

Burnett County Circuit Court Rules – Effective January 1, 2019

Part 1: Tenth Judicial District Rules

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101 District Rule Adoption and Promulgation

101 District Rule Adoption and Promulgation

101.01 Pursuant to Wis. Stat. § 753.35, the Tenth Judicial District Court Rules are incorporated herein by reference. These Burnett County Circuit Court Rules supersede all previously adopted local rules and shall be posted and available for public review in the Burnett County Government Center.

101.02 Rules shall be adopted by order of a majority of the circuit court judges of Burnett County, subject to the approval of the chief judge.

101.03 The effective date of these new and improved rules is January 1, 2019.

Part 2: Court Practice

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201 Notice of Representation

201.01 Notice of Retainer. An attorney who represents a party shall file with the clerk of court a notice of retainer or order appointing counsel as soon as practicable. An attorney who intends to withdraw as counsel of record shall first file a written motion and schedule the matter for hearing with notice to the court and all opposing parties. Withdrawal and/or substitution by an attorney may be accomplished by written stipulation if agreed to and signed by all attorneys and approved by the court. Except where required by law, counsel will not be permitted to withdraw if scheduled proceedings will be delayed or if the client will be harmed.

202 Closure of Proceedings, Cameras and Media Access

202.01 A party moving that any judicial proceeding required by law to be public, should be closed to the news media, must notify the court three (3) days prior to the hearing/trial, if possible. The court may waive this requirement for good cause. The motion will be heard before the commencement of the hearing. The burden shall be upon the moving party to show why Wis. Stat. § 757.14 should not apply.

202.03 Cameras in the Courtroom. (a) All Burnett County Circuit Court proceedings shall be open to the public and media coverage unless prohibited by statute or court order. (b) Any mediation session, whether in civil, small claims or family court, is not a judicial proceeding required by law to be public and such settlement proceedings are therefore exempt from these requirements. As a result, any manner of recording (audio or video) is prohibited in said proceedings. (c) Cameras and recording equipment may be allowed in courtrooms or hearing chambers provided a written request is made to the presiding court official and Burnett County media coordinator at least three (3) days before each scheduled hearing or trial. A notice by one media representative shall be sufficient for all subsequent hearings and trials in said case. Each media organization must provide an individual notice; one notice will not suffice for all other media representatives. The court will make a diligent effort to notify the attorneys and any unrepresented parties by telephone as soon as reasonably possible of the notice, and place a copy of the media request for cameras in courtroom form into the file indicating the time of doing so. The notice requirement may be waived by the presiding court officer upon good cause being shown.

202.04 Camera and Recording Equipment Rules. The court officer presiding at the hearing shall designate the location within the courtroom of any and all camera or audio equipment so that media coverage will not obstruct the

view of persons located in the public areas of the courtroom. The size and configuration of the courtrooms in Burnett County may require limitations on the number of cameras, audio recording devices and other media equipment. In cases where more media organizations wish to have equipment present than space permits, those media representatives who are allowed in the courtroom shall share footage or audio recording with those not permitted inside the courtroom with their equipment. Media equipment shall be set up prior to the commencement of any hearing and may not be removed until the next recess. There shall be no visual photography or videotaping of any juveniles, victims of sex crimes, undercover law enforcement agents or confidential informants unless authorized by the court upon advance request. There shall be no video or still photography of jurors or prospective jurors under any circumstances. The use of motorized cameras while court is in session is prohibited unless the motor is silent. No flashes or strobe lights may be used under any circumstances.

202.05 Media Coordinator. Anyone wishing to have cameras or recording equipment must comply with these requirements. The name of the Media Coordinator shall be maintained on file with and available from the District Court Administrator of the Tenth Judicial District. You can also contact the Judicial Assistant at 715-349-2149 or the Clerk of Courts at 715-349-2147.

203 Confidential Records

203.01 The following records and files are presumed to be confidential and will not be accessible without an order of the court: juvenile files, probate files, presentence investigation reports, medical reports, psychological evaluations, confidential judge and court commissioner notes that are work-product, and financial disclosure statements.

204 Continuances

204.01 All stipulated requests for the continuance of a hearing/trial require the consent of the parties in writing or on the record and must be for good cause shown. Non-stipulated requests for continuance must be on motion and hearing and for good cause shown by the party or with the party's written consent. Continuance requests are subject to the approval of the court and shall be requested of the Court within twenty (20) days of the date a hearing/trial notice is provided. If the time limits of the proceeding do not permit such time periods, the court may in its discretion shorten the time to file a notice of continuance and objection.

205 Court Commissioner

205.01 The circuit court commissioner and family court commissioner shall be appointed pursuant to Wis. Stat. § 757.68 and SCR 75.02(1). The circuit court commissioner and family court commissioner shall have all of the powers and duties specified in their annual appointment orders. Supplemental court commissioners may be appointed pursuant to Wis. Stat. § 757.675 and shall have all of the powers and duties specified in their respective appointment orders.

205.05 De Novo Review of Court Commissioner Orders

Any decision of a circuit court commissioner or family court commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any party may file a demand for a de novo hearing with the assigned judge within twenty (20) days from the date of a decision. Twenty (20) days shall be counted consecutively and include weekends and holidays. A motion for a de novo hearing will not stay the order(s) of the circuit court commissioner or family court commissioner unless the assigned judge specifically grants a stay of said order(s). Findings and orders entered by the circuit court commissioner or family court commissioner by stipulation or entered by default are not subject to de novo review.

206 Entry of Order/Judgments (Five-Day Rule)

206.01 Judges and court commissioners may hold proposed orders for a minimum of five (5) days upon receipt and request. If no objection is received by any other party, they may sign the orders as submitted.

207 Facsimile/Email Transmission of Documents to the Court

207.01 The filing of pleadings and other papers with the court shall be made by e-filing them. For cases that do not permit e-filing or for parties not subject to e-filing requirements, documents may be filed by facsimile transmitted to the courts shall be accepted for filing only if: (a) no filing fee is required, unless such fee has already been paid; (b) the document does not exceed fifteen (15) pages in length, excluding cover sheet, unless prior approval has been granted by the Judge; and (c) no additional fee or charge must be paid by the circuit court for accepting or receiving the facsimile document.

207.02 Facsimile documents transmitted to a non-court agency, party or company for reception and transmittal to the court shall be accepted for filing only if: (a) they are on plain-paper; (b) no filing fee is required; (c) no additional fee or charge must be paid by the circuit court for accepting or receiving the facsimile document; and (d) filing is complete upon receipt by the court. The party transmitting the facsimile document is solely responsible for ensuring its timely and complete receipt. The judge, court commissioner, judicial assistant, or clerk is not responsible for: (a) errors or failures in transmission that result in missing or illegible documents; and (b) periods when a circuit court facsimile machine is not operational for any reason. If the facsimile transmission exceeds 15 pages, the party or attorney shall certify that the assigned judge or court commissioner has approved the facsimile transmission. The court may authorize, in advance, the filing of particular documents in a case that do not conform to these rules, if good cause is shown and they are in conformance with Wis. Stat. § 801.16.

207.05 A party submitting a document shall make the original transmission through the clerk of circuit court facsimile at (715) 349-7659 only, and is not required to also transmit to the judge or court commissioner facsimile. Facsimile papers are considered filed upon receipt by the clerk of circuit court and are thus the official record of the court and may not be substituted. No additional copies may be sent. There shall be no fee for incoming facsimiles. The court may charge \$1.25 per page for outgoing facsimiles. Documents that are not to be filed but are to be used by the court for reference or other purpose may be transmitted by facsimile transmission at the discretion of the judge, court commissioner, judicial assistant or clerk.

208 Fees--please see Statutes for fees or talk to the Circuit Court Clerk's Office.

209 Filing a Name Change

209.01 A petition for name change must be filled out by the petitioner or the parents if the petitioner is a child who is under the age of fourteen (14). Both parents must agree to the petition unless a parent's rights have been terminated. The petitioner must also complete the notice of hearing. A judicial assistant will assign a date and time for a hearing. The petitioner will be given a copy of the petition and notice of hearing. A copy of the notice of hearing must be published with the local newspaper or in the official county newspaper for three (3) weeks. An affidavit of publication must be filed with the clerk of court prior to the name change hearing.

209.02 After the judge has granted the name change, the petitioner, if born in Wisconsin, must complete a new vital statistics form and pay a recording fee. If the petitioner was not born in Wisconsin, he or she must ask the clerk for an additional certified copy of the order for change of name to send to the appropriate state of birth. Two certified copies of the order will be needed. One copy shall be recorded with the Burnett County Register of Deeds. A recording fee may also be charged by the Register of Deeds.

210 Holding of Court in Location Other Than the Government Center

210.01 The court may, from time to time, travel to other cities, villages and towns to hold sessions of the court in places located within the boundaries of Burnett County. Such travel shall only be done after the court has made a determination that the proposed location is appropriate, has adequate facilities, and that such action is consistent with Wis. Stat. § 753.24.

211 Issuing of Writs

211.01 All writs shall be addressed to and heard by the intake judge unless otherwise ordered. That judge shall handle all subsequent proceedings involving the writ unless otherwise required by law.

212 Judicial Assignments

212.01 Intake. The judge(s) and court commissioner shall preside over intake court.

213 Jury Fees

213.01 Civil Actions. In all civil cases, the fee for either a six person jury (\$36.00) or twelve person jury (\$72.00) shall be paid either at the time of commencement of the action or the time specified in the scheduling order. If the jury fee is not paid in a timely manner, the matter shall be tried to the court as a bench trial unless otherwise ordered by the assigned judge.

213.02 Small Claims Actions. Pursuant to Wis. Stat. § 799.21(3), any party may, upon payment of the \$36.00 jury fee, file a written demand for a jury trial. In eviction actions, the demand shall be filed at or before the time of joinder of issue. In all other actions, the demand for trial by jury shall be made at the time a demand for trial is made for review of the decision of the circuit court commissioner pursuant to Wis. Stat. § 799.207.

213.03 Ordinance and Traffic Court Actions. Pursuant to Wis. Stat. § 345.43 any defendant may demand a jury trial within ten (10) days after the date s/he has entered a not guilty plea. If the jury fee is not paid in a timely manner, the matter shall be a bench trial unless otherwise ordered by the assigned judge.

214 Rules of Decorum

214.01 These rules restate the rules of courtesy and decorum set forth in Wisconsin Supreme Court Rule 62.

214.02 Judges, court commissioners, lawyers, clerks and court personnel shall at all times do all of the following: (a) Maintain a cordial and respectful demeanor and be guided by a fundamental sense of integrity and fair play in all their professional activities. (b) Be civil in their dealings with one another and with the public and conduct all court and court-related proceedings, whether written or oral, including discovery proceedings, with civility and respect for each of the participants. (c) Abstain from making disparaging, demeaning or sarcastic remarks or comments about one another. (d) Abstain from any conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive. (e) While in court or while participating in legal proceedings, dress in a manner showing proper respect for the court, the proceedings and the law. Judges shall wear black robes while presiding on the bench except when exceptional circumstances exist. (f) Advise clients, witnesses, jurors and others appearing in court that proper conduct and attire is expected within the courthouse and, where possible, prevent clients, witnesses or

others from creating disorder or disruption. (g) In scheduling all hearings, meetings and conferences, be considerate of the time schedules of the participants and grant reasonable extensions of time when they will not adversely affect the court calendar or clients' interests. (h) Conduct themselves in a manner which demonstrates sensitivity to the necessity of preserving decorum and the integrity of the judicial process.

214.03 Judges, court commissioners and lawyers shall be punctual in convening and appearing for all hearings, meetings and conferences and, if delayed, shall notify other participants, if possible.

214.04 Lawyers shall do all of the following: (a) Make all reasonable efforts to reach informal agreement on preliminary and procedural matters. (b) Attempt expeditiously to reconcile differences through negotiation, without needless expense and waste of time. (c) Abstain from pursuing or opposing discovery arbitrarily or for the purpose of harassment or undue delay. (d) If an adversary is entitled to assistance, information or documents, provide them to the adversary without unnecessary formalities. (e) Abstain from knowingly deceiving or misleading another lawyer or the court. (f) Clearly identify for the court and other counsel changes that he or she has made in documents submitted to him or her by counsel or by the court. (g) Act in good faith and honor promises and commitments to other lawyers and to the court.

214.05 Adherence to standards of professionalism and courtesy, good manners and dignity is the responsibility of each judge, court commissioner, lawyer, clerk, and other personnel of the court who assist the public.

215 Substitutions and Recusals

215.01 A request for substitution of the judge shall be filed with the assigned judge. After the parties have been advised that another judge will be assigned to the case and a timely request for substitution of judge has been filed, the case will be immediately transferred to a different judge.

215.02 If a judge disqualifies himself or herself pursuant to Wis. Stat. § 757.19, the judge shall describe the reasons with specificity and with particularity. The judge will file the written reasons supporting the disqualification, along with a request for reassignment, with the chief judge of the tenth district, who shall then determine whether the disqualification is appropriate based on the reasons stated.

215.03 Attorneys for the parties who become aware of a reason for disqualification under Wis. Stat. § 757.19(2) shall promptly notify the judge and the other parties so that appropriate action can be taken under Wis. Stat. § 757.19(3), (4) or (5).

216 Telephonic Appearances

216.01 Telephone appearances can be arranged by contacting the judicial assistant of the judge or court commissioner. The party requesting to appear by telephone must make the request in writing to the judge or commissioner and must state that they have spoken with their client and that their client does not object to their appearance by telephone. This request must be received at least 48 hours prior to the hearing, unless otherwise approved by the court. The party requesting to appear by telephone is responsible for notifying all parties, initiating the call at the time of the hearing, and connecting all parties to the conference call who wish to appear by telephone.

217 Use of Videoconferencing

217.01 Statement of intent. Videoconferencing technology shall be available for use in the circuit courts of Burnett County consistent with Wis. Stat. § 885.50.

217.02 Technical and operational standards. Videoconferencing technology used in circuit court proceedings in Burnett County shall meet the technical and operational standards set forth in Wis. Stat. § 885.54.

217.03 Criteria for exercise of court’s discretion. The circuit courts in Burnett County will be guided by Wis. Stat. § 885.56 in determining whether to permit the use of videoconferencing technology in a particular case.

217.04 Use in civil cases and special proceedings. Subject to the standards and criteria set forth in ss. 885.54 and 885.56 and to the limitations of Wis. Stat. § 885.58(2), a circuit court may, on its own motion or at the request of any party, in any civil case or special proceeding permit the use of videoconferencing technology in any pre-trial, trial, or post-trial hearing.

217.05 Use in criminal cases and proceedings under chapters 48, 51, 55, 938 , and 980. Subject to the standards and criteria set forth in ss. 885.54 and 885.56 and to the limitations of § 885.60(2), a circuit court may, on its own motion or at the request of any party, in any criminal case or matter under chs. 48, 51, 55, 938, or 980, permit the use of videoconferencing technology in any pre-trial, trial or fact-finding, or post-trial proceeding.

217.06 Waivers and stipulations. Parties to circuit court proceedings may waive the technical and operational standards provided in this subchapter, or may stipulate to any different or modified procedure, as may be approved by the court. Fees, costs, and other information regarding videoconferencing availability in Burnett County may be obtained by calling the clerk of court at (715) 349-2147.

Out-Of-State Lawyers / Pro Hac Vice Admission

225.01

This rule is in conformity with the Tenth District Rule, which requires that judges and court commissioners in Burnett County strictly enforce Wisconsin Supreme Court Rule 10.03(4).

A non-resident lawyer who is not licensed to practice law in the State of Wisconsin and wishes to appear in any action in any Circuit Court within the Tenth Judicial Administrative District must petition the Circuit Court in writing.

1. The Affidavit supporting the Petition shall include, or be accompanied by, the following:
 - a. The name of the active member of the Wisconsin State Bar who will participate with the non-resident lawyer.
 - b. A copy of the signed Office of Lawyer Regulation Application for Admission Pro Hoc Vice form.
 - c. Proof of payment of the \$250 application fee. Pursuant to SCR 10.03(4)(b)2, the fee shall be waived if the application certifies that the attorney is employed by an agency providing legal services to indigent clients and will be appearing on behalf of an indigent client, or that the applicant will otherwise be appearing on behalf of an indigent client in the proceeding and will be charging no fee for the appearance.
2. If the Circuit Court grants the petition:
 - a. The active member of the Wisconsin State Bar shall appear in person at all proceedings held on the record, including those held out of court, such as depositions.
 - b. The active member of the Wisconsin State Bar shall review all pleadings, motions and other papers to be filed with the Circuit Court. Both the non-resident lawyer and the active member of the Wisconsin State Bar shall sign all pleadings and motions.
3. Wisconsin Supreme Court Rule 10.03(4) shall be strictly enforced.
4. The non-resident lawyer is subject to disciplinary authority of this State for conduct that occurs in connection with the action, pursuant to Wisconsin Supreme Court Rule 20:8.5.

230 Ex Parte Communications

Ex parte communications are restricted by State and local law. Any communication by telephone, email, letter, face-to-face conversation, or other off the record contact, is generally prohibited.

250 Electronic Monitoring / Electronically Recorded Proceedings

250.01 Pursuant to Wis. Stat. § 757.55 and SCR 71.05, the judges of Burnett County Circuit Court have determined that certain proceedings involving the judge, circuit court commissioner and family court commissioner maybe reported by electronic means. Electronic reporting uses audio recording equipment to register court proceedings and has been approved for use by the Wisconsin Supreme Court and Tenth Judicial District. The reason for this rule is because transcripts of hearings before the circuit court commissioner and family court commissioner are infrequently requested and a digital court reporting system is used. Proceedings reported by electronic means in front of the commissioner may include default divorces, post-judgment family motions, harassment and domestic abuse injunction hearings, small claims, traffic and ordinance cases. Copies of the only the proceedings listed above in front of the commissioner may be requested on CD-ROM and may be available for purchase at a cost of \$10.00. The CD, however, is not an official transcript and shall not be used for anything other than illustrative purposes. Any party requesting an official transcript shall be responsible for having it transcribed and certified by an official court reporter. No other recording is available for purchase. An official transcript must be purchased, if desired to have a record of the hearing.

260 Admission of Electronic Evidence. Photographic or written evidence stored in electronic format which is sought to be admitted as an exhibit in an evidentiary hearing shall be provided in printed format for admission at trial. This rule includes text messages, emails, photographs maintained on a cellular phone. Further videos stored in electronic format shall be provided on CD-Rs or DVD-Rs.

Part 3: Civil Practice

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301 Service and Answer

301.01 These rules incorporate by reference the filing, service, and answering requirements of the rules of civil procedure contained in Wis. Stat. § 801, et seq.

302 Scheduling

- 302.01 Court Review. All civil cases will be reviewed for proof of service and answer 120 days after filing. The court may issue a dismissal order, notice of scheduling conference, or notice of a default hearing when appropriate.
- 302.02 Consolidation of Cases. Motions to consolidate cases will generally be filed with and heard by the judge assigned to the earliest filed case. If the motion is granted, the cases shall be assigned to the judge with the earliest filed case and the order shall offer signature lines for all judges in all cases being considered.
- 302.03 Scheduling Orders and Scheduling Conferences. Scheduling orders will typically not be issued until a telephonic scheduling conference has taken place and a scheduling order has been agreed to by counsel. Scheduling conferences are handled by the judicial assistant or someone else directed by the judge and can be arranged by calling (715) 349-2149. The party requesting the scheduling conference is responsible for notifying all parties in writing of the date and time of the call, initiating the call, and connecting all parties to the call. The court commissioner generally will request that the plaintiff draft a proposed scheduling order in accordance with the deadlines agreed upon at the scheduling conference and circulate copies to all parties. Deadlines included in such orders may include trial, pretrial dates, discovery, summary judgment, pleading and party amendments, expert witness disclosure dates, ADR completion date, and other dates agreed upon by counsel. In the event that the parties are unable to agree on provisions of the scheduling order, the matter will be referred to the assigned judge for further assistance. The parties may presume that the court has signed the order after five (5) days pursuant to the five (5) day rule of Rule 206. Signed copies of scheduling orders will not be sent out by the clerk of court unless a self-addressed stamped envelope has been provided.
- 302.04 Continuances. All stipulated requests for the continuance of a hearing/trial require the consent of the parties in writing or on the record and must be for good cause shown. Non-stipulated requests for continuance must be on motion and hearing and for good cause shown by the party or with the party's written consent. Continuance requests are subject to the approval of the court and shall be requested of the Court within twenty (20) days of the date a hearing/trial notice is provided. If the time limits of the proceeding do not permit such time periods, the court may in its discretion shorten the time to file a notice of continuance and objection.

302.05 Mediation. In any civil action, the parties and other interested persons as ordered by the court, shall select either mediation or any other settlement alternative, as that term is defined in Wis. Stat. §802.12(1)(i), and attempt settlement prior to trial. An order under this paragraph may include a requirement that the parties participate personally in the settlement alternative. All parties, including subrogated parties, and their attorneys shall participate in person. Any corporate party or other organization shall appear, in addition to counsel of record, by an individual who shall have full authority to negotiate, unless the mediator permits otherwise. Full authority means the authority to make or modify offers and to approve a final settlement without the need to seek authority from any other person. A party who fails to comply with this provision of this Order may be ordered to pay all costs of the mediation and be subject to further sanctions. Unless otherwise ordered by the court, the parties shall share equally the cost of mediation or other settlement alternative. The court may waive or modify this ADR requirement in its discretion. Mediation shall generally be completed before the Court schedules a jury trial.

303 Pretrial

303.01 In all pretrial matters, attorneys must have the authority to negotiate in the absence of their clients or, if authority is not granted, immediate telephonic access to the clients shall be required. The judge may in any case require all parties to be present personally at the pretrial.

304 Discovery

304.01 All motions to compel discovery pursuant to Wis. Stat. § 804 must be accompanied by a statement in writing by the movant that after consultation with the opposing party and sincere attempts to resolve their differences the parties are unable to reach an accord. Such statement shall recite the date, place and name of all parties participating in such discussions. The court may upon its own initiative after reasonable notice, or pursuant to a motion, limit the number of depositions and interrogatories and may also limit the length of depositions. The frequency and extent of the use of the discovery methods otherwise permitted or limited by these rules may be further limited if the court determines that: the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or the burden or expense of the proposed discovery outweighs its benefit, taking into account the needs of the case, the amount in controversy, the

parties' resources, the importance of the issues at stake in the litigation, the importance of the proposed discovery in resolving the issues.

305 Other Motions

305.01 Motion Practice. Motions shall be heard at a date and time set by the judge or judicial assistant. It is the attorney's responsibility to schedule the motion with the court, and a motion filed only with the clerk of court will not be scheduled until a specific request by phone or in writing is made of the court for a hearing date and time. Motions, supporting documents and briefs should be filed with the court and served on the nonmoving party at least twenty (20) days before the hearing date unless provided otherwise by these rules or order of the court. The opposing party should serve and file a written response at least five (5) days before the hearing. Motion hearing dates will not be set until motion is filed.

305.03 Telephone Motions. Telephonic hearings are discretionary with the court and may be arranged by calling the judge's judicial assistant. After approval by the court, a date and time will be set by the judicial assistant. The party requesting the telephone motion is responsible for notifying all parties, initiating the call, and connecting all parties to the call who wish to appear by telephone.

305.04 Trial Briefs, Proposed Verdict and Instructions. Unless otherwise provided by the judge or scheduling order, all trial briefs, proposed verdicts, instructions and motions in limine shall be filed one week prior to the pretrial, unless otherwise approved by the Court.

306 Judgments

306.01 Default Judgment. Except as to mortgage foreclosures, in all actions where personal service was obtained upon the defendant, ten (10) days notice shall be required prior to the entry of judgment. Notice may be accomplished by either an affidavit of mailing or cover letter showing that the defendant was copied on the default papers filed with the court. If after ten (10) days no objection is received, the court will typically sign the proposed order and grant the default judgment. In actions where damages are not liquidated, a hearing may be held to determine the amount of the judgment. The court may order a hearing to determine the amount of judgment in any case, and any judge may in an individual case require further notice or proof regarding service, damages or costs if appropriate.

306.011 In mortgage foreclosure actions, a hearing is generally required and the plaintiff shall include with its motion for default judgment the specific property description in the proposed findings of fact, conclusions of law

and judgment submitted for the court's signature. In cases where no personal service is obtained upon the defendant (i.e., substitute or published, notice of motion for default judgment shall be given to the defendant by regular mail at the defendant's last known address. The notice shall provide that in the event the defendant does not request a hearing from the court, in writing, on the plaintiff's motion within fifteen (15 days of the date of the notice, a default judgment may be entered.

306.02 Summary Judgment. The parties may file motions for summary judgment within eight (8 months of the filing of the summons and complaint or within the time established in the scheduling order, as allowed under Wis. Stat. § 802.08. Motions shall be accompanied by: legal briefs; affidavits; and a notice of briefing schedule. Standards suggested are twenty (20 days for responsive briefs and affidavits, and ten (10 days thereafter for reply briefs and affidavits. All briefs should be received at least five (5 days before a hearing. Summary judgment motions will be decided without oral argument unless otherwise ordered. Oral argument will be scheduled upon request and in the discretion of the assigned judge.

307 Harassment, Domestic Abuse, Child Abuse and Individual At Risk Restraining Orders and Injunctions

307.01 All motions must be filed by 4:00 p.m. to ensure that a judge or commissioner can review the request for the temporary. Motions filed after 4:00 p.m. will not be reviewed until the next morning. The clerk of court shall ensure that the petitioner has signed the moving papers and that the signature is notarized. The clerk of court shall also ensure that all relevant paragraphs on the petition and other papers are complete and stated with specificity, and if needed, confer with the judge before filing. The clerk should also determine whether or not any other actions between the parties are pending. If there are, the court commissioner or judge assigned should be so informed. The court commissioner or judge shall review all petitions as to form and substance. If the petitioner seeks to have the filing fees waived due to indigency, the court commissioner or judge shall determine the question of indigency. Injunction hearings shall be scheduled with either the court commissioner or judge, depending on the nature of the case and calendar availability, to ensure compliance with statutory hearing timelines.

307.02 Petitioners in harassment, domestic abuse, child abuse, and individual at risk cases should provide the clerk of court with their contact information at the time of filing so as to facilitate communication for scheduling purposes. Any contact information provided by a petitioner shall be sealed in the court file and may not be accessed unless otherwise ordered by the court.

308 Certiorari Review of County Administrative or Board Decisions

308.01 Pursuant to Wis. Stat. § 781.03, in an action for certiorari review of a decision made by a Burnett County department, committee or board, the

respondent department, committee or board shall cause the record of decision to be transmitted to the clerk of court. The respondent department, committee or board is not required to provide a copy of the record of decision to the petitioner.

308.02 Notwithstanding the above, if the proceedings of the department, committee or board were recorded by a court reporter by stenographic means or videotape means or by electronic recording, it shall be the petitioner's responsibility and at petitioner's expense to arrange for the filing of the original transcript or videotape with the court, and it shall be petitioner's responsibility to obtain at petitioner's expense a copy for petitioner's use. Respondent shall be responsible for obtaining at respondent's expense, a copy for respondent's use.

Part 4: Criminal Practice

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401 Defendant's Presence Required

401.01 All persons charged with criminal offenses must be present at all appearances unless, due to exceptional circumstances and upon motion by the defense, the judge enters an order authorizing non-appearance. Presence may be by videoconference or telephone for noncritical stages in the proceeding and in person at critical stages of the proceedings.

402 Warrants and Warrantless Arrests

- 402.01 Activated warrants. In criminal matters where there is an activated warrant, and the defendant has made appearance on that activated warrant, unless specific mention of instructions are given on the record, it is ordered that the activated warrant pertaining to that matter shall be dismissed.
- 402.02 Active warrants. It is ordered that in criminal matters where there is a court disposition on the record, and, any active warrant exists pursuant to that matter, that warrant shall be considered dismissed unless specifically stated otherwise on the record.
- 402.03 Warrantless arrests. Whenever a warrantless arrest occurs, the person arrested must have a probable cause determination by a court commissioner or judge within forty eight (48) hours of the arrest. This is commonly referred to as a Riverside hearing, which generally requires a judicial determination of probable cause within forty-eight (48) hours of a warrantless arrest. See County of Riverside v. McLaughlin, 500 U.S. 44, 56-57, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991). A judge or court commissioner shall review the form and find that probable cause either is or is not stated on the form. Persons for whom no probable cause is found shall be released immediately. Persons for whom probable cause is found may be held for further proceedings and may post bond as determined by the court.
- 402.04 Warrant Return Dates. For any warrant that is issued but stayed, the defendant will be required to appear no later than Wednesday of the following week at 1:00 p.m. or as otherwise stated by the judge on the record when issuing the warrant in front of the intake judge or at another date as approved by the judge. For any warrant that is issued, if a defendant calls in and asks what s/he should do, they should be advised to report to the jail or pay any amount listed on the warrant for cash release. After they report to the jail, they will be brought to the judge either at 1:00 p.m. on the day they report or at 1:00 p.m. the following day, depending on what time they report to the jail. For any warrant that is issued, if a defendant shows up on the second floor of the courthouse at any time, s/he should be taken into custody. If they show up in the morning, they should be brought down from the jail at 1:00 p.m. that day to appear in front of the intake judge. If they show up after noon, they should be brought down from the jail at 1:00 p.m. the following day in front of the intake judge. For any issued warrant that the issuing judge or commissioner has established a cash bail, the amount of cash stated in the warrant will be modified only upon approval of the judge based upon a valid reason for nonappearance.

403**Bonds**

- 403.01 Cash Bonds. All persons arrested for a violation of a state or municipal forfeiture shall be released from custody without a cash bond if they: have a valid Wisconsin driver's license or can show sufficient evidence of ties to the community; or the arresting officer is otherwise satisfied that the accused will make future court appearances. All persons arrested for a misdemeanor, including a misdemeanor traffic offense, shall be released from custody without a cash bond unless any of the following exist: the accused does not have proper identification; the accused appears to represent a danger of harm to himself or herself, another person or property; the accused cannot show sufficient evidence of ties to the community; the accused has previously failed to appear in court or failed to respond to a citation; arrest or further detention is necessary to carry out legitimate investigative action in accordance with law enforcement agency policies or any reasonable determination made by the jail captain or the designee as to reasons not to release the person. Persons arrested for operating a motor vehicle while intoxicated or other criminal alcohol related driving offense shall be required to post the minimum cash bail as referenced in the Uniform Misdemeanor Bail Schedule. In the event cash bail cannot be posted, the accused shall be held for an initial appearance/bail bond hearing on the next calendar date or if arrested on a weekend and necessary, a 48 hour probable cause request shall be submitted to a judicial officer for consideration and determination. All persons not released pursuant to the circumstances above for a forfeiture misdemeanor or misdemeanor traffic offense shall be released upon compliance with the state deposit or misdemeanor bail schedules unless bail is otherwise set by the court. These guidelines do not supersede specific statutorily mandated detention.
- 403.02 No Contact Domestic Violence Bonds. Whenever a bail/bond form is prepared and executed by law enforcement officers in Burnett County under circumstances where the alleged violation involves domestic abuse or violence and implicates the mandatory arrest provisions of Wisconsin law, the person preparing the bond shall include a "no contact" provision prohibiting the defendant from contacting the alleged victim or victims, unless the victim or victims waive the mandatory "72-hour no contact" provision.

405 Preliminary Hearings

405.01 Preliminary hearings in felony cases will be scheduled according to the parameters of Wis. Stat. § 970.03, unless waiver of time limits is received. The preliminary hearing will typically be heard by the assigned judge, but may be handled by the court commissioner as the Court calendar permits.

406

Commitment Orders

407

Discovery

407.01

Discovery in criminal cases is governed by Wis. Stat. § 971.23.

408

Jury and Bench Trials

408.01

Pretrial order and order setting case for trial

409

Motion Practice

409.01.

Motions must be in writing and shall state with particularity the grounds thereof and the order or relief sought pursuant to Wis. Stat. § 971.30(2). It is the responsibility of the moving party to advise the court at time of final conference when a motion requires an evidentiary hearing. The hearing will be heard prior to trial unless the court determines otherwise. Motion hearing dates will not be set without first filing a motion. Pretrial motions shall be filed by the attorney 10 days after a probable cause finding, unless otherwise approved by the court.

410

Pre-Sentence Investigation

410.01

Pre-sentence Reports. After a conviction in a felony case the court may order a presentence investigation. When a presentence investigation report has been received the judge shall disclose the contents of the report to the defendant's attorney and to the district attorney prior to sentencing. When the defendant is not represented by an attorney, the contents shall be disclosed to the defendant. The judge may conceal the identity of any person who provided information in the presentence investigation report.

Except as otherwise provided by statute, after sentencing the presentence investigation report shall be confidential and shall not be made available to any person except upon specific authorization of the court. The district attorney and the defendant's attorney are entitled to have and keep a copy of the presentence investigation report and may do so at the district attorneys' office by asking to view a copy. If the defendant is not represented by counsel, the defendant is entitled to view the presentence investigation report but may not keep a copy of the report. A district attorney or defendant's attorney who receives a copy of the report shall keep it confidential. A defendant who views the contents of a presentence report shall keep the information in the report confidential.

411 Probation

415 Restitution

415.01 The specific amount of restitution should be ascertained by the district attorney by the time of sentencing and should be included in the judgment of conviction. If there is a contest regarding restitution, the matter shall be referred to the court commissioner or to the judge for factual findings pursuant to Wis. Stat. § 973.20(13). If heard by the court commissioner, the commissioner shall advise the judge in writing as to his findings and the judge may, in his or her discretion, attach those findings to its final restitution order.

425 Appointment of Counsel

425.01 Appointment of Counsel/County Reimbursement. Appointment of counsel shall be made by the assigned trial judge. When the court appoints criminal defense counsel at county expense (not an appointment by the State Public Defender's Office), at the time the appointment is made the defendant will be required to sign a statement acknowledging that he or she will reimburse the county for all or part of the counsel fees through a wage assignment or other means. The court may order immediate partial payment of fees, a retainer deposit, or other conditions the court determines as a condition of appointment.

450 Scheduling Orders

450.01 Each judge may supplement these criminal practice rules with scheduling orders.

470 Huber Privileges and Community Service Work

470.01 Huber law, by state statute, is for: (a) seeking employment or engaging in employment training; (b) working at employment; (c) performing community service work; (d) self-employment; (e) school attendance; or (f) medical treatment. The court sentences defendants and the Burnett

County Sheriff's Office manages the Huber/work release rules and regulations. Huber privilege is as approved by the Court and at the discretion of the jail, unless the court orders Huber release through the Court program permitting electronic monitoring. Information about this program can be provided by contacting Tessa Anderson.

480 Installment Payments

480.01 In any criminal or traffic matter, any fine, attorney fee, court cost, or restitution order may be paid in installments when so ordered by the assigned judge or court commissioner. If such a payment plan is approved, the defendant shall provide the court with a current address, telephone number, and social security number, which will then be kept confidential in the court file.

490 Continuances

490.01 All stipulated requests for the continuance of a hearing/trial require the consent of the parties in writing or on the record and must be for good cause shown. Non-stipulated requests for continuance must be on motion and hearing and for good cause shown by the party or with the party's written consent. Continuance requests are subject to the approval of the court and shall be requested of the Court within twenty (20) days of the date a hearing/trial notice is provided. If the time limits of the proceeding do not permit such time periods, the court may in its discretion shorten the time to file a notice of continuance and objection.

Part 5: Family Law Practice

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501 Advanced payments on custody and psychological evaluations

501.01 The court may order a party to deposit funds with the clerk of court to cover the cost of court-ordered custody and psychological evaluations.

502 Child Support Warrants

502.01 When a bench warrant is issued due to the non-appearance of a party at a child support hearing, the following procedures will apply. (1 The party will be picked up and transported to the Burnett County Jail unless s/he purges his or her contempt by paying arrearages in full or through cash bail

established on the warrant . The sheriff's department will contact the child support office and advise of the arrest. (2) The defendant will appear at the next regularly scheduled criminal intake calendar. (3) During intake, the court may order a signature bond or keep the warrant in place and set the matter on for a review hearing with the judge assigned to the underlying family file.

503 Guardian ad litem

503.01 If, upon the request of either party, the court determines that a Guardian Ad Litem (GAL) should be appointed, both parties shall file a financial disclosure statement with the court within ten (10) days. Failure to file the statement shall be deemed an admission of ability to pay.

503.02 Gal will be appointed by the Court. Parties may provide input or requests as to a potential GAL, but the appointment will be at the discretion of the Court.

503.03 The court will normally require one or both parties to deposit partial prepayment of the GAL fee in the amount of \$300 to the clerk of court upon appointment of a GAL. In an initial divorce action, the parties will generally be required to split the deposit 50-50. In post-judgment disputes, the moving party will generally be required to post the initial \$500. The court may increase the \$500 deposit amount if a party has the ability to pay the increased amount. The court may reduce the \$500 deposit amount or waive the deposit requirement if a party is indigent. The court may require the \$300 retainer to be paid or other payment arrangements approved before appointing the GAL or as otherwise ordered by the Court.

503.04 A GAL appointed in an action affecting the family should provide a monthly, but no later than quarterly. The GAL should appear at the final hearing in divorce or paternity proceeding with a statement of fees. In a divorce action the court will consider the GAL fee a marital liability in the property division. In a paternity action, the court will allocate responsibility for payment of the fee in the judgment. The court may order either or both parties to pay all or any part of the compensation of the GAL. If both parties are indigent, the court may direct that the county pay the compensation. The court may order a separate money judgment for unpaid GAL fees so the county can docket the judgment.

503.05 This rule is an alternative to any appointment of an attorney who may be under contract to Burnett County. The rule does not restrict the circuit court's statutory authority to appoint a GAL of the court's choice. The parties to an action affecting the family may also stipulate to the appointment of any qualified attorney as GAL for the minor children.

503.06 At the conclusion of the action, and prior to the discharge of the GAL, the court shall review the financial account of the GAL billings and receipts. The court shall make a final determination of what portion of GAL fees and costs shall be paid by each party or the county. No final judgment will be granted by the court without a provision regarding payment of the GAL fees and costs, including date certain for payment of remaining fees. Any final stipulation submitted by the parties for approval of the court must contain a provision regarding payment of remaining GAL fees.

503.07 When drafting an order for payment, the GAL shall copy all counsel and parties and indicate that, unless any objection is received within five (5) days, the court shall sign the order for payment as submitted by the GAL. If there is a dispute over payment, the objecting party is responsible for scheduling the matter for review with the judge or court commissioner.

504 Pre-trial

504.01 Order procedure for contested divorces.

504.02 Financial Disclosure Statements. A financial disclosure statement must be filed by both parties with the family court commissioner and with the Burnett County Child Support Agency if public assistance is involved, before or at the time of the hearing on the temporary order or prior to the entry of any temporary order based upon a written stipulation. Failure by either party to complete and file this form as required will authorize the judge or family court commissioner to accept the statement of the other party as the basis of its decision. Every motion or order to show cause to set or modify support, family support, or maintenance, shall contain language which requires both parties to submit to the court at the scheduled hearing completed financial disclosure statements/budgets and verification of income for two (2) months prior to the hearing date.

504.03 Confidentiality of financial disclosure statements. Due to the personal and private nature of the information provided in financial disclosure statements, all such documents shall be confidential in court files and may be accessed only by a party or his or her attorney.

504.04 Failure to File Timely Financial Disclosure Statements. An updated financial disclosure statement shall be filed at the final hearing, or at such time as ordered by the trial court. Failure by either party to timely file a complete disclosure statement as required, shall authorize the judge to accept the statement of the other party as accurate.

- 504.05 Temporary Order Hearing. All motions or orders to show cause for temporary orders shall be brought before the family court commissioner with the right to a *de novo* hearing before a judge. Hearings before the family court commissioner shall not be used for discovery purposes. The family court commissioner may curtail discovery which is not relevant to the pending hearing and may modify motions or orders to show cause which would require parties to bring materials to a hearing which would be more appropriately obtained through discovery procedure.
- 504.06 Divorce scheduling. When appropriate, the family court commissioner will conduct a status conference and enter a pretrial order which provides a list of disputed issues and an estimated length of trial, and which may include a discovery schedule and the date at which the case may be ready for trial. A copy of the order shall be sent to the assigned court branch.
- 504.07 Default divorce dates in uncontested cases may be heard by the family court commissioner. Status conference and default divorce dates will not occur until after the statutory 120 day waiting period contained in Wis. Stat. § 767.335 has expired.

505 Mediation

- 505.01 In any action affecting the family in which it appears legal custody or physical placement are contested (including, but not limited to, divorce, post-divorce, paternity and child support actions) the parties, and other interested persons as ordered by the court, shall attend at least one session of mediation with a mediator, and parent education classes as required by Wis. Stat. § 767.405. In its discretion, the court may order additional mediation sessions in a contested case on legal custody, physical placement, child support, property division, or any other issue affecting the family if it deems such a referral appropriate. Any mediator appointed by the court shall comply with all mediator qualifications specified in Wis. Stat. § 767.405(3).
- 505.03 The cost of the initial session of mediation shall be \$150.00 with the fee split equally between the parties. In cases where the requisite filing fee has been paid to the clerk of court, the county shall be responsible for the cost of the two hours of mediation. For any subsequent mediation sessions ordered by the court, the cost of mediation shall be at the mediator's rate and the fee will be split equally between the parties. The fee generally must be prepaid to the mediator, if requested. If prepayment is not received by the date set forth in the mediation order, the mediation session will be cancelled without further notice. Any mediator appointed by the court to perform a court ordered mediation agrees to comply with the fee schedule set forth above. The parties to any action may, at their own expense, receive mediation services from a mediator other than one appointed by the court.

506 Continuances

506.01 All stipulated requests for the continuance of a hearing/trial require the consent of the parties in writing or on the record and must be for good cause shown. Non-stipulated requests for continuance must be on motion and hearing and for good cause shown by the party or with the party's written consent. Continuance requests are subject to the approval of the court and shall be requested of the Court within twenty (20) days of the date a hearing/trial notice is provided. If the time limits of the proceeding do not permit such time periods, the court may in its discretion shorten the time to file a notice of continuance and objection.

Part 6: Foreclosure Practice

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601 Service

601.01 In mortgage foreclosure actions, a hearing is generally required and the plaintiff shall include with its motion for default judgment the specific property description in the proposed findings of fact, conclusions of law and judgment submitted for the court's signature. In cases where no personal service is obtained upon the defendant (i.e., substitute or published), notice of motion for default judgment shall be given to the defendant by regular mail at the defendant's last known address. The notice shall provide that in the event the defendant does not request a hearing from the court, in writing, on the plaintiff's motion within fifteen (15) days of the date of the notice, a default judgment may be entered.

602 Mediation

602.01 Pursuant to Wis. Stat. §802.12, Alternative Dispute Resolution (ADR) is available to parties in civil actions including those seeking foreclosures.

602.02 In actions for foreclosure, the Court requires the parties to seek settlement through Alternative Dispute Resolution (ADR) procedures under Wis. Stat. §802.12.

602.02.1 If the parties fail to agree upon a settlement alternative under said statute, the Court will determine whether the case is appropriate for use of a settlement alternative and the Court may order the parties to mediation, pursuant to Wis. Stat. §802.12(2)(b).

602.03 Upon the filing of a Summons and Complaint for foreclosure, the plaintiff(s) will be notified of the availability of foreclosure mediation and the process thereof, including service of mediation information upon the defendant borrower(s).

602.04 A request for mediation will not extend the time for filing any responsive pleadings while the applicability of a settlement alternative is determined.

602.04.1 If there is no request for Alternative Dispute Resolution (ADR), none will occur and a responsive pleading is due as required by the Summons.

602.05 In foreclosure actions, the plaintiff(s) shall determine whether and by whom the subject real estate is occupied. If the subject real estate is occupied by persons other than the defendant borrower(s), the plaintiff(s) shall give notice of the pending action to foreclosure to the occupants.

Part 7: Juvenile Practice

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701 Confidentiality

701.01 This local court rule establishes the policies and procedures of the juvenile and children's court of Burnett County. It shall supersede all previous

statements of the policies and procedures of the Burnett County Circuit Court concerning proceedings under Wis. Stat. ch. 48 and 938 in whatever form or format promulgated. All juvenile court proceedings shall be confidential. Social workers should file the documents either with the district attorneys' office or through electronic filings.

702

Definitions

702.01 Child: Refers to a person under the age of 18 involved in a chapter 48 CHIPS proceeding.

CHIPS: Child In need of Protection or Services; a Chapter 48 proceeding concerning a child who is within the jurisdictional requirements of Wis. Stat. § 48.13, generally involving orphaned, abandoned, abused, neglected, special treatment children, and children with alcohol or other drug abuse impairments.

Court: When used without further qualification, means the court assigned to exercise jurisdiction under Chapters 48 or 938, Wisconsin Statutes.

Court Intake: The process of submitting to the juvenile intake worker written referrals from agencies or departments authorized in Chapters 48 or 938 to refer a child/juvenile to the court.

Custody Intake: The process by which a person is taken into custody under § 48.19 and 938.19, Wisconsin Statutes, and delivered to the juvenile intake worker for a custody determination.

JIPS: Juvenile In need of Protection or Services; a Chapter 938 proceeding concerning a juvenile who is within the jurisdictional requirements of § 938.13, Wisconsin Statutes, generally involving uncontrollable juveniles, habitual truants, school dropouts, under 10 who commits a delinquent act, not responsible because of mental disease or defect, or not competent to proceed.

Juvenile: Refers to a person under the age of 17 involved in a delinquency proceeding or a person under the age of 18 involved in a JIPS proceeding.

702.05 General Policies. It is the express policy of the court to implement the legislative purposes expressed in § 48.01 and 938.01, Wisconsin Statutes. Statutorily-mandated procedures are the law and do not constitute policies. Statutory mandates are to be explicitly followed in the performance of all matters involving Chapters 48 and 938. This rule is intended to set forth the philosophical role of the circuit court in matters concerning Chapters 48 and 938 and to establish procedures that are discretionary with the court.

Rationale: The statutes are the law. They must be followed. Policies and procedures are intended to fill the gaps in the law and set forth the philosophical and procedural requirements for handling matters involving Chpts. 48 and 938.

702.06 The court will not routinely waive time limits.

Rationale: It was the intent of the legislature to expedite court proceedings. This intent is based, in part, on the philosophy that delays: in Delinquency and JIPS matters, remove the "cause and effect" relationship between juvenile behavior and court-ordered "consequences" in delinquency matters, and In CHIPS matters, place the child and parents in a limbo status concerning the various needs, rights, and responsibilities of the parties.

702.07 "Custody Intake"

1. The duties of intake and disposition/supervision shall be in the Burnett County Human Services Department [hereinafter Department].
2. Custody intake shall be done by professionally-trained intake workers.

Rationale: The statutes mandate training for all intake workers. The powers of the intake worker are similar to those of a judge.

3. Backup custody intake workers shall be on-call workers.

Rationale: It is fiscally impossible for a county the size of Burnett to have full-time back-up workers. Utilizing a list of on-call back-up workers is efficient and fiscally responsible.

4. Referrals for custody intake shall first be made to the full-time intake worker; if the full-time intake worker is not available, the backup workers shall be contacted in the order provided by the Department.

Rationale: Custody intake should first be conducted by the person who is most experienced and generally familiar with the statutes, juveniles, and court processes: the full-time intake worker. If that worker is not available, referrals should be made to the backup workers in the order listed by the Department so that there is uniformity in intake decisions.

702.08

Custody intake "decision guidelines"

1. All custody intake referrals shall be made through law enforcement or human services personnel.

Rationale: The decision to refer a person to custody intake is best made by professionals familiar with the law and resources available to the county.

2. Intake shall not be contacted until the referring agency has made a reasonable, articulable decision that a person should be held. The referral agency shall be required to complete the custody intake referral form before intake is notified.

Rationale: Intake should only be contacted after the referring agency has made a decision that the person should be held. The agency must be able to justify that decision in writing. Requiring the agency to complete the referral form before intake is called forces the referral person to justify the request for a hold.

3. Intake shall first determine whether the court has jurisdiction over the person.

a. In delinquency matters, the referring agency shall attempt to establish if the person is subject to original adult court jurisdiction or the juvenile court. If the person is subject to original adult court jurisdiction, the procedures specified in Section 2506 of this rule and Chpts. 967 to 979, Wisconsin Statutes, shall apply.

b. In the event an immediate determination cannot be made whether the juvenile is subject to original adult court or juvenile court jurisdiction, any person age 16 or under shall be presumed to be subject to juvenile court jurisdiction until juvenile intake or the court is satisfied otherwise. The juvenile intake worker shall

decline to make a custody determination in a case if the intake worker knows of his or her own knowledge that the person is not subject to juvenile court jurisdiction.

c. If the person is not subject to original adult court jurisdiction, intake shall determine what jurisdictional basis exists for the requested hold under Chpts. 48 or 938.

4. If there is jurisdiction, intake shall then consider whether and where the person should be held in custody.

a. Chapter 48 presumptions:

1. A child shall be removed from the home if the best interests of that child so dictate.

Rationale: In construing Chapter 48, the paramount consideration is the "best interests of the child."

2. If the best interests of the child require removal, lower levels of restriction must always be considered and rejected before considering a higher level of restriction. Intake shall consider placement in the following ascending order of restriction (only if statutory criteria are met):

- a. Home placement with conditions;
- b. Home placement under home detention rules;
- c. Placement in the home of a relative;
- d. Holdover room;
- e. Placement in the home of a person not a relative;
- f. A licensed foster home;
- g. Shelter care.

b. Chapter 938 delinquency/JIPS presumptions:

1. A juvenile shall be removed from the home and placed in custody if doing so is necessary to protect citizens from juvenile crime.

Rationale: In construing Chapter 938, protecting citizens from crime is one of eight equal purposes of the juvenile code.

2. If removal from the home is not necessary to protect citizens from juvenile crime, intake shall consider whether any of the following conditions on home placement are warranted:

Home placement with conditions;
Home placement under home detention rules.

3. If protection of the public requires removal, lower levels of restriction must always be considered and rejected before considering a higher level of restriction, except in the case of those crimes statutorily presumptive of secure detention. Intake shall consider placement in the following ascending order of restriction (only if statutory criteria are met):

Placement in the home of a relative;
Placement in the home of a person not a relative;
A licensed foster home;
Shelter care;
In delinquency matters, secure detention in:
Secure detention facility (such as Eau Claire or La Crosse Secure Detention).
The juvenile portion of an adult jail meeting the requirement of DOC 346.

Rationale: Increasing levels of custody should be considered commensurate with the level of custody needed for the protection of the public. Secure custody should be imposed only when the secure setting is necessary and the statutory criteria have been met.

4. If the juvenile is charged with or it appears reasonable to believe the juvenile will be charged with a crime which establishes a presumption of secure custody under § 938.208(1), that juvenile shall always be placed in secure custody unless the intake worker is satisfied that such custody is not necessary to protect the public. For illustrative purposes only, the presumptive secure custody crimes as of the date of promulgation of this rule are:

- a. 1st degree intentional homicide, 940.01
- b. 1st degree reckless homicide, 940.02
- c. Felony murder, 940.03
- d. 2nd degree intentional homicide, 940.05
- e. Class C, D & E felony Battery, 940.19 (2) to (6)
- f. Mayhem, 940.21
- g. 1st degree sexual assault, 940.225(1)
- h. Kidnapping, 940.31
- i. Discharging firearm from automobile or in parking lot under certain conditions, 941.20(3)

- j. Arson to building, 943.02(1)
- k. Car jacking while possessing a dangerous weapon, 943.23(1g)
- l. Car jacking while possessing a dangerous weapon and causing great bodily harm, 943.23(1m)
- m. Car jacking while possessing a dangerous weapon and causing death, 943.23(1r)
- n. Armed robbery, 943.32(2)
- o. 2d or subsequent offense of Harassment with threat of death/great bodily harm, 947.013(1t)
- p. Harassment with threat of death/great bodily harm based on information obtained electronically, 947.013(1v)
- q. 2d or subsequent offense of harassment based on information obtained electronically, 947.013(1x)
- r. 1st or 2nd degree sexual assault of child, or repeated acts of sexual assault to same child, 948.02(1) or (2)
- s. Physical abuse of child, 948.03
- t. Use of handgun, short-barreled rifle/shotgun while committing a felony under Chpt. 940
- u. Possession of a short-barreled rifle/shotgun, § 941.28
- v. Going armed with a handgun in violation of § 948.60

Future legislative changes that either add to or subtract from this list shall be considered incorporated into this rule without further revision of this rule.

DNA collection will be made of juvenile in felony matters upon arrest.

5. If the intake worker believes secure custody is not necessary in a presumptive secure custody situation, the intake worker shall consider less restrictive placements as listed in paragraph 3 of this section of this rule in a descending order of restriction, rather than an ascending order of restriction.

6. The referral agencies' recommendation concerning either the necessity of a hold or the proper placement is not binding on the intake decision and should be considered only with caution. Recommendations should be filed with the district attorney or electronically.

Rationale: Intake must make a reasoned, independent decision on both the holding of a child and the proper placement. Referral agencies have

different constituencies and interests from intake. Intake's responsibility is to the court, not the referral agency.

7. Intake staff shall consider the following criteria when appropriate in making a custody decision and the appropriate level of placement:

a. In delinquency situations whether the present offense is a presumptive secure custodial placement crime listed in § 938.208(1)(a) (b), or (c), Wisconsin Statutes.

b. In delinquency matters which are not presumptive secure custodial placement crimes, the severity of present alleged offense:

Whether the present offense involves bodily injury or property damage

The degree of injury to the victim

Any special vulnerability of victim (elderly, very young, handicapped) Whether a weapon was used and type of weapon Extent of premeditation on the part of juvenile Whether act represents "random, senseless act of violence" The number of co-actors involved The attitude of the juvenile toward offense Whether offense included any "gang" involvement Other circumstances relevant to the offense

c. In delinquency matters, the prior CHIPS, JIPS, and/or delinquency record of juvenile:

Number, nature and consequences of prior court adjudications

Age of initial law enforcement/court involvement compared to present age

Whether the activity indicates an escalation in severity or dangerousness

Whether the activity indicates an increasing lack of respect for or inclination to adhere to rules

Other factors concerning the prior record of the juvenile

d. Risk of Flight:

Is the person presently a runaway from a court-ordered placement

Has this person previously run away from a court-ordered placement

Attitude of the person toward remaining in custody

Record of obeying home curfews and rules

Ability of caregiver to control the person

School attendance record

Likelihood of the person to be successful at running from placement based on:

1. Age
2. Apparent maturity
3. Availability of other associates that would assist running away
4. "Gang" relationships that would foster runaway status
5. Level of consequences child/juvenile now faces for immediate behavior
6. Other facts that appear relevant to level of risk of flight

e. Current legal status:

Is person currently subject to a dispositional order

Are other court actions involving the person currently pending

What is person's present level of custody

Are there prior adjudications of a similar nature

Have other dispositional alternatives been tried in past

Other factors relating to the person's present legal status

f. Protection needs:

Is person subject to abuse or neglect in home

Have there been verbal threats against this person

Has this person exhibited potential harm to self by recent behavior or threats

Is the present caregiver able to adequately protect this person

Is this person vulnerable to revenge acts by others, including co-actors, victims, or others

Other factors relating to the need to protect the person

8. Deadline for petitions if no custody hearing is requested

a. If a child/juvenile has been taken into custody and placed in a secure or nonsecure placement outside the home, but no request for a hearing on the custody has been requested, the custody order shall automatically terminate and the person released from the custody order unless a written referral to intake pursuant to § 48.24 or 938.24, Wisconsin Statutes, has been filed within five (5) days of the date of the custody order.

Rationale: Persons who are taken into custody must not be left in a "limbo" status. Intake inquiries must be promptly filed in order to initiate the formal court process. Five days is an appropriate maximum amount of time for the requesting agency to file the intake referral.

b. This rule does not apply to defendants age 14 or under charged with an original adult court jurisdiction matter who are being held in secure custody.

Rationale: Defendants in an original adult court jurisdiction matter who are being held in secure custody are under the procedures of the adult court, not the juvenile court. There are no "referrals" to intake for such matters. The defendant is held until bail/bond conditions have been met.

702.08 Original adult court criminal defendants--secure custody

1. Defendants age 15 or over:

A defendant involved in an adult court jurisdiction matter who is age 15 or over at the time a custody decision is being made shall be held in the county jail.

Rationale: A defendant age 14 or under can only be held in secure custody in a juvenile secure detention facility. Since the legislature specifically limited such placements to defendants 14 or under, defendants 15 or over are subject to all adult court procedures,

including custody in the county jail pending meeting bail/bond conditions or further court proceedings.

2. Defendants age 14 or under:

a. Initial arrest: If law enforcement arrests a defendant age 14 or under for an adult court jurisdiction matter and law enforcement intends to hold the defendant in custody pending a bail/bond hearing, the defendant must be held in a juvenile secure detention facility.

Juvenile intake shall be contacted to determine the secure custody placement location and complete the temporary physical custody request order. Juvenile intake shall not have the authority to overrule the law enforcement decision to hold the defendant in secure custody.

A defendant arrested without a warrant and held under this rule is entitled to a probable-cause determination within 48 hours of the arrest.

A defendant arrested and held under this rule is entitled to a bail/bond hearing under Chpt. 969.

A defendant arrested and held under this rule is not entitled to a juvenile court custody hearing under § 938.20.

Rationale: A defendant in an original adult court jurisdiction matter is subject to all of the procedures in Chpts. 967 to 979 except that any secure custody placement must be in a juvenile detention facility. In all other adult court matters law enforcement makes a decision to hold or release the defendant. The same should be true in the case of defendants who are involved in an original adult court proceeding. Juvenile intake serves only as the conduit for placing such a defendant in a secure detention facility and should not have the authority to overrule the law enforcement decision. Such defendants are also entitled to the adult court procedures of a Riverside/McLaughlin hearing, bail/bond hearing, etc. But since these defendants are not in juvenile court, they are not entitled to juvenile court § 938.20 custody hearings.

b. Failure to post bond: If a defendant age 14 or under charged with an adult court jurisdiction matter appears for a bail/bond hearing before a judge or court commissioner and is unable to meet

the conditions of bail/bond in order to be released, the defendant must be held in a juvenile secure detention facility. The juvenile shall be immediately released from such detention upon meeting the conditions of bail/bond.

Rationale: Although a defendant is held in secure custody in a juvenile facility, the hold is only because the defendant has not met the conditions of bail/bond established by the court. When the bond conditions have been met--such as payment of a cash bond--the defendant should be released the same as a defendant age 15 or over would be released.

3. In the event an immediate determination cannot be made whether the juvenile is subject to original adult court or juvenile court jurisdiction, any person age 16 or under shall be presumed to be subject to juvenile court jurisdiction until juvenile intake or the court is satisfied otherwise. The juvenile intake worker shall decline to make a custody determination in a case if the intake worker knows of his or her own knowledge that the person is not subject to juvenile court jurisdiction.

4. Any defendant who meets all of the following criteria shall immediately be transferred to the county jail upon his or her 15th birthday:

The person is subject to original adult court jurisdiction, and, the person had been placed in juvenile secure custody because the person was age 14 or under at the time the custody decision was made.

No further court order is needed to effectuate such a transfer. Law enforcement shall be responsible for transporting the juvenile from the secure custodial placement to the county jail.

703 Requests for Access

703.01 Form of Requests for Access

703.02 Deficient Requests for Access

703.03 Requests for Access by Victims of Juvenile's Act or Acts

703.04 Procedure Upon Receiving Request

703.05 Request to Attend Court Proceedings

704 Delinquency Proceedings

705 Hearings

706 Notice to victims of Children’s acts

706.01 Notice to victims of children's acts

The victim-witness coordinator in the district attorney's office shall be responsible for notifying each known victim who sustained personal injury or property damage of:

1. The policies and procedures of the court concerning their rights. The district attorney may establish policies and procedures for the victim-witness coordinator.
2. Notices of scheduled proceedings in delinquency matters.

707 Plea negotiations

707.01 1. The court will not accept any plea negotiations that are entered into after the date set by the court for motions in the case, or if no motions are filed, within five working days of the fact-finding hearing.

Rationale: Last-minute resolutions of cases are extremely disruptive to the court calendar. Time on the court calendar will have been set aside for this case to the exclusion of other cases. Witnesses and jurors who have been subpoenaed may have made alternative arrangements for their personal affairs. In order to avoid this disruption, the parties to a case must make all necessary efforts to resolve the matter as much before the fact-finding hearing as possible.

2. After a plea negotiation deadline has passed, the only resolutions the court will accept to pending delinquency, JIPS, or CHIPS matters is an admission to the petition by all parties, a dismissal of the entire petition by the petitioner, or a fact finding trial on the original petition.

3. If a plea negotiation involves a Consent Decree, the consent decree must be reduced to writing, completely signed by all parties, and presented to the court prior to the deadline for plea negotiations.

Rationale: Since fact-finding hearings are typically scheduled for a date close to the statutory deadline, waiting until the last minute to complete the consent decree is especially disruptive to the court calendar.

Custody hearings and petitions

1. Custody hearings, whether under § 48.21 or 938.21, shall be conducted within 48 hours after the end of the day that the decision to hold was made, excluding weekends and holidays.

Rationale: Section 48.21 requires a custody hearing to be held within 48 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays and legal holidays. Section 938.21 requires a custody hearing to be held within 48 hours after the end of the day that the decision to hold the juvenile was made, excluding Saturdays, Sundays and legal holidays. Although Chpts. 48 and 983 have differing deadlines, it is appropriate for the court to establish a common deadline so as to avoid confusion.

2. If court scheduling or congestion makes it impossible to conduct a custody hearing within the time period, the custody hearing shall be conducted as soon as is reasonably practical. No juvenile shall be automatically released from custody if a custody hearing is not held in a timely fashion if the reason for the inability to hold the custody hearing is because of court congestion or scheduling difficulties under § 938.315(1)(dm).

3. If a petition under either Chpt. 48 or Chpt. 938 has not been filed by the time of the custody hearing and the statutory grounds exist for an extension of time to file a petition, a petition must be filed within:

a. Chpt. 938 matters: 48 hours from the time of the hearing.

b. Chpt. 48 matters: 72 hours from the time of the hearing, excluding Saturdays, Sundays and legal holidays.

4. No custody hearing under Chpts. 48 or 938 is to be held for a defendant age 14 or under involved in an original adult court jurisdiction matter who is being held in secure custody.

"Court Intake"

1. All intake referrals under § 48.24(1) or 938.24(1), Wisconsin Statutes, are to be submitted in writing on the appropriate forms, either the Court Referral--Juvenile, Law Enforcement form or the Court Referral--Juvenile, Non-law enforcement form.

Rationale: All referrals must contain specific information. Using a state-wide approved form provides a consistent format for presenting and reviewing each referral.

2. All intake referrals under Wis. Stat. §§ 48.24(1) or 938.24(1) shall be conducted by the full-time intake worker.

Rationale: Consistency in the handling of the referral process is necessary to assure that children are handled similarly. Coordinating all intake inquiries in the full-time intake worker assures such consistency.

3. All parties making a referral may make a recommendation for disposition, but that recommendation is not binding on the intake worker.

Rationale: Often the party making the referral has special insight into the facts or needs of each case which should be communicated to the intake worker who must make the ultimate recommendation. Recommendations, however, are merely recommendations.

4. Intake referrals under § 48.24(1) or 938.24(1), Wisconsin Statutes, are not required if all of the following have occurred:

- a. A custody intake decision was made pursuant to § 48.19 or 938.19, Wisconsin Statutes;
- b. A hearing on the custody has been held pursuant to § 48.21 or 938.21, Wisconsin Statutes;
- c. The person has been continued in custody (secure or nonsecure); and,
- d. A petition was filed with the court at or prior to the custody hearing or the court has authorized an extension of time to file a petition.

Rationale: The purpose of the intake referral is to allow the Juvenile Intake Worker to review the facts, meet with the child and parents, and make a decision whether the matter should be referred for a Petition to be filed, whether the matter should be resolved through an Informal Disposition or Deferred Prosecution Agreement, or whether the matter should be dismissed. Chapters 48 and 938 require that a petition be filed at or prior to a custody hearing or allows a 48-hour extension of time to file such a petition. Because of the expedited nature of the process when a child is taken into custody, the purpose of an intake inquiry has been accomplished. It is impossible to reconcile the statutory guidelines for an intake inquiry with the statutory guidelines for processing a petition. It was the apparent intent of the legislature to circumvent the intake inquiry procedure when the intrusive step of a child being taken into custody has occurred.

5. Intake referrals under § 48.24(1) or 938.24(1), are not required if the juvenile has been transferred to juvenile court by an adult court pursuant to a "reverse waiver" under § 970.032(2) or 971.31(13).

Rationale: The juvenile has already been in adult court under an original adult court jurisdiction crime because of the serious nature of the crime committed or the juvenile's past record. The district attorney will already have prepared charging documents concerning the juvenile in adult court and is in the best position to make a determination of whether a delinquency petition should be filed and the charge(s) to be included in the petition.

6. Except as set forth elsewhere in this rule, the intake worker shall always consider the possibility of an informal disposition agreement under Chpt. 48 or a deferred prosecution agreement under Chpt. 938 when doing so would not unduly depreciate the seriousness of the matter referred in the eyes of the juvenile, parents, victims, and the public.

Rationale: Diversion of children from the formal court system is one of the goals of both chapter 48 and 938. An Informal Disposition Agreement (IDA) or Deferred Prosecution Agreement (DPA) may allow the intake worker to structure a plan with the agreement of the child/juvenile and parents that will accomplish all of the goals of Chapter 48 and 938. However, an IDA or DPA can be counter-productive if its effect is to reduce the child's or parents' responsibility, or the IDA/DPA would depreciate the seriousness of the offense, or such an action would be viewed as doing so by other interested persons.

7. The intake worker shall consider the following factors in screening intake referrals:

- a. Seriousness of the allegations
- b. Intent
- c. Severity of personal injury
- d. Severity of property damage
- e. Prior allegations of similar activity
- f. Attitude of the public
- g. Attitude of the victim
- h. Previous contacts with law enforcement, social services, or juvenile intake
- i. Age and maturity
- j. Attitude of the person and/or parents
- k. Degree of apparent incorrigibility/uncontrollability
- l. School attendance and behavior patterns
- m. Involvement in gang-related activity

- n. Other social factors
- o. Resources available to the family and community to provide adequate care
- p. Criteria in § 938.18(5), Wisconsin Statutes, concerning waiver to adult court
- q. Any other facts or circumstances available to the intake worker that impact on the referral decision consistent with the welfare and safety of the person and the protection of the public, including those factors provided in Rule 2505, concerning custody decision-making.

Rationale: The intake decision should not be hamstrung by artificial barriers to the free flow of information. Just as the circuit judge may consider all "relevant" factors in making a disposition, without regard to the rules of evidence, the intake worker should also be able to use all information available to make a decision on the future of that particular referral.

- 8. The intake worker shall not enter into a deferred prosecution agreement in a Chpt. 938 matter in the following situations unless the district attorney has referred the matter back to the intake worker with such a recommendation.

Rationale: The legislature, on behalf of the society it represents, has categorized crimes in terms of seriousness by creating a classification system. It is the duty of the executive branch, acting through the elected District Attorney, to determine the extent to which these crimes should be prosecuted. For those crimes society considers most serious, the intake worker should not make Informal disposition recommendations in those cases which would appear to unduly depreciate the seriousness of the allegations. Certain criminal activity is so serious that an informal disposition should only be considered when the District Attorney has made that choice as the proper prosecutorial decision. The intake worker should conduct an intake conference and may recommend to the district attorney a juvenile court deferred prosecution agreement or an adult criminal court deferred prosecution agreement. If the district attorney has reviewed the matter and concludes that a juvenile court deferred prosecution agreement is appropriate, the district attorney will refer the matter back to intake for such a procedure. If the district attorney believes an adult criminal court deferred prosecution agreement is appropriate, the district attorney will prepare the paperwork in adult court.

- a. If the intake worker is satisfied there is probable cause to believe the juvenile committed a Class A or B Felony

Rationale: Although intake will seldom see a juvenile who is charged with a Class A or B Felony (most of these are original adult court jurisdiction matters), there are occasions when it might occur. These matters are so serious that an IDA or DPA is never a practical consideration.

- b. If the intake worker is satisfied there is probable cause to believe the child committed a felony and has been previously adjudicated delinquent.

Rationale: A prior adjudication for delinquency followed by a new felony referral for delinquency is sufficiently serious to require that the initial decision on filing a formal petition should always be made by the District Attorney.

- c. The juvenile and at least one of the parents does not appear at an intake conference.

Rationale: For a deferred prosecution agreement to work, the parties must reach an agreement. Juveniles or parents who do not attend the intake conference exhibit a noncooperative attitude that would make an informal disposition unworkable.

- d. The juvenile or the family deny the allegations of the referral.

Rationale: The deferred prosecution agreement is not to be used as a bargaining tool or hammer to avoid litigation. For a DPA to work, the parties must show a willingness to admit that there is a problem and to work voluntarily to resolve it.

- e. When the child has been the subject of an informal disposition agreement concerning delinquency under Chpt. 48 or a deferred prosecution agreement under Chpt. 938 entered into within the last two years.

Rationale: A juvenile who has been the recent subject of an informal disposition agreement is not appropriately considered for informal disposition again.

- 9. The juvenile intake worker may consider recommending an informal disposition agreement or deferred prosecution agreement in the following circumstances:

- a. When an informal disposition would not violate rule 7 above.

- b. In delinquency/JIPS matters when:

1. The juvenile admits the allegations.
2. The juvenile exhibits remorse for the acts.
3. The juvenile's parents appear cooperative with the court.
4. The juvenile has not previously been formally adjudicated delinquent.

c. In CHIPS matters when:

1. The custodial parent(s) agree that the child is in need of protection and services.
2. The child has not previously been adjudicated CHIPS.
3. The child is not the victim of sexual or physical abuse resulting in actual injury inflicted by an adult person currently residing in the child's home.

Rationale: One of the statutory goals is to divert children out of the court system. An informal disposition agreement should be the first consideration in all cases that are not automatically excluded from such disposition by these rules. Only when an informal disposition is considered inappropriate should the intake worker discard the possibility of an informal disposition.

10. Deferred prosecution agreements involving Youth Village Placements

- a. Any deferred prosecution agreement that includes placement in a Youth Village as described in § 118.42, intake shall provide written notice of that agreement or extension of that agreement to the circuit judge or juvenile court commissioner along with a proposed order for the court official to sign requiring compliance with that agreement.

Rationale: Although deferred prosecution agreements take place outside the juvenile court process and generally prior to the juvenile court having any files or documentation concerning the juvenile, § 938.245(3) requires the court to be given written notice of a DPA involving a youth village placement. The court is also required to order the parties to comply with the agreement. The statutes do not give the court the authority to reject the DPA.

- b. Upon signing of the order, intake shall provide written copies of the agreement and order to:

the juvenile;
the parent, guardian, or legal custodian;
the agency providing services under the agreement; and,
the juvenile court clerk.

c. The juvenile court clerk shall file the court copy of the deferred prosecution agreement and order in a group file.

11. The intake worker may dispense with holding an intake conference in those cases in which the intake worker is satisfied that the best interests of the child or the interests of society require an immediate decision. In such cases the intake worker may notify the child and parents of their rights under Chpts. 48 and 938 in writing.

Rationale: In some cases a referral and recommendation are apparent on the basis of the referral documents. CHIPS cases involving danger or risk to the child, or Delinquency matters involving serious crimes, may require a greater immediacy of action than the usual intake process would allow. The intake worker should be free to make the decision whether an intake conference would be beneficial to the intake decision or would merely be postponing necessary action.

12. When a matter has been presented to the intake worker by the Juvenile Court Clerk under Section 2518 of this local court rule, the intake worker may:

a. Refer the matter to the appropriate agency for investigation and review. That agency shall then make a determination whether an intake referral should be made, or,

b. Conduct an intake inquiry based on the petition presented to the juvenile court clerk for filing.

Rationale: Section 48.25(1), Wisconsin Statutes, permits the filing of a petition under § 48.13 or 48.14 by counsel or guardian ad litem for a parent, relative, guardian or child. Presumably a parent, relative, guardian or child could also file such a petition pro se. Section 2517 of these local court rules prohibits the Juvenile Court Clerk from accepting for filing such a petition unless an intake inquiry has been conducted. When the Juvenile Court Clerk makes such a referral to intake, the intake worker must have the ability to refer the matter to law enforcement or human services for investigation and determination whether a petition should be filed. Alternatively, the intake worker may determine that an intake inquiry should be conducted based on the materials submitted by the petitioning party.

1. If a custody hearing is held:

a. At the commencement of the custody hearing, the court shall advise the child/juvenile and parent(s) of their rights, obligations and possible disclosures. The court may do so by ensuring that the child/juvenile and parent(s) who attend have been provided with the printed form JD-1716 [Notice of Rights, Obligations, and Possible Disclosure] by the intake worker. Notice is considered properly given whether or not the recipients sign the signature block on the form.

b. If a parent does not attend the custody hearing, the juvenile court clerk or intake worker shall send a copy of the written form JD-1716 to the nonattending parent if the address is known immediately at the conclusion of the hearing.

c. If signed, the signed copy of JD-1716 shall be filed in the court file. If the child/juvenile or parent(s) did not sign, the juvenile court clerk or intake worker shall file a copy of the form with a notation as to the person(s) and date(s) on which the notice was provided.

2. At an intake inquiry:

a. At the commencement of the intake inquiry, the juvenile intake worker shall advise the child/juvenile and parents of their rights, obligations and possible disclosures. The juvenile intake worker may do so by providing the child/juvenile and parent(s) who attend with the printed form JD-1716. Notice is considered properly given whether or not the recipients sign the signature block on the form.

b. If signed, the signed copy of JD-1716 shall be filed in juvenile intake worker's file. If the child/juvenile or parent(s) did not sign, the juvenile intake worker shall file a copy of the form with a notation as to the person(s) and date(s) on which the notice was provided.

Rationale: Chapters 48 and 938 require the child/juvenile and parents be given various notices at different stages of the court proceedings. The Wisconsin Records Management Committee has created a printed form (JD-1716) intended to accomplish the various notice requirements.

720

Dispositional activities

1. Court reports that have been ordered by the court shall be completed and filed with the court not less than five working days before the scheduled dispositional hearing. The agency completing the court report shall transmit copies of the report to the attorneys involved in the matter. In the case of parents who are not represented by counsel, a copy of the report shall be transmitted directly to them by the agency.

Rationale: The court report may be the single most important document prepared on behalf of a child/juvenile and a family. In order for the child/juvenile/attorney and family to have the opportunity to consider the report and any recommendations made in the report, it is imperative that they have access to the report before the dispositional hearing. Receiving and reviewing the report on the day or even at the time of the hearing does not allow a reasonable amount of time to consider the report.

2. Burnett County Human Services shall be the agency primarily responsible for implementing court dispositional orders involving supervision.

Rationale: In order to effect the separation between intake and adjudication (which are court functions) and dispositional supervision (which should not be a court function), it is appropriate that the local Human Services agency be the agency primarily responsible for implementing court orders.

3. Dispositions involving persons who are not residents of Burnett County shall be coordinated through the Burnett County Human Services Department.

Rationale: In order for the court to ensure that its orders are enforced, the court must have jurisdiction over the agency that is implementing the order. Requiring the local Human Services agency to coordinate the services provides the court with the leverage needed to ensure compliance.

4. If a matter has been transferred from another county to this county for a dispositional hearing, the dispositional hearing shall be set within 30 days of the receipt of the transfer documents from the other county. If the agency preparing the court report has not had any prior experience with the juvenile, the agency may request an extension for preparation of the court report.

725

Extensions of dispositional orders

1. The agency primarily responsible for implementation of a dispositional order shall notify the court at least thirty days prior to the termination of an order as to whether the agency will seek to extend the dispositional order or allow it to terminate. The agency shall ensure that copies of the communication to the court (whether Petition or letter) shall be sent to all parties entitled to notice.

Rationale: Notwithstanding relaxation of some time limits in Chpt. 938, matters, the court loses jurisdiction in either a Chpt. 48 or 938 case if the extension hearing isn't held before the order terminates. At least thirty days notice of an intent to seek an extension is necessary in order to schedule and conduct a hearing. Requiring the agency to give notice at least thirty days in advance as to whether it will or will not seek an extension will insure that all cases are considered and eliminate the possibility of any one case slipping "through the cracks."

2. The agency may revise its decision after giving such notice if it determines that the original decision was incorrect based on a reconsideration or new factors.

Rationale: Sometimes the agency may reconsider its decision based on new factors or merely a re-review of the situation. The agency must be given the opportunity to change its mind.

3. A request to extend a dispositional order received during the thirty day period immediately prior to the termination of the order shall be accompanied by a request for a temporary thirty-day extension under § 48.365(6) or 938.365(6), Wisconsin Statutes, in order to schedule a hearing.

Rationale: It may be difficult for the court to schedule an extension hearing prior to the original termination date depending on when the request for an extension is filed. Requiring all extension requests filed within the last thirty days of the dispositional order to be accompanied by a request for a thirty-day extension provides the court with the flexibility of granting a temporary extension when needed to accommodate court scheduling.

4. The court shall schedule an extension hearing in all cases where a request for an extension is filed. If the extension request is filed during the thirty-day period immediately prior to the termination of the order, the court shall attempt to schedule the case before the termination date. If the court cannot schedule the matter before the termination date, the court will grant the request for a temporary thirty-day extension under § 48.365(6) or 938.365(6), Wisconsin Statutes.

Rationale: As part of the court's philosophy that juvenile proceedings must be expedited, it is appropriate to attempt to schedule extension hearings within the original time period set for termination of an order. Only if the hearing cannot be set within that time period should the court consider a temporary extension.

5. All extensions of a dispositional order shall take effect at the termination date of the dispositional order being extended regardless of the date of the hearing on the extension, except that in the case of a disposition that has been temporarily extended for up to thirty days under § 48.365(6), Wisconsin Statutes, any extension shall take effect at the termination of the extended date.

Rationale: It is appropriate that there be uniformity in determining when an extended disposition is to take effect. Since Chpts. 48 & 983 do not specifically address this issue, dispositional orders in the past have sometimes used the hearing date as the date from which the extension is calculated rather than the date the dispositional order was to expire. Since an extension is merely a continuation of the old order, it is logical that the extended period is simply added to the existing order. It is illogical to consider the extension to be a new order which can overlap the old dispositional order.

730 Requests by victims or the insurance companies of victims for disclosure of juvenile identity and police records

1. All requests by victims or the insurance companies of victims for disclosure of the juvenile's identity and police records shall be referred to the law enforcement agency responsible for the investigation.

2. The insurance company of a victim shall be entitled to know the amount of restitution a court has ordered paid on behalf of the victim if a request to the juvenile court clerk is made pursuant to § 938.396(2)(fm).

735 Requests to review court files involving juveniles

1. All requests for review of court records involving a juvenile shall be in writing.

2. The juvenile court clerk shall make available upon request the appropriate forms (such as JD-1738) for requesting such information.

3. If a request is made by a juvenile, parent, guardian or legal custodian under § 938.396(2)(ag) or (am), before release of any information requested the juvenile court clerk shall review the file and make an initial determination whether release of that information might result in imminent danger to anyone.

If the juvenile court clerk believes such a result might occur, the juvenile court clerk shall either:

a. Refer the matter to the judge assigned to that case for a determination as to whether a hearing shall be held on the release, or,

b. Prepare a version of the information requested with the potentially dangerous information blocked out. The requester may bring a motion to the court if the requester believes the information should not have been blocked.

4. Requests pursuant to § 938.396(2m)(a): If a request is for access to juvenile court records made by any person under § 938.396(2m)(a) for juveniles alleged to have committed an offense enumerated in § 938.34(4h)(a) (Serious Juvenile Offender crimes), the juvenile court clerk shall before releasing the file for inspection:

a. Determine if the juvenile is alleged to have committed a crime specified in § 938.34(4h)(a), and, if so,

b. Remove from the file all reports under § 938.295 (physical, mental, psychological, or developmental examination reports) or § 938.33 (court dispositional reports) or other records that deal with sensitive personal information of the juvenile and the juvenile's family. If the juvenile court clerk has questions concerning the appropriateness of releasing any information, the matter shall be referred to the judge assigned to the that case for a determination.

5. Requests pursuant to § 938.396(2m)(b): If a request is for access to juvenile court records of a juvenile alleged to be delinquent for committing a felony after a prior delinquency adjudication, the juvenile clerk shall:

a. First, make all of the following determinations:

That the juvenile is currently charged with a felony,

That the juvenile was adjudicated delinquent for any crime at any time before the commencement of the felony proceeding,

That the previous adjudication remains of record and has not been reversed.

b. Second, if all of the above have been found to exist, the juvenile clerk before releasing the file for inspection shall remove from the file all reports under § 938.295 (physical, mental, psychological, or developmental examination reports) or § 938.33 (court dispositional reports) or other records that deal with sensitive personal information of the juvenile and the juvenile's family. If the juvenile court clerk has questions concerning the appropriateness of releasing any information, the

matter shall be referred to the judge assigned to the that case for a determination.

6. No copies of any court records shall be made or provided to any person requesting access to the records of a juvenile.

7. All requests for access to court records shall be responded to, in writing, within 72 hours of the request.

8. Intake files retained by the juvenile intake worker are not considered court files for the purposes of this rule.

740

Expunction of the record of a delinquency adjudication

1. All petitions for expunction of a juvenile adjudication shall be scheduled for a hearing.

2. If the court grants the petition for expunction of the juvenile adjudication, the juvenile clerk shall:

a. Follow standard CCAP procedures for removal of the adjudication from the computerized record;

b. Seal inside the court file all documents referring to the adjudication, including but not limited to:

the dispositional order,
the dispositional court report,
all motions and orders concerning extensions, revisions, or changes of placement,
all petitions and orders for sanctions,
all minute sheets referring to the adjudication or other post-adjudication proceedings,
transcripts of court proceedings referring to the adjudication or other post-adjudication proceedings,
the petition and order for expunction.

c. The exterior of the sealed material shall simply state "Sealed: not to be opened except upon express order of the court." No reference shall be made that the contents are "expunged" materials.

3. If a proper request is made for information concerning the juvenile's adjudication, court personnel shall merely state that there is no record of a delinquency adjudication, although the remainder of the court file is open to inspection if it otherwise meets the criteria for opening records under § 938.396.

750

Delinquency proceedings commenced by a reverse waiver

1. All delinquency proceedings following a reverse waiver from an adult court with original jurisdiction shall be commenced by filing a Petition for determination of status--delinquency.

2. No intake inquiry is necessary for such proceedings.

3. Custody placements of juveniles who have been reverse waived shall be as follows:

Any juvenile who was being held in an adult jail for failure to post bond shall be immediately transferred to a juvenile secure custody facility.

Any juvenile (age 14 or under) who was being held in juvenile secure detention shall remain in that placement.

Any juvenile who had been released on bond under conditions shall be deemed held in nonsecure placement under the same bond conditions until a custody hearing is held pursuant to § 938.21.

4. The following may request a custody hearing under § 938.21 to review or revise this custody:

Any person otherwise authorized to request custody under Chpt. 938,
The juvenile, juvenile's parent, legal guardian, or custodian.

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Duties of the Juvenile Court Clerk in handling CHIPS petitions filed by the counsel or guardian ad litem for a parent, relative, guardian, or child, or directly by such a person acting without an attorney.

1. The Juvenile Court Clerk shall not accept for filing any petition under § 48.13 or 48.14, Wisconsin Statutes, presented by the counsel or guardian ad litem for a parent, relative, guardian or child, or directly by such a person acting without an attorney, unless that petition has been first referred to juvenile intake for an intake inquiry under § 48.24, Wisconsin Statutes.

Rationale: Section 48.24, Wisconsin Statutes, requires that information indicating that a child should be referred to the court shall first be referred to the intake worker. However, § 48.25, Wisconsin Statutes, authorizes the counsel or guardian ad litem for a parent, relative, guardian or child to file a petition. In most cases, such petitions will not have been referred first to juvenile intake for an inquiry whether the court should be involved. It is important

that intake be provided the opportunity to make inquiry first to ensure that there is a proper basis for the filing of a petition.

2. Upon receipt of any such petition the Juvenile Court Clerk shall refer the matter to the juvenile intake worker for an intake inquiry.
3. Any petition filed contrary to this rule may be dismissed without prejudice pending the intake inquiry.

Rationale: Once a petition has been filed, the time limits for conducting a plea hearing and other proceedings take effect. Those time limits are inconsistent with the periods allowed juvenile intake to complete an intake inquiry. It is the court's policy to require an intake inquiry for matters brought directly to the court by counsel or guardian ad litem for a parent, relative, guardian, or child, or by such a person directly without an attorney. Therefore, to avoid the redundancy of having a court proceeding and an intake inquiry proceeding at the same time, with conflicting time limitations, the court can only control such petitions by dismissing without prejudice those that don't go through intake.

765

Reimbursement/payment for attorney fees, placement costs, and/or services

1. Attorneys appointed by the county or state to represent a child/juvenile
 - a. Unless the court has directed otherwise, at the conclusion of any proceeding under Chpts. 48 or 938 in which the juvenile was represented by an attorney appointed by the county or the state, the juvenile court clerk shall complete JD-1762 and mail it to the parent(s).

b. The standard repayment schedule shall be:

If there are two parent(s) residing together, not less than \$150 per month.
If there is only a single parent or the two parents are residing separately, not less than \$100 per month from each.

c. All payments on reimbursement for attorney fees shall be made to the Juvenile Clerk, and are enforceable under Chpt. 985, Wisconsin Statutes, for contempt of court.

2. Attorneys appointed by the court for parents in CHIPS matters

a. If the court has ordered an attorney be appointed at county expense on behalf of a parent of a child involved in a CHIPS proceeding, the court

shall order the parent(s) to reimburse the county for all or part of the cost of such attorney fees.

b. The court may order reimbursement to begin as of the date of the appointment and will base reimbursement on income and financial ability. However, the standard repayment schedule shall be:

If there are two parent(s) residing together, not less than \$150 per month.

If there is only a single parent or the two parents are residing separately, not less than \$100 per month from each.

c. Reimbursement under this section shall be paid to the Juvenile Clerk and are enforceable under Chpt. 985, Wisconsin Statutes, for contempt of court.

3. Costs of custody/placement

a. If the child/juvenile is placed outside the home and the court orders the parent(s) to reimburse the county or state for the costs of such placement, the court shall either:

Establish the amount of reimbursement on the record in court at the time the placement order is made, or,

Refer the matter to Burnett County Human Services for a determination of the amount the parent(s) are able to pay. Burnett County Human Services shall establish a payment schedule for reimbursement.

b. All payments on reimbursement for costs of custody/placement shall be made to Burnett County Human Services.

4. Costs of services

a. If the court has ordered services to be provided on behalf of a child/juvenile and has ordered the parent(s) to reimburse the county or state for such services, the court shall either:

Establish the amount of reimbursement on the record in court at the time the placement order is made, or,

Refer the matter to Burnett County Human Services for a determination of the amount the parent(s) are able to pay. Burnett County Human Services shall establish a payment schedule for reimbursement.

b. All payments on reimbursement for services shall be made to Burnett County Human Services.

5. When a parent(s) has been ordered to reimburse the county or state for custody/placement/or services, the court may require the parent(s) to complete a financial disclosure of assets.

6. A parent may seek review of any of the orders for reimbursement by petitioning the court for a review.

Part 8: Probate Practice

Part 8: Probate Practice Table of Contents

801	Jurisdiction of the Probate Court
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801: Jurisdiction of the Probate Court

- 801.01 Probate actions under Wis. Stat. Chapters 851 through 879.
- 801.02 Guardianship and protective placements under Chapters 54 and 55.
- 801.03 Trust actions under Chapter 701.
- 801.04 Civil commitments under Chapter 51.

802: Responsibility within the Probate Court

- 802.01 Nothing contained in these rules will be construed to limit or restrict the assigned judge in exercise of his or her discretion nor restrict the Chief Judge in the exercise of his or her duties.
- 802.02 Responsibility of the Probate Judge: all contested matters falling under the jurisdiction of the probate court are handled by the probate judge.
- 802.03 Responsibility of Register in Probate/Probate Registrar:
 - 802.03.1 The Register in Probate office is responsible for the opening, reviewing, filing, maintenance and closing of all files and papers dealing with civil commitment, probate, trust, protective placement, adult adoption, guardianships (both adult and minor), as well as administrative matters dealing with probate court.
 - 802.03.2 The Probate Registrar handles uncontested informal probate hearings.
- 802.04 Responsibility of Court Commissioners:

- 802.04.1 The Probate Court Commissioner, if appointed, handles uncontested hearings on formal probates and trusts matters
- 802.04.2 The Circuit Court Commissioner may handle civil commitment probable cause hearings, emergency protective placement hearings, summary hearings on *Watts* and temporary guardianship hearings.

803: Filing of Documents:

- 803.01 Filing of documents: all documents relating to Probate Court subject matter are to be filed at the Register in Probate office unless filed with the court at the time of the hearing.
- 803.02 Facsimile Transmission of Documents to the Court:
 - 803.02.1 Documents requiring original signatures may be faxed only for the purpose of showing the court the document is complete; the original must be filed with the court.
 - 803.02.2 The Judge or Court Commissioner may authorize in advance the filing of a particular document that does not conform to these rules if good cause is shown and they are in conformance with the statutes.
 - 803.02.3 The party transmitting the document is solely responsible for ensuring its timely and complete receipt.
 - 803.02.4 Copies of documents from court files will not be transmitted by facsimile without the appropriate costs being received in advance. The facsimile machine is not to be utilized in an effort to avoid payment of statutory copy fees.

804: Scheduling:

- 804.01 The Register in Probate office schedules probate cases on the judge's probate calendar.
- 804.02 Uncontested probate matters are scheduled with the Register in Probate.

805: Estates:

- 805.01 Wills: only original wills will be accepted for filing with the court. Copies of wills will only be permitted if the attorney can prove validity.
 - 805.01.1 Wills of a decedent which will not be subject to probate proceeding shall be filed and shall be accompanied by an affidavit.
 - 805.01.2 Wills of living persons filed for safekeeping shall be accompanied by the statutory filing fee and other information as the Register in Probate may require.
- 805.02 Summary Settlement and Summary Assignment: Proof of Heirship must be filed with all opening papers for Summary Settlement and Summary Assignment petitions.

- 805.03 Ancillary proceedings: surety bond required for nonresident granted ancillary letters.
- 805.04 Selection of Personal Representative: only Wisconsin residents may be appointed as Personal Representative of an estate, unless, at the discretion of the court, the nominated non-resident is then required to have a resident agent and post a bond with the probate court in an amount determined by the probate court.
- 805.05 Hearing or Waiver of Hearing: a hearing is not required when waivers are filed by interested parties. Hearings will be held if notice is required or upon request of the attorney for the estate, the personal representative, or the probate court.
- 805.06 Objection to Will filed: an objection to a Will filed must be in writing and filed with the probate court together with the statutory filing fee. When the objection is filed, the probate court shall set a hearing date.
- 805.07 Objections to claims filed: an objection to a claim must be in writing and filed with the probate court. When the objection is filed, the probate court shall set a hearing date. The personal representative or attorney for the estate shall send notice of the objection and notice of the hearing to all interested parties.
- 805.08 Inventory: estate inventory shall be filed no later than 4 months after the issuance of letters together with the statutory filing fee.
- 805.09 Tax clearances: a Wisconsin closing certificate for fiduciaries shall be filed and a federal estate tax closing letter (if the estate met the standard to file a federal estate tax return) shall be filed with the court prior to the closing of any estate, unless the court approves a petition to waive.
- 805.10 Closing estates: signed receipts from heirs or beneficiaries and documentation that the residual beneficiaries or heirs have been advised as to the amount of the personal representative and attorney fees must be filed with the court.
- 805.11 Extensions of time to closing estates: when an estate cannot be closed within the required time limits, a petition setting forth the reasons for the request of an extension of time to close the estate must be filed with the court. A proposed order shall also be submitted. The court will review each request individually. See section 805.09 and section 809.
- 805.12 10th Judicial District time lines to close estates: Estate actions shall be disposed of within twelve (12) months from the date of the filing of the petition or application to open estate.

806: Trusts:

- 806.01 Inventory: the trust inventory shall be filed before the estate will be closed. If the inventory is not timely filed, the Register in Probate shall notify the trustee that the trust inventory is past due.
- 806.02 Selection of Trustee: a Wisconsin resident Trustee may be required to post a bond with the court, at the court's discretion. A non-resident Trustee is The Court only supervises the trust if requested by the beneficiary.

required to post a bond with the probate court in an amount determined by the probate court.

806.03 Closing:

806.03.1 At the time of the termination of the trust, all annual accountings for prior years and the final account must be on file with the court if requested by the beneficiary.

806.03.2 The trustee shall petition the court to terminate the trust.

806.03.3 The trust beneficiary(ies) shall file a Trust Receipt for assets received from the Trustee.

806.03.4 A Wisconsin closing certificate for fiduciaries must be filed with the court before a trust may be closed and the trustee discharged.

807: Guardianship:

807.01 Temporary Guardianships:

807.01.1 A hearing shall be held on all temporary guardianship petitions.

807.01.2 A Petition to Extend Temporary Guardianship and Order on Petition to Extend Temporary Guardianship shall be filed if an extension of the temporary guardianship is requested.

807.01.3 A Guardian ad Litem shall be appointed for the proposed ward in all temporary guardianship matters.

807.02 Guardianships:

807.02.1 Guardian ad litem: the Court shall appoint a guardian ad litem for the proposed ward; the guardian ad litem shall file a report with the court prior to the hearing.

807.02.2 The guardianship inventory together with the statutory filing fee shall be filed within 60 days of the appointment of a guardian of the estate.

807.02.3 Unless previously ordered by the court, the guardian must petition the court for reimbursement of expenses and/or guardian fees. Guardian must not spend more than \$200 without court approval.

807.03 Minor guardianships:

807.03.1 A Guardian ad Litem shall be appointed for the proposed ward in all minor guardianship matters.

807.03.2 The guardianship inventory together with the statutory filing fee shall be filed within 60 days of the appointment of a guardian of

807.04 Conservatorships:

807.04.1 The conservatorship inventory together with the statutory filing fee shall be filed within 60 days of the appointment of a conservator.

807.04.2 A hearing is required to terminate a conservatorship.

807.05 Protective Placements:

807.05.1 A petition for protective placement may be filed with or anytime after the guardianship petition is filed.

- 807.05.2 Comprehensive evaluation must be completed and filed with the court on all protective placement petitions unless filed with court in previous 12 months.
- 807.06 Protective Placement Reviews (*Watts*):
- 807.06.1 Summary hearings on *Watts* reviews will be held in front of the intake judge or the court commissioner.
- 807.06.2 Summary hearings are held on the last Wednesday of each month.
- 807.06.3 If an objection to the protective placement is received, the matter will be scheduled with the intake judge for further proceedings.
- 807.07 Termination of guardianships:
- 807.07.1 Guardianship of the person – deceased ward: upon notification to the probate court that the ward died, the court will issue an order of discharge of the guardian of the person.
- 807.07.2 Guardianship of the estate – deceased ward: upon notification to the probate court that the ward died and filing of: the final account as approved by the court; a proper receipt from the person/entity receiving the remaining assets in the ward’s estate; the court will issue an order of discharge of the guardian of the estate.
- 807.07.3 Guardian of the estate for a minor: upon filing proof of the ward reaching the age of eighteen, filing the final account and receipt signed by the ward; the court will issue an order of discharge of the guardian of the estate.

808: Civil Commitments:

- 808.01 Commencement: all civil commitment matters under Chapter 51 originate with the county corporation counsel office.
- 808.02 Scheduling: the judicial assistant will schedule all hearings regarding civil commitments.
- 808.03 Subject’s Presence Required: the subject is required to appear in person at all hearings, unless under certain circumstances to be determined by the Court, a subject may appear by telephone with counsel in his/her presence at the detention facility, if there is no objection by the subject or counsel. A statement from a physician or psychologist must be filed for the Court’s consideration that indicates transportation would be a danger to the subject or others.
- 808.04 Use of Videoconferencing: Videoconferencing for all hearings regarding civil commitments may only be used pursuant to Section 885.60, Wisconsin Statutes. See also Court Rule 217.

809: District probate benchmarks:

- 809.01 The judges of the 10th Judicial District have set the case processing benchmark for closing estates at twelve (12) months from the date of filing the petition or application.
- 809.02 See 805.11 above regarding extensions for time to close the estate.

810: District forms:

- 810.01 Case management forms/guidelines/checklists created by the 10th Judicial District Registers in Probate shall be used when appropriate.

810.02 District forms shall not take the place of standard, statewide forms created pursuant to sec. 758.18, Wis. Stats.

Part 9: Small Claims Practice

Part 9: Small Claims Practice Table of Contents

900	Venue
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902	Appearance
903	Mediation
904	Party Identification
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906	Trials and Settlements
907	Garnishment

900 Venue

900.01 Within Wisconsin, small claims actions may be filed in: (a) the county in which the defendant resides or does substantial business; (b) the county in which the property relating to the claim is located; or (c) the county in which the claim arose. Claims arising out of consumer credit transactions may be filed in the county: (a) where the consumer resides; (b) where the consumer made the purchase; or (c) if it was a credit transaction, where the collateral (property securing the transactions) is located. A “consumer transaction” is a purchase or lease of goods, property or services, or loan of money or credit, for personal, family, household, or agricultural purposes.

901 Service

901.01 Alternatives for service of summons and complaint. (1) In suits for money judgments, service of summons may be by personal service, substituted service or, if within Burnett County, by mail sent by the Burnett County Clerk of Court. (2) If a summons is returned to the Clerk of Court’s Office by the post office, the plaintiff must serve the defendant(s) by personal service, substituted service, or publication.(3) Eviction actions require personal or substituted service. (4) Replevin actions must be commenced by personal service. (5) Where personal, substituted, or mail service has failed, the plaintiff may request permission of the Court on the return date for publication to establish personal or in rem jurisdiction. (6) Where personal and substituted service has failed in eviction actions, adjournment of the return date, posting, and mailing is the procedure.(7) In evictions and replevin actions, the Petition/Motion to set aside judgment shall be served by mail with certificate of mailing or affidavit of mailing not later than 48 hours before the time specified for the hearing. (8) In

construction liens, the statutory requirement of registered mail is met by certified mail if a sender's receipt is obtained from the postal authorities and return receipt is requested.

902 Appearance

- 902.01. Appearance in Small Claims Actions (Except Evictions). Except for eviction actions, a defendant may contest any small Claims action without appearing on the initial return date by Delivering a written Answer to the Clerk of Courts no later than 2:00 p.m. On the day of the scheduled return date. See Wis. Stats. §799.22(4). The Answer shall state in plain simple language the basis for contesting the lawsuit. The defendant must also provide a copy of any such Answer to the plaintiff (or the plaintiff's attorney) prior to the return date. The box provided on the standard form must be utilized to provide a brief explanation of the claim or it will not be accepted for filing.
- 902.02 Appearance in Small Claims Eviction Actions. In eviction actions, all parties (including landlords and tenants) must personally appear at the initial return date (even if the defendant files a written Answer prior to the return date) if the defendant objects to the eviction or other relief requested in the lawsuit. However, a defendant is not required to appear if that party does not object to the granting of the eviction and other relief requested.
- 902.03 Attorneys who have been retained to represent parties in small claims court and out-of-state defendants who notify the court in writing before the date of the initial appearance may be excused from personally appearing at the initial appearance. However, they must be available for a pretrial conference that same day by telephone. If the court commissioner initiates the call, a \$5.00 fee will be charged, unless a toll-free or local number is provided.
- 902.04 At the return date the court will hear each case that has not gone to mediation individually in random order. Attorneys and out-of-state defendants who have complied with the telephone appearance requirements above will be contacted by telephone for the pretrial conference on their case. If an attorney or out-of-state defendant is unavailable when the court commissioner contacts them by telephone, it will be considered a nonappearance and may result in dismissal or a judgment.

903 Mediation

- 903.01 All cases arising in small claims are presumed to lend themselves to settlement in mediation. If both parties appear at the return date they may be referred to mediation immediately. Mediation is a conflict resolution

process in which an impartial third party, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Decision-making authority for any agreement or settlement rests with the parties themselves. A mediator is responsible for directing and protecting the mediation process. The role of the mediator includes, but is not limited to, assisting the parties in facilitating communication, clarifying issues, reducing obstacles, evaluating options, and encouraging a voluntary agreement. Parties must engage in mediation in good faith and treat the mediator with the utmost respect. Failure to do so may be considered contempt of court and cause for a default judgment or dismissal. If the mediation is successful, the mediator will draft a settlement agreement which is signed by the mediator and all parties. If the mediation is unsuccessful the matter will be scheduled for trial with the court commissioner thereafter. The court commissioner or judge may waive these requirements for good cause.

904 Party Identification

904.01 Parties not Properly Identified

904.02 Change of Address. Parties must notify the clerk of court in writing of any change of address. Once issue has been joined, the court is not responsible for any errors or omissions caused by an incorrect address.

904.03 Use of Work Address. The plaintiff may not serve the summons and complaint on a defendant by first class mail or certified mail at his or her workplace. This exception does not apply to personal service on a party at his or her workplace.

905 Return Date

905.50 More Detailed Statement. In conjunction with a trial date, parties must file with the clerk of court a more detailed statement of the case, if requested by the court. A copy of this statement must also be sent to all opposing parties. If the plaintiff fails to file his or her more detailed statement of the case with the clerk of court by the due date set by the court, or fails to provide a copy to the defendant(s), the case may be dismissed. If the defendant fails to file his or her more detailed statement of the case with the clerk of court by the due date set by the court commissioner, or fails to provide a copy to the plaintiff(s), judgment may be entered in favor of the plaintiff(s).

906 Trials and Settlements

906.01 If a case settles prior to trial, the small claims court clerk should be notified by calling (715) 349-2147 or faxing the court clerk at (715) 349-7659.

- 906.50 Trials are scheduled with the court commissioner or at times with the judge. Parties should be prepared with evidence and witnesses at the time of trial. If plaintiff does not come with three (3) copies of all evidence/exhibits at the time of the trial, they will be directed to the clerk of court to get copies made at their expense. If no time remains to hear the case, it will be rescheduled. If the plaintiff appears a second time without three (3) sets of copies of all evidence/exhibits, the case will be dismissed. No more than thirty (30) minutes is allowed for each case, unless otherwise approved. Parties must contact the small claims court clerk at (715) 349-2147 if more time is needed for trial.
- 906.55 Continuances. All requests for continuances must be made in writing and filed with the clerk of court at least ten (10) days before the trial date.
- 906.60 Jury Demand. Either party may demand a jury trial pursuant to Wis. Stat. § 799.21(3). The party who files the demand must pay an additional \$53.00 filing fee plus a non-refundable \$36.00 jury fee (\$6.00 per juror).
- 906.70 Judgments. A plaintiff may take judgment against a defendant when: the defendant fails to respond to the summons and complaint on or before the return date or does not dispute the plaintiff's claim or the entry of judgment; or after a trial when the court rules in the plaintiff's favor. A defendant may take judgment against the plaintiff when the court rules in defendant's favor, either for dismissal or on a counterclaim. There is a \$5.00 fee for docketing a judgment, to be paid upon entry of same. The clerk of court will place the judgment on an official list, open to public inspection. After docketing the judgment, it becomes a lien on any real estate owned by the debtor in that county for ten (10) years.
- 906.75 Financial Disclosure Statements. If the court decides in a party's favor, and the judgment requires a party to pay money damages, the court will also order the judgment debtor to send the prevailing party a statement disclosing his or her name, address, employers, and their addresses, real property he or she owns, financial institutions in which he or she has funds on deposit, and other information required by form schedules which will be sent out or given to the debtor by the court. The debtor need not file this information in court. He or she must mail it directly to the judgment creditor within fifteen (15) days after the judgment is filed in court, unless within that time the judgment is paid. If the debtor has not paid the debt or sent the financial disclosure statement by the 15th day after the judgment was filed in court, the creditor can start proceedings to have the debtor held in contempt of court.
- 906.77 Contempt. After filing a Petition and Order for Hearing of Contempt, the court will order the other party to appear in court and explain why he or she has failed to send the proper financial disclosure statement. If the debtor fails to appear at the hearing, the court will issue a warrant for his or her arrest for being in contempt of court. The debtor can be placed in jail or ordered to pay a fine for each day he or she fails to make the required financial disclosures to you. The Petition and Order for Hearing of Contempt on the failure to file a financial disclosure statement must be served personally if the moving party wants to request a bench warrant or other sanction for the judgment debtor's nonappearance.

907 Garnishment

- 907.01 Commencement of Earnings Garnishment. To commence a garnishment action, a creditor must file an “Earnings Garnishment Notice” and pay the required filing fee
- 907.02 Upon filing of the notice and payment of the filing fee, the clerk of court will provide the creditor with a garnishment packet that includes the following standardized court forms: (1) two earnings garnishment from blanks, with court seal; (2) exemption notice-earnings garnishment; (3) earnings garnishment-debtor’s answer; (4) garnishment exemption worksheet; and (5) poverty guidelines for earnings.
- 907.03 The creditor must complete the earnings garnishment form and within sixty (60) days after filing notice, the creditor shall serve one of the two (2) earnings garnishment forms upon the debtor and one upon the garnishee defendant.
- 907.04 Service on the Garnishee. Methods of service on the garnishee defendant include: (1) first class mail; (2) certified mail, return receipt requested; (3) any means permissible for the service of a summons in a civil action, other than by publication; and (4) other means if the garnishee defendant signs an admission of service.
- 907.05 Service on the Debtor. Service on the debtor shall be made within seven (7) business days after the date of service on the garnishee and at least three (3) business days before the payday of the first pay period affected by the garnishment. Methods of service on the debtor include: (1) first class mail; (2) certified mail, return receipt requested; (3) any means permissible for the service of a summons in a civil action, other than by publication. Along with the earnings garnishment form, the debtor must also be served with an exemption notice, an answer form, an exemption worksheet, and poverty guidelines.
- 907.06 Debtor’s Answer. The debtor must complete the form and deliver or mail it to the garnishee. It is the garnishee’s duty to send a copy of the answer to the creditor. The answer can be sent to the garnishee or amended at any time during the effective period of earnings garnishment.
- 907.07 Demand for Hearing. A creditor who objects to the answer provided by the debtor may seek a court hearing to review the appropriateness of the debtor’s claims. An earnings garnishment objection will reinstate the court process. Within five (5) business days after such a motion or petition is filed, the court shall schedule the matter for a hearing to be held as promptly as practicable. Notice of the hearing shall be given to the creditor, debtor and garnishee defendant.

908 Rules of Evidence. The trial will be conducted informally by the Court conducting a majority of the questioning, unless attorneys are retained. The rules of evidence do not apply, except for the rules of privilege. The Court will not accept written statements of witnesses not present in court to testify.

Part 10: Traffic/Forfeiture Practice

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1001 Obtaining Bonds on Traffic Citations

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1004 Jury Trial Demands

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1001 Obtaining Bonds on Traffic Citations

1003 Traffic Court Procedure

1003.01 Initial Appearances. The clerk of court shall preside over traffic intake, which typically is scheduled for a return date at 10:00 a.m. on the second Wednesday of the month. If the defendant enters a not guilty plea, he or she shall be provided with a date for a pretrial hearing with the district attorney. Individuals may enter a not guilty plea by mail or phone prior to the initial appearance day. If an individual fails to appear at the initial appearance or fails to enter a not guilty plea by mail or phone, a default judgment will be entered.

1003.02 Pretrials. After the entry of a not guilty plea, a representative of the district attorney's office shall confer with the defendant and attempt to resolve the contested case. The defendant must appear in person at the pretrial date unless otherwise ordered by the court. Failure to appear at the pretrial will result in a default judgment.

1004 Jury Trial Demands

1004.01 Pursuant to Wis. Stat. § 345.43 any party may, upon payment of a \$36.00 jury fee, file a written demand for a jury trial within ten (10) days after the date the defendant has entered a not guilty plea. If the jury fee is not paid in a timely manner, the matter shall be tried to the court as a bench trial unless otherwise ordered by the assigned judge.

1005 Time Payments

1005.01 The payment of fines, costs, fees, surcharges, etc. should be done within thirty (30) days of a conviction. Any request for an extension of time to pay past the time set forth in the original agreement shall be submitted to the clerk of courts, subject to review and approval by the judge. In any traffic or ordinance matter, any fine, attorney fee or court cost may be paid in installments when so ordered by the assigned judge. If such a payment plan is approved, the defendant shall provide the court with a current address, telephone number, and social security number, which number shall then be confidential in the court file.

Part 11: Selection of Jurors

11.01 Potential jurors. The clerk of circuit court shall use the Department of Transportation list when selecting names of potential jurors.

11.02 Length of Jury Duty. Jurors shall serve for a period not exceeding 31 days, unless a trial in progress takes them past the 31-day period, in which case they shall finish that trial. Jurors who serve 5 days shall be excused from further service unless a trial in progress takes them past the 5-day period, in which case they shall finish that trial.

11.03 Additional jurors. The clerk of court shall have the power to select additional jurors if the list provided by the Department of Transportation provides insufficient numbers.

11.04 Excusing Jurors. The clerk of circuit court shall have the discretion to excuse jurors who meet the statutory requirements. The circuit judge may be consulted, if necessary, regarding whether or not a juror should be excused. Juror requests to be excused shall be in writing except in the case of family, medical, or other emergency. Documentation may be required.

11.05 Six-person Jury Trials. In cases where a timely demand for a six-person jury has been made in a case subject to the provisions of §345.43 Wis. Stats., the following method shall be utilized to select the jury.

1. The clerk of court will prepare a random list of at least 25-30 jurors from the prospective juror list.

2. A copy of the random list will be mailed to each of the parties (or their attorney if represented) no less than 10 days prior to the scheduled trial date.

11.06 Voir Dire. During examination of jurors on voir dire, the attorney or party conducting the examination shall, insofar as practical, use collective questions, avoid repetition and seek only material information.

11.07 Release of Judgment Information

11.08 Release Policy. Judgment records will be open to public inspection during normal court business hours.

11.09 Attorney Withdrawal or Substitution. A formal motion must be filed prior to any further proceedings in the particular case and approved by the court.