

Rule 368. Removal of a Particular Child Support Magistrate**Rule 368.01 Automatic Right to Remove Precluded**

No party has an automatic right to remove a child support magistrate, family court referee, or district court judge presiding over matters in the expedited process, including motions to correct clerical mistakes under Rule 375 and motions for review under Rule 376.

Rule 368.02 Removal for Cause

Subdivision 1. Procedure. To effect removal, a party shall serve upon the other parties and file with the court a request to remove the child support magistrate for cause within ten (10) days of service of notice of the name of the magistrate assigned to hear the matter or within ten (10) days of discovery of prejudice. If assignment of a child support magistrate is made less than ten (10) days before the hearing, the request to remove shall be made as soon as practicable after notice of assignment is given.

Subd. 2. Grounds to Remove. Removal of a child support magistrate requires an affirmative showing of prejudice. A showing that the child support magistrate might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

Subd. 3. Review of Denial of Removal. If the child support magistrate denies the request to remove, upon written request filed with the Court Administrator in that district, a district judge assigned to or chambered in the district shall determine whether cause exists. If that judge is the child support magistrate, the request for removal for cause shall be heard by a different judge in that district.

(Amended effective June 1, 2009.)

Advisory Committee Comment - 2008 Amendment

Rule 368.02, subdivision 1, is amended to clarify the procedure for removal of an assigned child support magistrate from hearing a matter. Subdivision 3 is a new provision, designed to provide a more streamlined mechanism for review of a magistrate's decision not to order removal. The review of that decision is to be heard by a district judge who either had chambers in the county where the expedited child support case is pending or to a judge assigned to that county. This procedure obviates submission of the matter to the Chief Judge, recognizing that the Chief Judge may be far removed from the county where the case is pending.