

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1323 Docket No. 05.0009.81R4

DATE RECEIVED 10/9/86
REVIEW DATE 10-10-86
DUE DATE 10-23-86

APPROVED 10/23/86
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING —
EMERGENCY RULE

REVISOR APPROVED 10-23-86
REVISOR DISAPPROVED
FILED W/SEC. STATE 10-29-86
RETURNED TO AGENCY 10-31-86

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion
October 26, 1984 Date published in State Register
yes Comments

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~

✓ Proposed rule
yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
257.60 Statutory Authority
no Small business statement
yes Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
July 18, 1986 Date (30)/25 days before adoption

✓ Publication in State Register
July 21, 1986 Date (30)/25 days before adoption

~~Resolution Adopting~~

✓ Findings of Fact, Conclusions & Order Adopting
Oct. 8, 1986 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
Julie K Harris Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

✓ Certificate

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: LEONARD W. LEVINE
Commissioner, Department of Human Services

ATTN: JULIE K. HARRIS
Special Assistant Attorney General

DATE: 10-30-86

FROM: J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Commissioner's Consent to Paternity Suit Settlements, Minnesota Rules, parts 9500.1650 to 9500.1663

The above-referenced rule has been approved as to its legality by the Attorney General on October 23, 1986.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

JMM:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR1323

Department of Human Services

Adopted Permanent Rules Relating to Commissioner's Consent to Paternity Suit Settlements

Rules as Adopted

9500.1650 APPLICABILITY.

Parts 9500.1650 to 9500.1663 govern the procedures and the standards applicable to the way in which the commissioner decides, as a party under Minnesota Statutes, section 257.60, whether to agree to a particular lump sum settlement or compromise agreement in a paternity action under Minnesota Statutes, sections 257.51 to 257.74. Parts 9500.1650 to 9500.1663 apply equally to lump sum settlements and compromise agreements proposed as part of a maternity suit under Minnesota Statutes, section 257.71.

9500.1655 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9500.1650 to 9500.1663, the following terms have the meanings given to them in this part.

Subp. 2. **Admission of paternity.** "Admission of paternity" means a written acknowledgement by a male that he is the biological father of a child.

Subp. 3. **Aid to families with dependent children or AFDC.** "Aid to families with dependent children" or "AFDC" means the program authorized by title IV-A of the Social Security Act to provide financial assistance services to needy families with dependent children.

Subp. 4. **Alleged father.** "Alleged father" means a male alleged to be the biological father of a child.

Subp. 5. **Blood test.** "Blood test" means a test using blood group identification of a mother, child, and alleged father that is used to predict the probability or exclude the possibility that the alleged father is the biological father of the child.

Subp. 6. **Child.** "Child" means an individual under age 18 whose parental relationship with the alleged father is being determined and whose legal rights and privileges are at issue.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 8. **Compromise agreement.** "Compromise agreement" has the meaning given it by Minnesota Statutes, section 257.64, subdivision 1, clause (b).

Subp. 9. **Costs.** "Costs" has the meaning given it under Minnesota Statutes, section 257.69.

Subp. 10. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 11. **Depository.** "Depository" means a person or organization entrusted to safekeep a father's or an alleged father's lump sum settlement or compromise agreement payments and to make periodic payments of the money on behalf of the child.

Subp. 12. **Guardian ad litem.** "Guardian ad litem" means the person designated by the court to represent the interests of a child in a paternity suit, according to Minnesota Statutes, section 257.60.

Subp. 13. **Income.** "Income" has the meaning given it under Minnesota Statutes, section 518.54, subdivision 6.

Subp. 14. **Interest rate.** "Interest rate" means the rate of interest used to calculate the present value of periodic payments a father is required to pay and is equal to the current market rate of interest on a United States Treasury obligation using as its maturity date the child's 18th birthdate.

Subp. 15. **Liability for past support.** "Liability for past support" means the financial obligation of the noncustodial parent to reimburse the local child support enforcement agency for all or a portion of past expenses furnished on behalf of a child under Minnesota Statutes, sections 257.66 and 257.67.

Subp. 16. **Local IV-D agency.** "Local IV-D agency" means the county or multicounty agency that is authorized under

Minnesota Statutes, section 393.07, to administer the child support enforcement program under the requirements of title IV-D of the Social Security Act, United States Code, title 42, sections 651 to 658, 660, 664, 666, 667, 1302, 1396(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

Subp. 17. **Lump sum settlement.** "Lump sum settlement" means a single payment to satisfy the remaining obligations of a noncustodial parent for support of the parent's minor child.

Subp. 18. **Medical support.** "Medical support" has the meaning given it under Minnesota Statutes, section 518.171.

Subp. 19. **Mother.** "Mother" means a woman who was not married to her child's father when the child was born or when the child was conceived.

Subp. 20. **Office of Child Support Enforcement.** "Office of Child Support Enforcement" means the office within the department that administers the child support enforcement program for the purposes of locating absent parents, establishing paternity, and establishing and enforcing orders for support under the requirements of title IV-D of the Social Security Act, United States Code, title 42, sections 651 to 658, 660, 664, 666, 667, 1302, 1396(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

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Subp. 22. **Paternity suit.** "Paternity suit" means a legal action brought to establish that a man is the biological father of a child and has legally enforceable duties and responsibilities in regard to that child.

Subp. 23. **Periodic payments.** "Periodic payments" means payments of support on a schedule established by the court under Minnesota Statutes, section 518.551, subdivision 5.

Subp. 24. **Present value.** "Present value" means the current monetary worth of future periodic payments. The formula used to determine present value is $An = V\ 1-(1+i)^{-n}/i$ where:

"An" means present value of the periodic payments,

"V" means value of the periodic payments,

"n" means number of periodic payments, and

"i" means interest rate.

Subp. 25. **Reimbursement.** "Reimbursement" means payment of a sum for public funds expended for the care and support of a child under Minnesota Statutes, sections 256.87; 257.66, subdivisions 3 and 4; 257.69; and 393.07, subdivision 9.

Subp. 26. **Support.** "Support" has the meaning given to "support money" under Minnesota Statutes, section 518.54, subdivision 4.

9500.1656 CONSENT BY COMMISSIONER TO A COMPROMISE AGREEMENT.

The commissioner shall not consent to a compromise agreement.

9500.1657 COMMISSIONER'S CONSENT TO A LUMP SUM SETTLEMENT.

The commissioner shall consider each proposed lump sum settlement that is submitted to the commissioner. If a submitted proposed lump sum settlement does not comply with parts 9500.1650 to 9500.1663, the commissioner shall not consent to the proposed lump sum settlement.

9500.1658 STANDARDS USED BY COMMISSIONER TO DETERMINE WHETHER TO CONSENT TO A PROPOSED LUMP SUM SETTLEMENT.

Subpart 1. **Standards.** The commissioner shall consent to a proposed lump sum settlement only if the conditions of subparts 2 to 6 are met.

Subp. 2. **Admission of paternity.** The alleged father must admit paternity and either waive blood tests or the results of blood tests indicate a likelihood of more than 92 percent that the alleged father is the biological father of the child.

Subp. 3. **Comparison of proposed lump sum settlement to present value of periodic payments.** The proposed lump sum settlement must be equal to or greater than the present value of periodic payments.

Subp. 4. **Liability for past support and costs.** A provision must be made for a partial or full reimbursement

consisting of the alleged father's liability for past support and costs. The alleged father's liability for past support and costs includes:

A. all or a proportion of the amount of assistance furnished the child during the two years immediately preceding the start of the paternity action under Minnesota Statutes, section 256.66, subdivision 4;

B. expenses of the mother's pregnancy and confinement under Minnesota Statutes, section 257.66, subdivision 3; and

C. all or a proportion of costs and fees detailed under Minnesota Statutes, section 257.69, subdivision 2.

If a reimbursement is to be made through payments to the local IV-D agency, provisions for income withholding shall be included in the proposed lump sum settlement agreement under Minnesota Statutes, section 518.611.

Subp. 5. **Protection over lump sum settlement amount.** A plan to invest the lump sum settlement to meet the child's future needs and to prevent rapid depletion of the lump sum settlement must be made part of the lump sum settlement. The plan to invest the lump sum settlement must include:

A. an agreement to deposit the lump sum settlement amount in an interest bearing account with a rate of interest based on a United States Treasury obligation that matures on the date of the child's 18th birthday;

B. provisions for making periodic payments to the child until the child is 18 years of age;

C. provisions for making the periodic payments under item B to the public agency, if the child receives AFDC or becomes eligible to receive AFDC and rights to support are assigned under Minnesota Statutes, section 256.74, subdivision 5;

D. the name of the depository that will hold and disburse the lump sum settlement under this subpart;

E. the name of the person or agency designated to make decisions on managing the lump sum settlement account; and

F. the amounts charged by the depository for the costs of administering the lump sum settlement account.

Subp. 6. **Medical benefits.** The lump sum settlement must provide for maintenance of health and dental insurance for the child under Minnesota Statutes, section 518.171.

9500.1659 CONTENTS OF PROPOSED LUMP SUM SETTLEMENT AGREEMENT.

A proposed lump sum settlement must include:

A. the names and addresses of the parties to the paternity suit;

B. a statement indicating whether there has been an admission of paternity;

C. the amount of reimbursement agreed to be paid to the local IV-D agency and the method by which payments will be made as required under part 9500.1658, subpart 4;

D. the amount of the proposed lump sum settlement;

E. a plan for distributing the lump sum settlement amount on behalf of the child under part 9500.1658, subpart 5;

F. a written statement showing compliance with part 9500.1658, subpart 6, by the responsible parent; and

G. a signature line for each of the parties and the guardian ad litem.

9500.1660 DOCUMENTS THAT MUST ACCOMPANY A PROPOSED LUMP SUM SETTLEMENT AGREEMENT

The documents in items A to G must accompany the proposed lump sum settlement submitted to the commissioner:

A. the statement of blood test results or a statement that blood tests were waived by the alleged father;

B. a statement of the reasons a lump sum settlement is proposed rather than periodic payments;

C. a copy of the alleged father's affidavit of earnings, income, and resources, including real and personal property;

D. the mathematical calculation used to make the computation required under part 9500.1658, subpart 3;

E. an itemization of amounts previously expended by each public agency as support on behalf of the child, including dates and amounts of AFDC expended, pregnancy and confinement

expenses, costs of blood tests, filing fees, service of process fees, and county attorney's fees;

F. a written statement showing how the plan for reimbursement of the alleged father's liability for support and costs owed to the local IV-D agency was derived; and

G. a written, signed statement from the guardian ad litem that indicates how the proposed lump sum settlement is in the best interest of the child.

9500.1661 TIME FOR SUBMISSION OF PROPOSAL.

The proposed lump sum settlement agreement under part 9500.1659 and documents required under part 9500.1660 must be submitted to the Office of Child Support Enforcement for review at least 30 days before the date scheduled for the court hearing on the proposed lump sum settlement. If the 30-day period is not complied with, parties must not presume that the commissioner has consented to the proposed lump sum settlement unless a written statement to that effect is made by the commissioner and submitted to the parties.

9500.1662 REVIEW PROCESS.

On receipt of a proposed lump sum settlement, the commissioner shall review the submitted proposal and documents for compliance with parts 9500.1650 to 9500.1663. If the commissioner consents to the proposal, the commissioner will sign the proposal and return it to the submitting party. If the commissioner does not consent to the proposal, the commissioner will send a letter to the submitting party indicating the reasons for not consenting to the proposal. The commissioner will send copies of either response to the court of jurisdiction. The commissioner will also send copies of either response to the other parties and guardian ad litem if addresses for those parties are provided by the submitting party.

9500.1663 NOTIFICATION OF FINAL DISPOSITION.

If the lump sum settlement or compromise agreement is approved by the court, a copy of the final order must be

provided to the commissioner within 30 days of the date of the court order. If the submitted agreement is not approved by the court, the commissioner must be notified in writing of any other disposition made regarding the paternity suit. The parties other than the commissioner must agree between themselves as to the party responsible for notification to the commissioner in accordance with this part.

APPROVED AS TO FORM AND LEGALITY

10/23 19 86

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

OCT 29 1986 3:17 P.M.

Joan Anderson Growe
Secretary of State

Department of Human Services
Income Maintenance Bureau

Outside Opinion Sought Concerning Rules Governing Lump Sum Settlements and Compromise Agreements in Paternity Actions

Notice is hereby given that the Minnesota Department of Human Services solicits opinion on proposed permanent rules governing the procedures for lump sum settlements and compromise agreements in paternity actions.

This rule is authorized under Minnesota Statutes, section 257.60, in conjunction with Minnesota Statutes, chapter 14.

The rule will govern the procedure for submission of a lump sum settlement or compromise agreement in paternity actions to which the Commissioner of Human Services and the child are parties under Minnesota Statutes, section 257.60; the specific provisions to be included in the agreement; and the procedures to be followed by the Office of Child Support Enforcement as authorized representative of the Commissioner in reviewal and approval of lump sum settlements or compromise agreements.

All interested or affected persons or groups are invited to participate. Statements of information and comment may be made orally or in writing.

Oral statements of information or comments will be received during regular business hours over the telephone at 612/296-2555.

Written statements of information and comment may be addressed to:

Mary L. Anderson, Program Advisor
Office of Child Support Enforcement
Department of Human Services
Space Center Building, Second Floor
444 Lafayette Road
St. Paul, MN 55101

All statements of information and comment will be accepted by the Department until further notice. Any written material received by the Department shall become part of the hearing record.

Metropolitan Council

Public Hearing on Amendments to the System Plan Section of Part 1 of the Water Resources Management Development Guide/Policy Plan

The Metropolitan Council will hold a public hearing on Thursday, Nov. 15, 1984 from 2:00-3:30 p.m., in the Metropolitan Council Chambers, 300 Metro Square Bldg., 7th and Roberts Sts., St. Paul, Minnesota 55101, for the purpose of receiving public comments on the proposed amendments to Part 1 of the Water Resources Management Development Guide/Policy Plan. Changes proposed include phasing out of the Savage Wastewater Treatment Plant (WWTP) to the Seneca WWTP, construction of a new Middle Belt Line Interceptor, and several system improvement studies. The amendments are prepared in accordance with the Metropolitan Council's authority under Minn. Stat. § 473.145. All interested persons are encouraged to attend the hearing and offer comments on the proposed amendments. Persons wishing to speak at the hearing are encouraged to register in advance by contacting the Council's public hearing coordinator at 291-6521. Those who register first will be scheduled to speak first. Written comments may be submitted until Dec. 3, 1984. Copies of the hearing documents are available for public inspection beginning Monday, Oct. 15, 1984 at the following locations:

Metropolitan Council Library
300 Metro Square Building
St. Paul, Minnesota 55101

Minneapolis Public Library
Government Documents Room
300 Nicollet Mall
Minneapolis, Minnesota 55401

St. Paul Public Library
Science and Industry Room
90 W. Fourth Street
St. Paul, Minnesota 55102

Anoka County Library—Blaine Branch
707 Highway 10
Blaine, Minnesota 55434

Carver County Library—Burnsville Branch
314 Walnut Street
Chaska, Minnesota 55318

Aitkin County Family Service Agency

CHILD SUPPORT UNIT
AITKIN, MINNESOTA 56431
927-3744

DIRECTOR
ROBERT F. FARRELL

COUNTY ATTORNEY
JOHN LEITNER

December 6, 1984

SERVICES:
Establish Child Support Obligation
Enforce Court Ordered Child Support
Initiate Paternity Actions
Absent Parent Locator Service
Investigate Suspected Fraud

Office of Child Support Enforcement
Attn: Mary Anderson
Space Center Bldg., 2nd Floor
444 Lafayette Rd.
St. Paul, MN 55101

Re: Lump-Sum Settlement

Dear Mary:

I hope I am not too late to tender my opinion on proposed permanent rules govering the procedures for lump-sum settlements and compromised agreements in paternity actions. I don't know just how old this legislative report is that I have, but hopefully nothing permanent has been done yet.

I am of the opinion that lump-sum settlements should not be allowed except in the extreme circumstances such as the child is in the late teens, the alleged father has a long history of economic problems or is in and out of jail frequently, etc. Lump-sum settlement circumstances are costly for the county, especially since they require attorneys for everyone involved and in many cases they are public defenders for the alleged father, child, the mother, and county attorney for the county. Also, the sum of money received is seldom anywhere close to the amount of afdc the county could be placing if the mother remains on assistance for the child.

Also, I feel that no one is able to adequately forsee the future and what it will hold for the people involved, and it does not seem right that the Court should make a decision when the child is young about its next eighteen years. I am sure every county can cite examples of payors who originally were not financially secure but a number of years later proved to be quite good prospects.

If lump-sums will be allowed, it should provide a permanent untouchable, interest bearing fund from which payments are disbursed by a public agency. The amount placed in the fund should be sufficient as to bear interest in an adequate amount to represent child support, and the lump-sum at the end of the child's 18th birthday or emancipation should be provided for; part, of course, should go to the agency for administration etc, if not all of the money. In that manner, the public agency is protected should the child go on afdc or remain on afdc during its minor years. The child is also protected if something happens to the mother, and the mother is not able to squander the entire sum within a short period of time and return to public assistance. By making a public agency controller, you are assuring that the money will not be foolishly spent within a quick time

frame, and that there would be a regular monthly payment for the life of the child.

Our assistant county attorney comes from a different point of view. He feels that more discretion should be given to the county attorney's office and the agency and that strict rules should not be set up.

I'm assuming, of course, that this is only relating to paternity actions where the alleged father pays a certain sum of money in return for an admission of paternity but no on-going continuing support amount. I assume this is not talking about compromising past afdc benefits for "cash in hand".

If there are any other polls being taken regarding this, I would appreciate being part of that.

Sincerely,

Ruth Sundermeyer

Ruth Sundermeyer
Child Support Officer

RSS/kn

Department of Human Services

Proposed Permanent Rules Relating to Commissioner's Consent to Paternity Suit Settlements

Rules as Proposed (all new material)

9500.1650 APPLICABILITY.

Parts 9500.1650 to 9500.1663 govern the procedures and the standards applicable to the way in which the commissioner decides, as a party under Minnesota Statutes, section 257.60, whether to agree to a particular lump sum settlement or compromise agreement in a paternity action under Minnesota Statutes, sections 257.51 to 257.74. Parts 9500.1650 to 9500.1663 apply equally to lump sum settlements and compromise agreements proposed as part of a maternity suit under Minnesota Statutes, section 257.71.

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APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 6. **Child.** "Child" means an individual under age 18 whose parental relationship with the alleged father is being determined and whose legal rights and privileges are at issue.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

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Subp. 9. **Costs.** "Costs" has the meaning given it under Minnesota Statutes, section 257.69.

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APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Minnesota Statutes, section 393.07, to administer the child support enforcement program under the requirements of title IV-D of the Social Security Act, United States Code, title 42, sections 651 to 658, 660, 664, 666, 667, 1302, 1396(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

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Subp. 18. **Medical support.** "Medical support" has the meaning given it under Minnesota Statutes, section 518.171.

Subp. 19. **Mother.** "Mother" means a woman who was not married to her child's father when the child was born or when the child was conceived.

Subp. 20. **Office of Child Support Enforcement.** "Office of Child Support Enforcement" means the office within the department that administers the child support enforcement program for the purposes of locating absent parents, establishing paternity, and establishing and enforcing orders for support under the requirements of title IV-D of the Social Security Act, United States Code, title 42, sections 651 to 658, 660, 664, 666, 667, 1302, 1396(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

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APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

"V" means value of the periodic payments,

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Subp. 25. **Reimbursement.** "Reimbursement" means payment of a sum for public funds expended for the care and support of a child under Minnesota Statutes, sections 256.87; 257.66, subdivisions 3 and 4; 257.69; and 393.07, subdivision 9.

Subp. 26. **Support.** "Support" has the meaning given to "support money" under Minnesota Statutes, section 518.54, subdivision 4.

9500.1656 CONSENT BY COMMISSIONER TO A COMPROMISE AGREEMENT.

The commissioner shall not consent to a compromise agreement.

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Subp. 2. **Admission of paternity.** The alleged father must admit paternity and either waive blood tests or the results of blood tests indicate a likelihood of more than 92 percent that the alleged father is the biological father of the child.

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Subp. 4. **Liability for past support and costs.** A provision must be made for a partial or full reimbursement

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

consisting of the alleged father's liability for past support and costs. The alleged father's liability for past support and costs includes:

A. all or a proportion of the amount of assistance furnished the child during the two years immediately preceding the start of the paternity action under Minnesota Statutes, section 256.66, subdivision 4;

B. expenses of the mother's pregnancy and confinement under Minnesota Statutes, section 257.66, subdivision 3; and

C. all or a proportion of costs and fees detailed under Minnesota Statutes, section 257.69, subdivision 2.

If a reimbursement is to be made through payments to the local IV-D agency, provisions for income withholding shall be included in the proposed lump sum settlement agreement under Minnesota Statutes, section 518.611.

Subp. 5. **Protection over lump sum settlement amount.** A plan to invest the lump sum settlement to meet the child's future needs and to prevent rapid depletion of the lump sum settlement must be made part of the lump sum settlement. The plan to invest the lump sum settlement must include:

A. an agreement to deposit the lump sum settlement amount in an interest bearing account with a rate of interest based on a United States Treasury obligation that matures on the date of the child's 18th birthday;

B. provisions for making periodic payments to the child until the child is 18 years of age;

C. provisions for making the periodic payments under item B to the public agency, if the child receives AFDC or becomes eligible to receive AFDC and rights to support are assigned under Minnesota Statutes, section 256.74, subdivision 5;

D. the name of the depository that will hold and disburse the lump sum settlement under this subpart;

E. the name of the person or agency designated to make decisions on managing the lump sum settlement account; and

F. the amounts charged by the depository for the costs of administering the lump sum settlement account.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 6. **Medical benefits.** The lump sum settlement must provide for maintenance of health and dental insurance for the child under Minnesota Statutes, section 518.171.

9500.1659 CONTENTS OF PROPOSED LUMP SUM SETTLEMENT AGREEMENT.

A proposed lump sum settlement must include:

A. the names and addresses of the parties to the paternity suit;

B. a statement indicating whether there has been an admission of paternity;

C. the amount of reimbursement agreed to be paid to the local IV-D agency and the method by which payments will be made as required under part 9500.1658, subpart 4;

D. the amount of the proposed lump sum settlement;

E. a plan for distributing the lump sum settlement amount on behalf of the child under part 9500.1658, subpart 5;

F. a written statement showing compliance with part 9500.1658, subpart 6, by the responsible parent; and

G. a signature line for each of the parties and the guardian ad litem.

9500.1660 DOCUMENTS THAT MUST ACCOMPANY A PROPOSED LUMP SUM SETTLEMENT AGREEMENT

The documents in items A to G must accompany the proposed lump sum settlement submitted to the commissioner:

A. the statement of blood test results or a statement that blood tests were waived by the alleged father;

B. a statement of the reasons a lump sum settlement is proposed rather than periodic payments;

C. a copy of the alleged father's affidavit of earnings, income, and resources, including real and personal property;

D. the mathematical calculation used to make the computation required under part 9500.1658, subpart 3;

E. an itemization of amounts previously expended by each public agency as support on behalf of the child, including dates and amounts of AFDC expended, pregnancy and confinement

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expenses, costs of blood tests, filing fees, service of process fees, and county attorney's fees;

F. a written statement showing how the plan for reimbursement of the alleged father's liability for support and costs owed to the local IV-D agency was derived; and

G. a written, signed statement from the guardian ad litem that indicates how the proposed lump sum settlement is in the best interest of the child.

9500.1661 TIME FOR SUBMISSION OF PROPOSAL.

The proposed lump sum settlement agreement under part 9500.1659 and documents required under part 9500.1660 must be submitted to the Office of Child Support Enforcement for review at least 30 days before the date scheduled for the court hearing on the proposed lump sum settlement. If the 30-day period is not complied with, parties must not presume that the commissioner has consented to the proposed lump sum settlement unless a written statement to that effect is made by the commissioner and submitted to the parties.

9500.1662 REVIEW PROCESS.

On receipt of a proposed lump sum settlement, the commissioner shall review the submitted proposal and documents for compliance with parts 9500.1650 to 9500.1663. If the commissioner consents to the proposal, the commissioner will sign the proposal and return it to the submitting party. If the commissioner does not consent to the proposal, the commissioner will send a letter to the submitting party indicating the reasons for not consenting to the proposal. The commissioner will send copies of either response to the court of jurisdiction. The commissioner will also send copies of either response to the other parties and guardian ad litem if addresses for those parties are provided by the submitting party.

9500.1663 NOTIFICATION OF FINAL DISPOSITION.

If the lump sum settlement or compromise agreement is approved by the court, a copy of the final order must be

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provided to the commissioner within 30 days of the date of the court order. If the submitted agreement is not approved by the court, the commissioner must be notified in writing of any other disposition made regarding the paternity suit. The parties other than the commissioner must agree between themselves as to the party responsible for notification to the commissioner in accordance with this part.

OFFICE BY:

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Commissioner's Consent to Paternity Suit Settlements

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9500

The attached rules are approved for publication in the State Register

Susan E. Quayle

Susan E. Quayle
Assistant Revisor

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Commissioner's Consent to Paternity Suit Settlements, Minnesota Rules, parts 9500.1650 to 9500.1663

Notice of Proposed Adoption Of A Rule Without A Public Hearing

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 257.60.

All persons have 30 days or until 4:30 p.m. on August 20, 1986 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Mary Anderson
Office of Child Support Enforcement
444 Lafayette Road, 2nd Floor
St. Paul, MN 55101
Telephone: 612/296-2555

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

Minnesota Statutes, section 257.60, mandates the court to name the commissioner a party to a paternity suit in which a lump-sum settlement or compromise agreement is proposed. As a party to the paternity suits, the commissioner must decide whether to consent to the proposed lump-sum settlement or compromise agreement.

The purpose of proposed rule parts 9500.1650 through 9500.1663, therefore, is to govern the commissioner's decisions on whether to consent to a lump-sum settlement or compromise agreement proposed as part of a paternity suit.

Proposed parts 9500.1650 through 9500.1663 apply to all parties of and persons concerned with a paternity suit involving a lump-sum settlement or compromise agreement proposal.

The proposed rules indicate that the commissioner will not consent to a compromise agreement, indicate that the commissioner will consent to lump-sum settlement proposal; describe the standards used by the commissioner to determine whether to consent to a proposed lump-sum settlement; describe the required contents of a proposed lump-sum settlement proposal; describe the documents that must accompany a proposed lump sum settlement agreement; and give timelines for submission of lump-sum settlement proposals to the commissioner.

The proposed rules also include definitions of terms necessary for uniform application of these rules; the process for the commissioner's review of submitted lump-sum settlements; and requirements for notifying the commissioner of the court's final orders pertaining to the lump-sum settlement or compromise agreement.

A free copy of the rule is available upon request from Mary Anderson.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mary Anderson upon request.

The adoption of these rules will not result in additional spending by local public bodies in either of the first two years following implementation of the rule.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Mary Anderson.

7-7-86
Date

LEONARD W. LEVINE, Commissioner
Department of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Governing Commissioner's Consent to Paternity Suit Settlements, Minnesota Rules, Parts 9500.1650 to 9500.1663

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

IT IS ORDERED this 7th day of July, 1986, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Human Services for that purpose and be published in the State Register .

STATE OF MINNESOTA



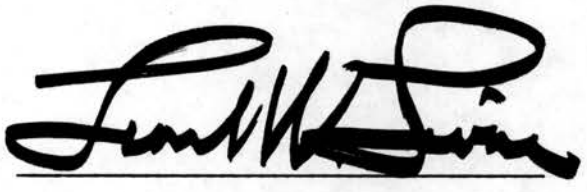
LEONARD W. LEVINE, Commissioner
Department of Human Services

FISCAL NOTE FOR DEPARTMENT OF HUMAN SERVICES

PERMANENT RULE

PARTS 9500.1650 THROUGH 9500.1663

The permanent rule parts are expected to produce no net change in total costs for state and local governments. A lump sum settlement or compromise agreement is settlement to a paternity suit which w ould be otherwise settled by trial and a court order or dismissal of the action.



LEONARD W. LEVINE

Commissioner

Minnesota Department of Human Services

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Minnesota Rules, parts 9500.1650 Through 9500.1663 Governing the Commissioner's Decision on Whether to Consent to Lump Sum Settlements or Compromise Agreements Proposed in Paternity Suits.

STATEMENT OF NEED AND REASONABLENESS

PURPOSE OF AND PROCEDURES GOVERNED BY THE PROPOSED RULES

Minnesota Statutes, section 257.60, mandates the court to name the commissioner a party to a paternity suit in which a lump sum settlement or compromise agreement is proposed. Proposals for compromise agreements are authorized under Minnesota Statutes, section 257.64, subdivision 1, and proposals for lump sum settlements are authorized under Minnesota Statutes, section 257.66, subdivision 4.

As a party to the paternity suits, the commissioner must decide whether to consent to the proposed lump sum settlement or compromise agreement.

Authority for the commissioner to make decisions relating to lump sum settlements and compromise agreements is given under Minnesota Statutes, sections 256.72; 256.74; 256.87 and 393.07, subdivisions 2, 3, and 5.

The commissioner's decisions as a party to paternity suits under Minnesota Statutes, section 257.60, and the procedures used to arrive at those decisions are defined as rules according to the Minnesota Administrative Procedures Act. Under the Act, all parties affected by rules must be given a chance to see and comment on rules before they are promulgated as law.

The purpose of proposed rule parts 9500.1650 through 9500.1663, therefore, is twofold; the first purpose is to govern the

commissioner's decisions on whether to consent to a lump sum settlement or compromise agreement proposed as part of a paternity suit, and the second purpose is to allow affected persons to comment on the proposed rule parts.

LEGISLATIVE BACKGROUND OF CHILD SUPPORT ENFORCEMENT

Laws pertaining to child support enforcement are based on the assumption that the biological or adoptive parents of a child should be responsible for the financial support of that child. Congress and state legislatures have used this assumption to develop child support enforcement legislation for at least 35 years.

In 1950 Congress added section 402(a)(11) to the Social Security Act to require state welfare agencies to notify law enforcement officials when Aid to Families with Dependent Children (AFDC) was furnished to a child of an absent parent. In 1965 and 1967 Congress passed laws to allow states to request addresses of absent parents from the Department of Health, Education, and Welfare (now the Department of Health and Human Services) and from the Internal Revenue Service, and to require states to establish offices for child support enforcement.

In 1975, Public Law 93-647 established the child support enforcement program as part D of title IV of the Social Security Act. According to part D, states have primary responsibility to operate the child support enforcement program according to a state plan. A major component the state plan must contain is a plan for the state to establish paternity and secure support for individuals who receive AFDC and who apply directly for child support services.

Public law 94-88, also passed in 1975, and Code of Federal Regulations, Title 45, section 232.12 require as a condition of eligibility for assistance, that each applicant for or recipient of

AFDC be required to cooperate with the local IV-D agency in establishing the paternity of a child born out-of-wedlock for whom assistance is claimed. An applicant for or recipient of AFDC can be excused from cooperating in establishing paternity or securing support under circumstances such as rape or incest when cooperating would not be in the best interest of the child.

Code of Federal Regulations, title 45, sections 301 through 306 guide implementation of Title IV-D of the Social Security Act.

Code of Federal Regulations, title 45, section 303.5 requires the local IV-D agency to try to establish paternity and an order for support in the case of a child born out-of-wedlock:

1. in all cases covered by an assignment of support and maintenance rights under operation of law, and

2. in all cases where an indivdual not receiving public assistance requests child support collection and paternity determination services.

Congress enacted the Child Support Enforcement Amendments of 1984 (Public Law 98-378), to strengthen State laws and put strong enforcement techniques in place. Public Law 98-378 requires states to have laws and procedures that permit the establishment of paternity of any child at any time prior to that child's eighteenth birthday; to establish guidelines for setting child support award amounts within the state; to include medical support in new or modified support orders; and to require mandatory wage withholding for support. This federal law assures that support money goes to children for whom it is intended, regularly and reliably, and helps avoid expenditures of public support.

Prior to enactment of Public Law 98-378 Minnesota had already improved child support enforcement with Minnesota Statutes, Chapters

308 in 1983 and 547 in 1984.

The increasing numbers and strictness of laws and regulations pertaining to child support enforcement and paternity establishment corresponds to the apparent failure by absent parents to support their children. The failure of absent parents to support those children causes a corresponding increase in the dependence of children on the welfare system. To decrease the dependence of children on welfare, welfare agencies must establish who the biological parents of children are and then require those parents to support their children.

Minnesota's AFDC and child support enforcement program are supervised by the state Department of Human Services and administered by county human service or welfare agencies. Title IV-D services are provided to all families in need of support, including those receiving AFDC and those who do not receive AFDC but apply for help to establish paternity and obtain support from an absent parent. Child support collected by the county agencies is used to reimburse the state for AFDC paid to a family or is sent to the family if the family does not receive AFDC, has not received AFDC, or has already reimbursed the state for past AFDC support.

Although Minnesota Statutes, Chapter 518 requires both parents to support their children financially, a parent of an illegitimate child cannot be compelled to support the child until parentage is acknowledged or established or the parent offers financial support for the child in a legally binding document.

Many mothers of illegitimate children depend on public assistance until paternity is established and support is collected from the father. "Child Support Enforcement, 8th Annual Report to Congress for Period Ending September 30, 1983" (Appendix A) reports that the percentage of American children under 18 that live with only their

mothers has increased steadily since 1960 and that female-headed families with no husband because of divorce or because they have never been married are much more likely to be poor. Code of Federal Regulations, title 45, sections 302.31 and 303.5 require the state to establish paternity for children of applicants or recipients of AFDC except under good cause provisions and for persons not receiving AFDC who apply for paternity establishment and collection services. Because of these requirements, the establishment of paternity has a high priority for Minnesota's Title IV-D program.

GOVERNING PRINCIPLE AND PUBLIC INPUT

To prepare proposed parts 9500.1650 through 9500.1663, the commissioner used the procedures mandated by the Minnesota Administrative Procedures Act, the Office of Administrative Hearings, and a public advisory committee.

A notice to solicit outside opinion was published at Volume 9 State Register, page 849, number 17, dated October 22, 1984.

The public advisory committee was formed by the commissioner in January of 1985. The committee consisted of attorneys, a guardian ad litem, a child support officer, a judge, an accountant and financial specialist, a department rules development specialist, and State Office of Child Support Enforcement staff (see appendix B for a list of committee members). All committee members were familiar with, and most were experts on, paternity suits that propose lump sum settlements and compromise agreements. The committee met for a total of at least 10 hours.

To decide on rule provisions the committee had to identify the interests of the commissioner, child, alleged parent, and known parent that could influence the commissioner's decision to consent to a

proposed lump sum settlement or compromise agreement. Then the committee had to decide whether those interests should guide the commissioner's decision on whether or not to consent.

It became clear that in paternity suits that propose a lump sum settlement or compromise agreement, it is in the alleged parent's interest to minimize the amount of support ordered by the court, and that it is in the known parent's (plaintiff's) and child's interest to maximize the amount of support ordered by the court.

The commissioner's interests, however, were less clear at first. Under Minnesota Statutes, section 257.175 the commissioner must protect the interests of "defective, dependent, neglected and delinquent children, ..., and take initiative in all matters involving the interest of such children where adequate provision therefor has not been made". Yet, under Minnesota Statutes, section 256.462, subdivision 3, the commissioner is mandated to recover money expended for AFDC, and under Minnesota Statutes, section 256.87, Subdivision 1, the commissioner is authorized to bring action against a parent for the amount of AFDC that has been given a child. Therefore, the commissioner and the child could be perceived to be in an adversial relationship in suits where the commissioner must try to recover from the alleged parent public assistance that was paid the child and where support for the child is being sought - in such suits the child and commissioner would be competing for money from the alleged parent.

The committee also realized, however, that unless the commissioner sought a lump sum settlement that was large enough to partially or fully reimburse the commissioner and provide support for the child until the child is 18 years of age the commissioner would probably have to provide support for the child later. It is in the commissioner's best interest then to try to obtain enough money to

repay the commissioner and support the child - and by trying to obtain that amount of money, the commissioner's legal responsibility to protect the child and the taxpayor is satisfied.

After identifying the interests of the parties involved in the paternity suits and after analyzing how those interests are protected in a paternity suit, it became apparent that the governing principle of proposed parts 9500.1650 through 9500.1663 should be the protection of the commissioner's interest to (1) recover past support provided by the commissioner and other costs related to the paternity suit, and (2) to consent only to those proposed lump sum settlements that provide all child support required under rules and laws, including medical insurance. In other words, proposed parts 9500.1650 through 9500.1663 are designed in part to try to obtain enough money and protections to prevent or reduce the need to provide the child with AFDC and medical assistance (medicaid) benefits.

Compromise agreements, which do not establish paternity, are not reasonable from the commissioner's point of view because they do not establish paternity. Paternity must be established to make the child eligible for certain financial benefits to which a child is entitled only through his or her biological or adoptive parent. Financial benefits that are contingent on establishing paternity and that are available to the child may prevent the commissioner from having to provide AFDC or medical assistance for the child. Such benefits include social security, veteran's benefits, workers compensation allowances, and health and life insurance benefits. Therefore, proposed part 9500.1658, subpart 2, protects the commissioner's and the child's interests in these benefits by requiring an admission of paternity coupled with a waiver of blood tests or indicating a "likelihood of more than 92% that the alleged father is the biological

father of the child".

Since compromise agreements are categorically rejected by the commissioner, proposed parts 9500.1650 through 9500.1663 govern how and under what conditions the commissioner will consent to proposed lump sum settlements. A proposed lump sum settlement must be large enough to at least partially or fully reimburse the commissioner for public assistance previously provided the child, blood test costs, medical expenses, filing fees, service fees, and attorney fees, and provide adequate ongoing support for the child until the child is age 18.

Proposed parts 9500.1650 through 9500.1663 are also reasonable because they set standards that enable the commissioner to make objective and consistent decisions concerning consent to proposed lump sum settlements and compromise agreements.

NEED FOR AND REASONABLENESS OF SPECIFIC RULE PROVISIONS

As required by the Administrative Procedures Act, and based on the principle that the commissioner must act in the commissioner's interest as a party under Minnesota Statutes, section 257.60, the commissioner hereby affirmatively presents the need for and reasonableness of proposed parts 9500.1650 through 9500.1663.

9500.1650 Definitions.

Subpart 1. **Scope.** This subpart is necessary and reasonable because it clarifies that the definitions apply to the entire sequence of rules.

Subp. 2. **Admission of Paternity.** This definition is necessary because an admission of paternity is one of the criteria under proposed part 9500.1658 that the commissioner will use to decide whether to consent to a lump sum settlement. It is also necessary

because it is one of the ways by which the commissioner is assured that paternity is established as required under the Code of Federal Regulations, title 45, sections 302.31 and 303.5. The definition is reasonable because it is the one agreed on by the public advisory committee and because it is consistent with the meaning given under Minnesota Statutes, section 257.55, subdivision 1, paragraph (C), clause (1).

Subp. 3. **Aid to Families with Dependent Children.** This definition is needed because proposed part 9500.1658, subparts 4 and 5 require AFDC to be partially or fully reimbursed to the commissioner for the commissioner to consent to a lump sum settlement. The definition is reasonable because it was reviewed by experts in the department who are writing proposed rules on AFDC. It is consistent with federal law, 42 USC section 601 and Minnesota Statutes, sections 256.72 - 256.87.

Subp. 4. **Alleged Father.** This definition is needed because the term is used throughout the rule. The alleged father is the person who is responsible for payment of the lump sum settlement if his paternity is determined or if he acknowledges it. The definition is reasonable because a paternity suit is brought against a person who is believed to be the father of a child, and once the suit is brought, the term "alleged father" is used to refer to that person.

Subp. 5. **Blood tests.** This definition is necessary because proposed part 9500.1658, Subpart 2 requires blood tests to determine probability of paternity if the alleged father has not admitted paternity. The definition is reasonable because it is used in accordance with Minnesota Statutes, section 257.62.

Subp. 6. **Child.** Subpart 6 is necessary because Minnesota Statutes, section 257.51-257.74 and proposed parts 9500.1650-9500.1663

directly affect a child's rights and the benefits available to that child through paternity establishment. This definition is reasonable because it helps to identify, objectively and consistently, when the child's rights and benefits are being affected.

Subp. 7. **Commissioner.** Subpart 7 is necessary because it is used to identify the person who, according to Minnesota Statutes, section 257.60 must be named as a party to paternity suits that propose a lump sum settlement or compromise agreement, and because Minnesota Statutes, section 257.60 and proposed parts 9500.1650 - 9500.1663 refer to the commissioner of human services.

Subp. 8. **Compromise agreement.** Subpart 8 is necessary because Minnesota Statutes, section 257.64, names the commissioner as a party to all paternity suits that propose a compromise agreement. The definition is reasonable because it is consistent with the explanation of compromise agreements given under Minnesota Statutes, section 257.64. It is also reasonable because part of the purpose of parts 9500.1650 through 9500.1663 is to indicate that the commissioner will not consent to a compromise agreement.

Subp. 9. **Costs.** Subpart 9 is necessary because the term is used in proposed part 9500.1658, which requires an alleged father to repay certain costs. The definition is reasonable because it is consistent with Minnesota Statutes, section 257.69, subdivision 2, which describes the costs an alleged father may be legally required to pay.

Subp. 10. **Department.** This definition is solely for the purpose of identification.

Subp. 11. **Depository.** Subpart 11 is necessary because it is used to help the commissioner decide whether to consent to a proposed lump sum settlement under proposed part 9500.1658. It is reasonable because Minnesota Statutes, section 257.67, subdivision 2 authorizes

the court to require that support payments be made to someone designated to administer them for the benefit of the child under supervision of the court. The definition is also reasonable because it functionally describes an element that the commissioner deems necessary to ensure that a lump sum settlement is used for support of the child and not for another person's use.

Subp. 12. **Guardian ad litem.** It is necessary to define this term because it is used in proposed part 9500.1660, item G. The definition is reasonable because it is consistent with Minnesota Statutes, section 257.60.

Subp. 13. **Income.** Subpart 13 is necessary because income is used to help determine how much support a parent can pay. This definition is reasonable because the same definition is used to help determine an established parent's ability to provide support for a child under Minnesota Statutes, section 518.54, subdivision 6.

Subp. 14. **Interest rate.** Subpart 14 is necessary because "interest rate" is used in proposed part 9500.1658, subpart 5, item A. Also, "interest rate" is used to calculate the present value of periodic payments a father would be required to pay and to compare that value to the value of a lump sum settlement proposed by that father. It is necessary to define interest in such a precise manner to make the comparisons consistent when used by the commissioner to compare the proposed lump sum settlement to present value to determine whether the proposed lump sum settlement is sufficient to keep the child off of AFDC or at least minimize the necessity for supporting the child with AFDC.

It is reasonable to use the current market rate of interest on a U.S. Treasury obligation for comparative purposes because the U.S. government guarantees full faith and credit of the obligation by the

U.S. government. The rate of interest is guaranteed and constant. The interest earned is exempt from state taxation for the dependent child. The definition is also reasonable because the rate of return on a sum invested as a U.S. treasury obligation is greater than if the sum had been deposited in a pass book savings account earning minimum interest allowable by law (now about 5 1/2%).

It is reasonable to limit the definition for comparative purposes. The definition does not require that the proposed lump sum settlement be invested in a U.S. Treasury obligation nor preclude investment of the proposed lump sum in an annuity or savings certificate which yields a higher rate of interest with limited risk to the investment.

Subp. 15. **Liability for past support.** Subpart 15 is necessary because in addition to periodic payments of support or a lump sum settlement in lieu of periodic payments, the alleged father may have a liability for past support that will have to be partially or fully reimbursed for the commissioner to consent to a proposed lump sum settlement as is proposed under part 9500.1650, subpart 4. If a public agency has provided AFDC or medical assistance, the court may direct that the alleged father reimburse the agency for all or a portion of past support in accordance with Minnesota Statutes, sections 257.66 and 257.67. The definition is reasonable because it is consistent with Minnesota Statutes, sections 257.66, subdivision 4 and 257.67.

Subp. 16. **Local IV-D Agency.** Subpart 16 is necessary to identify the agency responsible for child support enforcement and to which periodic payments of the lump sum settlement must be paid if public assistance is or was provided the child as is required by Minnesota Statutes, sections 256.74, subdivision 5 and 518.551,

subdivision 1 and Code of Federal Regulations, title 45, section 302.32. The definition is reasonable because it is consistent with the definition identifying the organization responsible for administering the Title IV-D program as given under Code of Federal Regulations, title 45, section 301.1, and as governed by Code of Federal Regulations, title 45, section 302.12.

Subp. 17. **Lump sum settlement.** Subpart 17 is necessary because the purpose of this rule is to establish standards to determine whether a lump sum settlement is in the best interests of the commissioner. The definition is reasonable because it is a form of payment suggested by Minnesota Statutes, section 257.66, subdivision 4. It is reasonable to define lump sum settlement as a "single payment" because a "single payment" is consistent with Minnesota Statutes, section 257.66, subdivision 4, which states: "In the best interest of the child, a lump sum payment may be ordered in lieu of periodic payments of support". It is clear that the law says "a lump sum payment", not two or more payments. The public advisory committee agreed that it would be confusing to compare lump sum settlements to the present value of periodic payments if "lump sum settlement" was defined as more than one payment.

Subp. 18. **Medical support.** It is necessary to define this term because Minnesota Statutes, section 518.171 (Session laws) and proposed part 9500.1658, subpart 6 require the maintenance of health and dental insurance be provided for the child by one of the parents. The definition is reasonable because it is consistent with the above cite and because it protects the commissioner's interest by preventing or minimizing the need for medical assistance (medicaid) benefits.

Subp. 19. **Mother.** It is necessary to define "mother" because though proposed parts 9500.1650 through 9500.1663 apply to either

parent it is simpler to use the term "mother" for grammatical ease, and because the vast majority of suits to determine parentage are paternity suits. The definition is reasonable because if the mother was married when the child was born or conceived, support for the child would be governed by laws pertaining to married, separated, or divorced parents.

Subp. 20. **Office of Child Support Enforcement.** It is necessary to define the term "Office of Child Support Enforcement" because this office has responsibility to administer the child support enforcement program on a statewide basis in accordance with the State Plan for Support Collection and Establishment of Paternity under Title IV-D of the Social Security Act. It is necessary because the office also has responsibilities under proposed Parts 9500.1650 through 9500.1663. The definition is reasonable because the Office of Child Support Enforcement has been delegated responsibility to act on behalf of the commissioner in consenting to or rejecting lump sum settlements or compromise agreements according to Minnesota Statutes, section 257.60.

Subp. 21. **Party.** Subpart 21 is necessary because Minnesota Statutes, section 257.60 requires the commissioner to be a party to paternity suits that propose a lump sum settlement or compromise agreement. This definition is reasonable because it is consistent with the statute cited and because, according to the public advisory committee, "Party" is the term commonly used by the legal community to identify persons or entities affected by a paternity suit or other law suits. The definition is also necessary because one of the purposes of parts 9500.1650 through 9500.1663 is to clarify the role of the commissioner as a party to, and to clarify the commissioner's interest in, paternity suits that propose a lump sum settlement or compromise agreement.

Subp. 22. **Paternity Suit.** Subpart 22 is necessary because the term is used in these rules to describe the action brought under Minnesota Statutes, section 257.57. The definition is reasonable because it is commonly accepted by the legal community. The definition was reviewed and approved by the public advisory committee whose members included attorneys.

Subp. 23. **Periodic payments.** Subpart 23 is necessary because it clarifies the meaning of the term that is used in these rules. Minnesota Statutes, section 257.66, subdivision 4, specifies that support judgments or orders "ordinarily shall be for periodic payments which may vary in amount". The definition is reasonable because it is consistent with Minnesota Statutes, section 257.66, subdivision 4 which refers to a lump sum as a single payment and periodic payments as multiple payments of support. Minnesota Statutes, section 518.551 establishes the maintenance and support obligations for persons whose paternity has been established. The definition is also reasonable because it is consistent with Minnesota Statutes, section 257.66, subdivision 3, which states that the remaining matters must be determined in accordance with Minnesota Statutes, Chapter 518.

Subp. 24. **Present value.** Subpart 24 is necessary because the commissioner determines whether to consent to a proposed lump sum settlement, in part, by comparing the present value of periodic payments to the monetary value of a proposed lump sum settlement. Minnesota Statutes, section 257.66, subdivision 4 provides that "a lump sum payment may be ordered in lieu of periodic payments of support". (See the SNR for the comparison of periodic payments to lump sum settlements, 9500.1658, subpart 3 on page 19; and the SNR for the requirement that the lump sum be paid the child according to a schedule of periodic payments, part 9500.1658, subpart 5, on page 21.)

The definition used is reasonable because, the formula proposed to be used to compute present value is the textbook formula commonly used by government and business to compute present value. The definition is also reasonable because, according to Peter Sausen, financial specialist on the public advisory committee, it is a conservative estimate of what the lump sum equivalent would be of periodic payments. For example, the formula for present value uses as its interest rate, the current market rate of interest on a United States Treasury Obligation (see Subpart 14, Interest Rate) and uses the child's 18th birthdate as the obligation's maturity date. Using the 18th birthday to calculate present value is reasonable because, according to Minnesota Statutes, section 518.54, subdivision 2, a father's responsibility for support usually ends on the child's 18th birthday.

Subp. 25. **Reimbursement.** Subpart 25 is necessary because it is the commissioner's responsibility to seek reimbursement for public funds paid on behalf of the child. The definition is reasonable because it is consistent with Minnesota Statutes, sections 393.07, subdivision 9 and 256.87, which provide for reimbursement of public funds paid on behalf of the child and with Minnesota Statutes, sections 257.66, subdivisions 3 and 4, and 257.69, which provide for reimbursement of costs.

Subp. 26. **Support.** Subpart 26 is necessary because a paternity suit is usually brought not only to establish paternity but to establish that a parent must pay support. A goal of parts 9500.1650 through 9500.1663 is to ensure that adequate support including medical support is provided by the terms of lump sum settlements. The definition is reasonable because Minnesota Statutes, section 518.54, subdivision 4, defines a term that is used in Minnesota Statutes,

section 518.551 to describe the amount of support that a parent must pay for a child after a divorce or legal separation. Proposed parts 9500.1650 through 9500.1663 presume that the amounts of support required under Minnesota Statutes, sections 518.551, subdivision 5 and 518.171, would also be sufficient for the support of an illegitimate child from the person whose paternity for that child has been established.

9500.1655 Applicability.

Proposed part 9500.1655 is necessary to clarify that the Commissioner of the Department of Human Services will use the standards and procedures provided under Parts 9500.1650 through 9500.1663 to decide whether to consent to a lump sum settlement or compromise agreement proposed in a paternity suit.

Proposed part 9500.1655 is reasonable because it helps ensure consistent application of standards and procedures by the commissioner and because it advises other parties to paternity actions and the courts of the standards and procedures used by the commissioner when acting as a party to paternity suits.

9500.1656 Consent By The Commissioner To A Compromise Agreement.

Proposed part 9500.1656 is necessary because the commissioner, as a party to a paternity suit involving a compromise agreement, must decide whether to consent to a compromise agreement. The commissioner's decision to not consent to compromise agreements is reasonable because one of the purposes of the Title IV-D program, which is administered by the commissioner, is to establish paternity. The Code of Federal Regulations, title 45, section 303.5 requires that the IV-D agency attempt to establish paternity in the case of a child born out of wedlock; in all cases covered by the assignment of support

and maintenance rights, and in all cases where an application is made for child support collection or paternity determination services. If the commissioner consented to a compromise agreement, it would be in violation of the cited regulation. It is also reasonable for the commissioner not to consent to compromise agreements because without paternity established, public assistance may need to be provided the child whereas had paternity been established, the child might be eligible for benefits under various entitlement programs, such as social security or workers' compensation, that base eligibility on parental lineage. Such benefits would minimize or prevent the need for AFDC and medical assistance benefits.

9500.1657 Commissioner's Consent To A Lump Sum Settlement.

Part 9500.1657 is necessary because as a party the commissioner must decide whether to consent to a lump sum settlement if proposed to settle a paternity suit. It is reasonable for the commissioner to not consent to lump sum settlements that do not comply with proposed parts 9500.1650 through 9500.1663 because these parts are designed to protect the commissioner's interest in paternity suits that involve compromise agreements and lump sum settlements. The position that parts 9500.1650 through 9500.1663 be written to protect the commissioner's interest was agreed upon by the public advisory committee. The reasonableness of the idea that parts 9500.1650 through 9500.1663 be written to represent the commissioner's interest is also discussed in the previous section titled "Governing Principle and Public Input".

9500.1658 Standards Used By The Commissioner To Determine Whether To Consent To A Proposed Lump Sum Settlement.

The conditions of subparts 1 through 6 below are necessary to help ensure that the child receives financial support from the parents

rather than through public assistance, thereby protecting the commissioner's interest in the paternity suit.

Subpart 1. **Standards.** Subpart 1 is necessary to clarify that all of the conditions of part 9500.1650 through 1663 must be met for the commissioner to consent to a proposed lump sum settlement, and for the commissioner to make impartial decisions regarding consent. The subpart is reasonable because it prevents the commissioner from making arbitrary or capricious decisions regarding consent to a proposed lump sum settlement. Without this subpart, there could be confusion about which of the criteria of Part 9500.1658, subparts two through six is most important. Department staff and the public advisory committee agreed that all the conditions of Part 9500.1658 are equally important and should be met for the commissioner to consent.

Subp. 2. **Admission of paternity.** Subpart 2, admission of paternity, is needed because an admission of paternity or a determination of paternity helps to ensure that the liability is identified so attempts to secure a maximum amount of support for that parent's child can be made, thereby satisfying the commissioner's interest in not having to provide total support to the child through AFDC.

Subpart 2 is also necessary because an admission of paternity settles the issue of paternity. It is reasonable because the paternity suit is brought to establish paternity for the child.

If the alleged father believes himself to be the father of the child and waives blood tests or the results of blood tests indicate a more than 92% likelihood that he is the father, it is reasonable to request that he admit to paternity as settlement of the issue.

Subp. 3. **Comparison of proposed lump sum settlement to present value of periodic payments.** This subpart is needed to protect the

commissioner's and child's best interest, which is to ensure payment from an alleged father that meets or exceeds the present value of periodic payments. It is consistent with Minnesota Statutes, section 518.551, subdivision 5, which reflects the legislature's determination of the amount needed to support a child. A payment from an alleged father that meets or exceeds the value of periodic payments reduces the child's need for AFDC. This subpart is reasonable because if a lump sum settlement was not proposed, the issue would be sued to judgment and child support would be determined according to Minnesota Statutes, Chapter 518 and section 257.66, subdivision 3. This subpart is reasonable because it mandates that a precise mathematical formula (present value) be used to compare the value of a lump sum settlement proposal to the value of periodic payments. Further, the subpart is consistent with Minnesota Statutes, section 257.66, which allows lump sums in lieu of periodic payments.

The criteria that a lump sum settlement be equal to or greater than the present value of periodic payments is reasonable because it follows the rationale contained in the introduction to this statement of need and reasonableness - that both parents are traditionally and morally required to economically support their children and that these morals and traditions have led to legal requirements for both parents to economically support their children. If parents are legally required to economically support their children, the commissioner's and thereby taxpayer's economic support for a child should be sought only as a last resort.

Subp. 4. **Liability for past support and costs.** Subpart 4 is necessary to protect the commissioner's interest in the reimbursement of public funds used to support the child and the costs of the paternity suit. This subpart is reasonable because it is consistent

with Minnesota Statutes which allow the court to provide for repayments of these expenses. These statutes include sections 256.74, subdivision 5, assignment of support and maintenance; 257.66, liability for past support; 257.67, enforcement of judgment or order, and 257.69, costs.

It is reasonable to request provisions for income withholding on payment agreements for past support and costs because it is consistent with Minnesota Statutes, section 518.611, subdivision 5.

This section is also reasonable because settlement of this issue will help reduce the necessity for further litigation between the parties, such as a suit brought later to obtain past support and costs under Minnesota Statutes, section 256.87.

Subp. 5. **Protection over lump sum settlement amount.** This subpart, including items A through F, is needed to ensure that money is available to meet at least the basic needs of the child throughout the period that the mother and father are required to support the child. It is possible, for example, for a parent to spend all of a lump sum settlement at once, and on things which the child does not need. If the lump sum settlement is spent during a short period, or if it is not invested wisely, there may not be enough money to meet fully or partly the child's basic food, clothing, and shelter needs throughout the entire period the parent is required to support the child. If the lump sum money is depleted too soon, public assistance may be needed to provide for the child's basic needs, thereby adversely affecting the commissioner's interest.

Item A is reasonable because according to the financial specialist from the Department of Finance who served on the public advisory committee, the interest rate on a U.S. Treasury Obligation will help the invested lump sum at least keep pace with inflation and

because investments at this interest rate are a guaranteed security and carry little or no risk of losing the principle. Using the child's 18th birthdate as the investment's maturity date is reasonable because according to department records and Minnesota Statutes, section 518.54, subdivision 2, the child's 18th birthdate is usually the date the parent is no longer legally required to support the child.

Item B is reasonable because the child will continue to have basic needs that will need to be met by the parent until the child reaches 18, when the parent is usually no longer legally required to economically support the person.

Item C is reasonable because it is consistent with Minnesota Statutes, section 256.74, subdivision 5, which requires that rights to support are assigned if the child becomes eligible for public assistance.

Item D is reasonable because the alleged father will need to know where to deposit the lump sum and because the person or agency to whom a payment from the lump sum will be made needs to know from whom the payments will come. The commissioner will want to know this information so that the commissioner can verify that the lump sum will be secure.

The alleged father may be required to send the settlement directly to the depository and the depository may be required to notify authorities if the lump sum is not deposited, depending on what is agreed to and what is ordered by the court according to Minnesota Statutes, section 257.67, subdivision 2.

The requirement is also reasonable because it legally binds the alleged father to an agreement of where to deposit the settlement.

Item E is reasonable because parties to the paternity suit may

want to verify the investment proposal or may need to exchange information from the person managing the account, such as improved investment terms or address change for transfer of payments. Also, the department and the local IV-D agency need to know whom to contact if there are problems, such as when payments are not being received.

Item F is reasonable because it helps avoid unexpected and unreasonable costs that could be subtracted from the amount of payments to the child and possibly jeopardize adequate support from the alleged father.

Subp. 6. **Medical benefits.** This subpart is necessary to ensure that the child is provided with insurance coverage to avoid undue expenses by the mother or the state, such as expenses that medical assistance would otherwise have to pay. It is reasonable because it is a requirement of Code of Federal Regulations, title 45, Parts 302, 304, 305, and 306 and Minnesota Statutes, section 518.171. By providing medical insurance benefits to the child in addition to provision of financial support for basic needs, the expenditure of public funds for the child are prevented or minimized.

9500.1659 Contents Of Proposed Lump Sum Settlement Agreement.

This part including items A through G is necessary to describe the contents of a lump sum settlement that are needed to determine whether the standards of part 9500.1658 have been met. It is reasonable because under Minnesota Statutes, section 257.66 certain provisions must be included in the court order. Information provided in the proposed agreement will help the court make the order for support. It is also reasonable because a proposed agreement offered as settlement of the paternity issues should resolve all issues involved.

Item A is reasonable because the parties need to be sent a copy of the commissioner's response to the proposed agreement.

Item B is reasonable because this is one of the conditions necessary for the commissioner to give approval to a lump sum settlement under proposed part 9500.1658, subpart 2.

Item C is necessary because it is the commissioner's responsibility to seek reimbursement for public assistance paid and because the commissioner needs to know how much will be reimbursed to evaluate whether the proposed lump sum settlement is in the best interest of the commissioner as explained in the "Governing Principle" section of this statement of need and reasonableness.

Item D is reasonable because the proposed amount is the basis for settling the child support issue. The commissioner needs to know the amount of the proposed settlement to evaluate whether the proposed amount is in the commissioner's interest.

Item E is reasonable because the periodic payments from the account will help meet the child's ongoing needs for support and prevent or minimize the need for public assistance. The commissioner needs the information required by item E to evalute the proposed distribution to determine whether it will prevent or minimize the need for public assistance.

Item F is reasonable because the written statement can be used as evidence of the responsible parent's compliance with proposed part 9500.1658, subpart 5. It can then become the basis for a provision in the court's judgment order under Minnesota Statutes, sections 257.64 and 257.66.

Item G is reasonable to show the court that the parties have agreed to the terms of the proposed lump sum settlement. It is reasonable to request the guardian ad litem's signature prior to

submission of the proposed agreement to the commissioner to assure the commissioner that the child's interests have also been represented in negotiating the proposed settlement.

9500.1660 Documents That Must Accompany a Proposed Lump Sum Agreement.

The documentation listed in items A through G is needed to help the commissioner decide whether the proposed lump sum settlement protects the interests of the commissioner, and to help verify whether proposed lump sum settlements meet the requirements under Parts 9500.1658 and 9500.1659.

Item A is reasonable because it provides a means by which the commissioner can verify the statistical probability of the alleged father's paternity. If the blood test excludes the alleged father as a biological father the commissioner would reject the proposal because the commissioner will not consent to a compromise agreement.

Item B is needed because it is consistent with Minnesota Statutes, sections 257.60, 257.64, and 257.66, subdivision 4 to state why a proposed lump sum settlement would be better for the child than periodic payments. The requirement is reasonable because it is consistent with Minnesota Statutes, section 257.66, subdivision 4. Therefore, the parties must explain to the commissioner why they believe the proposed settlement is in the child's best interest.

Item C is reasonable because it helps the commissioner know how much finanical support an alleged father can be expected to provide the child in accordance with the financial status of the alleged father and the guidelines under Minnesota Statutes, section 518.551, subdivision 5 and to determine compliance with Part 9500.1658, subpart 3.

Item D is reasonable because it provides the commissioner verification of the method used to determine the amount of the

proposed settlement and helps the commissioner determine if the amount offered is sufficient to provide for the child without public assistance.

Item E is reasonable because it accounts for public funds used to support the child and bring the paternity action and affirms the local IV-D agency's interest in reimbursement of public funds under Part 1658, subpart 4.

Item F is reasonable because it explains to the commissioner how the plan for pay back of public expenditures by the alleged father was developed. Because the total obligation, which includes past, present and future support, is proposed to be settled at one time by the alleged father the settlement amount must be sufficient to partially or fully reimburse the commissioner for public assistance already paid (as accounted for under item E) and still provide for the child's ongoing needs. It is not desirable for the commissioner to be awarded such shares of the sum proposed so that insufficient amounts are left for the child. It is also not desirable to award the child the total sum and disregard liability for public assistance already paid on behalf of the child to the detriment of the taxpayers. Therefore, it is reasonable to show how the plan for reimbursement was derived.

Item G is reasonable because it assures the commissioner that the child's interests have been represented. Although the commissioner's primary interest in lump sum settlements is economic, the commissioner also is responsible for protecting the welfare of the child and upholding state laws regarding child protection. Item G is further reasonable because it is consistent with Minnesota Statutes, section 257.66, which requires that a guardian ad litem be appointed to represent the interests of the child as a party.

9500.1661 Time Frames For Submissions Of Proposal.

This part is necessary because the commissioner must have time to review and respond to the proposed agreement prior to the court hearing on the proposed lump sum settlement. Thirty days is a reasonable time in which to respond because of staff availability for review, mail transit time and time for informational inquiry necessary to the process.

9500.1662 Reviewal Process.

This part is necessary to explain the procedure which will be used by the commissioner to review and consent or reject the proposed agreement. It is reasonable because it directs the commissioner on how to conduct an objective review of the proposal, and because it gives the other parties information needed to take further action.

9500.1663 Notification Of Final Disposition.

This part is needed to inform the commissioner that the case has been finalized and that further correspondence or review on the commissioner's part is unnecessary. This method of notification is reasonable because the commissioner's file would otherwise remain open in anticipation of subsequent negotiations, and also because it helps protect the commissioner's interest because the commissioner can know whether further action must be taken as a party to the paternity suit.

Expert Witnesses at Hearing

If a public hearing is required, the Department does not plan to have expert witnesses from outside the Department testify on its behalf at the hearing.

7-7-86
Date

LEONARD W. LEVINE, Commissioner

FISCAL NOTE FOR DEPARTMENT OF HUMAN SERVICES

PERMANENT RULE

PARTS 9500.1650 THROUGH 9500.1663

The permanent rule parts are expected to produce no net change in total costs for state and local governments. A lump sum settlement or compromise agreement is settlement to a paternity suit which w ould be otherwise settled by trial and a court order or dismissal of the action.



LEONARD W. LEVINE

Commissioner

Minnesota Department of Human Services

APPENDIX B

RULE COMMITTEE ON LUMP SUM SETTLEMENTS and COMPROMISE AGREEMENTS IN PATERNITY ACTIONS

Jean Gerval, Director 227-7493
Minnesota County Attorneys Association
40 North Milton Street
St. Paul, Minnesota 55104

Suzanne Smith 348-8475
Guardian ad litem
626 South Sixth Street
Minneapolis, Minnesota 55415-1582

Aviva Breen 296-8590
Commission for Economic Status of Women
Room 400 SW State Office Building
435 Park Street
St. Paul, Minnesota 55155

Becky Frederick Hanson 929-0041
Titus Building, Suite 300
6550 York Avenue South
Minneapolis, Minnesota 55430

Cathy Brasel, Child Support Officer 421-4760
Anoka County Social Services
Courthouse
Anoka, Minnesota 55303

Loretta M. Frederick (507) 454-6660
South Regional Legal Aide
400 Exchange Building
Fourth and Center Streets
Winona, Minnesota 55987

Peter Sausen, Debt Management Dir. 296-8372
Department of Finance
Room 309 - Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Judge Stanley Thorup 421-4760
Anoka County Court
Courthouse
Anoka, Minnesota 55303

Michael Dean, Rulemaker 297-1469
Department of Human Services
Rule Making Division
444 Lafayette Road - 4th Floor
St. Paul, Minnesota 55101

Mary L. Anderson, Program Advisor 296-2555
Department of Human Services
Office of Child Support Enforcement
444 Lafayette Road - 2nd Floor
St. Paul, Minnesota 55101

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES GOVERNING COMMISSIONER'S CONSENT TO PATERNITY SUIT SETTLEMENTS, MINNESOTA RULES, PARTS 9500.1650 TO 9500.1663

AFFIDAVIT OF MAILING

Nancy Storelee, being first duly sworn, deposes and says:

That on the 16th day of July, 1986, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Proposed Adoption of a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Department of Human Services for the purpose of receiving notice of hearing by this Department.

Nancy Storelee

Subscribed and sworn to before me

this 18 day of July, 1986.

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Commissioner's Consent to Paternity Suit Settlements, Minnesota Rules, parts 9500.1650 to 9500.1663

Notice of Proposed Adoption Of A Rule Without A Public Hearing

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 257.60.

All persons have 30 days or until 4:30 p.m. on August 20, 1986 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Mary Anderson
Office of Child Support Enforcement
444 Lafayette Road, 2nd Floor
St. Paul, MN 55101
Telephone: 612/296-2555

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

Minnesota Statutes, section 257.60, mandates the court to name the commissioner a party to a paternity suit in which a lump-sum settlement or compromise agreement is proposed. As a party to the paternity suits, the commissioner must decide whether to consent to the proposed lump-sum settlement or compromise agreement.

The purpose of proposed rule parts 9500.1650 through 9500.1663, therefore, is to govern the commissioner's decisions on whether to consent to a lump-sum settlement or compromise agreement proposed as part of a paternity suit.

Proposed parts 9500.1650 through 9500.1663 apply to all parties of and persons concerned with a paternity suit involving a lump-sum settlement or compromise agreement proposal.

The proposed rules indicate that the commissioner will not consent to a compromise agreement, indicate that the commissioner will consent to lump-sum settlement proposal; describe the standards used by the commissioner to determine whether to consent to a proposed lump-sum settlement; describe the required contents of a proposed lump-sum settlement proposal; describe the documents that must accompany a proposed lump sum settlement agreement; and give timelines for submission of lump-sum settlement proposals to the commissioner.

The proposed rules also include definitions of terms necessary for uniform application of these rules; the process for the commissioner's review of submitted lump-sum settlements; and requirements for notifying the commissioner of the court's final orders pertaining to the lump-sum settlement or compromise agreement.

A free copy of the rule is available upon request from Mary Anderson.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mary Anderson upon request.

The adoption of these rules will not result in additional spending by local public bodies in either of the first two years following implementation of the rule.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Mary Anderson.

7-7-86
Date

LEONARD W. LEVINE, Commissioner
Department of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES GOVERNING COMMISSIONER'S CONSENT TO PATERNITY SUIT SETTLEMENTS, MINNESOTA RULES, PARTS 9500.1650 TO 9500.1663

AFFIDAVIT OF ADDITIONAL MAILING

Nancy Storelee, being first duly sworn, deposes and says:

That on the 16th day of July, 1986, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Proposed Adoption of a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following groups:

.The 87 Minnesota County Human Services Agencies
.Others requesting notice (see attached list)

Nancy Storelee

Subscribed and sworn to before me

this 18 day of July, 1986.

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Commissioner's Consent to Paternity Suit Settlements, Minnesota Rules, parts 9500.1650 to 9500.1663

Notice of Proposed Adoption Of A Rule Without A Public Hearing

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All persons have 30 days or until 4:30 p.m. on August 20, 1986 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Mary Anderson
Office of Child Support Enforcement
444 Lafayette Road, 2nd Floor
St. Paul, MN 55101
Telephone: 612/296-2555

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

Minnesota Statutes, section 257.60, mandates the court to name the commissioner a party to a paternity suit in which a lump-sum settlement or compromise agreement is proposed. As a party to the paternity suits, the commissioner must decide whether to consent to the proposed lump-sum settlement or compromise agreement.

The purpose of proposed rule parts 9500.1650 through 9500.1663, therefore, is to govern the commissioner's decisions on whether to consent to a lump-sum settlement or compromise agreement proposed as part of a paternity suit.

Proposed parts 9500.1650 through 9500.1663 apply to all parties of and persons concerned with a paternity suit involving a lump-sum settlement or compromise agreement proposal.

The proposed rules indicate that the commissioner will not consent to a compromise agreement, indicate that the commissioner will consent to lump-sum settlement proposal; describe the standards used by the commissioner to determine whether to consent to a proposed lump-sum settlement; describe the required contents of a proposed lump-sum settlement proposal; describe the documents that must accompany a proposed lump sum settlement agreement; and give timelines for submission of lump-sum settlement proposals to the commissioner.

The proposed rules also include definitions of terms necessary for uniform application of these rules; the process for the commissioner's review of submitted lump-sum settlements; and requirements for notifying the commissioner of the court's final orders pertaining to the lump-sum settlement or compromise agreement.

A free copy of the rule is available upon request from Mary Anderson.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mary Anderson upon request.

The adoption of these rules will not result in additional spending by local public bodies in either of the first two years following implementation of the rule.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Mary Anderson.

7-7-86
Date

LEONARD W. LEVINE, Commissioner
Department of Human Services

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Judge George Peterson, President
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Cathy Brasel, Child Support Of.
Anoka County Social Services
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Loretta M. Frederick
South Regional Legal Aide
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Fourth & Center St.

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Human Services

Proposed Permanent Rules Relating to Commissioner's Consent to Paternity Suit Settlements

Notice of Proposed Adoption of a Rule without a Public Hearing

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 257.60.

All persons have 30 days or until 4:30 p.m. on August 20, 1986 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Mary Anderson
Office of Child Support Enforcement
444 Lafayette Road, 2nd Floor
St. Paul, MN 55101
Telephone: 612/296-2555

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

Minnesota Statutes, section 257.60, mandates the court to name the commissioner a party to a paternity suit in which a lump-sum settlement or compromise agreement is proposed. As a party to the paternity suits, the commissioner must decide whether to consent to the proposed lump-sum settlement or compromise agreement.

The purpose of proposed rule parts 9500.1650 through 9500.1663, therefore, is to govern the commissioner's decisions on whether to consent to a lump-sum settlement or compromise agreement proposed as part of a paternity suit. Proposed parts 9500.1650 through 9500.1663 apply to all parties of and persons concerned with a paternity suit involving a lump-sum settlement or compromise agreement proposal.

The proposed rules indicate that the commissioner will not consent to a compromise agreement, indicate that the commissioner

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will consent to lump-sum settlement proposal; describe the standards used by the commissioner to determine whether to consent to a proposed lump-sum settlement; describe the required contents of a proposed lump-sum settlement proposal; describe the documents that must accompany a proposed lump sum settlement agreement; and give timelines for submission of lump-sum settlement proposals to the commissioner.

The proposed rules also include definitions of terms necessary for uniform application of these rules; the process for the commissioner's review of submitted lump-sum settlements; and requirements for notifying the commissioner of the court's final orders pertaining to the lump-sum settlement or compromise agreement.

A free copy of the rule is available upon request from Mary Anderson.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mary Anderson upon request.

The adoption of these rules will not result in additional spending by local public bodies in either of the first two years following implementation of the rule.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Mary Anderson.

Dated: 7 July 1986

Leonard W. Levine, Commissioner
Department of Human Services

Rules as Proposed (all new material)

9500.1650 APPLICABILITY.

Parts 9500.1650 to 9500.1663 govern the procedures and the standards applicable to the way in which the commissioner decides, as a party under Minnesota Statutes, section 257.60, whether to agree to a particular lump sum settlement or compromise agreement in a paternity action under Minnesota Statutes, sections 257.51 to 257.74. Parts 9500.1650 to 9500.1663 apply equally to lump sum settlements and compromise agreements proposed as part of a maternity suit under Minnesota Statutes, section 257.71.

9500.1655 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9500.1650 to 9500.1663, the following terms have the meanings given to them in this part.

Subp. 2. **Admission of paternity.** "Admission of paternity" means a written acknowledgement by a male that he is the biological father of a child.

Subp. 3. **Aid to families with dependent children or AFDC.** "Aid to families with dependent children" or "AFDC" means the program authorized by title IV-A of the Social Security Act to provide financial assistance services to needy families with dependent children.

Subp. 4. **Alleged father.** "Alleged father" means a male alleged to be the biological father of a child.

Subp. 5. **Blood test.** "Blood test" means a test using blood group identification of a mother, child, and alleged father that is used to predict the probability or exclude the possibility that the alleged father is the biological father of the child.

Subp. 6. **Child.** "Child" means an individual under age 18 whose parental relationship with the alleged father is being determined and whose legal rights and privileges are at issue.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 8. **Compromise agreement.** "Compromise agreement" has the meaning given it by Minnesota Statutes, section 257.64, subdivision 1, clause (b).

Subp. 9. **Costs.** "Costs" has the meaning given it under Minnesota Statutes, section 257.69.

Subp. 10. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 11. **Depository.** "Depository" means a person or organization entrusted to safekeep a father's or an alleged father's lump sum settlement or compromise agreement payments and to make periodic payments of the money on behalf of the child.

Subp. 12. **Guardian ad litem.** "Guardian ad litem" means the person designated by the court to represent the interests of a child in a paternity suit, according to Minnesota Statutes, section 257.60.

Subp. 13. **Income.** "Income" has the meaning given it under Minnesota Statutes, section 518.54, subdivision 6.

Subp. 14. **Interest rate.** "Interest rate" means the rate of interest used to calculate the present value of periodic payments a father is required to pay and is equal to the current market rate of interest on a United States Treasury obligation using as its maturity date the child's 18th birthdate.

Subp. 15. **Liability for past support.** "Liability for past support" means the financial obligation of the noncustodial parent to reimburse the local child support enforcement agency for all or a portion of past expenses furnished on behalf of a child under Minnesota Statutes, sections 257.66 and 257.67.

Subp. 16. **Local IV-D agency.** "Local IV-D agency" means the county or multicounty agency that is authorized under Minnesota Statutes, section 393.07, to administer the child support enforcement program under the requirements of title IV-D of the Social Security Act, United States Code, title 42, sections 651 to 658, 660, 664, 666, 667, 1302, 1396(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

Subp. 17. **Lump sum settlement.** "Lump sum settlement" means a single payment to satisfy the remaining obligations of a noncustodial parent for support of the parent's minor child.

Subp. 18. **Medical support.** "Medical support" has the meaning given it under Minnesota Statutes, section 518.171.

Subp. 19. **Mother.** "Mother" means a woman who was not married to her child's father when the child was born or when the child was conceived.

Subp. 20. **Office of Child Support Enforcement.** "Office of Child Support Enforcement" means the office within the department that administers the child support enforcement program for the purposes of locating absent parents, establishing paternity, and establishing and enforcing orders for support under the requirements of title IV-D of the Social Security Act, United States Code, title 42, sections 651 to 658, 660, 664, 666, 667, 1302, 1396(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

Subp. 21. **Party.** "Party" means a person as defined in Minnesota Statutes, sections 257.57 and 257.60, who is involved in a paternity suit.

Subp. 22. **Paternity suit.** "Paternity suit" means a legal action brought to establish that a man is the biological father of a child and has legally enforceable duties and responsibilities in regard to that child.

Subp. 23. **Periodic payments.** "Periodic payments" means payments of support on a schedule established by the court under Minnesota Statutes, section 518.551, subdivision 5.

Subp. 24. **Present value.** "Present value" means the current monetary worth of future periodic payments. The formula used to determine present value is $An = V\ 1-(1+i)^{-n}/i$ where:

"An" means present value of the periodic payments,

"V" means value of the periodic payments,

"n" means number of periodic payments, and

"i" means interest rate.

Subp. 25. **Reimbursement.** "Reimbursement" means payment of a sum for public funds expended for the care and support of a child under Minnesota Statutes, sections 256.87; 257.66, subdivisions 3 and 4; 257.69; and 393.07, subdivision 9.

Subp. 26. **Support.** "Support" has the meaning given to "support money" under Minnesota Statutes, section 518.54, subdivision 4.

9500.1656 CONSENT BY COMMISSIONER TO A COMPROMISE AGREEMENT.

The commissioner shall not consent to a compromise agreement.

9500.1657 COMMISSIONER'S CONSENT TO A LUMP SUM SETTLEMENT.

The commissioner shall consider each proposed lump sum settlement that is submitted to the commissioner. If a submitted proposed lump sum settlement does not comply with parts 9500.1650 to 9500.1663, the commissioner shall not consent to the proposed lump sum settlement.

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9500.1658 STANDARDS USED BY COMMISSIONER TO DETERMINE WHETHER TO CONSENT TO A PROPOSED LUMP SUM SETTLEMENT.

Subpart 1. **Standards.** The commissioner shall consent to a proposed lump sum settlement only if the conditions of subparts 2 to 6 are met.

Subp. 2. **Admission of paternity.** The alleged father must admit paternity and either waive blood tests or the results of blood tests indicate a likelihood of more than 92 percent that the alleged father is the biological father of the child.

Subp. 3. **Comparison of proposed lump sum settlement to present value of periodic payments.** The proposed lump sum settlement must be equal to or greater than the present value of periodic payments.

Subp. 4. **Liability for past support and costs.** A provision must be made for a partial or full reimbursement consisting of the alleged father's liability for past support and costs. The alleged father's liability for past support and costs includes:

A. all or a proportion of the amount of assistance furnished the child during the two years immediately preceding the start of the paternity action under Minnesota Statutes, section 256.66, subdivision 4;

B. expenses of the mother's pregnancy and confinement under Minnesota Statutes, section 257.66, subdivision 3; and

C. all or a proportion of costs and fees detailed under Minnesota Statutes, section 257.69, subdivision 2.

If a reimbursement is to be made through payments to the local IV-D agency, provisions for income withholding shall be included in the proposed lump sum settlement agreement under Minnesota Statutes, section 518.611.

Subp. 5. **Protection over lump sum settlement amount.** A plan to invest the lump sum settlement to meet the child's future needs and to prevent rapid depletion of the lump sum settlement must be made part of the lump sum settlement. The plan to invest the lump sum settlement must include:

A. an agreement to deposit the lump sum settlement amount in an interest bearing account with a rate of interest based on a United States Treasury obligation that matures on the date of the child's 18th birthday;

B. provisions for making periodic payments to the child until the child is 18 years of age;

C. provisions for making the periodic payments under item B to the public agency, if the child receives AFDC or becomes eligible to receive AFDC and rights to support are assigned under Minnesota Statutes, section 256.74, subdivision 5;

D. the name of the depository that will hold and disburse the lump sum settlement under this subpart;

E. the name of the person or agency designated to make decisions on managing the lump sum settlement account; and

F. the amounts charged by the depository for the costs of administering the lump sum settlement account.

Subp. 6. **Medical benefits.** The lump sum settlement must provide for maintenance of health and dental insurance for the child under Minnesota Statutes, section 518.171.

9500.1659 CONTENTS OF PROPOSED LUMP SUM SETTLEMENT AGREEMENT.

A proposed lump sum settlement must include:

A. the names and addresses of the parties to the paternity suit;

B. a statement indicating whether there has been an admission of paternity;

C. the amount of reimbursement agreed to be paid to the local IV-D agency and the method by which payments will be made as required under part 9500.1658, subpart 4;

D. the amount of the proposed lump sum settlement;

E. a plan for distributing the lump sum settlement amount on behalf of the child under part 9500.1658, subpart 5;

F. a written statement showing compliance with part 9500.1658, subpart 6, by the responsible parent; and

G. a signature line for each of the parties and the guardian ad litem.

9500.1660 DOCUMENTS THAT MUST ACCOMPANY A PROPOSED LUMP SUM SETTLEMENT AGREEMENT

The documents in items A to G must accompany the proposed lump sum settlement submitted to the commissioner:

A. the statement of blood test results or a statement that blood tests were waived by the alleged father;

B. a statement of the reasons a lump sum settlement is proposed rather than periodic payments;

C. a copy of the alleged father's affidavit of earnings, income, and resources, including real and personal property;

D. the mathematical calculation used to make the computation required under part 9500.1658, subpart 3;

E. an itemization of amounts previously expended by each public agency as support on behalf of the child, including dates and amounts of AFDC expended, pregnancy and confinement expenses, costs of blood tests, filing fees, service of process fees, and county attorney's fees;

F. a written statement showing how the plan for reimbursement of the alleged father's liability for support and costs owed to the local IV-D agency was derived; and

G. a written, signed statement from the guardian ad litem that indicates how the proposed lump sum settlement is in the best interest of the child.

9500.1661 TIME FOR SUBMISSION OF PROPOSAL.

The proposed lump sum settlement agreement under part 9500.1659 and documents required under part 9500.1660 must be submitted to the Office of Child Support Enforcement for review at least 30 days before the date scheduled for the court hearing on the proposed lump sum settlement. If the 30-day period is not complied with, parties must not presume that the commissioner has consented to the proposed lump sum settlement unless a written statement to that effect is made by the commissioner and submitted to the parties.

9500.1662 REVIEW PROCESS.

On receipt of a proposed lump sum settlement, the commissioner shall review the submitted proposal and documents for compliance with parts 9500.1650 to 9500.1663. If the commissioner consents to the proposal, the commissioner will sign the proposal and return it to the submitting party. If the commissioner does not consent to the proposal, the commissioner will send a letter to the submitting party indicating the reasons for not consenting to the proposal. The commissioner will send copies of either response to the court of jurisdiction. The commissioner will also send copies of either response to the other parties and guardian ad litem if addresses for those parties are provided by the submitting party.

9500.1663 NOTIFICATION OF FINAL DISPOSITION.

If the lump sum settlement or compromise agreement is approved by the court, a copy of the final order must be provided to the commissioner within 30 days of the date of the court order. If the submitted agreement is not approved by the court, the commissioner must be notified in writing of any other disposition made regarding the paternity suit. The parties other than the commissioner must agree between themselves as to the party responsible for notification to the commissioner in accordance with this part.

Public Employees Retirement Association

Proposed Permanent Rules Relating to Membership of Elected Officials

Notice of Withdrawal and Notice of Hearing

NOTICE IS HEREBY GIVEN that the Board of Trustees of the Public Employees Retirement Association (PERA), having reviewed the history and issues related to the above-titled rule and having approved its elements, proposes to adopt this rule following the procedures set forth in Minnesota Statutes, sections 14.131 to 14.20 (1984). PERA's specific authority to adopt the rule is Minnesota Statutes, sections 353.03 and 353.18. A public hearing on the proposed rule will be held in Room 15, State Capitol, Aurora Avenue, Saint Paul, Minnesota, 55155, on September 3, 1986, commencing at 9:00 a.m. and continuing until all interested or affected persons have had an opportunity to participate. The proposed rule may be modified as a result of the hearing process; therefore, all interested persons or groups are urged to participate in the rule hearing process.

A proposed rule on the same subject matter that was published in the May 12th issue of the *State Register*, pursuant to the procedures of Minnesota Statutes, sections 14.22 to 14.28 (1984) has been withdrawn. During the 30-day comment period on the original proposed rule, a number of valuable responses to it were received at the PERA office, including a written request for public hearing signed by the requisite 25 or more persons. In light of the comments received, a new proposed rule was developed. It is this new proposed rule that will be the subject of the announced hearing.

Following PERA's presentation at the hearing, all interested or affected persons or groups will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record.

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STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULE OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING THE COMMISSIONER'S CONSENT TO PATERNITY SUIT SETTLEMENTS, MINNESOTA RULES PARTS 9500.1650 TO 9500.1663

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE ADOPTED WITHOUT PUBLIC HEARING

Notice of the Commissioner's proposed adoption of the above-entitled matter was published in the State Register on Monday, July 21, 1986 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on July 16, 1986. The Statement of Need and Reasonableness was prepared before the notice of proposed adoption of a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The agency received one request for a public hearing. Therefore, the agency did not receive request for a public hearing from 25 or more persons which were not withdrawn.

No requests for notice of submission to the Attorney General were received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

No changes are being made between the rule as proposed and the rule as adopted.

During the comment period, one letter was received from Mr. Brian D. Roberud, Attorney at Law with Frundt, Frundt, Johnson and Roberud, Ltd., Blue Earth, Minnesota. Mr. Roberud in his letter dated July 21, 1986 requested a public hearing stating that the proposed rule failed to take into account the "best interest of the child" with no consideration by the Commissioner of a compromise agreement. Mr. Roberud requested that part 9500.1656 be deleted in its entirety and be replaced with a statement that the Commissioner may for good cause consent to a compromise agreement. He further requested that part 9500.1658 be changed by deleting the requirement that the father "must" admit paternity with the substitution of the word "may" admit paternity.

The proposed rule is left unchanged because after identifying the interest of the parties involved in the paternity suits and after analyzing how those interests are protected in a paternity suit, it became apparent that the governing principle parts of 9500.1650 to 9500.1663 should be for the protection of the Commissioner's interest to try to obtain enough money and protection to prevent and reduce the need to provide the child with AFDC and medical assistance (Medicaid) benefits.

Compromise agreements, which do not establish paternity, are not reasonable from the Commissioner's point of view because they do not establish paternity. Paternity must be established to make the child eligible for certain financial benefits to which a child is entitled only through his or her biological or

adopted parent. Financial benefits that are contingent on establishing paternity and that are available to the child may prevent the Commissioner from having to provide AFDC or medical assistance for the child. Such benefits include Social Security, Veterans Benefits, workers compensation allowances and health and life insurance benefits. Therefore, proposed part 9500.1658, subpart 2, protects the Commissioner's and the child's interests in these benefits by requiring an admission of paternity and categorically reject compromise agreements.

Proposed parts 9500.1650-9500.1663 sets standards that enable the Commissioner to make objective and consistent decisions concerning concent to proposed lump sum settlements and compromise agreements.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as permanent rules relating to the Commissioner's consent to paternity suit settlements, Minnesota Rules, parts 9500.1650 to 9500.1663 is adopted this 8th day of October. 19[illegible], pursuant to authority vested in my by Minnesota Statutes, section 257.60.

LEONARD W. LEVINE,
Commissioner

Frundt, Frundt, Johnson & Roverud, Ltd.
Attorneys at Law

JOHN H. FRUNDT
CHARLES K. FRUNDT
MICHAEL D. JOHNSON
BRIAN D. ROVERUD

OF COUNSEL:
JAMES M. LOONAN

117 WEST 5TH STREET
BLUE EARTH, MN 56013
PHONE (507) 526-2177

JUL 1986
RECEIVED
OFFICE OF
CHILD SUPPORT
ENFORCEMENT

July 21, 1986

Ms. Mary Anderson
Office of Child Support and Enforcement
444 Lafayette Road
Second Floor
St. Paul, MN 55101

Re: Comments and Written Request for Public Hearing on Proposed Rules on Consent to Paternity Suit Settlements

Dear Ms. Anderson:

Please consider this letter as a written request for a public hearing with respect to proposed rules regarding the State Department of Human Services governing Commissioners consent to paternity suit settlements under Minnesota rules parts 9500.1650 to 9500.1663. I am also including some comments I have to the rules.

I am attorney at law, practicing law in Blue Earth, Faribault County, Minnesota. I am involved on occasion in paternity suit proceedings. In reviewing the rules as proposed, I do see some substantial problems with them. The most difficult problem is the failure to take into account the "best interests of the child". The key factor running throughout the statutory provisions in Minn. Stat. section 257.64 and 518.551 along with 257.60. In effect, the Department of Human Services is saying that it is not going to take into account the best interests of the child, but is going to require admission of paternity and full payment for future child support either equal to the guidelines or in excess of those guidelines. There is no provision for a compromise in situations where it might be in the best interests of the child not to have the father admit or where a compromise is the best result for the child.

There have been occasions where paternity has not been established by a jury even though that alleged individual has had a blood test result in excess of 92 percent. In effect, by the Commissioner not agreeing to any sort of compromise the Commissioner is saying that all cases will be tried where there are circumstances which would potentially allow the jury to conclude that the alleged father is not in fact the biological father of the child. This all or nothing approach is directly contrary to the language contained in the statutes already cited which allow for

compromise of these disputes based on all factors and not just the blood test results.

It therefore appears that the rules as proposed are contrary to the statute and would possibly not withstand a challenge by a party to the adoption of these rules.

It appears that the proposed rules are flawed with ambiguity dealing with child support payments and costs. In 9500.1656 it states that the Commissioner shall not consent to a compromise agreement and yet in 9500.1658 it talks about all or a proportion of past payments. How is this to be interpreted.

Finally,, I request that the rules dealing with restricting the availablity of compromises be deleted from these proposed rules and namely that 9500.1656 be deleted in its entirety and replaced with the statement that the Commissioner may for good cause consent to a compromise agreement and change 9500.1658 by deleting the requirement that the father must admit paternity deleting subpart 3, changing the third word in subpart 4 to may and the remainder remain as written.

Very truly yours,

FRUNDT, FRUNDT, JOHNSON & ROVERUD, LTD.

Brian D. Roverud

BDR:tkl

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULE OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING THE COMMISSIONER'S CONSENT TO PATERNITY SUIT SETTLEMENTS, MINNESOTA RULES, PARTS 9500.1650 TO 9500.1663

DECLARATION OF COUNSEL

I, Julie K. Harris, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 81R4.

October 9, 1986
Date

Julie K. Harris
Special Assistant
Attorney General

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES GOVERNING COMMISSIONER'S CONSENT TO PATERNITY SUIT SETTLEMENTS, MINNESOTA RULES, PARTS 9500.1650 TO 9500.1663

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 16th day of July, 1986.

Nancy Storlee

Notice of Intent to Adopt Rule
- Signed 7-7-86
- Rule is described
- They followed your form
- Sm. business not addressed

Declaration of Counsel
- followed recommended form

Findings of Fact
- followed Recommended form

Rule
All new material
- 257.64 subd 1
- 257.66 subd 4
- 256.72
- 256.74 subd 1 (6) subd 1a (1)
256.87 ?
- 393.07 subd 2, 3 + 5

RECEIVED
1986
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
444 LAFAYETTE ROAD
ST. PAUL, MINNESOTA 55101

TO: Rita Desmond
Legal Assistant
Attorney General's Office, Administrative Division

FROM: Bob Hamper BH 10/10/86
DHS Rules Unit

SUBJECT: Review of a Rule Adopted Without a Public Hearing;
Commissioner's Consent to Paternity Suit Settlements,
Minnesota Rules, parts 9500.1650 to 9500.1663

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0300 for your review of a rule adopted without a public hearing for the above entitled matter.

Official documents in this submitted material include:

1. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt a rule without a public hearing as mailed.

4. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

5. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The affidavits state that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a is accurate, complete, and current and that the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

6. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the State Register.

7. Four copies of the rule as adopted. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the revisor of statutes.

8. The findings of fact, conclusions, and order adopting the rule.

9. All written requests, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness.

10. The declaration of the attorney in the attorney general's office who represents the agency.

11. The notice of submission of the rule to the attorney general, if applicable.

12. The affidavit of mailing notice of submission of the rule to the attorney general, if applicable.

If you have any questions on this submitted material, please call me at 296-2794.