19.48%	18.51%	18.24%	17.29%	19.91%

- An exclusion is defined as the rate wherein alleged or presumed fathers who are named by the mother are excluded as a possible father by genetic tests. It is suggested by some that the exclusion rate is as high as 30%, but that does not take into consideration that one mother may name multiple alleged fathers who are excluded for the same child.
- Source of National Exclusion Rates – AABB Annual Reports from those years.
- Source of Minnesota and Ramsey County Exclusion Rates – DHS-CSD Reports from those years.
- Total number of IV-D Genetic Tests in the State of Minnesota by year: 2010 – 5,244; 2011 – 5,147; 2012 – 4,777; 2013 - 5,489; 2014 – 4,185. Total number of IV-D Genetic Tests in Ramsey County by year: 2010 – 970; 2011 – 1,032; 2012 – 1,020; 2013 - 1,105; 2014 – 924. Source – DHS-CSD Reports from those years.

Others argue that genetic tests should only be done in multiple presumed or alleged father cases because genetic tests are not required by Minnesota law to adjudicate paternity, and genetic tests may be intrusive on families that know the father is not the biological father, and because of the delay caused by genetic testing to the formation of the father-child relationship, the issue should be a question. Another argument is that if there is a difficult to locate party or parties evading the genetic testing order, this will affect county performance.

No matter which camp you are in, the following laws must be considered in county initiated paternity adjudication cases:

a. A parent and child relationship is defined by Minnesota Statutes, section 257.52 as "the legal relationship existing between a child and the child's **biological** or **adoptive parents** incident to which the law confers or imposes rights, privileges, duties, and obligations."

b. The parent and child relationship between a child and "(b) the **biological** father may be established under sections 257.51 to 257.74 [the Parentage Act] or 257.75 [Recognition of Parentage]; or (c) the **adoptive** parent may be established by proof of adoption." Minn. Stat. § 257.54.

c. The court must order genetic tests if a party requests genetic tests in conjunction with a paternity adjudication. Minn. Stat. § 257.62.

d. In *County of Ramsey v. S.M.F.*, 298 N.W.2d 40 (Minn. 1980), the Minnesota Supreme Court emphasized the importance of the new genetic testing laws in a case that had nothing to do with a request for blood or genetic testing.[10] The Supreme Court stated that the moving party should always request blood or genetic testing, and if a party failed to make such a request, the court on its own motion should order genetic tests to be done early in the case.

e. The Supreme Court also encouraged genetic tests based on public policy in *Berrisford v. Berrisford*, 322 N.W.2d 742, 744-745 (Minn. 1982) by stating that the Minnesota Parentage Act "clearly evince[s] that the present public policy of this state is to encourage the use of such [blood test] evidence when paternity is in issue."

[10] The Court stated in SMF: We can imagine no situation in which it would not be in the interest of a paternity plaintiff, whether it be the county, the mother or the child, to have blood tests taken. When such reliable evidence is available, it is no longer sensible to rely solely on customary, less reliable evidentiary techniques. We therefore believe that in **every paternity case**, the party bringing the action should **request the court to order blood tests as early as possible in the litigation**. Under 1980 Minn. Laws Ch. 589, s 12, the court would then be required to order such tests. **If the party fails to make such a request, the trial court should order such tests** at an early stage on its own motion… *Id.* at 44. *Emphasis added*.

f. In *Turner v. Suggs*, 653, N.W.2d 458 (Minn. Ct. App. 2002), the Minnesota Court of Appeals vacated a paternity adjudication under Rule 60 based on subsequent genetic tests despite the fact that the father voluntarily admitted he was the biological father of the child, waived his rights to genetic tests, and the mother swore that the father was the only possible father on the record. The court stated that the appeal could have been avoided if the parties had engaged in genetic tests "before stipulating on the paternity question." *Id* at 466. The Court also stated that the "objective of paternity proceedings is to correctly identify the biological father of the child." *Id* at 468.

g. Recognition of Parentage (ROP) Issues –

   i. Language in the Minnesota Recognition of Parentage – "I acknowledge that we are the biological parents of the child named in this ROP." "I understand that either of us can choose to have genetic testing done before we sign the ROP."

   ii. Minnesota Statutes, section 257.75, subdivision 4 provides that if genetic tests establish that the man who executed the ROP is not the father, the court "shall vacate" the ROP.

h. Expedited Child Support Process Rules –

   i. "Unless blood or genetic testing has already been completed, a request for blood or genetic testing shall be served with the summons and complaint" showing that the Supreme Court intends for genetic tests to be considered in paternity cases. Rule 371.01.

   ii. When a party requests genetic tests, the CSM shall issue an order for genetic testing and continue the hearing to allow time to complete the tests and receive the results. Rule 371.06.

   iii. When genetic tests are requested at the adjudication hearing, the CSM shall issue an order for genetic testing and continue the hearing to allow time to complete the tests and receive the results. Rule 371.11.

i. Unintended Consequences of Disestablishment of Paternity based on Later Genetic Tests (vacating the ROP or vacating the adjudication or declaring the nonexistence of the father-child relationship) include:

   i. What should happen to the ongoing child support order?

   ii. What should happen about the past support paid or unpaid?

iii. Is there another responsible person to take over the role of the father for both financial and emotional support?

iv. What about the best interests of the child and the importance of identity and value of parentage?

j. There is no easy answer – "The law is clearly not one mind when it comes to weighing the respective claims of blood, marriage, caregiving, and voluntary assumption of parental duty defining the basis of parenthood." David D. Meyer, Parenthood in a Time of Transition: Tensions Between Legal, Biological, and Social Conceptions of Parenthood, 54 AM J. Comp. 125, 137 (2006).

k. Other interesting reading on the topic of genetic testing.[11]

7. *Filing Adjudication Orders with MDH* – Based on the MCAA and DHS-CSD Comprehensive Legal Vision research, less than 25% of the counties currently file paternity adjudication orders with MDH. Some of the counties that do not currently file with MDH have filed in the past but stopped that practice due to several reasons: cost of $40 for each filing, "errors" in the

[11] **Center for Law and Social Policy – www.clasp.org**

1. Memos written by Paula Roberts dated June 17, 2004, June 10, 2005 and June 30, 2006;
2. *Voluntary Paternity Acknowledgement: An Update of State Law*, dated December 11, 2006
3. *Paternity Disestablishment in 2004: The Year in Review,* dated December 30, 2004
4. *Truth and Consequences: Part I, II, and III*
5. *Parentage Case Update" Can a Child Have Two Mothers*, dated December 1, 2005

Law Review Articles:

1. *When Daddy Doesn't Want to be Daddy Anymore: An Argument Against Paternity Fraud Claims*, 16 Yale J.L. & Feminism 193 (2004)
2. *Little White Lies that Destroy Children's Lives – Recreating Paternity Fraud Laws to Protect Children's Interests*, 6 J.L. & Family Studies 2037 (2004)
3. *Parenthood in a Time of Transition: Tensions Between Legal, Biological, and Social Conceptions of Parenthood*, 54 AM J. COMP. L. 125, 137 (2006)
4. *Assisted Reproduction, Civil Unions and Parentage*, 29 Delaware Lawyer 25 (Fall 2011)

Newspaper and Blog Articles:

1. *DNA Dilemma/Easy, Inexpensive Paternity Tests are Proving Increasingly Popular and Raising Tough Questions* – St. Paul Pioneer Press, October 29, 1998
2. *Push for Paternity Testing Often Leaves Children Suffering* – St. Paul Pioneer Press, September 23, 2002
3. *Who's Your Daddy? The Answer May be at the Drugstore* – Scientific American, November 14, 2008
4. *"Who Knew I was not the Father?" How DNA Testing is Changing Fatherhood* – New York Times, November 22, 2009
5. *N.J. legislature proposes bill requiring genetic testing for all newborns, parents to verify paternity* – blog.nj.com, March 2012
6. *Before Birth, Dad's ID* – New York Times, June 19, 2012
7. *Early Paternity Tests Work Early in Pregnancy* – Star Tribune, June 20, 2012
8. *California Jury Urges Death in Murders over Paternity* – Star Tribune, August 10, 2012
9. *"Who's Your Daddy" Truck Rolls Through NYC, Officers Answers with DNA Tests* – CBS New York, August 15, 2012
10. I*ncidental Findings of Nonparentage: A Case for Universal Nondisclosure* – Pediatrics: Official Journal of the American Academy of Pediatrics, August 10, 2014

Order will cause MDH to reject the filing. MDH records of updated birth records compared to the paternity adjudications shows that even when the parents are provided with instructions on how to file the paternity adjudication order themselves, parents rarely follow through. Last year thousands of county initiated paternity adjudication orders were never filed with MDH.

While there is no written state policy that requires the counties to file paternity adjudication orders with MDH, the state has always encouraged this practice. The benefits of having a child's birth record clarified outweighs the time it takes and the cost of filing the order (after FFP, it is $13 per case).

When paternity adjudication orders are not filed with MDH, the paternity adjudication is arguably not complete because the father's name is not added to the birth certificate. Several cases have arisen where a paternity order was entered but not filed with MDH, and then a different father later signs a ROP for the child. The ROP father is then listed on the birth certificate. This creates a competing presumption issue on the paternity case, which could have been avoided if the initial paternity order had been filed and accepted by MDH.

Additionally, even as an adult, the child cannot request a copy of his or her paternity adjudication order without moving the court for an order to release it. This can result in significant issues relating to college applications, passports, driver's licenses, applications for public benefits, health insurance and other processes where a birth record is required.

VI. Things about Enforcing Orders:

A. Judgments –

1. *What to include when asking for a judgment as part of a motion* – Include an affidavit supporting the motion requesting the judgment that states the amount due each month, the amount paid each month, and any interest that accrued in that month. Show the cumulative balance due each month and the total judgment amount being requested for the time period identified. It is NOT sufficient to simply allege that arrears in the total amount of $XXX amount are due for the period (date) to (date). Also, remember that if payments were not made through the IV-D program, obtain an affidavit from a party who has actual knowledge of the facts.

2. *Don't forget to enter and docket the judgment* – Once the court has awarded a judgment without entering and docketing the judgment, it is not an enforceable judgment. The judgment must be entered and docketed to be fully enforceable. Remember the following:

a. Minnesota Statutes, section 548.09 states that "…every judgment requiring the payment of money shall be entered by the court administrator when ordered by the court and will be docketed by the court administrator upon the filing of an affidavit as provided in subdivision 2."

b. Subdivision 2 provides that "No judgment, ….shall be docketed until the judgment creditor….has filed with the court administrator an affidavit stating the full name, occupation, place of residence, and post office address of the judgment debtor…" This is commonly referred to as an "Affidavit of Identification".

c. Minnesota Statutes, section 548.09, subdivision 1 provides that a judgment is a lien, in the amount unpaid, upon all real property in the county then or thereafter owned by the judgment debtor <u>from the time of docketing</u> (not entry). Remember that docketing cannot occur unless/until an affidavit of identification is filed.

3. *Judgment by Operation of Law (JOL) - Minnesota Statutes, section 548.091, subdivision 1(a):*

a. *What is a JOL?* – The Judgment by Operation of Law statute provides that any payment or installment of support owed pursuant to a court order that is not paid when due is a judgment by operation of law on and after the date it is due. The JOL was required to be adopted by all states due to the Bradley Amendment in 1986.[12]

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[12] *The Bradley Amendment* (Public law 99-509, 1986) requires state courts to prohibit retroactive reduction of child support and obligations and created a judgment by operation of law for child support arrears. The original purpose was so that interstate cases could be handled more consistently where the parent to whom support was owed may not make an appearance in another state. In addition, an administrative lien also arises by operation of law against any unpaid child support as soon as it is due without the need to ask the court for a judgment or even administratively enter and docket a judgment each month an obligation is not paid. This allows the public authority to move quickly to seize income and assets of a child support obligor who owes arrears without having to go to court first.

The federal IV-D law was amended to include both the prohibition on retroactive modifications and the administrative liens (JOLs) as follows in 42 U.S.C. § 666(a):

(4)(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and
(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—
(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,
(B) entitled as a judgment to full faith and credit in such State and in any other State, and
(C) not subject to retroactive modification by such State or by any other State;

In other words, all arrears are JOLs for the purposes of full faith and credit for interstate enforcement actions on the arrears. However, a JOL is not the same as an entered and docketed judgment. One example is that a lien cannot be obtained on real property without an entered and docketed judgment, despite the fact that the JOL statute states that JOLs have the same weight as judgments.

b. How to administratively docket JOLs? – These JOLS can be made into judgments through an administrative process to enter and docket. JOLs "…shall be entered and docketed by the court administrator on the filing of affidavits as provided in subdivision 2a."

   i. Subdivision 2a. requires the obligee or the public authority to file (1) a statement identifying or a copy of the order for child support; (2) an affidavit of default, which must state the full name, occupation, place of residence and last known post office address of the obligor, the name of the obligee, the date or dates payment was due and not received and the total amount of the judgments to be entered and docketed; (3) an affidavit of service of a notice of intent to enter and docket judgment in person or by first class mail.

   ii. Subdivision 3a. provides that once the documents required under subdivision 2a. have been filed, the court administrator shall enter and docket the judgment in the amount of the unpaid obligation identified in the affidavit of default.

4. *Statute of Limitations on a Child Support Judgment* – A judgment, once entered with the court administrator is good for ten years. Minn. Stat. § 548.09. Unless it is renewed, after ten years it is no longer a judgment for which judicial remedies may be used (although it may continue to be a debt and administrative remedies may apply). The ten years starts counting with entry of the judgment, even if it is never docketed.[13]

5. *Administrative Renewal of Child Support Judgments* – A child support judgment that was entered may be renewed administratively.[14] However, if the statute of limitations has run, the original judgment is expired and cannot be renewed.

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except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

[13] Minn. Stat. § 548.09, subdivision 1 states (in pertinent part): "The judgment survives, and the lien continues, for ten years after its entry."

[14] *See* Minn. Stat. §548.091, subd. 3b.

6. *New Action to Renew Still Allowed* – Prior to the administrative renewal of judgment statute, the only way to "renew" a judgment was to get a new judgment. Bringing a new action to essentially obtain a new judgment is still allowed (which is how most non-child support judgments are renewed). However, if the statute of limitations has run, the original judgment is expired and cannot be renewed or a new judgment cannot be obtained.

7. *Satisfaction of Judgments* – When a judgment has been paid in full or agreement has been reached to settle the judgment for less than the full amount, the judgment creditor must file with the court administrator a Certificate of Satisfaction (unless it was satisfied by execution, in which case the sheriff's return stating the amount satisfied will be filed by the Sheriff).

   Minnesota Statutes, section 548.15 requires the judgment creditor to file the satisfaction within ten days after the satisfaction or within 30 days of payment by check or other noncertified funds.

   Satisfaction after paid in full must be filed with the court administrator within 5 days of the payment. Minn. Stat. § 548.091, subd. 10. Minnesota Statutes, section 548.15, subdivision 2 provides: "In the case of a judgment for child support or spousal maintenance, an execution or certificate of satisfaction need not be filed with the court until the judgment is satisfied in full."

B. Contempt –

1. *The Law – Minnesota Statutes Chapter 588* – Generally, child support contempt is civil constructive contempt. The purpose of a civil contempt action is to induce compliance with the order, not to punish.

2. *Use the contempt remedy wisely and well* – "Wisely" means selecting the right case, one where you are reasonably certain the obligor has the ability to pay, but chooses not to pay. The affidavit you submit in support of your contempt motion should outline all of the steps you have taken and efforts made to get a payment or even a response.

   "Well" means using contempt as a tool to determine whether or not someone has the ability to comply with the order. If the information you obtain indicates that the order is set too high (or too low), use the information to file a motion to modify. Contempt proceedings can be well worth the time and resources – they bring in a lot of information and/or money.

3. *First Stage Contempt Requirements* – Read *Hopp v. Hopp*, 156 N.W.2d 212 (Minn. 1968)[15] and keep a copy (or a link to it) handy. This case remains the definitive explanation of what is required in a contempt proceeding.

[15] Below is an excerpt of the most important provisions of the *Hopp* opinion:

a. The County must allege and be able to show that the ordering court had subject matter and personal jurisdiction, that the order clearly stated what the person was supposed to do, that the party had notice of the order and time to comply, that the other party has asked for the court's help to compel performance giving specific grounds for complaint, and that upon due notice a hearing should be held and the noncompliant party must be given an opportunity to show compliance or reason for not complying.

b. The court must formally determine whether there was a failure to comply and, if so, whether conditional confinement is reasonably likely to produce compliance in full or in part.

c. The court must not direct a party to do something the party is wholly unable to do. When confinement is ordered, the party confined should be able to obtain release by compliance or by agreement to comply to the best of his/her ability.

4. *Second Stage Contempt Requirements – Mahady v. Mahady*, 448 N.W.2d 888 (Minn. Ct. App. 1989) clarifies the need to allow the obligor the opportunity to comply with the contempt order and a second hearing to allow the obligor to explain the reason for noncompliance before incarcerating the obligor.

Even so, the recognized limits on the power of a trial judge in the exercise of his civil contempt powers require:
(a) That the ordering court had jurisdiction of the subject matter and the person. *Papke v. Papke*, 30 Minn. 260, 15 N.W. 117; *Red River Potato Growers Assn. v. Bernardy*, 128 Minn. 153, 150 N.W. 383; 17 C.J.S., Contempt, §§ 14 and 64; 17 Am. Jur. (2d) Contempt, § 42; Annotation, 12 A.L.R.2d 1059.
(b) That the decree of the court clearly defined the acts to be performed by a party to the proceedings. *International Longshoremen's Assn. Local 1291 v. Philadelphia Marine Trade Assn.*, 389 U.S. 64, 88 S.Ct. 201, 19 L.Ed.2d 236; 17 Am.Jur. (2d) Contempt, § 52.
(c) That the party directed to perform had notice of the court's decree and a reasonable time within which to comply. 17 C.J.S., Contempt, §§ 18 and 78; 17 Am.Jur. (2d) Contempt, § 41.
(d) That the party adversely affected by the alleged failure of the directed party to comply has applied to the court for aid in compelling performance, giving specific grounds for complaint. 17 C.J.S., Contempt, § 72(2); 17 Am.Jur.(2d) Contempt, § 86; *Clausen v. Clausen*, 250 Minn. 293, 84 N.W.2d 675; *State ex rel. Hoefs v. District Court*, 113 Minn. 304, 129 N.W. 583.
(e) That upon due notice a hearing be conducted and at such hearing the party charged with nonperformance be given an opportunity to show compliance or his reasons for failure. *See*, 4 Dunnell, Dig. (3 ed.) § 1705; Minn.St. 588.09; *Krmpotich v. Krmpotich*, 227 Minn. 567, 35 N.W.2d 810; *Laff v. Laff*, 161 Minn. 122, 200 N.W. 936; 17 C.J.S., Contempt, § 85(1); 17 Am. Jur.(2d) Contempt, § 88.
(f) That the court after such a hearing should determine *formally* (*Clausen v. Clausen*, supra; 17 C.J.S. Contempt, §§ 85 [5], 86[3]) whether there was a failure to comply with the order and, if so, whether conditional confinement is reasonably likely to produce compliance fully or in part. *Cohen v. Mirviss Mfg. Co.*, 173 Minn. 100, 216 N.W. 606.
(g) That confinement should not be directed to compel a party to do something which he is wholly unable to do. But the burden of proving inability should be on the defendant, who should not be held to have sustained it when he has failed to make a good-faith effort to conform. See, *Laff v. Laff*, supra; *Cohen v. Mirviss Mfg. Co.*, supra, 4 Dunnell, Dig. (3 ed.) § 1708; 17 C.J.S., Contempt, § 19; 17 Am. Jur.(2d) Contempt, § 51.
(h) That when confinement is directed, the party confined should be able to effect his release by compliance or, in some cases, by his agreement to comply as directed to the best of his ability. Minn.St. 588.12; State ex rel. *Hoefs v. District Court*, supra; *Wilkins v. Corey*, 172 Minn. 102, 214 N.W. 776; 17 C.J.S., Contempt, §§ 88(5) and 93; 17 Am.Jur.(2d) Contempt, § 111.

5. *Keys to the Jail* – Since the purpose of a contempt action is to induce compliance and not to punish, the obligor must be provided with an opportunity to stay out of or get out of jail based on purge conditions. If the court orders the obligor to go to jail for a specified period of time, the time must be "up to" a specified time and outline what the obligor must do to be released before that time (the purge conditions or keys to the jail). *Mower County* o/b/o *Swancutt v. Swancutt*, 551 N.W.2d 219 (Minn. 1996).

6. *Lump Sum Payments* – Contempt lump sums for a purge condition to stay out of jail or settle the case are the only time contempt payments may flow to only one case. Ongoing purge conditions should address the fact that if there are multiple cases, the obligor's additional payments (monthly or otherwise) will be distributed among the obligor's cases per the distribution requirements.

C. Arrears Management –

1. *Arrears Management and Prevention Policy (AMPP)* – AMPP is an important tool supported by federal and state policy and allowable by law. There are many orders that were set by default (or after a hearing) at a level that is unrealistic and/or impossible for the obligor to pay or that have not been modified after a substantial change in circumstances or the obligor is now permanently disabled and will not ever have the ability to repay the public assistance arrears. All or a portion of the arrears can be managed.

   a. *Public Assistance Only* – The county can only manage public assistance arrears.

   b. *Nonpublic Assistance Forgiveness* – If custodial parents wish to forgive arrears owed to them, the county can facilitate this process. Be sure that the custodial parents understand that once the arrears are forgiven, they are gone forever.

   c. *Best Practice* – The county can (and should) on its own review public assistance arrears to determine which are unrealistic or impossible for the obligor to pay, and then arrears manage those arrears. A good time to do this is before pursuing a modification (whether initiating or responding), before pursuing a contempt, and when the case flips from current to arrears only.

D. Administrative Remedies – It is important to be familiar with the threshold to use the enforcement remedy, and how and where the parties can contest and what the county needs to do for the contest. See the attached table entitled "IV-D Enforcement Tools" for some quick information about all of the administrative and judicial enforcement tools.

E. Income Withholding with the Veteran's Administration (VA) – The VA will not honor income withholding without the veteran signing off on an apportionment from his or her benefits.

F. Driver's Licenses – If the driver's license suspension issue goes to court on a contest, and the court orders the suspension, unless the court order specifically gives the county permission to administratively reinstate, the court must issue an order to reinstate the driver's license (which will require a motion and hearing).

VII. Things About Review and Adjust (Modification):

A. Modifications Matter – One of the core principals of the best order or "right-sized" order concept is to modify orders when they are no longer appropriate. Whether the modification is exactly what the party expects, by having the county pursue a modification based on a change of circumstances can promote more buy-in, leading to more enforceable orders. Modifications also affect the current support performance measure (the amount of current support collected versus the amount of current support ordered). If more orders are modified timely, more current support is collected as compared to the amount of current support ordered.

70% of orders that receive payments are cases where income withholding is in place. Income withholding can take upwards of 6 months to commence, during which time arrears may accrue if an obligor does not or cannot make the past order's payments. Data suggests that orders based on actual earnings that come from paychecks through income withholding collect approximately 81% of the obligation. 81% is a good collection amount on a case, but perhaps a review should occur to see if the obligation needs a slight modification if less than 100% is collected through income withholding.

Data also suggests that orders based on imputed income or self-employed income where there is no paycheck involved, have collections ranging from 0% to 62% of the obligation. Perhaps these orders could use a review as well, or early intervention, or an attempt to get the obligor more actively engaged. There is also data to suggest to support case stratification to drill down which orders, if modified, will result in payments. Why aren't we doing this?

B. The New World of Modifications –

1. *Minnesota Department of Human Services Grant* – 2008 Goals:
    a. Simplify and streamline the review and modification process
    b. Minimize burden and cost to the parties and counties
    c. Provide access to justice
    d. Comply with court rules
    e. Ensure due process

2. *"New" DHS Modification Policy Issued December 5, 2012 -*
    a. Requests for review not required to be in writing
    b. Counties must review all cases when a request has been made (this does not mean a modification must be done though)
    c. Counties can no longer cancel based on RFI (requestor failed to return information)
    d. Counties are encouraged to pursue settlements, agreements, and stipulations
    e. Counties must review both PA and NPA cases when the county notices a change (no longer need to wait for a party request on NPA cases
    f. Streamlined process and forms
        i. Child support ezDocs
        ii. Education for parties and community partners
        iii. County initiated process
            - Reduced timeframes
            - Simplified financial statements
            - New policy
            - New reports and worklists
            - Streamlined documents and process for incarcerated
            - Streamlined documents and process for SSI (coming)

3. *Significant Culture Change* – In the past, some counties did not pursue modifications when the obligor was incarcerated, or if the order was less than 3 years old, or even when the parties agreed and wanted to enter into a stipulation to reflect the modification. Counties generally did not pursue modifications unless the parties asked (did some agency initiated PA cases though)[16].

    When support was based on the amount of the public assistance grant (really old orders), based on imputed income of the highest possible quarter of DEED information, based on 150% of the minimum wage, or with significant pregnancy and confinement expenses or past support, modifications were more necessary when realistic information was made available. Yet, modifications were not set unless a party asked.

    Caseload management is different when counties start doing more routine modifications. Consider the following in your county's caseload management:
        a. Adopt a "Best Order Policy" that discourages imputed income and default orders

[16] According to a 2013 NCSEA policy document, since the public authority that advocates for the local and state program and does not advocate for either parent, the public authority support agency has an independent interest in avoiding the accrual of uncollectible support which it may later be required to attempt to collect, thereby using valuable resources that could be used to set and collect reasonable orders. Therefore, when a child support agency has or has access to reliable income information which suggests that a change in the child support obligation would be appropriate, there is a benefit to initiating a review and modification process rather than waiting for a parent to act on that information by requesting a review.

b. Use reports for case management
c. Take a holistic approach – breaking down silos between functions if your county does not have a cradle to close organization
d. Use early intervention to prevent accumulation of arrears
e. Improved case management:
    i. Determine what orders need a modification without the parties requesting
    ii. Talk to parties who call
    iii. Educate parties about the process and realistic expectations
    iv. Do not terminate the review based on the party not returning information (RFI)
    v. Research and find additional information available to the county
f. Prioritize incarcerated and SSI modifications
g. Pursue stipulations

C. Equal Services for Modifications – Remember, regardless of whether the case is a nonpublic assistance (a never public assistance case or a former public assistance case) or a public assistance case, child support services must be applied equally. Counties should not set policies to shift the burden of nonpublic assistance cases to the parties to pursue. Just because there are quality and easy to use pro se forms available for modifications does not mean that a party has the capacity or access to complete the modification.

D. Incarcerated Modifications – Incarcerated modifications are important. While arrears management is available for public assistance arrears that accumulate during the incarceration, that tool is not available for nonpublic assistance cases unless the custodial parent consents. With a provision in the ability to pay section of the guidelines that states that a minimum support obligation does not apply to an obligor who is incarcerated, combined with presumptions for modification of support when there has been a substantial decrease in income, it is clear that the Minnesota legislature intends for counties to review cases when an obligor is incarcerated. Unlike a noncustodial parent who voluntarily quits a job or actively evades paying child support, an incarcerated obligor usually has very little or no ability to earn income. Not pursing a modification while an obligor is incarcerated is also counterproductive because of the challenges faced by an obligor following release from incarceration.

E. Driver's License Payment Agreements and Contempt Purge Conditions Do Not Modify the Obligation – Driver's license payment agreements and contempt purge conditions do not modify the child support obligation. To modify an obligation within a contempt, a specific finding about the modification and order provision to modify the obligation is required. However, if your contempt orders are for defined periods of time, what happens to the modified order when the contempt order expires?

If it is appropriate to enter into a payment agreement or set purge conditions for less than the full amount of the monthly obligation plus payback on arrears, keep in mind that if the lesser amount is paid to meet the agreement or purge conditions, arrears will continue to accrue. The purpose of an agreement to a lower amount is to work with the obligor to become engaged in the process, to encourage finding a job or a new job, and to get payments going without having the driver's license suspended or sitting in jail for failure to follow the contempt order.

VIII. Things About Reviewing or Appealing Decisions:

A. Error in the Expedited Process Order – Generally, all motions for post-decision relief are precluded, except for motions to correct clerical mistakes, motions for review, or motions alleging fraud. (Minn. Gen. R. Prac. 377.)

1. *Motion to Correct Clerical Errors – (Rule 375)*

a. The Motion to Correct Clerical Errors is a remedy for use by any party who wants the court to correct clerical mistakes, typographical errors, or mathematical errors in an existing support order issued by a CSM. You may not use this form to bring other requests or questions before the court.

b. The court will consider the motion without a hearing.

c. To bring a motion to correct clerical mistakes, the aggrieved party must perform items (1) through (5) below as soon as practicable after discovery of the error:

1. Complete the Motion to Correct Clerical Mistakes form[17]. The Motion to Correct Clerical Mistakes must list **all** of the clerical mistakes, typographical errors, and mathematical errors that you believe are in the order. The errors must be identified by page and paragraph and include the proposed corrected language.
2. Serve the completed motion for clerical mistakes form upon all other parties or their attorney, if represented. Service may be made by personal service or by U.S. mail pursuant to Rule.
3. File the original motion with the court.
4. File the affidavit of service with the court. The affidavit of service shall be filed at the time the original motion is filed.
5. Order a transcript of the hearing under Rule 366, if the party desires to submit a transcript.

[17] A Motion to Correct Clerical Mistakes template form can be found on the Minnesota Judicial Branch Court Forms website. As of May 17, 2015, the web address is:
http://www.mncourts.gov/default.aspx?page=513&item=67&itemType=packetDetails

2. *Responding to Motion for Clerical Errors – Rule 377.04 -*

   a. To respond to a motion to correct clerical mistakes the response must be made within ten (10) days of the date the party was served with the Motion to Correct Clerical Errors.[18]

   b. The response to the motion must identify each page and paragraph the clerical mistake(s) alleged by the moving party and state whether responding party agrees or opposes the corrections.[19]

   c. A copy of the response must be served upon all parties, either personally or by mail.

   d. If a responding party wishes to raise other issues, these issues must be set forth as a counter motion in the response.

3. *Motion for Review – Rule 376*

   a. A Motion for Review is a remedy for use by any party who wants the court to amend the terms of an order, look at new evidence or grant a new hearing based on errors made by the court.

   b. After the CSM signs an order, court administration will serve all parties (usually by mail) with a 3 page document called "Notice of Entry of Order" along with a copy of the Order. This notice sets forth dates that Motions for Review are due.

   c. To bring a Motion for Review, the aggrieved party shall perform items (a) through (e) below within twenty (20) days after the date the court administrator served that party with the “Notice of Entry of Order”:

   d. Complete the Motion for Review form.[20] A Motion for Review must state the reason(s) the review is requested; state the specific change(s) requested; specify the evidence or law that supports the requested change(s); state whether the party is requesting that the review be by the child support magistrate that issued the order being reviewed or by a district court judge; state whether the party is requesting an order

[18] Calculation of time to respond to motion for clerical errors is altered if motion for clerical errors was served upon you by mail. *See* Rule 377.05.

[19] A Response to Motion to Correct Clerical Errors template form can be found on the Minnesota Judicial Branch Court Forms website. As of May 17, 2015, the web address is:
http://www.mncourts.gov/default.aspx?page=513&item=69&itemType=packetDetails

[20] A Motion for Review template form can be found on the Minnesota Judicial Branch Court Forms website. As of May 17, 2015, the web address is:
http://www.mncourts.gov/default.aspx?page=513&item=67&itemType=packetDetails

authorizing the party to submit new evidence; and state whether the party requests an order granting a new hearing.

e. Serve the completed Motion for Review form upon all other parties or their attorney, if represented. Service may be made by personal service or by U.S. mail pursuant to Rule 355.02.

f. File the original motion with the court. If the filing is accomplished by mail, the motion must be postmarked on or before the due date set forth in the notice of filing.

g. File the affidavit of service with the court. The affidavit of service shall be filed at the time the original motion is filed.

h. Order a transcript of the hearing under Rule 366, if the party desires to submit a transcript.

4. *Responding to a Motion for Review - Rule 377.04 -*

a. To respond to a Motion for Review, the response must be made within thirty (30) days of the date the party was served with the Notice of Entry of Order.[21]

b. The response to the Motion for Review must state why the relief requested should or should not be granted; if new issues are raised, state the specific change(s) requested; if new issues are raised, specify the evidence or law that supports the requested change(s); state whether the party is requesting that the review be by the child support magistrate who issued the order being reviewed or by a district court judge; state whether the party is requesting an order authorizing the party to submit new evidence; state whether the party requests an order granting a new hearing.[22]

5. *Combined Motion for Review and Motion to Correct – Rule 375.04*

a. The Combined Motion is the combination of a Motion to Correct Clerical Errors and a Motion for Review.
b. To bring a combined motion, the aggrieved party shall perform items specified in (a) through (e) above within thirty (30) days of the date the court administrator served that party with the Notice of Entry of Order.

[21] Calculation of time to respond to Motion for Review is altered if Motion for Review was served upon you by mail. *See* Rule 377.05.

[22] A Response to a Motion for Review template form can be found on the Minnesota Judicial Branch Court Forms website. As of May 17, 2015, the web address is http://www.mncourts.gov/default.aspx?page=513&item=71&itemType=packetDetails

6. *Appeal* –

   a. A final child support order may be appealed to the Minnesota Court of Appeals. *See* Rule 378.

   b. Appeals to the Court of Appeals must be made in accordance with the procedures set forth in the Minnesota Rules of Civil Appellate Procedure within sixty (60) days of the date the court administrator serves upon the parties the notice of filing of order or notice of entry of judgment.

   c. If any party brings a timely motion to correct clerical mistakes or a Motion for Review, the time for appeal is extended for all parties while that motion is pending. Once the last pending motion is decided by the CSM or district court judge, the sixty (60) day clock to appeal again begins to run.

   d. It isn't personal (the original order or the appeal).

   e. Bad facts make bad law.

   f. Notify DHS-CSD of any appeal. They may be able to help or get another county who has a similar issue involved to help.

   g. Consult other counties, your peers.

IX. Things About Responding to Pleadings or Motions When the County is Served:

A. Responding to Other Parties' Actions and Motions is Our Job Too – Respond by:
   1. filing an answer,
   2. filing a counter-petition,
   3. filing a responsive-motion, and/or
   4. appearing for hearings

B. What if You Don't Like the Result of the Court Order? –

   1. If you should have gotten notice and did not, you can go back and ask the court to vacate or change the order.

   2. If you were served and blew it off (failed to attend the hearing or arrange for a nonappearance), you may be stuck with it.

C. BEFORE You Can Respond, You MUST BE A PARTY to the Action – Party status is achieved through intervention. Failure to intervene = no standing to seek relief, and the court does not have jurisdiction to hear your position on the issue.[23]

[23] *Kilpatrick v. Kilpatrick,* 673 N.W.2d 528 (Minn. App. 2004)

D. What is Intervention? – Intervention is the procedure by which a third party, not originally a party to the suit, but claiming an interest in the subject matter, comes into the case, to protect his rights or to interpose his claim. The grounds and procedure are usually defined by various state statutes or Rules of Civil Procedure. Intervention may exist either as a matter of right or at the discretion of the court. A third party may intervene or seek to intervene in a legal proceeding commenced by others for the protection of an alleged interest.

E. Authority to Intervene –

1. *Intervention as a Matter of Right* – Rule 360 of the Expedited Process Rules states that counties may intervene as a party "as a matter of right" in any matter being heard in the expedited process. "Intervention is accomplished by serving upon all parties by U.S. mail a notice of intervention" and filing the notice and affidavit of service with the court. The intervention is effective on the date the last party is served with the notice. There is no right to object to county intervention.

2. *Real Party in Interest* – Minnesota Statutes, section 518A.49 provides that the public authority is a real party in interest in any IV-D case where there has been an assignment of support. In all other IV-D cases, the public authority has a pecuniary interest, as well as an interest in the welfare of the children involved in those cases. The law provides that counties may intervene as a matter of right in public assistance cases "to ensure that child support orders are obtained and enforced which provide for an appropriate and accurate level of child, medical, and child care support."

3. *Intervention of Right* – Rule 24.01 of the Minnesota Rules of Civil Procedure states that a party shall be allowed to intervene when the party requesting to intervene has an interest in the matter that cannot be represented by another existing party. The procedure to intervene is set forth in Rule 24.03, which states that the party requesting to intervene must serve and file a notice of intervention stating why intervention is necessary on the existing parties, and give the right to object to the intervention within 30 days of the notice. If no objection after 30 days, then the party is automatically included as an intervener. If there is an objection within the 30 days, then the party requesting to intervene must serve and file a motion to intervene.

F. Formal Intervention is NOT Necessary in Certain Situations –

1. *Public Assistance Cases* – Counties are not required to formally intervene in public assistance cases because the public authority is statutorily joined as a party. As a practical matter, some type of correspondence with the court and the parties may be necessary to alert everyone to the public authority's involvement; however formal intervention is not necessary.

2. *Non-Public Assistance Cases where the County Commences a Legal Action* – Counties are not required to formally intervene when the county commences an action in a non-public assistance case, because the county is a real party in interest and is automatically joined as a party.

3. *County Initiated Paternity Cases* – Counties are not required to intervene in paternity cases. Counties are joined as a party in paternity actions in both public assistance (where there is assignment) and nonpublic assistance cases (where there is an open IV-D case).

4. *Privately Initiated Paternity Cases* – If the paternity action involving a public assistance or nonpublic assistance case (where there is an open IV-D case) is initiated by a pro se party or a private attorney, and the county is not named as a party or served with the summons and complaint, formal intervention is still not necessary, but some type of correspondence to the court and the parties may be necessary to alert everyone to the county's involvement.

G. Formal Intervention is Necessary in Certain Situations –

1. *Privately Initiated Non-Public Assistance Cases* – Counties must formally intervene in non-public assistance cases if they provide IV-D services for the case because counties are not statutorily made a party. If there is no intervention, counties are not made a party and do not have the same rights that a party would have (such as the right to notice of hearings, the right to participate in the hearing, a right to receive the court order, and most importantly, the right to request review or appeal an order) until after the formal intervention.

2. *Examples of Actions Where the County must Intervene:*
    a. Dissolutions
    b. Domestic Abuse
    c. Custody and Parenting Time

H. In Addition to Intervention, Sometimes Certificates of Representation are Required –

1. *Expedited Process* – Rule 357.02 provides that counties and public defenders are not required to file certificates of representation in matters proceeding in the expedited process. It does not matter whether the case is a public assistance or non-public assistance case, or initiated by or not initiated by the county.

2. *District Court* – When counties intervene in a district court case, regardless of whether it is a public assistance or non-public assistance case, the county must file a certificate of representation. The certificate of representation must provide the court with information about the county as well as any updated information the county has about the parties or the parties' counsel.

3. *Referral from the Expedited Process to District Court* – There is no law on point as to whether or not counties are required to file a certificate of representation when a matter is referred from the expedited process to district court. Assuming the county initiated the action that is being referred, it is safe to assume a certificate of representation is not necessary. Counties may want to check with their local court administrator if this becomes an issue.

X. Things about Performance Measures and Timeframes:

A. Performance Measures Matter – States are evaluated on 5 Federal Performance Measures (and a data reliability standard of 95%). States compete for federal incentive funds based on the performance measures and TANF block grants are based on States complying with the requirements of the IV-D program. States risk losing both incentive funds and TANF funding if performance measures are not met.

1. *Establishment of Paternity* – The performance measure is the percentage of children in open IV-D cases with paternity established. This is measured by dividing the number of children in open IV-D cases not born into a marriage with paternity established during the current FFY, by the number of children in open IV-D cases not born into a marriage as of the end of the previous FFY.

$$\frac{\textit{Total \# of children born out of wedlock with paternity established this FFY}}{\textit{Total \# of children born out of wedlock during the previous FFY}}$$

Paternity establishment occurs both through court ordered adjudication and executed and filed recognitions of parentage.

The Federal Benchmark is for the State of Minnesota must establish paternity for at least 50% of the children in IV-D cases, and must show improvement each year until it establishes paternity for at least 90% of the children. The incentive increases as the establishment of paternity rate increases, but maximizes at 90%.

In FFY 2014 Minnesota was at 100% for IV-D Paternity and thus maximizing its paternity establishment incentives.

2. *Establishment of Support* – This performance measure is the percentage of child support cases with a child support order established. This is measured by dividing the total number of open IV-D cases with orders established as of the end of the FFY, by the number of open IV-D cases.

$$\frac{\textit{Total \# of IV-D child support cases with support orders in this FFY}}{\textit{Total \# of IV-D child support cases in this FFY}}$$

Establishments occur in § 256.87 establishment actions, paternity actions where support is addressed, dissolution actions wherein the county intervenes and support is addressed. Orders are also established by parties prior to a IV-D case being opened (i.e. the parties have an order at the time of application or referral).

The Federal Benchmark – the State of Minnesota must have support orders established for at least 50% of its IV-D cases or have a 5% improvement from the last year until it reaches 80% of the cases. The incentive increases as the establishment rate increases, but maximizes at 80%.

In FFY 2014 Minnesota was at 88% for IV-D Establishment of Support and thus maximizing its establishment incentives.

3. *Collection of Current Support* – This performance measure is the percentage of child support cases with current collections. This is measured by dividing the total amount of support distributed as current support during FFY, by the total amount of current support due for the same FFY.

$$\frac{\textit{Child Support \$\$\$ Distributed as Current Support in this FFY}}{\textit{Total Child Support \$\$\$ due in this FFY}}$$

The Federal Benchmark – the State of Minnesota must collect at least 40% of current support in its open IV-D cases. The incentive payment increases until 80% of the current support is collected, at which point the incentive payment is maximized.

In FFY 2014 Minnesota was at 72% for Current Support collections, thus only receiving 84% of what it could receive in incentives. Even though Minnesota is not maximizing its incentives in this measure, it is ranked 5th of all states in this measure.

4. *Collection of Arrear*s – This performance measure is the percentage of arrears cases with collections. This is measured by dividing the total number of cases that had a collection on arrears during the FFY, by the number of cases that had arrears due.

$$\frac{\textit{Total \# of IV-D cases paying toward arrears}}{\textit{Total \# of Iv-D cases with arrears due}}$$

The Federal Benchmark – the State of Minnesota must collect arrears payments from at least 40% of its IV-D cases that have arrears. The incentive payment increases until 80% of the cases have arrears payments, at which point the incentive payment is maximized.

In FFY 2014 Minnesota was at 70% for Current Support collections, thus only receiving 80% of what it could receive in incentives. Even though Minnesota is not maximizing its incentives in this measure, it is ranked 3rd in all states in this measure.

5. *Cost Effectiveness* – The official title for this performance measure is "Child Support Collections per Dollar of Program Spending." This is measured by dividing the total IV-D child support current and arrears payments collected by the total amount of money expended by the County and State programs.

$$\frac{\textit{Total IV-D \$\$\$ collected}}{\textit{Total IV-D \$\$\$ expended}}$$

The Federal Benchmark – the State of Minnesota must collect $2 in child support for every $1 of program spending. The size of the federal incentive payment increases until a state collects $5 in child support for every $1 of program spending, at which point the incentive payment is maximized.

In FFY 2014 Minnesota was at a $3.58 per $1 collected rate, thus receiving only 70% of the incentives for this measure. Sometimes it costs more money to ensure quality orders, quality enforcement, and a quality program (ensuring due process and fairness to families). This is not an excuse to not meet the potential in this measure, but arguably the Minnesota IV-D Program has a lot of quality over some other states that are more cost effective.

B. Federal Timeframes Matter – There are several federal timeframes that must be met in addition to the above performance measures. This is why counties come up with local efficiencies and short cuts. As long as all of the above is considered, there is nothing wrong with efficiencies and short cuts. Efficiencies and short cuts must balance legal requirements with timeframes.

1. *Intake and Locate* – Counties must open a case within 20 days after receipt of a public assistance referral or nonpublic assistance application and check locate resources or act upon new information within 75 days. Repeat attempts must be made at least quarterly (if locate is still needed).

2. *Establishment/Paternity* – Counties must serve or attempt to serve the parties within 90 days of the last party located. Counties must also obtain an order on 75% of cases within 6 months of service of process and obtain an order on 90% of cases within 12 months of service of process.

3. *Interstate* – Within 10 days, counties must:
    a. move forward on new information to the responding state,
    b. transfer to another county if needed, or
    c. send a new address to the initiating state and Central Registry if located in another state.

Within 20 days, counties must send a petition/registration to another State after the NCP is located if enforcement is no longer possible in Minnesota. Counties also have 30 days to respond to inquiries from responding states.

4. *Enforcement* – Counties must initiate an enforcement action within 30 days of locating assets if the obligation is 1 month in arrears, but service of process *is not* required. Counties must also initiate an enforcement action within 60 days of locating assets if the obligation is 1 month in arrears, and service of process *is* required.

5. *Income Withholding* – Counties must send an income withholding notice to the employer within 15 days of identifying an employer. Counties must send an income withholding notice to the employer within 2 business days after new employee information is entered onto the New Hire (Work Reporting System) database.

6. *Medical Support* – Counties must serve the National Medical Support Notice (NMSN) within 2 business days after new employee information is entered onto the New Hire (Work Reporting System) database and within 15 days if obtained information from other recognized source. Counties must also terminate NMSN within 10 days if medical support is no longer appropriate.

7. *Review and Adjust* – Counties must complete a review, and if appropriate, obtain an adjusted (modified) order within 180 days of determining a review and adjust is necessary.

8. *Collections and Distribution* – Counties must disburse support within 2 business days of receipt (unless it is tax money). For tax intercepts, if the obligor is a single filer, counties must disburse the money after 30 days of receipt. If the obligor is a joint filer, counties must disburse the money after 180 days of receipt (unless an injured spouse claim is filed and granted, then the part not granted can be released before the 180th day).

9. *Case Closure* – Counties must send a 60 day notice of intent to close the case unless the nonpublic assistance custodial parent requests case closure, or good cause is granted.