

MINNESOTA FAMILY SUPPORT & RECOVERY COUNCIL

2018 ANNUAL
CONFERENCE

Round Table Attorney Hot Topics

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Ethical Considerations for Public Attorneys

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Responsibilities regarding non-lawyers



- A lawyer having direct supervisory authority of a nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligation of the lawyer and
- A lawyer shall be responsible for the conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - The lawyer has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.3

What is our role?





Jenny's paternity jury trial



Scenario #1

Mother receives MFIP on behalf of herself and the child. No father is identified on child's birth certificate. County initiates paternity case. There is more than one presumed father, so the County names both of them in the paternity action. One presumed father is on GA and has been for years. One presumed father is employed and has work history.

Scenario #1 (continued)



Should the County:

- a. Take the position that "employed" father should be adjudicated, based purely on financial considerations and expenditure of public assistance.
- b. Look at all circumstances and the best interests of the child and make a recommendation on who should be adjudicated after that analysis.
- c. Take no position on who should be adjudicated.

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518A.49 ASSIGNMENT OF RIGHTS; JUDGMENT.



(b) 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 public authority may intervene as a matter of right in those 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. If the public authority participates in an IV-D case where the action taken by the public authority requires the use of an attorney's services, the public authority shall be represented by an attorney consistent with the provisions in section [518A.47](#).

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Scenario #2



Child Protection initiates a CHIPS case and needs to know who the father is to offer him services as part of the child protection case plan. The IV-D unit starts a paternity action. In the paternity pleadings, how do you handle birthing expenses and past support?

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Scenario #2 (continued)



In the paternity pleadings, how do you handle birthing expenses and past support?

- a. Don't plead it and don't worry about it because the only reason the County is involved is because of the pending CHIPS case and there is no application from Mother.
- b. Plead birthing expenses and past support and address them in court.
- c. Plead birthing expenses and past support but reserve both and let the parties file a motion in the future.

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Working with self-represented parties

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Scenario #3

In a paternity action, you talk with the mother first and explain physical and legal custody and parenting time. She says dad has not seen the infant child so she wants sole physical and legal and is ok with him having some supervised parenting time until he gets to know the child. You talk to dad who agrees he hasn't seen the child, would like parenting time and disagrees with the guidelines support obligation of \$500 which is without a PEA. After talking with you, the parties talk by themselves and the mother informs you that they have agreed to 50/50 parenting time which results in a \$100 support order by dad because she agrees he can't afford the \$500.

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Scenario #3 (continued)



You inform the mother that you do not represent her and she has the right to an attorney. She says she does not want an attorney. What do you do?

- Educate the mother as to the standard to modify a parenting time order.
- Inform her that if in the future she makes more than he does, she may be the person obligated to pay support.
- Discuss with mom that she could look at a possible deviation of child support even with the original parenting time schedule.
- Proceed with the agreement.

Scenario #4



Mother and Father are getting a divorce and father is receiving MFIP on behalf of the minor children who are temporarily in his care. The parties are pro se and have reached an agreement in the dissolution. No one has contacted child support throughout the process until the father calls to explain that there has been an agreement reached that was filed with the court an hour ago and he wants the child support agreement to be enforced immediately.

Scenario #4 (continued)



What do you do?

- a. Inform the dad that the court is going to schedule a hearing and prior to that hearing he needs to serve the county with his pleadings or a Notice to Public Authority.
- b. Thank dad for the information and tell him we cannot enforce anything until the order is signed.
- c. Ask the father if he submitted a guidelines worksheet with his paperwork and if he did not, tell him that will be required by the court at the hearing.
- d. Tell him you want to set up a meeting with him so you can go over the proposed decree that was filed prior to the court hearing to make sure it is legally sufficient.

Dealing with Unrepresented Person



- Lawyer shall not state or imply that the lawyer is disinterested.
- Lawyer shall disclose whether the client's interests are adverse to the unrepresented person's interests.
- Lawyer shall make reasonable effort to make sure the unrepresented person understands the lawyer's role.
- Lawyer shall not give legal advice to the unrepresented person, other than the advice to secure counsel if the lawyer knows the interests of the unrepresented person are or have a reasonable possibility of being in conflict with the interests of the client.

Rule 4.3



What is Legal advice?

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Scenario #5

You receive a call from an obligor saying she can't possibly pay her support amount. You tell her that you do not represent her and you cannot give her legal advice.

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Scenario #5



You tell her she can:

- a. Request an agency review of her case
- b. Bring a motion to modify
- c. Look at the courts website for forms, hire an attorney or seek help at a self-help center
- d. Both a. and b.
- e. Both a. and c.
- f. a. b. and c are all correct

Scenario #6



Mom and dad have drafted a stipulation where they agreed mom will have sole physical and legal custody, dad will have parenting time and will pay guidelines basic support. Dad brings the stipulation to you for approval. MA is being expended and dad has affordable insurance available. You ask dad if he will agree to provide insurance. He agrees but is frustrated that mom often brings the children to the emergency room for incidents that may not require emergency care which will result in additional costs for him if he provides insurance and they split unreimbursed costs according to their PICS.

Scenario #6 (continued)



You advise dad that you do not represent him, cannot give him legal advice and he may want to talk to an attorney. You tell him the county's position is that he should provide medical insurance. As to his concerns, you tell him:

- a. You have seen other orders where people address these issues within the custody provisions of their order.
- b. He may wish to discuss the division of unreimbursed/uninsured medical expenses with the mother if he does not want to agree to the PICS split.
- c. You tell him the definition of sole legal custody.
- d. None of the above.

What is legal advice?



- Telling someone what legal steps they should or should not take.
- Telling someone what the legal consequences are from certain actions.
- Telling someone that what they have done is legally sufficient or insufficient.

What should you do?



- Make sure they are not represented
- Be clear about your role and the county's role
- Ask if the party understands your role, and if they want to talk to you
- Educate and advise as to the party's rights
- Do not seek a waiver of important rights if you do not believe they understand what they are waiving



Candor to the Court



Scenario # 7



Mother and Father signed a ROP for the child. Mother applies for MFIP. In the County's 256 Establishment pleadings, the County indicates there is no court ordered custody or parenting time, accordingly, no parenting expense adjustment is given. One of the parties requests a hearing. Prior to the hearing, the CSO learns that the parties have been following a week-on week-off schedule with the child.

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Scenario # 7 (continued)



At the hearing, do you:

- a. Tell the Court the parties are splitting parenting time 50/50.
- b. Tell the Court nothing about the parenting arrangement and leave it to the parents to remember to tell the court.
- c. Tell the father that if he wants a deviation for parenting time he needs to tell the court about the 50/50 parenting time.

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Scenario #8



County initiates a 256 Establishment action in an NPA case. Mother and father are both working. Mother is personally served. Father is personally served by substitute service. CSO sees on jail roster that father was just arrested and is in jail. The time passes for responses to the motion and requested relief.

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Scenario #8 (continued)



Does the County:

- a. Go forward with the 256 Establishment default as plead.
- b. Serve NCP personally in jail to make sure he sees a copy of the pleadings and start timelines over.
- c. Amend the pleadings and recommend that NCP's obligation should be \$0, and serve NCP in jail.

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Candor Toward the Tribunal



(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal, or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 3.3

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County's role – new PEA considerations



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Scenario #9



Mom has primary physical custody of two children. Dad works full time but is self employed and has arranged his schedule so that he can pick the kids up from school, coaches their after school sports teams and takes the kids to doctor's appointments and orthodontist appointments. He has court ordered parenting time every other weekend during the day for approximately six hours on Saturday and six hours on Sunday. He does not have overnights. The parents' incomes are equal and this is an NPA case. Dad got a 12% reduction in the prior child support order. Dad files a motion to modify child support arguing he has equal parenting time with the kids.

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Scenario #9 (continued)



What is the county's position at the hearing?

- a. Ask the Magistrate to determine if the time Dad spends with the kids is equivalent to overnights and how many.
- b. Apply no parenting time adjustment at all, because there are no overnights and if dad would like the overnight equivalents he should file a motion in District Court.
- c. Argue that the 12% PEA from the prior order should apply.
- d. Argue that Dad should get the equivalent of 2 overnights per week.

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Scenario #10



Mom has primary custody of a child who is 2 years old and has special needs. Dad works in the evenings and takes care of the child during the day, five days a week while mom works because childcare is not available for this child. Dad has no overnights and visits with the child one day during the weekend every weekend from 10:00 a.m. to 5:00 p.m. There is a court order that states mom has sole physical custody of the child and dad has reasonable and liberal parenting time. There are public assistance funds being expended for the child.

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Scenario #10 (continued)



What do you do in your establishment pleadings?

- a. Apply no PEA but set direct to hearing to determine the overnight equivalent or see if parties will agree to adjustment.
- b. Apply no parenting time adjustment because there are no court ordered overnights
- c. Apply a PEA using overnight equivalents of equal parenting time.
- d. Do not apply a PEA but plead a deviation based on the time dad spends with the child.

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Scenario #11



In a paternity matter, Mom and alleged father agree to adjudication, joint legal custody, sole physical custody to mom and the name of the child by the time they come to the hearing. They are close to an agreement for a parenting time schedule but want to know how parenting time will affect child support. Public assistance funds are being expended.

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Scenario #11 (continued)



What do you do?

- a. Explain the Parenting Expense Adjustment to the parties, give them a piece of paper and a calculator and have them figure out the overnights so you can calculate support.
- b. Explain the Parenting Expense Adjustment to the parties and run calculations with various overnights based on the parenting time schedules the parties are considering to see if they can reach agreement on parenting time and support.
- c. Tell the parties there is a Parenting Expense Adjustment based on overnights and the Magistrate/Judge can explain it to you.
- d. Tell the parties that you cannot give them legal advice and give them the option of continuing the hearing so they can obtain legal advice or reach an agreement.

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Scenario #12



Mom and dad are the parents of two children. They are in court because dad has filed a motion to modify child support arguing that he should get a bigger break considering the custody order gives him a lot of overnights with the kids. The mother does not disagree with what the court order states but indicates to you that he does not exercise any of the overnights and he has not seen the kids in at least six months. The Magistrate asks you to speak with the parties to see if they have reached an agreement.

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Scenario #12 (continued)



What do you do?

- a. Talk to the parties and explain the Parenting Expense adjustment and inform the parties that if they disagree with the parenting time order they should file a motion in District Court to change the parenting time order.
- b. Explain to the parties when a child support order can be modified, explain the new parenting expense adjustment and leave them to their negotiations.
- c. Explain the limited jurisdiction of the Magistrate and let them argue their case to the Magistrate.
- d. Let them fight it out and ask court security to stand close by.

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Contact Info

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Paternity Issues Request and Affidavit of Parent: What Issues Will Be Addressed in My Paternity Case?

A paternity case involves a determination of the legal father for a child as well as the issues of custody, parenting time and the child's legal name. It also includes adding the father's name to the child's birth certificate. Here is a short summary of the issues:

1. **LEGAL FATHER:** Under Minnesota law, if a child's parents are not married to each other when the child is born, the father is not recognized as the "legal father" until someone takes legal steps to establish his paternity. Ramsey County requests genetic testing on all paternity cases.
2. **CUSTODY:**
 - a. "Physical Custody" is the routine daily care of the child(ren) and where the child(ren) primarily resides. Depending on several factors, parents may share physical custody, which is often called "**joint**" physical custody. Or, one of them may have "**sole**" physical custody.
 - b. "Legal custody" is making the major decisions about the child(ren), including education, health care, and religious upbringing. Depending on several factors, parents may share legal custody, which is often called "**joint**" legal custody. Or, one of them may have "**sole**" legal custody.
3. **PARENTING TIME:** "Parenting time" (previously called "visitation"), refers to the time that each parent spends with the child(ren). Some parents agree to a specific schedule, while others agree to a flexible schedule, as agreed to by the parents.
4. **CHILD'S LEGAL NAME:** The paternity order must include a determination of the child's legal name, either leaving the name as it is on the birth certificate or changing the child's name.
5. **CHILD SUPPORT:** "Child support" is court-ordered payments for the financial support of a child. Child Support may include basic support, medical support, child care support, and past support. Under Minnesota law, child(ren) have the right to be financially supported by both parents.

Do you and the other parent agree to any of these issues? Studies indicate that it is in the child(ren)'s best interests if the parents are able to reach agreements on their child(ren)'s custody and parenting time, when possible. Please contact your child support worker to discuss a possible agreement.

Do you have specific requests on custody, parenting time, or the child(ren)'s legal name? Please complete pages 2-3 of this document with your requests and return to the child support office ASAP. If our office receives this Affidavit before completing the court documents for your case, we can attach your affidavit.

Please note: The Ramsey County Attorney's Office does not represent either parent and cannot give legal advice to either parent. In addition, the attached Affidavit is not a formal response as the Court may require. If your case does not reach an agreement, you may have to serve and file a formal response, and pay the Court's filing fee, in order for your requests to be considered by the Court.

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CASE TYPE: 14 OTHER CIVIL

Ramsey County and

AFFIDAVIT OF PARENT

_____,
Petitioners,
and

IV-D Case No. _____,

_____,
Respondent(s).

I, _____, am the mother or alleged father of the child(ren):
_____, and I state the following as my requests on
the issues of the child(ren)'s custody, parenting time, and legal name(s) in Ramsey County's paternity action:

1. I request the following on physical custody (where the child(ren) primarily lives):

2. I request the following on legal custody (who makes the major decisions for the child):

3. I request the following on parenting time (when each parent spends time with the child):

4. I request that the child(ren)'s legal name be: _____

I understand that the court must consider the following factors when changing a child's legal name, and my responses are as follows. (If there is no change requested, do not complete A-H.)

- a. Does the other parent agree with the name change that you want?

☐ No ☐ Yes ☐ Unknown

b. If the child(ren) is old enough to state a preference, has the child(ren) said what he/she would like his/her new name to be?
☐ No ☐ Yes ☐ Not old enough

c. If the child(ren) is too young to state a preference, why do you think the name should change?

d. Do you think that changing the child(ren)'s name will affect his/her relationship with you and the other parent? ☐ No ☐ Yes

e. Is there any effect on the child(ren)'s community for the child's current name or new name?

f. Does the child(ren) have any difficulty, harassment, or embarrassment because of his/her current name? ☐ No ☐ Yes

g. Do you think that the child(ren) will have any difficulty, harassment, or embarrassment because of his/her new name? ☐ No ☐ Yes

h. Are there any other reasons not listed above as to why you want to change the child(ren)'s name?

5. I understand that completing this Affidavit does not guarantee that the Court will issue an order with my requests. I understand that I must appear at all court hearings on this paternity case in order for my requests to be considered. I understand that I may have to serve and file a formal response, and pay the Court's filing fee for the Court to consider my requests.

6. I understand that the Ramsey County Attorney's Office does not represent me or the other party. I understand that the Ramsey County Attorney's Office cannot give me legal advice.

7. I am freely and voluntarily completing this Affidavit.

I declare under penalty of perjury that everything I have stated in this document is true and correct. This document is signed in _____ County, Minnesota. Minn. Stat. § 358.116.
(fill in County name)

Date

(signature)
(print name)
(address)
(city, state, zip)
(phone #)