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# PORTAGE COUNTY CIRCUIT COURT RULES

(Ninth Judicial District) Effective Date: January 6, 2025

## ORDER PROMULGATING LOCAL COURT RULES PURSUANT TO §751.12 AND §753.35, WIS. STATS.

- Sec. 1: Ninth Judicial District Rules
- Sec. 2: Court Practice
- Sec. 3: Civil Practice
- Sec. 4: Criminal Practice
- Sec. 5: Family Law Practice
- Sec. 6: Juvenile Practice
- Sec. 7: Probate Practice
- Sec. 8: Small Claims Practice
- Sec. 9: Traffic/Forfeiture Practice
- Sec. 10: TRO/Injunction Practice

Circuit Court Portage County, Wis.

**FILED**

JAN 07 2025

LISA M. ROTH  
CLERK OF COURTS

## **Introduction**

The undersigned circuit court judges for Portage County, Wisconsin, in an effort to promote an orderly and efficient system of court administration, hereby adopt the following rules of practice and trial court administration which shall govern the practice of law in this County. All prior rules not otherwise incorporated herein shall have no force and effect after the effective date hereof.

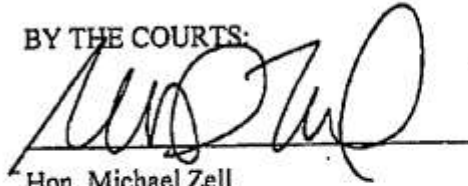
These rules have been approved by the Chief Judge for the Ninth Judicial District and are ancillary to the Wisconsin Statutes, the Wisconsin Supreme Court Rules and the Rules of the Ninth Judicial District.

## **Effective Date**

These rules are effective as of: January 6, 2025

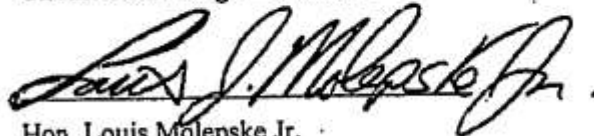
Dated and signed at Stevens Point, Wisconsin, this 30 day of December, 2024.

BY THE COURTS:



Hon. Michael Zell

Circuit Court Judge – Branch 1



Hon. Louis Molepske Jr.

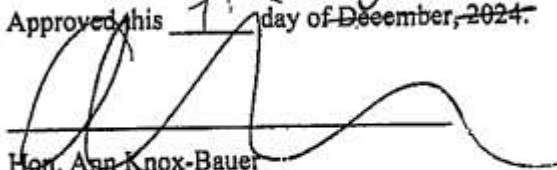
Circuit Court Judge – Branch 2



Hon. Patricia Baker

Circuit Court Judge – Branch 3

Approved this 7th day of Jan 2025  
~~day of December, 2024.~~



Hon. Ann Knox-Bauer

Chief Judge – Ninth Judicial District

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# **SEC. 1: NINTH JUDICIAL DISTRICT RULES**

## **1.1 DISTRICT RULE ADOPTION AND PROMULGATION**

1.1.01 Pursuant to §753.35(2), Wis. Stats., the Ninth Judicial District Court Rules/Guidelines are incorporated herein by reference. These Rules/Guidelines may be accessed at [https://www.wisbar.org/Directories/9th District Court Rules](https://www.wisbar.org/Directories/9th-District-Court-Rules)

## **1.2 PUBLICATION AND REVISION OF CIRCUIT COURT RULES**

1.2.01 Rules shall be adopted by written order of the Portage County Circuit Judges, subject to approval of the Chief Judge.

1.2.02 Orders adopting rules shall specify an effective date.

1.2.03 Once adopted, rules shall be filed in accordance with §753.35, Wis. Stats.

# **SEC. 2: COURT PRACTICE**

## **2.1 CASE PROCESSING TIME GUIDELINES**

2.1.01 The following case processing time guidelines have been adopted by the Ninth Judicial Administrative District. They are designed to provide a guide to the judiciary and bar. Unless otherwise indicated, the guideline represents the time period from filing to final disposition.

- Felony – Two Stage Standard, 85% w/in 180 days and 95% w/in 360 days
- Misdemeanor – 90% w/in 180 days
- Criminal Traffic – 90% w/in 180 days
- Contested Traffic – 95% w/in 180 days
- Contested Forfeiture – 95% w/in 180 days
- Civil – Personal Injury & Property Damage - 90% w/in 540 days
- Civil – Contracts & Real Estate - 95% w/in 360 days
- Civil – Other – 95% w/in 180 days
- Family – Divorce - 90% w/in 360 days
- Paternity - 90% w/in 180 days
- Family – Other - 95% w/in 360 days
- Contested Small Claims – 95% w/in 180 days
- Formal Estates – 90% w/in 540 days
- Informal Estates – 90% w/in 540 days
- Juvenile Delinquency – 95% w/in 90 days
- Juvenile CHIPS - 85% w/in 90 days

2.1.02 Every case shall be scheduled for a next action or review date at every stage in the life of the case.

## **2.2 CLOSURE OF PROCEEDINGS**

2.2.01 Media Coverage

Unless good cause be shown, or otherwise required by statute, a party moving that any judicial proceeding be closed to the public must notify the court and the media coordinator in writing at least 72 hours before the time set to hear the motion. The purpose of this rule is to permit legal counsel to appear

on behalf of the media and be heard. The burden shall be upon the moving party to show why the proceedings should not be public.

## **2.3 RULES OF DECORUM**

- 2.3.01 Court shall be formally opened each day, during the first proceeding, with an announcement that the Court is now open, and announcing the name of the judge presiding. Each time the judge subsequently enters the courtroom for a hearing, the bailiff or another assigned court staff person shall announce “all rise.” When the judge is at the bench, either the bailiff or the judge shall then announce “be seated please.”
- 2.3.02 The flag of the United States shall be displayed in close proximity to the Judge, on a standard, at all times court is in session.
- 2.3.03 The second floor of the Portage County Court Facility is monitored by security officers. All members of the public and attorneys are subject to the security screening process. Anyone returning to the second floor after leaving is required to go through security screening again. Unauthorized Items: guns of any kind including pellet, BB, replica and toy guns, ammunition, explosives, electric weapons, martial arts weapons, batons, brass knuckles, mace, pepper spray, hammers, gun case (empty), knives of any kind, sharp objects, ax/hatchet, bow/crossbow. (Additional items may be disallowed at the discretion of screening personnel).
- 2.3.04 The Court uses a digital microphone system which is meant to assist with videoconferencing and the digital audio recording system. Everyone in the Courtroom is required to silence their cell phone during proceedings. Everyone addressing the Court must speak into a microphone audibly, clearly, and one person at a time, remaining within twelve inches of the microphone. If private conversations are necessary, the microphone should be muted. Participants should avoid paper shuffling, table tapping, and any other activity which creates unnecessary noise that could interfere with the proceedings.
- 2.3.05 Attorneys should examine witnesses and address the jury either from counsel table or from the podium. Attorneys may request permission from the Court when it is necessary to approach a witness to show an exhibit, but may not question the witness about the exhibit until the attorney has returned to the podium or counsel table. A witness should never be examined with the attorney standing next to or close to the witness. The witness and attorney must each have a separate microphone.
- 2.3.06 During examination of jurors on voir dire, the attorney or party conducting the examination shall use collective questions as much as practical, avoid repetition, and seek only material information. Hypothetical questions, meaning questions asking a juror how they would vote or decide a certain question, are not allowed.
- 2.3.07 During trial, no attorney or party shall exhibit familiarity with witnesses, jurors or opposing counsel and generally the use of first names shall be avoided. In jury arguments, no juror shall be addressed individually or by name.
- 2.3.08 Attorneys and court officers shall be attired in such a manner as not to lessen the dignity of the court or of proceedings in the eyes of the jury and public, whether appearing in person or remotely.
- 2.3.09 Attorneys shall never lean upon the bench or appear to engage the court in a manner which would lessen the dignity of the proceedings in the eyes of the jury and public.
- 2.3.10 Attorneys shall advise their clients and witnesses of the formalities of court and seek their full cooperation. It is expected that attorneys will guide clients and witnesses as to appropriate attire and behavior, whether appearing in person or remotely.
- 2.3.11 Witnesses shall be examined with courtesy and respect, and their good faith presumed until the contrary appears.
- 2.3.12 Attorneys and parties shall be prepared to proceed at the time matters are scheduled. Failure to proceed on time may be grounds for sanctions, including but not limited to costs, dismissal, judgment, and ruling against the late party on the particular matter before the court.
- 2.3.13 Taking photographs and making audio or video recordings are prohibited in the courtrooms and corridors without prior court approval.

- 2.3.14 Attorneys and members of the public shall refrain from extraneous conversation in the courtroom that is distracting to court reporters.
- 2.3.15 Unless worn for religious or medical purposes, hats shall be removed prior to entering the courtroom.
- 2.3.16 Smoking, tobacco products, eating, drinking and chewing gum are not permitted in the courtroom without the express permission of the judge. Water at counsel tables is permissible.
- 2.3.17 Demonstrations, placards, badges, T-shirts and clothing that espouse a position on an issue before the court are not permitted in the courtroom.
- 2.3.18 Individuals not in compliance with these rules may be removed from the courtroom. Security personnel may act on their own in enforcing these rules and need no further authority from the court.

## **2.4 CONTINUANCES**

- 2.4.01 Stipulated requests for continuance of trial dates require the consent of the parties in writing or on the record and must be for good cause.
- 2.4.02 Non-stipulated requests for continuance must be on motion and hearing and for good cause.
- 2.4.03 All requests for continuance are subject to approval of the Court, and witnesses should not be released until such approval is granted.

## **2.5 VIDEO AND TELEPHONIC HEARINGS/MOTIONS**

- 2.5.01 In cases involving out-of-county attorneys, the use of video or telephonic conferencing for scheduling and for motions not involving evidence is encouraged. The use of video or telephonic conferencing for other matters shall be at the discretion of the judge. Requests to appear via video or telephonically shall be made at least one week in advance. If a telephonic conference is requested, it shall be the responsibility of the attorney or party seeking the conference call privilege to make the arrangements, give notice and assume costs.
  - (1) When making a request for video appearance, CCAP standard forms GF-306 (Request to Appear Remotely) and GF-307 (Order on Request to Appear Remotely) must be filed.
  - (2) In criminal cases, a defendant appearing remotely must also file CR-295 (Waiver of Right to Personal Appearance)
  - (3) Video appearances for non-party participants, such as public observers, must be requested at least 48 hours before the scheduled hearing, and may be approved in the discretion of the Court. Portage County Courts do not initiate a videoconferencing session for every hearing, and will not initiate a videoconferencing session unless there is an approved request. Failure of a participant to obtain approval for a video appearance may result in the Court excluding the participant. Any non-party participant must identify their appearance by initials or role in the case.
  - (4) Members of the media may appear by videoconferencing for bond hearings and other routine matters without making a request, but must identify themselves as a member of the media on the user appearance.
  - (5) Recording of the videoconferencing sessions is prohibited without specific permission of the judge conducting the proceeding. Requests to record the proceedings must be made to the assigned judge no later than 48 hours before the proceeding.

## **2.6 COURT COMMISSIONER**

- 2.6.01 The Family Court Commissioner shall preside at the following:
  - (1) Child support actions brought by the Child Support Agency.
  - (2) Harassment and domestic abuse injunctions.
  - (3) Paternity proceedings.
  - (4) Temporary Order Hearings
  - (5) Stipulated divorce hearings



- (6) Family law motion hearings
- (7) Truancy Court
- (8) Other matters as directed by a judge.

2.6.02 De Novo Review of Court Commissioner Decisions. A party seeking review of a court commissioner by the assigned judge shall file a written request for such review within the time period allowed by the applicable Wisconsin Statute.

## **2.7 JUDICIAL ASSIGNMENTS**

### **2.7.01 No Limitation of Jurisdiction**

This rule is intended to equalize and rotate caseloads and not to limit the jurisdiction of any branch over any matter. Nothing in this rule shall limit jurisdiction of any branch over any matter brought before it.

### **2.7.02 Notice of Assignment**

For purposes of a request for substitution of judge, these local rules constitute notice of the judicial assignment.

### **2.7.03 Criminal Intake**

Each judge presides over Intake Court for two weeks at a time in chronological branch order.

### **2.7.04 Assignment of Cases**

Cases are assigned as indicated in the Portage County Judicial Rotation Order. Cases heard during Criminal Intake Court shall be assigned to the branch of the intake judge unless otherwise specified in the [Portage County Rotation Order for Judicial Assignments](#).

### **2.7.05 Modification or Enforcement of Final Orders**

Motions for modification or enforcement of a final order or judgment shall be assigned to the same judge who granted the order or judgment. If the judge who granted the order has retired or otherwise left the bench, the matter shall be assigned to the judge now presiding in the same branch.

## **2.8 ELECTRONIC FILING RULES**

2.8.01 Portage County encourages e-filing of pleadings and documents by all parties. Attorneys and high volume filers are required to file documents by e-filing as provided in Wis. Stat. § 801.18. E-filing parties are required to comply with these rules.

- (1) To File electronically using the Wisconsin Court E-filing System link, <https://www.wicourts.gov/ecourts/efilecircuit/index.jsp>

2.8.02 Parties shall use the Supreme Court forms and Portage County forms specified by these rules, or, where permitted, a substantial equivalent.

- (1) Supreme Court forms are available at: <https://www.wicourts.gov/forms1/circuit/index.htm>
- (2) Wisconsin Court System Forms Assistant <https://www.wicourts.gov/ecourts/prose.htm> for Family, Small Claims, and Restraining Orders
- (3) Portage County specific forms are available at: <https://www.co.portage.wi.gov/190/Court-Forms>

## **2.9 PAPER FILING OF DOCUMENTS**

2.9.01 Attorneys and high-volume filers are required to e-file documents. If a party is not a mandatory e-filer, the party is encouraged to electronically file documents, but may file paper documents pursuant to this rule.

2.9.02 Non E-filing parties may submit letters, pleadings, motions, briefs, affidavits and other documents which shall conform to the provisions of this rule. If a document does not comply with this rule, it shall not be filed.

2.9.03 All Non E-filing documents submitted for filing shall:

- (1) Be printed on 8 ½ x 11 inch paper;
- (2) All documents shall leave a minimum half-inch top margin at the top of each page. This header space is to ensure that the auto-stamp does not interfere with the content of the document when it is e-filed/scanned into the record.
- (3) Any document submitted for Court Official signature shall leave a **three-inch** margin at the top of the first page. All subsequent pages shall leave a minimum half-inch top margin at the top of each page.
- (4) State the case number and names of the principal parties to the case.
- (5) Be double-spaced.
- (6) When referring to published decisions of Wisconsin appellate courts, include the Callaghan reporter citation (Wis. 2d).
- (7) If signed by an attorney, state the attorney's State Bar Identification Number.
- (8) The original document shall be maintained by the filing party and produced upon request of the Court.
- (9) Self-represented litigants shall produce the original and copies of documents for filing. One copy shall not be stapled or otherwise bound, except by an easily removable method, such as a paper clip or a binder clip, in order to facilitate scanning into the CCAP Case Management application. Once file stamped, the original shall be maintained by the filing party and produced upon request of the Court.
- (10) Unless otherwise permitted by state statute or court order, include a certification signed by the party or an attorney for the party filing the document stating that a copy of the document has been served on all parties to the action, in accordance with applicable law, identifying the name and address of each party served and stating the date and method of service; and
- (11) Conform to any page limitations on briefs or appendices set forth in these rules.

2.9.04 The Court may relieve self-represented litigants from some or all of the requirements of this rule.

## **2.10 FILING OF DOCUMENTS BY FACSIMILE**

2.10.01 The following governs filings of pleadings and other papers by facsimile transmission with the Clerk of Court:

- (1) E-Filers shall not submit any filings via facsimile.
- (2) Self-represented litigants may file pleadings and other papers with the Clerk of Circuit Court via facsimile to 715-346-1236 only in accordance with the procedures established in §801.16(2), Wis. Stats. Transmissions that do not comply with this rule will not be filed.
- (3) No filings shall exceed 15 pages in length. A "filing" means the fax cover sheet and all subsequent pages thereafter.
- (4) Notwithstanding the preceding paragraphs, no briefs, or memoranda of law will be accepted by facsimile for filing.
- (5) In accordance with §801.16(2)(c), Wis. Stats. any deviation from this local rule will only be permitted upon receipt of express consent of the judge assigned to the case and only upon good cause shown. It is incumbent on the faxing party to demonstrate to the Clerk that a judge has granted express consent.

## **2.11 CORRESPONDENCE WITH THE COURT BY FACSIMILE AND ELECTRONIC MAIL**

2.11.01 The following governs facsimile transmissions to an individual judge or the court commissioner:

- (1) Facsimile transmissions to the judiciary shall be by express permission only.
- (2) The judiciary will not accept or forward to the Clerk's office, any filings intended for the Clerk of Circuit Court.

- (3) Facsimile transmissions to the judiciary shall not exceed six (6) pages, including the fax cover sheet unless the individual judge permits otherwise.
- (4) Any deviation from this rule will only be permitted upon receipt of express consent of the judge and only upon good cause shown.

2.11.02 The following governs electronic mail communication with an individual judge or the court commissioner:

- (1) Parties may not communicate with the court by electronic mail unless specifically invited by the court, on such terms as the court prescribes, and then only if all parties receive a copy of the message simultaneously with delivery of the message to the court.

## **2.12 COURTESY COPIES OF MOTIONS, BRIEFS, AFFIDAVITS AND OTHER SUCH DOCUMENTS**

2.12.01 Courtesy copies to the assigned judge are generally not required.

- (1) Only upon direct request shall parties provide the assigned judge with courtesy copies of documents, briefs and affidavits on substantive motions simultaneously with eFiling and service on parties.
- (2) Such copies shall be marked “Courtesy Copy” and mailed or faxed as directed.

## **2.13 PROPOSED ORDERS; THE “FIVE-DAY RULE”**

2.13.01 Parties are encouraged to obtain the signature of the other party approving a proposed order.

- (1) If a proposed order has been approved by both parties, the Judge and Court Commissioner may sign the document immediately.
- (2) If a proposed order is filed without the signature of the other parties, the Court shall hold proposed order for a minimum of five (5) days upon receipt.
- (3) If no objection is received by any other party, the Court may sign the orders as submitted.

## **2.14 FILING OF EXHIBITS**

2.14.01 Exhibits should be filed after they are received by the Court. Exhibits shall only be filed prior to a hearing or trial with the approval of the Court, although they may be pre-marked with approval of the Court. Clerks may reject exhibits filed without the Court’s permission.

## **2.15 ARTIFICIAL INTELLIGENCE (AI) USE**

2.15.01 If a party files a brief, motion, or other document which is produced using artificial intelligence (AI) in any way, the document must contain a statement regarding the use of AI which meets the following requirements:

- (1) The statement must advise the Court whether the document contains any citations, references or language obtained through the use of AI.
- (2) If the document does contain such material, the party filing the document must further assert that they have reviewed all AI provided sources to confirm accuracy of the reference.

## **2.16 OUT-OF-COUNTY JUDGES**

2.16.01 Judges from other counties who are assigned to cases in Portage County shall coordinate their scheduling through the Presiding Judge’s Judicial Assistant (JA).

- (1) The Presiding Judge’s JA will identify an available courtroom from any of the three branches which works with the schedule of the out-of-county judge and counsel on the case, without regard to the original branch of the case.
- (2) The Presiding Judge’s JA will then confirm with the JA for the branch which is being used before finalizing the dates.
- (3) The Presiding Judge’s JA will attempt to use time that will not interfere with the sitting judge’s normal calendar activities by using vacation, conference, and other judicial absences.

- (4) The sitting judge will not over-ride the scheduled out-of-county judge matters which are scheduled unless there is an urgent matter which requires use of the time.
  - (a) If that occurs the sitting judge shall notify the Presiding Judge's JA of the conflict, and the Presiding Judge's JA will then notify the Out-of-county judge, who may choose to reschedule or hold a backup position on the calendar.

## **2.17 SUPREMACY OF STATE STATUTES AND SUPREME COURT RULES:**

These rules are intended to supplement, not supersede, states statutes and supreme court rules. Local rules that conflict with statutes or Supreme Court rules shall not be enforced.

## **2.18 ELECTRONICALLY RECORDED PROCEEDINGS:**

All Court proceedings that are electronically recorded shall be preserved in the court file or by some other approved method. No duplicate copy of the recording shall be made without a court order. If a party, member, or representative of the media requests a transcript of a court proceeding that has been electronically recorded, the official court reporter for the assigned judge shall transcribe the proceeding pursuant to SCR 71.05. The court reporter who prepares the transcript shall certify that it is a verbatim transcript of the electronic recording of the proceeding.

## **2.19 GOOD FAITH EFFORT TO RESOLVE DIFFERENCES BEFORE BRINGING A MOTION:**

Except as permitted by statute, by these rules or by court order, attorneys shall make a good faith effort to resolve differences informally before filing a motion.

# **SEC. 3: CIVIL PRACTICE**

## **3.1 INITIAL COURT REVIEW**

- 3.1.01 All actions shall be filed with the Clerk of Circuit Court's office.
- 3.1.02 All civil cases shall be reviewed for service and answer 105 days after filing. If a case has not reached issue in the time prescribed by statute, a dismissal order or default proceeding may be initiated by the court.

## **3.2 PRETRIAL**

- 3.2.01 Scheduling Conference
  - (1) If all parties are represented by attorneys, approximately 60 days after issue has been joined.
    - (a) The court shall set the matter for a scheduling conference.
    - (b) Notice shall be sent to the parties in advance of the scheduling conference, and the attorney for each represented party shall be present by videoconferencing or as directed by the court.
  - (2) If any party is unrepresented or if the Court determines there are too many attorneys/parties for an effective videoconference, all attorneys/parties may be required to appear at the courthouse, in the room specified in the order, to hold the scheduling conference.
  - (3) Scheduling conferences may be held by videoconferencing or telephonically. Telephone scheduling conferences shall be initiated by plaintiff's attorney who shall place the call to the judicial assistant after all attorneys are on the line, and the call will then be transferred to the Judge or handled in the manner required by the judge.
  - (4) Unless otherwise directed by the judge, the judge will complete the civil scheduling order and the judicial assistant will provide a copy to all attorneys. The order may establish:
    - (a) Dates for completion of discovery, naming experts, filing of reports, motions and mediation.
    - (b) Requirements for alternative dispute resolution.
    - (c) The date of a final pretrial conference.
    - (d) The date of the trial

- (5) The scheduling order is final unless objected to within 10 days of mailing.
- (6) Stipulations extending any dates set forth in the scheduling order are not binding unless the Court approves such stipulation.

3.2.02 In all pretrial matters, attorneys must have authority to negotiate in the absence of their clients or, if authority is not granted, they must have immediate telephone access to their clients.

### **3.3 GUARDIANS AD LITEM FOR MINORS / MINOR SETTLEMENT AGREEMENTS**

3.3.01 In a personal injury action involving a minor, neither the minor's attorney nor a member of the attorney's firm may be appointed guardian ad litem for the minor.

3.3.02 Petitions

A petition for approval of a minor settlement must identify facts supporting venue and state the age of the minor, the nature and extent of the injury giving rise to the claim, the circumstances leading to the injury and liability, considerations bearing on settlement, and the proposed distribution of the settlement funds. The petition must request the appointment of a guardian ad litem for the minor, and be accompanied by a proposed order appointing the guardian ad litem and proposed order approving the minor settlement.

3.3.03 Participation at Hearings

Unless approved by the Court on motion for good cause shown, the minor, the guardian ad litem, and at least one parent or guardian must attend the hearing to approve the minor settlement. The Court may require production of other evidence relating to the claim or injury at the hearing.

### **3.4 MOTIONS**

3.4.01 Motions shall be filed in accordance with all deadlines specified in the scheduling order issued by the assigned judge. This includes any motions pursuant to Wis. Stat. § 907.02 (*Daubert* motions). Upon filing any motion, the moving party shall contact the court for a hearing date for the motion. Motions will only be scheduled for hearing when the movant contacts the court's judicial assistant to schedule the hearing. If no motions are filed by the specified deadlines the party waives the right to file such motions.

3.4.02 A motion for summary judgment under Wisconsin Statute 802.08 and a motion for dismissal under Wisconsin Statute 802.06 shall include any brief or other supporting documents. If a movant does not desire to file a brief or other documents, a statement waiving his/her right to file such brief or other documents shall be filed.

- (1) The non-moving party shall have 20 days from the filing of the movant's brief within which to file a responsive brief or waive in writing the right to do so. If the non-moving party fails to file a brief or waiver of the same within the 20-day period, it shall be presumed that party has waived this right and the court shall accept no further briefs.
- (2) The movant shall have 5 days from the filing of the non-moving party's response brief within which a reply brief or waive in writing the right to do so. If the movant fails to file a reply brief or waiver of the same within the 5-day period, it shall be presumed that the movant has waived this right and the court shall accept no further briefs.

3.4.03 If a movant desires to file a brief in support of a motion, other than one for summary judgment or dismissal, the brief shall be served and filed at least 10 days prior to any scheduled hearing date. Briefs in opposition to such motions must be filed no later than 2 business days prior to the hearing of the motion. Briefs filed in an untimely fashion may be disregarded by the court.

3.4.04 These filing deadlines control unless the parties agree otherwise and the agreed-upon deadlines are approved by the court and incorporated into the scheduling order.

### **3.5 DISCOVERY**

3.5.01 Limitation on Discovery Requests

- (1) Parties represented by same attorney or law firm are regarded as one party for purposes of determining compliance with discovery.

- (2) Parties must follow the Wisconsin Rules of Civil Procedure pertaining to written discovery, but may agree by written stipulation (or on the record) to permit additional discovery beyond that authorized under the Wisconsin Rules of Civil Procedure. The Wisconsin Rules of Civil Procedure control absent a written stipulation between the parties, or a contrary provision in the Court's scheduling order.

#### 3.5.02 Depositions

- (1) Objections to a deposition notice, including a notice to an organization under Wis. Stat. Sec. 804.05(2)(e), must be raised and resolved either by stipulation or protective order prior to the deponent sitting for the deposition. Absent good cause, objections to the notice not resolved prior to the deponent sitting for the deposition are waived.
- (2) Objections to questions asked at a deposition must be stated concisely in a non-argumentative and nonsuggestive manner. An objection "to form of the question" preserves all objections to the question unless the questioning party asks the objecting party the basis for the objection.
- (3) An attorney may instruct a deponent not to answer a question only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to suspend the deposition to present a motion for a protective order under Wis. Stat. Sec. 804.01(3).

#### 3.5.03 Discovery Motions

- (1) All motions to compel discovery or for a protective order precluding or limiting discovery must be accompanied by an affidavit by the movant certifying that, after the movant in good faith has conferred or attempted to confer with the opposing party to resolve the discovery dispute without court action, the parties are unable to reach an accord. The affidavit must recite the date(s) and time(s) of the conference(s) and the names of all parties participating in the conference(s).
- (2) Absent good cause, a motion to compel discovery must be filed no later than ninety days after the date upon which the discovery response was due (if not discovery response was served) or the date the discovery response was served.
- (3) Failure to comply with this rule may result in immediate denial of the motion.

#### 3.5.04 Completion of Discovery

- (1) Unless the Court orders otherwise, all discovery (excluding depositions to preserve testimony for trial) must be completed 20 days prior to the final pretrial hearing.
  - (a) Completion of discovery means that discovery must be scheduled to allow depositions to be completed, interrogatories and requests for admissions to be answered, and documents to be produced before the deadline in accordance with the Wisconsin Rules of Civil Procedure.
  - (b) On motion and for good cause, the Court may extend the time during which discovery may occur or reopen discovery.

### **3.6 LIMITATION ON LENGTHS OF BRIEFS**

- 3.6.01 Absent Court approval, a movant's brief must not exceed 25 pages, a responding brief must not exceed 25 pages, and a reply brief must not exceed 10 pages (excluding any caption, cover page, table of contents, table of authorities, and signature block).
- 3.6.02 The Court may disregard any briefs exceeding the permitted length or ones that contain non-standard typeface or margins to avoid compliance with this rule. On motion and for good cause, the Court may extend the page limits on the lengths of briefs.

## **SEC. 4: CRIMINAL PRACTICE**

### **4.1 INTAKE COURT**

- 4.1.01 **Judicial Rotation:** Portage County uses an intake court process which provides for a two week rotating duty schedule with each branch serving for two weeks at a time in numerical order.
- (1) **Intake Court:** covers bond hearings and first appearances for all new matters which come into the court system during the intake period.
  - (2) **Assigned Court:** Intake Court will remain the assigned court for all future proceedings involving the matters heard during intake.
  - (3) **Urgent Matters:** Intake Court will also hear matters for other branches when there is an urgency to the matter due to deadlines or other reasons. These urgent matters may include voluntary appearances, preliminary hearings, or anything else which is urgent. The Intake Judge will decide whether it is most appropriate to hear the matter on behalf of the assigned judge or refer it to the assigned judge.
- 4.1.02 **Pretrial/Scheduling Conferences Rotation:** The intake rotation also requires rotation of pretrial / scheduling conferences as agreed between the Courts every year. This means that on the first day of every week, one judge will have intake duty, and one judge will have pretrial and scheduling conferences.
- 4.1.03 **Availability of Attorneys:** In order to ensure availability of attorneys for pretrial and scheduling conferences, as well as intake and preliminary hearings, no other criminal matters shall be set on the first day of the week.
- 4.1.04 **First Day of Every Duty Week:** The intake judge covers appearances for traffic, ordinance, and criminal cases, as well as preliminary hearings.
- (1) Traffic and ordinance matters will be heard at 8:30 AM. Criminal traffic cases will be heard at 9:00 AM.
  - (2) Criminal cases (no more than 20) will be heard at 1:30 PM. Preliminary hearings (no more than 10) will be heard at 3:00 PM.
    - (a) The prosecutor is expected to file a criminal complaint in every case no less than 3 full business days before the scheduled initial appearance.
    - (b) The prosecutor covering intake proceedings is expected to print copies of criminal complaints for those cases in which a defendant may appear pro se at the initial appearance, and distribute that complaint to the defendant.
- 4.1.05 **Riverside and in-custody return on warrant cases.** The intake judge will hear every day at 1:00 P.M.
- 4.1.06 **Walk-in Return on Warrants:** The intake judge will hear walk-in return on warrant matters every day at 1:10 PM.
- (1) These matters will not be scheduled on Monday or Friday.
  - (2) No more than two of these matters will be scheduled on any day.
  - (3) If a defendant does not appear for two scheduled voluntary appearances, they must turn themselves in to the jail to address the warrant.
  - (4) There must be at least 24 hours of notice of any hearing.
- 4.1.07 **Criminal Initial Appearances:** The intake judge will conduct criminal initial appearances every day.
- (1) On Monday of each week, the Court will hear up to twenty cases beginning at 1:30 PM and ending at 2:30 PM.
  - (2) Every other day of the week, Tuesday through Friday, the Court will hear two matters at 1:15 PM.
- 4.1.08 **Pro Se Criminal Initial Appearance:** When defendants appear *pro se* at the initial appearance in a criminal matter, the judge will ask whether the person wants to be represented by counsel.

- (1) If the defendant expresses that they do not want counsel, the judge will conduct a brief colloquy to determine whether the defendant is making a free and knowing choice to waive counsel and whether the defendant is competent to represent themselves.
  - (a) If the Court determines that the waiver is acceptable, then the matter may proceed with the defendant self-represented.
- (2) If an unrepresented defendant in a felony matter wishes to be represented by counsel, the Court will advise the defendant of the time limits for commencing the preliminary hearing. The Court will then ask the defendant if they agree to extend the time limits for holding the preliminary hearing to provide more time to obtain counsel. If the defendant agrees, the Court will extend the time based upon the stipulation of the parties and schedule an adjourned initial appearance. Time limits will be tolled until the adjourned initial appearance.
  - (a) If the Court determines that the defendant does not or is otherwise unable agree to extend the time limits, the Court may on its own motion extend time limits for cause and schedule an adjourned initial appearance. The purpose of finding cause to extend time limits is to enable a defendant to be represented by counsel at the preliminary hearing. When finding cause to extend time limits, the Court will make the necessary findings supporting cause.
  - (b) If the Court does not find cause, the Court will schedule the matter for preliminary hearing within time limits irrespective of the status of counsel.
- (3) If a defendant in a misdemeanor matter wants to be represented by counsel, the Court will adjourn the matter for an adjourned initial appearance on the assigned judge's calendar during a scheduled pretrial conference date.

#### 4.1.09 Preliminary Hearings

- (1) Preliminary hearings will be heard every Monday at 3:00 PM. Preliminary hearings are scheduled for each branch in the two weeks following that judge's intake period.
- (2) Any matter which will take more than 15 minutes must be identified by the attorneys during intake proceedings so that the Court may schedule sufficient time to hear the matter.
- (3) If the case is bound over following preliminary hearing or waiver of the hearing, Arraignment will occur immediately after the preliminary hearing. If the attorney for the State or Defendant requests a different date for arraignment, the Court will schedule another date.
- (4) If an attorney for a defendant electronically files the Portage County preliminary hearing form at least 24 hours before the preliminary hearing, the attorney may also contact the judicial assistant for the intake judge to reschedule the matter for an arraignment, before the judge.

4.1.10 **Intake Motions:** Motions are allowed during intake proceedings regarding bond and no contact orders, but will only be heard during proceedings if time allows, in the determination of the judge.

## 4.2 MOTION PRACTICE

4.2.01 All motions must be in writing and state the grounds "with particularity". See Wis. Stat. §971.30.

- (1) Motions must provide a legal standard and a factual basis for the relief requested.
- (2) Failure to follow this requirement may be grounds for dismissal of the motion.
- (3) The Court may also refuse to schedule the motion.

4.2.02 A party filing a motion must contact the assigned court within 24 hours to request a date for hearing.

- (1) Failure to secure a date for the motion hearing shall constitute waiver of the motion.

4.2.03 Motions regarding an intake proceeding, such as request for remote proceedings, shall be routed to the judge assigned to intake.

4.2.04 Substantive motions shall be addressed by the judge assigned to the matter.

- (1) The intake judge will not hear motions regarding dismissal, suppression, or other substantive or dispositive issues.



## 4.3 PRETRIAL SCHEDULING

4.3.01 At the time of the Arraignment, a criminal felony case will be scheduled for two future dates:

- (1) Pretrial Conference - approximately 60 days from the date of the arraignment.
  - (a) This is an off-the-record proceeding between the prosecutor and defense counsel or unrepresented defendant.
- (2) Scheduling Conference - approximately 120 days from the date of the arraignment.
  - (b) This will be an on-the-record proceeding before the assigned judge.

### 4.3.02 Pretrial Conferences

The following procedures apply to the pretrial conference in all matters.

- (1) The purposes of the Pretrial Conference is for the parties to engage in settlement negotiations, confirm the exchange of discovery, and otherwise discuss case trajectory.
- (2) The State should make every effort to provide a written settlement offer to defense counsel at least two (2) weeks prior to the pretrial conference.
  - (a) For unrepresented defendants, offers may be conveyed at the pretrial conference.
- (3) The Pretrial Conference is to be conducted in the courtroom, unless the parties communicate in advance of the hearing.
  - (a) The pretrial conference is not on the record.
- (4) Defendants are required to appear at all pretrial conferences and sign in at the courtroom, unless previously excused by the court.
  - (a) Defendants must update their address or phone number, if either has changed.
  - (b) Once done, defendants are released and may leave the pretrial conference.
- (5) If the parties reach a plea agreement at the pretrial conference, they should contact the Judicial Assistant for scheduling to determine whether the matter will be heard during the scheduling conference or at a separate plea date.

### 4.3.03 Scheduling Conferences

The following procedures apply to all matters:

- (1) The purpose of the Scheduling Conference is for the court to determine whether the matter is resolved by plea agreement, should be scheduled for a hearing on a dispositive motion, or should be placed on the trial calendar.
- (2) The Scheduling Conference will be held on-the-record before the judge assigned to the case.
- (3) If the parties have reached a plea agreement, the court may take a plea at the Scheduling Conference, provided that the parties are prepared to proceed, the court's calendar is clear and the assigned judge is prepared to proceed, and the State is complainant with victim rights requirements. Otherwise, the parties must contact the Judicial Assistant for scheduling.
- (4) If the parties have not reached a plea agreement, the court will schedule dates for a Jury Trial, a Final Pretrial Conference, and if necessary, a hearing on substantive motions. The Court will establish a scheduling order which will comply with the provisions of section 4.4 of these rules.
- (5) The Court will reasonably evaluate motions to adjourn the scheduling conference when there are legitimate issues regarding late discovery, a need for additional investigation, or other matters implicating a defendant's constitutional rights, or rights of victims.

### 4.3.04 Plea and Sentencing Hearings

- (1) To assure prosecutor availability for plea and sentencing hearings, Portage County uses time blocks to specify time for each prosecutor on each Judge's calendar. The branches will coordinate those blocks so there is no conflict between the branches. Prosecutors may not schedule hearings in other branches which conflict with their assigned blocks.

- (2) A prosecutor may only schedule matters in the assigned branch during a time block. With permission of both judges, a prosecutor may schedule a hearing outside a time block in a different branch.

#### 4.4 SCHEDULING ORDERS

- 4.4.01 If the judge is advised that a case has not reached settlement at the time of the scheduling conference, the judge will set dates for jury trial (or court trial), and final pretrial, as well as deadlines for witness disclosure, motions in limine, proposed jury instructions, substantive motions, and *Daubert* motions.
- (1) The following deadlines are mandatory unless the Court orders otherwise:
- (a) Proposed jury instructions and motions in limine must be filed no later than 7 days before the final pretrial.
  - (b) Expert and citizen witnesses must be disclosed no later than 90 days before the final pretrial. If a party identifies an expert witness, the party must also provide a report or summary of the expert’s testimony.
  - (c) *Daubert* motions challenging an expert must be filed no later than 60 days before the final pretrial. The party filing the motion must contact the Court to schedule a hearing. *Daubert* motions will not be heard at the final pretrial unless specifically ordered by the Court.
  - (d) Substantive motions, including motions to dismiss or suppress evidence, motions to admit other acts evidence, and motions to join cases must be filed no later than 90 days before the trial. The party filing the motion must contact the Court to schedule a hearing. Substantive motions will not be heard at the final pretrial unless specifically ordered by the Court.
- 4.4.02 The court will then create a scheduling order which provides the court’s expectation for the parties.
- (1) The provisions of the scheduling order are mandatory and may only be modified or waived with written permission by the assigned judge.

#### 4.5 APPEARANCES

- 4.5.01 Defendants are generally expected to be present for all hearings in person, unless the Court approves a remote videoconferencing appearance
- 4.5.02 When defendants are in custody, their appearance will depend both on the location of custody, statutory requirements, and the defendant’s wishes.
- (1) In-custody appearances, including both transportation and videoconferencing, will be arranged by the district attorney either contacting the institution for videoconferencing, or filing an order to transport.
- 4.5.03 The following table indicates what is generally expected by the Courts.

Hearing	Released on Bond	Portage County Jail	Waupaca County Safekeeper	Other County Jail or Prison
Initial Appearance	In-person (unless approved GF-306)	Zoom	Zoom	Zoom
Preliminary Hearing	In-person	In-person	In-person from automatic CSU transfer (unless filed GF-306)	In-person from OTP (unless filed GF-306)
Prelim Waiver	In-person (unless approved GF-306)	In-person	Zoom	Zoom
Arraignment	In-person (unless approved GF-306)	Zoom	Zoom	Zoom

ARR/PTC	In-person (unless approved GF-306)	Zoom	Zoom	Zoom
PTC	Courtroom sign in only	No appearance	No appearance	No appearance
Scheduling Conference	In-person (unless approved GF-306)	Zoom or no appearance	Zoom or no appearance	Zoom or no appearance
Plea Hearing	In-person (unless approved GF-306)	In-person	In-person from automatic CSU transfer (unless filed GF-306)	In-person from OTP (unless filed GF-306)
Sentencing Hearing	In-person (unless approved GF-306)	In-person	In-person from automatic CSU transfer (unless filed GF-306)	In-person from OTP (unless filed GF-306)
Competency Hearing	In-person (unless approved GF-306)	In-person	In-person from automatic CSU transfer (unless filed GF-306)	In-person from OTP (unless filed GF-306)
Motion Hearing Evidentiary	In-person unless approved GF-306)	In-person	In-person from automatic CSU transfer (unless filed GF-306)	In-person from OTP (unless filed GF-306)
Motion Hearing Non-evidentiary	In-person (unless approved GF-306)	Zoom	In-person from automatic CSU transfer (unless filed GF-306)	In-person from OTP (unless filed GF-306)

#### **4.6 UNPAID FINES / FORFEITURES**

4.6.01 Fines, forfeitures, costs, surcharges, restitution, and/or attorney fees shall be paid within sixty (60) days of the sentencing hearing.

- (1) If the defendant needs more than sixty (60) days to pay, he/she shall apply for a payment plan with the Clerk of Court's Office within thirty (30) days of the sentencing hearing.
- (2) The payment schedule established by the Clerk of Court's shall be based on the defendant's financial resources and ability to make payments.
- (3) If the defendant experiences a substantial change of circumstances making it impossible to comply with the payment plan, the defendant shall contact the Court with any request to modify the plan.
- (4) If the defendant fails to pay the fine/forfeiture and costs within sixty (60) days, or fails to comply with the payment plan, the county may refer the matter to the state collection agency, or take any other lawful action to collect the unpaid amounts.

#### **4.7 DUTY JUDGE / COMMISSIONER**

4.7.01 The intake rotation does not apply after normal court hours. The courts will establish a duty rotation to accommodate urgent matters after normal court hours.

- (1) After hours requests shall be routed to the duty judge or court commissioner assigned. These assignments shall be on a rotating one-week basis.
- (2) Court commissioners assigned to duty rotation shall consult with a judge if the matter is anything other than an OWI blood-draw warrant.
- (3) If an officer is unable to reach the currently assigned duty person, the officer shall consult the next person on the list.

## **4.8 RESTITUTION HEARINGS**

- 4.8.01 All restitution hearings will be heard by the Family Court Commissioner within statutory time limits.
- (1) If there is a request for a restitution hearing the parties must advise the judge at the time of sentencing.
    - (a) The matter will then be referred to the Court Commissioner for further scheduling.
  - (2) The State is responsible for preparing an order referring the matter to the Court Commissioner.
  - (3) The State is not statutorily required to represent the victim at the restitution hearing, but shall notify the victim of the hearing and provide the Court with notice of that proof no later than 48 hours before the restitution hearing.
  - (4) If the defendant intends to assert that they do not have the ability to pay restitution, they must file a written financial disclosure statement at least 48 hours before the restitution hearing which provides all sources of income, all assets, and all expenses. CCAP form CV-410A is an acceptable form to provide this information, though other methods may also be acceptable.

## **SEC. 5: FAMILY LAW PRACTICE**

### **5.1 FAMILY COURT STRUCTURE**

- 5.1.01 Family Court Matters shall include all actions defined in Chapter 767 and Chapter 769 of the Wisconsin Statutes. The Family Court Commissioner is responsible for oversight and daily operational issues in family court matters.
- 5.1.02 Family court actions must be commenced with the Clerk of Court's office.
- (1) No petition, motion or filing will be accepted without payment of a filing fee or the approval of a waiver of fees.
  - (2) Fee waiver requests must be filed with the Clerk of Courts and will be evaluated by the Family Court Commissioner.
- 5.1.03 Every divorce, annulment, or legal separation at the time of filing shall be scheduled for a hearing before the assigned judge.
- (1) If both parties are *pro se*, the matter will be set with the Family Court Commissioner.
- 5.1.04 Every family court matter shall be scheduled for a future date, until the matter is closed.
- 5.1.05 All parties with minor children are required to attend an education program on the effects of divorce on children, unless the Court excuses the requirement.
- (1) The petitioning party must serve the other party with a copy of a court order requiring attendance at the program, along with the Summons and Petition.
  - (2) Signed orders can be obtained from the Clerk of Courts.

### **5.2 PROCEEDINGS BEFORE THE FAMILY COURT COMMISSIONER**

- 5.2.01 All stipulated divorces and legal separation final hearings shall be scheduled with the court commissioner, unless otherwise ordered by the Court.
- (1) All annulment final hearings shall be scheduled with the assigned branch, unless otherwise ordered by the Court.
- 5.2.02 All temporary order hearings will be held with the court commissioner.
- (1) All pre-judgment motions regarding discovery and other issues will be held before the court commissioner.
  - (2) All post-judgment matters will be heard by the court commissioner except motions to modify a judgment of divorce regarding custody and/or placement.

(3) The court commissioner may certify matters to the circuit court at their discretion.

(4) Discovery motions will be heard by the assigned judge.

5.2.03 In all actions before the court, the attorneys shall attempt to confer and consult with the opposing party or counsel prior to the scheduled hearing to attempt to resolve the matter to narrow the issues for review. The Court will not award costs to a party when there has not been a reasonable effort to resolve issues informally.

5.2.04 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 order to show cause which would require parties to bring materials to a hearing which would be more appropriately obtained through discovery procedures.

5.2.05 All pre-judgment motions or orders to show cause for temporary orders shall be brought before the family court commissioner.

(1) Under appropriate circumstances, commissioners may elect to conduct hearings regarding sales of assets.

5.2.06 Post-Judgment Matters

Actions to modify judgments or orders shall be filed with the Court Commissioner.

(1) The Court Commissioner shall review all post-judgment motions to modify custody and placement, and if legally sufficient, do any of the following:

(a) Schedule the matter for a status hearing;

(b) Refer the parties to mediation; or

(c) Forward the matter to the assigned judge for further scheduling.

(2) Actions to enforce judgments are time sensitive, and will be heard by the Family Court Commissioner.

5.2.07 Third Party Visitation Actions

All initial petitions for third-party visitation shall be scheduled with the assigned circuit court branch.

(1) Any action to enforce or modify a third party visitation order shall be scheduled with the Commissioner.

5.2.08 Video Hearings

Hearings before the court commissioner may be held via Zoom (or other virtual program authorized by the Chief Judge), via telephone, or in person, in the discretion of the commissioner.

(1) Parties appearing remotely must provide the other parties, at least 48 hours in advance of the hearing, with a financial disclosure form and other documentation upon which the party will rely during the hearing.

5.2.09 Offers of Proof

At hearings before the court commissioner the parties or counsel shall present supporting evidence via offers of proof unless otherwise requested by a party and approved by the commissioner.

(1) If the commissioner elects to require testimonial evidence in lieu of offers of proof, the matter may be adjourned to another date that is better able to allow for additional time for live testimony versus offers of proof.

(2) All documents or exhibits to be considered by the Court must be filed at least 2 working days in advance of the hearing.

5.2.10 De Novo Hearings

Any party who was present at the hearing has the right to have the assigned judge hold a new hearing by filing a written request with the judge's assistant, with a copy sent immediately to the opposing party, within 20 days of the oral decision of the family court commissioner, or within 20 days of mailing or

upon e-notice to a registered electronic notice party of the written decision if the order was not orally given at the time of the hearing.

(1) Findings and orders entered by the Family Court Commissioner by stipulation or entered by default are not subject to de novo review.

5.2.11 Notices requesting a hearing de novo will not stay the order unless the judge specifically grants a stay of the order.

(1) Should a party request a hearing de novo, the court will not proceed with any enforcement actions requested by that same party before that hearing,

(a) *Example:* The court will not grant a bench warrant and commitment order requested by the petitioner, if the petitioner requests a bench warrant based upon a failure of the respondent to comply with the order upon which the petitioner has requested a de novo hearing.

5.2.12 The family court commissioner shall not hear any motions to modify an order or temporary order if the matter is pending a de novo hearing or if a judge has held a hearing on the matter and the court has taken the matter under advisement.

(1) The order in existence will remain in effect until the court renders its decision.

5.2.13 Drafting Order

The moving party shall draft and submit a proposed order within 14 days of the hearing, under a 7-day hold and review, unless directed otherwise by the commissioner.

(1) If a party or counsel for party fails to timely file an order, the assigned judge or commissioner may refuse to schedule any further motions or hearings by the delinquent party/counsel in that matter until such time as the order has been filed.

### **5.3 FINANCIAL DISCLOSURE STATEMENT; FAILURE TO FILE TIMELY, CONFIDENTIAL DOCUMENTS**

5.3.01 A Financial Disclosure Statement and verification of income for 3 months prior to the hearing date must be filed by both parties 2 working days in advance of any hearing concerning child support, maintenance, property division or any other financial matter, including but not limited to temporary order hearings, contempt hearings, final divorce hearings and hearings on motions to modify financial matters, and provided to the other party or counsel.

(1) A copy must be provided to the Portage County Child Support Agency, if maintenance or child support are involved.

5.3.02 If child support is the only issue to be addressed, a party may file an Income & Expense Statement, and verification of income for 3 months prior to the hearing date, in lieu of a complete Financial Disclosure Statement.

5.3.03 Confidential Documents

Any document filed by a party or counsel, not specifically listed as "confidential" in the statute, may be sealed as "confidential" by the judge or commissioner upon making appropriate findings to support an order to seal.

### **5.4 FINDINGS, CONCLUSIONS, AND JUDGMENT**

5.4.01 Unless otherwise submitted at the final hearing, and distributed by the court at the final hearing, within 30 days of the final hearing, the Petitioner shall file the judgment with attached agreement(s) (MSA, MPA, or arbitration decision).

(1) The Petitioner shall ensure that a copy of the judgment is sent to any unrepresented party.

5.4.02 The findings of fact, conclusions of law and judgment shall include the last known address and earnings of each party, unless an updated Financial Disclosure Statement is on file and referenced.

(1) When real estate is involved, the legal description shall be required.

- (2) If a marital settlement agreement is incorporated into the judgment, a copy of the marital settlement agreement shall be attached to all copies of the judgment.
- 5.4.03 If no objection is received by the court within 7 working days, or such period as established by the court, any objection is deemed waived.
- 5.4.04 The judge or commissioner who entered the divorce decree will electronically sign the judgment.
- (1) Court staff will provide copies to the parties if unrepresented and not designated as an electronic notice party and will provide a copy of the judgment to the Portage County Child Support Agency.
- 5.4.05 In the event the findings, conclusions and judgment are not filed within 30 days required under Wis. Stat. Sec. 767.251(2), the judge may initiate an order to show cause for contempt against the attorney/party responsible for preparing and filing said documents and the judge may impose sanctions.
- 5.4.06 A hard copy of the Divorce Annulment Worksheet shall be filed on or before the final hearing in all divorce or annulment actions.
- (1) The completed worksheet shall be submitted to the assigned branch or commissioner assigned to the final hearing.

## **5.5 EX PARTE ORDERS**

- 5.5.01 Ex Parte orders are disfavored, and may be denied in the discretion of the Court.
- (1) An ex parte order awarding custody of children to a party in a family court action will not be signed without a verified petition or affidavit stating substantial reasons why it is in the best interests of said children for the order to be signed.
- (2) If a Guardian ad Litem has been appointed, the Court will not sign an ex parte order without input of the Guardian ad Litem.

## **5.6 GUARDIAN AD LITEM**

### **5.6.01 Appointment of a Guardian ad Litem in family law actions**

The parties may seek a specific attorney to act as Guardian ad litem (GAL), or a GAL may be appointed by the court, but in all cases the GAL shall be contacted prior to appointment.

- (1) The order for appointment will indicate the allowed hourly rate.
- (2) The Family Court Commissioner or Court may require a party or parties to submit a Financial Disclosure form to be completed prior to the appointment of a GAL.

### **5.6.02 Deposit and Billing**

Petitions for the appointment of an attorney to serve as a GAL in a family case shall be accompanied by a fee deposit in an amount ordered by the Court.

- (1) The Court, at its discretion, may order each party to contribute to such deposit and the amount of such contribution. A waiver pertains only to the GAL deposit, GAL fees are still the responsibility of the parties.
- (a) [Petition for Waiver or Reduction of GAL Deposit form.](#)
- (b) [Order on Petition for Waiver or Reduction of GAL Deposit form.](#)
- (2) This deposit shall be payable to the GAL, to be held in their trust account until such fees and expenses are approved by the court and payment ordered.
- (3) If the rate charged by the GAL comports with SCR §81.02, then Portage County shall have concurrent responsibility with the litigants for compensating the GAL.

### **5.6.03 Monthly Billing and Notice to the Court**

Attorneys appointed to act as Guardian ad Litem may provide monthly billings to the parties.

- (1) The Court shall be notified when the amount of the fees and expenses reach the deposit amounts with such notice to include the estimated final billing to conclude the case.

- (a) At that time the Court may order the parties to pay an additional deposit to the GAL; set up a payment plan with the GAL; or make other orders to ensure the payment of the guardian ad litem.
- (b) The Court may also release all or part of the interim payment of fees and costs incurred by the guardian ad litem.

#### 5.6.04 Final Order Approving Fees

Upon completion of the action the GAL shall submit a final bill to the Court itemizing time and expenses incurred and how much they have deposited to their trust account for this matter, any withdrawals made, and the total balance due.

- (1) The GAL shall use the Portage County standard GAL order for payment form found on the Portage County Clerk of Court website, Guardian ad litem page, under the sub-heading Attorney Forms for Appointed GAL.
  - (a) [GAL County Pay form.](#)
  - (b) [GAL Private Pay form](#)
- (2) This final billing shall be submitted to the Court within ninety days of the entry of judgment or order.

#### 5.6.05 Payment and Collection of Fees Owed

Upon approval of the bill by the Court, if the case is one in which Portage County has concurrent responsibility for payment, the Clerk of Court shall pay the GAL all outstanding fees and costs, which shall not exceed the amount allowed under SCR §81.02.

- (1) The Clerk of Court shall then use all available methods to obtain reimbursement to the County from the parties.
- (2) If the case is on a private pay basis, and not one in which the County has concurrent responsibility for payment, the Court shall enter judgment against the parties for the amount owed in favor of the GAL (including docketing) and the GAL shall be responsible for collection of the debt.

#### 5.6.06 Subsequent Family Actions

If a subsequent action is filed that requires the appointment of a GAL, all fees owed must be paid in full prior to that appointment, unless the court waives that requirement.

- 5.6.07 The Guardian ad Litem is an advocate for the best interest of the child and will not file a report unless ordered by the Court. The Guardian ad Litem may communicate their position to the parties verbally or in writing and may provide an explanation to the parties for their recommendation.

## 5.7 MEDIATION

#### 5.7.01 Mediation is required in all disputed custody or placement cases.

- (1) In order to promote an environment that is conducive to mediation, and to provide the parties with information that may aid in a successful mediation, the Family Court Commissioner shall order mediation in all disputed custody or placement cases only after each party has completed the Parents Forever Seminar and filed with the court proof of completion.
- (2) A participant may request waiver of mediation for danger or hardship at any time in the proceeding. The Family Court Commissioner shall determine waiver.

#### 5.7.02 The Family Court Commissioner shall approve qualifications of all mediators prior to service.

- (1) Minimum requirements include a recognized certification and training on the dynamics and effect of domestic violence.

#### 5.7.03 Parties may hire a qualified private mediator subject to Family Court Commissioner approval.

- (1) Without an agreement or approval, the commissioner shall assign a mediator from a list kept by the commissioner.



- (2) Approved mediators must agree to work at the County rate, and must complete one pro-bono mediation out of every ten assigned cases.

5.7.04 Mediators will have a testimonial privilege pursuant to Wis. Stat. § 904.085(3).

5.7.05 Before the assignment of a mediator, each party must pay the county a deposit as determined by the Court. The parties must each file a parenting plan before a mediator will be assigned. The County will contribute to the cost of mediation.

5.7.06 The Family Court Commissioner shall conduct a pretrial conference to discuss issues, and pragmatics of the court case.

- (1) Family Court Commissioner shall determine impasse in mediation based on mediator's report and refer the matter for court proceedings.

- (2) Family Court Commissioner shall appoint a guardian ad litem if mediation is unsuccessful and the matter will proceed to contested hearings.

## **5.8 SUPPORT ORDERS AND JUDGMENTS**

5.8.01 All orders which contain a provision for support, family support, or maintenance, shall contain the following:

- (1) The address of both parties.

- (2) The name, address, and phone numbers of the employers of the parties.

- (3) The name and birth date of any minor children.

- (4) The language required by Wisconsin Statute sections, including 767.225, 767.54, 767.511, 767.58, 767.75, 767.57.

- (5) A single payment amount and frequency along with a specific commencement date.

# **SEC. 6: JUVENILE / CHILDREN'S COURT PRACTICE**

## **6.1 JURISDICTION OF THE JUVENILE AND CHILDREN'S COURTS**

The Portage County Judicial Rotation Order assigns Wis. Stat. chapter 48 and 938 matters every two years pursuant to a judicial rotation order. Chapter 48 matters (Children's Court) and Chapter 938 matters (Juvenile Court) are assigned to different judges pursuant to that rotation order. The following assignments follow that rotation order:

6.1.01 The Chapter 48 judge will be assigned to all Chapters 48 matters, including Children in Need of Protection or Services and Unborn Children in Need of Protection or Services (CHIPS), Guardianships of the Person for Children, Termination of Parental Rights, Adoptions and Minor Adoptions.

6.1.02 The Chapter 48 judge will be assigned to all Adult Adoptions under Wis. Stat. Chapter 882.

6.1.03 The Chapter 938 judge will be assigned to all Juvenile Justice Code matters under Wis. Stat. Chapter 938 including Juvenile in Need of Protection or Services (JIPS) and Delinquencies.

6.1.04 The Chapter 938 judge will be assigned to Juvenile Injunctions.

6.1.05 The Chapter 48 judge will be assigned Juvenile Civil Commitment under Wis. Stat. Chapter 51.

## **6.2 FILING OF DOCUMENTS**

All documents must be filed in accordance with e-filing rules pursuant to [Section 2.8](#) of these rules, and Wis. Stat. § 801.18.

6.2.01 Non-e-filing parties may file documents in the Register in Probate office.

6.2.02 Documents required shall be filed prior to the hearing.

## **6.3 FORMS**

Parties are required to use standard forms when available pursuant to [Rule 2.8.02](#) of these local rules.

## **6.4 ASSIGNMENT OF CASES AND SUBSTITUTION OF JUDGE**

- 6.4.01 The Register in Probate/Clerk of Juvenile Court office assigns cases to a judge according to the Local Rotation Order.
- 6.4.02 Once a substitution of a judge is granted on any petition regarding a specific child, that judge is disqualified from presiding over any subsequent juvenile court proceedings regarding that case.

## **6.5 SCHEDULING**

- 6.5.01 The Register in Probate may schedule hearings on the assigned time blocks for each judge as set forth in the annual calendar as designated by each branch.
  - (1) All other hearings scheduled outside the time blocks are to be scheduled by the branch's judicial assistant and emailed to the Register in Probate/Clerk of Juvenile court staff, DHHS SW, Public Defender's office, Court-appointed Guardian ad Litem, Corporation Counsel (CHIPS only), District Attorney (Delinquencies only) and jail/juvenile secure custody, if applicable.
- 6.5.02 Temporary physical custody hearings and detention hearings will be heard at a time and date scheduled by the assigned branch's judicial assistant.
- 6.5.03 Petitions for Delinquencies are generally heard on two separate Tuesday afternoons per month between 1:30 p.m. and 4:00 p.m. by the assigned judge.
- 6.5.04 Petitions for Children in Need of Protection or Services (CHIPS) are generally heard on Tuesday mornings between 8:30 a.m. and 12:00 p.m. and Tuesday afternoons between 1:30 p.m. and 4:00 p.m. by the assigned judge.
- 6.5.05 Petitions for Juveniles in Need of Protection or Services (JIPS) are generally heard on Tuesday afternoons between 1:30 p.m. and 4:00 p.m. by the assigned judge.
- 6.5.06 Truancy Court Hearings are generally heard on Wednesday mornings at 7:30 a.m. before the Family Court Commissioner.
  - (1) If a juvenile contests the petition, an immediate hearing is held with the Family Court Commissioner.
- 6.5.07 Juvenile injunctions are heard at the time scheduled by the Chapter 938 judge.
- 6.5.08 Restraining order and child abuse hearings are heard by the juvenile judge assigned to Chapter 48 proceedings and will be scheduled by the judge's judicial assistant.
- 6.5.09 Petitions for emergency minor guardianship shall be heard before the Chapter 48 judge.
  - (1) If the judge is not available, the emergency minor guardianship shall be heard by the Family Court Commissioner.
- 6.5.10 Petitions for emergency, temporary, limited or full minor guardianships of the person are heard by the Chapter 48 judge, generally on Tuesday mornings from 8:30 a.m. and 12:00 p.m., unless otherwise scheduled by the assigned branch's judicial assistant.

## **6.6 GUARDIAN AD LITEM / ADVERSARY COUNSEL**

- 6.6.01 Any attorney who accepts appointment as Guardian ad Litem (GAL) in a Chapter 48 or 938 matter must have on file with the Register in Probate documentation of compliance with Supreme Court Rule 35.01.
- 6.6.02 Adversary counsel for a parent or child may be appointed by the Court in the discretion of the Court, upon review of applicable Indigency standards and other considerations deemed appropriate by the Court.
  - (1) The Court will not appoint adversary counsel when the party is eligible for appointment of counsel through the State Public Defender.
  - (2) A party seeking the appointment of adversary counsel may be required to complete a petition for the appointment of counsel and an Affidavit of Indigency before the Court considers the appointment of counsel.

- (3) A party asking the Court to appoint counsel may be asked to show the State Public Defender eligibility form showing that they are not eligible for the appointment of counsel.
- 6.6.03 GAL's are required to comply with Wis. Stat. § 48.235(3) and Wis. Stat. § 938.235(3), and must file form JD-1799, a Statement of Guardian ad Litem before a dispositional hearings, change in placement hearing, revision hearing, sanction hearings and permanency plan review hearings.
- (1) GAL's must meet with the children subject to the proceedings as required by statute, unless there is contrary direction from the Court.
- 6.6.04 Plea Questionnaire/Waiver of Rights (JD-1735 for CHIPS & JIPS and JD-1737 for Delinquencies) forms shall be completed and filed by counsel with the court prior to or at the court hearing, when applicable.
- 6.6.05 Billing: Interim and Final Bills
- (1) Final Invoices:
- (a) Attorneys appointed as GAL or adversary counsel pursuant to this chapter must submit a final invoice for payment within ten days of discharge from the matter.
  - (b) Final invoices must be submitted within thirty days of discharge.
  - (c) Invoices submitted for payment more than four months after discharge will not be paid.
- (2) Interim Invoices:
- (a) GAL's may submit interim invoices after the disposition hearing, if they are ordered to continue serving as GAL on the case.
  - (b) As a requirement of the IV-E funding grant, all attorneys are required to submit an interim bill in every case at the end of the calendar year, showing all services for that calendar year, by January 10<sup>th</sup> of the next year.
- (3) In private TPR or guardianship cases, the petitioner must pay a GAL deposit of \$1500 before or at the time the petition is filed. This deposit shall be payable to the GAL, to be held in his/her trust account until such fees and expenses are approved by the court and payment ordered.

## **6.7 TELEPHONE/VIDEO CONFERENCE APPEARANCE**

- 6.7.01 Attorneys seeking permission to appear by videoconferencing must file forms GF-306 (Request for Remote Appearance) and GF-307 (Order on Request for Remote Appearance) at least 48 hours before the scheduled hearing.
- 6.7.02 Social workers may request a remote appearance by sending a request by email message to the Court's judicial assistant at least 24 hours before the scheduled hearing.
- 6.7.03 Social workers may authorize pro se parties to appear by videoconferencing when the social worker determines the party is unable to appear due to incarceration, hospitalization, residence out-of-state, or similar circumstances.
- (1) Social workers should advise pro se parties to contact the Court if there is any question regarding whether the Court would approve the remote appearance.
- 6.7.04 When a party is incarcerated, it is the responsibility of the petitioner or plaintiff to make arrangements for a video appearance.

## **6.8 CONFIDENTIALITY OF COURT RECORDS**

- 6.8.01 Court Records for Chapter 938 proceedings are not open for inspection or their contents disclosed to the public except by juvenile court order or as permitted by §938.396, Wis. Stats.
- 6.8.02 Court records for Chapter 48 proceedings are not open for inspection or their contents disclosed to the public except by juvenile court order or as permitted by §48.396, Wis. Stats.

## **6.9 TEMPORARY PHYSICAL CUSTODY REQUESTS/HEARINGS**

- 6.9.01 Chapter 938

- (1) When a Request for Temporary Physical Custody is filed, the social worker shall email the temporary physical custody request to the Register in Probate staff, judicial assistant of the assigned branch, District Attorney's office and Public Defender's office.
- (2) The District Attorney's office shall file the request for temporary physical custody along with a petition in order to generate a JV case file. If the DA is not able to file a petition at the same time as the TPC request is filed, the DA shall contact the Register in Probate and request the creation of a GJ file. The Register in Probate Staff will create a new case based upon the TPC, and advise the parties of the case number.
- (3) The judicial assistant shall schedule the matter for a date and time and email all parties named above of the date and time for the temporary physical custody hearing and include juvenile secure detention, if applicable.
- (4) In-custody appearances by the juvenile and/or parent[s], including transportation and video conferencing, will be arranged by the social worker.

#### 6.9.02 Chapter 48

- (1) The Corp. Counsel office shall file the Request for Temporary Physical Custody and shall email the judicial assistant of the assigned branch for a date and time for the hearing.
- (2) The assigned branch's judicial assistant shall find a GAL if the child is under 12 years of age or if the child is 12 years of age or older, shall include the Public Defender's office email.
  - (a) The judicial assistant shall send an email to Register in Probate staff, GAL/Public Defender office, Corporation Counsel office and social worker informing the parties of the date and time for the Temporary physical custody hearing.
- (3) In-custody appearances by the child and/or parent[s], including transportation and video conferencing, will be arranged by the social worker.

### 6.10 DISPOSITIONS

#### 6.10.01 Court Reports

- (1) A designated representative of the Department of Health and Human Services shall prepare a court report in accordance to the mandates of §48.33 and §938.33, Wis. Stats.
- (2) Dispositional Court Reports prepared by the Department of Health and Human Services shall be filed with the Register in Probate/Clerk of Juvenile Court office at least five (5) business days prior to the scheduled disposition hearing.
- (3) At the Disposition Hearing, any party may present evidence relevant to the disposition, including expert testimony, and may make alternative recommendations for disposition by filing them with the Register in Probate/Clerk of Juvenile Court office at least three (3) business days prior to the scheduled disposition hearing.

#### 6.10.02 Consent Decrees

- (1) In the event a consent decree is agreed upon in either a chapter 48 or 938 case, the stipulation and consent decree shall be electronically filed 24 hours before the hearing.
- (2) In the event the unavailability of a party or attorney makes it impossible to file the stipulation for consent decree before the hearing, the conditions of the consent decree shall be filed at least 24 hours before the hearing.

#### 6.10.03 Permanency Plans

- (1) Permanency plans are only required for out-of-home placements.
- (2) When a parent's rights have been terminated, all future permanency plan review hearings shall occur in the TP case file, and the CHIPS case is closed.
- (3) Six-month reviews in juvenile court cases will be held by the family court commissioner. Six-month reviews in CHIPS cases will be done by the permanency review panel. The one-year review hearing in both case types shall be held by the assigned judge[s].

- (4) Request for Permanency Hearing must be filed no later than 45 days prior to the last date the Permanency Hearing must be held to allow sufficient time for notice to be sent per Wis. Stat. §§ 48.38(5m)b and 938.38(5m)b.

## **6.11 CASE CLOSURES**

- 6.11.01 The Corporation Counsel office shall file the Request for Case Closure in the CHIPS case for Chapter 48 cases, whereby the clerk shall schedule it for a hearing on the reserved time block for CHIPS case types.
- 6.11.02 When a proposed Case Closure Order is filed, the clerk will print off a blank copy of the family case order for the court to manually sign.
  - (1) When the Case Closure Order and the family court order are signed by the court, the Clerk shall give the signed family court order to the Clerk of Court's office for filing.
  - (2) The Case Closure Order shall be filed in the CHIPS case with copies sent to all parties.

## **6.12 TRIAL REUNIFICATION**

- 6.12.01 A trial reunification cannot occur without a court order. Only the person or agency responsible for implementing the disposition order may request a trial reunification.

## **6.13 EARLY TERMINATION OF DISPOSITION ORDER**

- 6.13.01 Corporation Counsel will file the Request to Terminate Consent Decree/Dispositional Order along with a cover letter to put the Guardian ad Litem on notice to voice any objection to the request.
- 6.13.02 If the Guardian ad Litem files an objection to the early termination of the Dispositional Order, a hearing will be scheduled with the judicial assistant as soon as possible, preferably on the next CHIPS court time block.
- 6.13.03 If no objection is filed within the next 10 business days by the Guardian ad Litem, the Corporation Counsel will file the Order Terminating the Disposition Order for the court to sign. Once the order is signed, the Register in Probate office shall mail a copy to all parties.

## **6.14 MINOR AND ADULT ADOPTIONS**

- 6.14.01 All records and papers pertaining to an adoption proceeding are confidential files and may not be disclosed except by order of the court, except as permitted under Wisconsin law.
- 6.14.02 Adult Adoptions
  - (1) Petitions for adult adoptions shall be filed in the Register in Probate/Clerk of Juvenile Court office in the petitioner's county of residence.
  - (2) Adult adoption matters will be heard by the assigned CHIPS judge and scheduled on a reserved CHIPS time block. The petitioner and the adult to be adopted must attend the hearing unless the court orders otherwise.
- 6.14.03 Minor Adoptions
  - (1) Petitions for minor adoptions shall be filed in the Register in Probate/Clerk of Juvenile Court office. The petitioner is responsible to ensure the petition is filed in the correct county of venue/jurisdiction.
  - (2) All minor adoption matters will be heard by the assigned CHIPS judge and scheduled on a reserved CHIPS time block within the time limits. All required documents necessary for the hearing must be filed 72 hours prior to the hearing. If the required documents are not filed, the court reserves the right to remove the hearing from the court's calendar.
  - (3) For a step-parent adoption the step-parent adoption report must be completed and filed at least 72 hours prior to the hearing. For an adoption agency adoption, a complete and full investigative report shall be filed at least 72 hours prior to the hearing. If the adoption reports are not filed prior to the hearing, the court reserves the right to remove the hearing from the court's calendar.

## **6.15 MINOR CIVIL COMMITMENTS**

- 6.15.01 Probable cause, Final and recommitment hearings shall be scheduled with the chapter 48 judge's judicial assistant by the Corporation Counsel office.
- 6.15.02 Access to minor civil commitments is limited to the person involved, his or her attorney, Corporation Counsel and any such other persons as approved by the court or permitted by statute.
- 6.15.03 Hearings held under Chapter 51 for minor civil commitments shall be before the court assigned to exercise jurisdiction under Chapters 48.

## **6.16 HARASSMENT AND CHILD ABUSE INJUNCTIONS**

- 6.16.01 Child abuse and/or harassment injunctions are only filed with the Register in Probate office as a JI case type if (1) the respondent is a minor, even if the petitioner is an adult, or (2) there is a pending CHIPS action involving the child victim. Injunctions filed in the Register in Probate office must be assigned to and heard by the CHIPS judge (See Wis. Stat. § 48.25(6)).
- 6.16.02 The case file shall always indicate the child victim as the Petitioner even if the parent is petitioning on behalf of the minor child when the respondent is a minor. If the Petitioner is an adult and the Respondent is a minor, then the respondent's name shall be listed to reflect the child's name in the caption.
- 6.16.03 The petitioner shall be responsible to obtain and provide proof of service prior to or at the hearing.
- 6.16.04 Parents of a child victim cannot be ordered to reimburse Guardian ad Litem fees per §48.235(3)(c).

## **6.17 TERMINATION OF PARENTAL RIGHTS**

- 6.17.01 A Guardian ad Litem is required for all termination of parental rights cases filed and must be appointed at the time the initial paperwork is filed.

# **SEC. 7: PROBATE PRACTICE**

## **7.1 JURISDICTION OF THE PROBATE COURT**

- 7.1.01 Probate actions under Wis. Stat. Chapters 851 through 879.
- 7.1.02 Guardianship and protective placements under Wis. Stat. Chapters 53, 54 and 55.
- 7.1.03 Civil commitments under Wis. Stat. Chapter 51.

## **7.2 RESPONSIBILITY WITHIN THE PROBATE COURT**

- 7.2.01 Responsibility of Register in Probate/Probate Registrar
  - (1) The Register in Probate/Clerk of Juvenile Court office is responsible for the opening, reviewing, filing, maintenance and closing of all files and papers dealing with civil commitment, probate, protective placement, guardianships (both adult and minor), as well as administrative matters dealing with Probate Court.
  - (2) The Probate Registrar handles uncontested informal probate hearings.

## **7.3 FILING OF DOCUMENTS**

- 7.3.01 All documents relating to probate court subject matter are to be filed in the Register in Probate/Clerk of Juvenile Court office. Documents required shall be filed prior to the hearing.

## **7.4 SCHEDULING**

- 7.4.01 The Register in Probate/Clerk of Juvenile Court office schedules informal probate hearings and uncontested formal hearings on Wednesday mornings at 10:00 a.m. Attorneys and parties are not required to appear unless a written objection has been filed in the Register in Probate office. Attorneys may appear telephonically but must schedule through the Register in Probate.
- 7.4.02 Routine formal probate matters are scheduled on two separate Tuesday mornings from 8:30 a.m. to 12:00 p.m. by the assigned Probate judge.

- 7.4.03 Any contested probate, demand for formal proceedings, objections, insolvent estates, unclassified probate, review of agent's performance, or any file requiring a court's order for a hearing shall be assigned to the judge assigned to the probate rotation..
- 7.4.04 Probable Cause Hearings, Final hearings, and Recommitment Hearings for mental commitments are scheduled with the judicial assistant of the assigned judge.
- 7.4.05 Adult guardianship, conservatorship, protective placement, post-guardianship matters and minor guardianship of estate hearings are generally heard on certain Tuesday mornings between 8:30 a.m. and 12:00 p.m. by the assigned judge.
- 7.4.06 Emergency Guardianship and protective placement hearings are scheduled through the judicial assistant for the assigned judge.
- 7.4.07 Temporary guardianship hearings are generally heard on certain Tuesday mornings between 8:30 a.m. and 12:00 p.m. by the assigned judge.

## **7.5 ESTATES**

### **7.5.01 Wills**

Only original wills will be accepted for filing with the court.

- (1) Wills of a decedent which will not be subject to probate proceeding shall be filed and shall be accompanied by a cover letter stating the decedent's date of birth and date of death.
- (2) Objections for admission of the will or appointment of the personal representative shall be in writing accompanied by the statutory filing fee. When the objection is filed, the Probate Court shall assign the case to the court presiding over Probate matters. The objector or attorney shall send notice of the objection to all interested parties. A notice of hearing will be sent to the interested parties from the court.

### **7.5.02 Summary Settlement, Summary Assignment and Special Administration**

Proof of heirship must be filed with all opening papers for summary settlement, summary assignment and special administration petitions. Special administration proceedings will be granted for specific powers only.

### **7.5.03 Ancillary Proceedings**

A surety bond is required for nonresidents granted ancillary letters. Bond shall be in an amount equal to or greater than the estimated net value of the decedent's property requiring administration located in Wisconsin.

### **7.5.04 Notice of Retainer**

An attorney who represents an interested party shall file a notice of retainer with the Register in Probate.

### **7.5.05 Withdrawal of Counsel**

An attorney who intends to withdraw as counsel of record shall file a written motion to the court.

### **7.5.06 Non-Resident Personal Representative**

A person who is not a Wisconsin resident may be appointed as Personal Representative in an informal probate matter only if:

- (1) The personal representative has an appointed Wisconsin resident as agent for service of process; and
- (2) The personal representative posts a surety bond with the Probate Court in an amount equal to or greater than the estimated net value of the decedent's property requiring administration.

### **7.5.07 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 court.

- (1) If there is no will filed and all interested parties have signed waivers and consents for a case proceeding under informal probate, the personal representative shall post a surety bond with the court

greater than or equal to the estimated net value of the decedent's property requiring administration unless all interested persons also waive bond. A waiver of bond shall contain substantially the following language: I agree the personal representative may serve without bond.”

- (2) In a formal probate matter, the court shall determine bond at the hearing for formal administration. The court may, in its discretion, require estate funds be held in an attorney trust account as an alternative to or in addition to filing of a surety bond.

#### 7.5.08 Objections to Claims

An objection to a claim must be in writing and filed with the Probate Court along with a demand for formal administration.

- (1) When the objection is filed, the Register in Probate shall assign the case to the Probate court.
- (2) The personal representative or attorney for the estate shall send notice of the objection to all interested parties.
- (3) A notice of hearing will be sent to the interested parties from the court.

#### 7.5.09 Inventory

The general inventory is due no later than six (6) months after the appointment of the personal representative unless the due date is extended by the court. A statutory filing fee shall accompany the inventory.

#### 7.5.10 Estate Account

Filing of an estate accounting in an informal action is preferred. A statement of attorney fees shall be filed when the estate account is not filed in the probate office.

#### 7.5.11 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.

#### 7.5.12 Closing Estates

Signed receipts from all beneficiaries receiving a specific bequest or residual distribution must be filed with the court.

- (1) If no final account is filed, statements from all residual beneficiaries stating that they have been advised as to the amount of the personal representative and attorney fees paid by the personal representative must also be filed with the court.

#### 7.5.13 Ninth Judicial District Timelines 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.

#### 7.5.14 Extensions of Time to Close Estates

When an estate cannot be closed within the required time limits.

- (1) A petition setting forth the reasons for the request of an extension of time to close the estate must be filed with the court.
- (2) A proposed order shall also be submitted.
- (3) The court will review each request individually.

#### 7.5.15 Trusts

Trusts are not subject to continuing judicial supervision.

## **7.6 UNIFORM POWER OF ATTORNEY**

7.6.01 Petitions for review should include a detailed evidentiary affidavit setting forth the specific objection and concern the petitioners have with respect to the conduct of the agent.

7.6.02 The petition shall be filed with the Register in Probate/Clerk of Juvenile Court office. When the petition is filed, the Register in Probate shall assign the case to the Probate court.



## **7.7 GUARDIANSHIPS**

### **7.7.01 Temporary Guardianships**

- (1) A hearing shall be held on all temporary guardianship petitions.
- (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.
- (3) A Guardian ad Litem shall be appointed in all temporary guardianship matters. The fees of the guardian ad litem are the responsibility of the petitioner/guardian.

### **7.7.02 Guardianships**

- (1) The Court shall appoint a guardian ad litem for the proposed ward if the petition is filed by a self-represented individual, otherwise counsel will retain the guardian ad litem; the guardian ad litem shall file a report with the court prior to the hearing.
  - (a) The fees of the guardian ad litem are the responsibility of the petitioner/guardian.
- (2) The guardian ad litem shall submit their billing invoice within 30 days of discharge. If the case is pending 180 days or longer, the guardian ad litem shall submit interim bills on at least a quarterly basis.
- (3) The guardianship inventory and appropriate filing fee shall be filed within 60 days of the appointment of a guardian of the estate.
- (4) Unless previously ordered by the court, the guardian must sign and date a guardian's fee and payment contract for reimbursement of expenses and/or guardian fees.
- (5) Sale of Real Estate  
The court needs to authorize/confirm the sale/mortgage/lease of the ward's real estate. The court will schedule a hearing on the matter at its discretion.

### **7.7.03 Conservatorships**

- (1) The conservatorship inventory shall be filed within sixty (60) days of the appointment of a conservator.
- (2) A hearing is required to terminate a conservatorship.

### **7.7.04 Protective Placements**

- (1) A petition for protective placement may be filed with or anytime after the guardianship petition is filed. A request for comprehensive evaluation should also be filed at the same time as the petition for protective placement.
- (2) A comprehensive evaluation must be completed and filed with the court on all protective placement petitions.

### **7.7.05 Protective Placement Reviews (Watts)**

- (1) Summary hearings on Watts reviews will be held in front of the court.
- (2) Summary hearings are held once a month.
- (3) If an objection to the protective placement is received, the matter will be held in front of the court.
- (4) The guardian ad litem must submit their billing invoice within thirty (30) days of discharge.

### **7.7.06 Termination of Guardianships**

- (1) Guardianship of the Person – Deceased Ward  
Upon notification to the Register in Probate/Clerk of Juvenile Court office that the ward died, the court will issue an order of discharge of the guardian of the person.
- (2) Guardianship of the Estate – Deceased Ward

Upon notification to the Register in Probate/Clerk of Juvenile Court office that the ward died and filing of the final account as approved by the court, the court will issue an order of discharge of the guardian of the estate.

(3) Guardian of the Estate for a Minor

Upon filing of proof of the ward reaching the age of eighteen (18) and the final account and receipt signed by the ward, the court will issue an order of discharge of the guardian of the estate.

## **7.8 CIVIL COMMITMENTS**

7.8.01 All civil commitment matters under Chapter 51 originate with the Portage County Corporation Counsel office.

7.8.02 Probable cause hearings will be scheduled by the judicial assistant for the assigned judge.

7.8.03 Final hearings are scheduled with the assigned judge.

7.8.04 Recommitment hearings are scheduled by the judicial assistant for the assigned judge.

## **7.9 FORMS - STATE**

7.9.01 Standard statewide forms are required for filing. Forms can be located at Wisconsin Courts Forms <https://www.wicourts.gov/forms1/circuit/index.htm>

# **SEC. 8: SMALL CLAIMS PRACTICE**

## **8.1 SERVICE**

8.1.01 Small Claims service of a summons and complaint by any individual resident of Portage County may be by mail, pursuant to § 799.12(3) Wis. Stats.

8.1.02 Personal service is required for out-of-county and out-of-state plaintiffs or defendants, as well as for evictions and replevin actions.

## **8.2 VENUE**

8.2.01 The complaint in all actions commenced by service outside of Portage County shall contain allegations justifying venue in Portage County.

## **8.3 APPEARANCES**

8.3.01 All plaintiffs and defendants shall appear for small claims matters as follows. Specific times for each hearing type are available at <https://www.co.portage.wi.gov/230/Small-Claims>

(1) Money Judgment / Replevin Return Dates: Parties should appear by video or phone if possible, but may appear in person.

(2) Order to Show Cause, Contempt, Garnishment and Motion Hearings – All parties should appear by phone or video if possible, but may appear in person.

(3) Eviction Return Dates – All parties must appear in person.

(4) Pretrial Conferences: All parties should appear by phone or video if possible, but may appear in person.

(5) Contested Money Judgments and Contested Replevins: All parties must appear in person.

(6) Rent and Damages Hearings: All parties must appear in person.

(7) Contested Eviction Hearings: All parties must appear in person.

(8) Post-Judgment Motion Hearing, Order to Show Cause, Garnishment Hearing and Contempt Hearings: Parties are required to appear in person.

- (9) If parties are required to appear in person by this rule, the party may still request phone and video appearances. Those appearances may be approved by the Judge if there are compelling reasons. To request a video or phone appearance, the requestor must file standard forms GF-306 and GF-307.
- (10) Phone and Video appearances are through Videoconferencing. The meeting identification numbers for each branch, as well as the dial in number, are available on the Portage County Clerk of Court's website.

## 8.4 HEARING PROCEDURES

### 8.4.01 Return Dates

Except as provided in 8.4.03, both parties are required to appear (as provided in rule 8.3) on the return date unless adjourned for cause under rule 8.4.04. The failure of any party to appear at the return date shall result in the following dispositions:

- (1) Plaintiff: Dismissal with Prejudice
- (2) Defendant: Default Judgment
- (3) Both Parties: Dismissal Without Prejudice

### 8.4.02 Contested Hearings

#### (1) Rent and Damages Hearings

- (a) The plaintiff/landlord shall, prior to the hearing, prepare an itemization of damages. The itemization of damages shall show each item of damages claimed (for example, unpaid rent for a certain month) and the amount of each item, along with any credits (i.e. security deposit) due.
- (b) The parties are ordered to meet in the hallway 15 minutes prior to the scheduled hearing date. If either party does not appear, judgment may be entered against that party.
- (c) During that meeting:
  1. The plaintiff/landlord shall provide the tenant with a copy of the itemization of damages.
  2. The parties shall provide each other with a copy of all documents they intend to use at the hearing.
  3. The parties shall discuss the terms on which they would settle the case.
  4. If no settlement is reached, the parties shall discuss which items are in dispute and which are not in dispute, and be prepared to explain that to the court at the start of the hearing.
    - o *Example:* if the tenant does not dispute rent for a particular month but does dispute the amount of cleaning costs charged, that should be explained at the beginning of the hearing.
- (d) If the matter is contested, the parties must be prepared to proceed with a contested hearing.
- (e) During any contested hearing, if a party wishes to refer to a document or photograph, the party must bring the original document (if there is an original) plus three copies.
  1. One of the copies will be marked and made part of the court file.
  2. The original will be kept by the party, but may need to be reviewed by the court.
  3. The other copies are for the court and for the opposing party.
  4. The court may refuse to consider documents or photographs when a party fails to bring copies.
  5. The court cannot view photos on cell phones or other media that cannot be made part of the court file.

#### (2) Other Contested Cases

- (a) Parties are ordered to meet in the hallway 30 minutes prior to the scheduled hearing date.
- (b) During that meeting, parties shall:
  1. Give the other party a copy of all documents they intend to use at the hearing.
  2. Discuss the terms on which they would settle the case.

3. If no settlement is reached, discuss which issues are in dispute and which are not in dispute, and be prepared to explain that to the court at the start of the hearing.
  - *Example:* if this is a construction case and the dispute is alleged poor workmanship on a particular part of the job, parties should state that at the beginning and discuss only that issue.
- (c) If a party wishes to refer to a document or photograph during the hearing, the party must bring the original document (if there is an original) plus three copies. One of the copies will be marked and made part of the court file. The original will be kept by the party, but may need to be reviewed by the court. The other copies are for the court and for the opposing party. The court may refuse to consider documents or photographs when a party fails to bring copies.
- (d) In construction disputes, the contractor must bring the original and three copies of all written contracts and change orders for the job in dispute.
- (e) Each party is responsible for having any witnesses it intends to call present at the hearing. If a party wishes to call an out of county witness by telephone, that request must be made at least 5 days before the hearing by filing a written request.
- (f) In collections cases, the creditor shall file all hearing exhibits five business days prior to the hearing, and shall make a witness available to testify by Zoom videoconferencing to the authenticity of the exhibits. The creditor may not call the account holder as part of their case in chief, nor may they rely on affidavits or summary judgment motions in their case in chief.

8.4.03 Exceptions to Personal Appearance Requirement: The personal appearance rule stated in 8.4.01 has the following exceptions

- (1) Non-earnings Garnishment; Pleading in Lieu of Appearance: The mandatory appearance rule shall not apply to non-earnings garnishment actions filed as small claims actions. The defendant or the garnishee may join issue by filing a written answer at or before the time of the return date, without being required to appear.
- (2) Defendants Who Reside Outside Wisconsin: Pursuant to Wis. Stat. §799.22(4)(am), defendants who are not residents of Wisconsin may join issue without personally appearing on the return date, provided they file a written answer prior to the return date.

8.4.04 Adjournments & Dismissal

- (1) Adjournments of Return Dates: Upon cause shown, the Clerk of Courts may permit an adjournment of a return date.
- (2) Dismissal by Clerk: The Clerk of Courts shall dismiss any action in which the above time limits have not been complied with.

## **8.5 RELIEF; DEFAULTS & DISMISSALS**

- 8.5.01 Relief from Dismissal with Prejudice: A plaintiff whose action was dismissed with prejudice for failure to appear may, within 30 days from the dismissal, petition the court to commence a new action upon the payment of the filing fee, unless the fee is waived as permitted by statute.
- 8.5.02 Relief from Dismissal Without Prejudice: A plaintiff whose action was dismissed without prejudice for failure to appear may, within 30 days from the dismissal, file a petition to re-open the matter for good cause shown. This determination shall be made by the judge of the branch where the last return date within the time limit was set.
- 8.5.03 Relief from Default: A defendant who has a default judgment entered against him/her may, within 12 months of such judgment, petition the court to reopen the judgment and permit a hearing, by showing cause and a meritorious defense to the action.

## **8.6 ORDERS TO SHOW CAUSE**

- 8.6.01 Any order to show cause served upon a judgment-debtor seeking contempt for failure to comply with an order requiring disclosure of assets pursuant to Sec. 799.26 Wis. Stats. shall be personally served upon such judgment-debtor unless otherwise permitted or directed by the Circuit Court.

## **8.7 EVICTIONS**

8.7.01 The plaintiff in all eviction actions filed in the Small Claims Court shall have prepared and ready for filing with the clerk on the return date scheduled in the action the following information:

- (1) Proof of service of the complaint upon the defendant
- (2) Copy of lease signed by defendant
- (3) Written summary of rent received under the terms of said lease, the amount received and the dates received
- (4) Written summary explaining money damages sought, and
- (5) Copies of all notices terminating tenancy and proof of service of such notices.

## **8.8 CONSTRUCTION CLAIMS**

8.8.01 In any small claims action in which the plaintiff alleges a claim of defective construction or remodeling of his or her dwelling pursuant to a written or oral agreement with a party who performed construction services and/or supplied construction materials relating to a resident dwelling or any existing structure at the plaintiff's resident premises (including work relating to driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages or basements) the plaintiff shall affirmatively allege in his or her complaint whether he or she has complied with all provisions of Sec. 895.07 Wis. Stats.

- (1) The plaintiff shall attach as exhibits to his or her complaint those notices, offers and proposals made by the plaintiff to the defendant and copies of all offers and proposals received from the defendant as required in Sec. 895.07(2) Wis. Stats.
- (2) Failure to comply with the provisions of 895.07 Wis. Stats. as required in this Order shall result in dismissal of the action without prejudice or entry of an order staying the proceedings pending compliance pursuant to Sect. 895.07(3) Wis. Stats.

## **8.9 CONSUMER CREDIT TRANSACTIONS**

8.9.01 The Wisconsin Consumer Act, Wis. Stat. § 425.109, prohibits the entry of a default judgment unless the complaint complies with Wis. Stat § 425.109. No default judgment will be entered by the Court without statutory compliance.

## **8.10 SUMMARY JUDGMENT**

8.10.01 This rule is intended to clarify the use of the summary judgment process in Portage County small claims cases. The intent of this rule is to allow expeditious resolution of commercial collections cases through the summary judgment process, while protecting the rights of unrepresented defendants. Summary judgment shall be allowed in small claims cases only as follows:

8.10.02 The summary judgment process may be used only in collections cases in which the plaintiff is a business, such as cases involving credit cards, medical debt, and vehicle loans.

8.10.03 The summary judgment process may be used only by plaintiffs, and only when plaintiffs are represented by counsel and an e-filing party.

8.10.04 The summary judgment process may be used only if the plaintiff provides notice to the court that a summary judgment filing will be made, either:

- (1) By advising the clerk at the return date;
- (2) By contacting the clerk and scheduling a deadline and a motion hearing no later than 14 days after the initial return date; or
- (3) By providing written notice to the court no later than 14 days after the initial return date.

8.10.05 When providing notice, the plaintiff may request a deadline for filing the motion and supporting documents, which may be any date no later than 90 days from the return date.

8.10.06 Upon receipt of notice from the plaintiff, the clerk will remove any existing hearing date from the calendar and enter a scheduling order setting:

- (1) A deadline for filing of the motion and supporting affidavits;
- (2) A deadline for the defendant's response; and
- (3) A date for a motion hearing.

8.10.07 The deadline for the plaintiff's filing will be the date requested by the plaintiff, or, if no deadline is requested, 60 days from the return date.

- (1) The deadline for the defendant's filing shall be 30 days from the deadline for the plaintiff's filing.
- (2) The motion hearing date will be the next regularly scheduled small claims hearing date following the deadline for the defendant's filing, or a later hearing date if requested by the plaintiff.

8.10.08 When filing its motion and supporting documents, the plaintiff shall serve the documents on the defendant by mail and file an affidavit of mailing with the court.

8.10.09 Both parties may appear by videoconferencing at the motion hearing.

- (1) If the motion is denied, the court will use the hearing to schedule an in-person contested hearing for a later date.

## **8.11 SMALL CLAIMS MEDIATION**

8.11.01 Procedures related to small claims mediation and mediation orientation may be set and posted by the Portage County courts.

- (1) Parties shall abide by the terms of all such procedures and court notices that set forth the same.
- (2) The Court favors the use of mediation and may require mediation.
- (3) At the return date the clerk will offer mediation. If the parties agree, the matter will be set for a pretrial conference date, and mediation will be ordered pursuant to the standing Portage County Mediation Order.
- (4) The Portage County Mediation Order is available on the Portage County Clerk of Courts website describes the process and the obligations of each party in that process.
- (5) At the conclusion of mediation, the mediators will provide a report to the Court regarding the result of mediation.

# **SEC. 9: TRAFFIC / FORFEITURE PRACTICE**

## **9.1 INITIAL APPEARANCES**

9.1.01 Adult Ordinance Violations

- (1) Individuals issued OWI or BAC citations must appear at the initial appearance for Traffic Court unless a Not Guilty plea letter has been received prior to the initial appearance date.
- (2) All other individuals receiving traffic or ordinance citations may enter a not guilty plea in writing with the Clerk of Court's office prior to the initial appearance date.

9.1.02 Juvenile Ordinance Violations

- (1) Juvenile ordinance citations under 16 years of age will incur a penalty of \$50 without court costs, with the exception of violations under §125.07(4)(b), Wis. Stats. – Underage drinking.

## **9.2 PRETRIAL PROCESS**

9.2.01 In Person Not Guilty Plea Entered

- (1) Any individual who appears for an initial appearance in a traffic or forfeiture matter and enters a not guilty plea will have a pretrial conference with an officer who represents the agency which issued the citation, except that this process does not apply to State Patrol citations.

- (a) If the officer reaches an agreement with the defendant, the agreement shall be provided to the Court using a stipulation and order form.
- (b) If the officer is unable to reach agreement with the defendant, the officer shall provide the District Attorney with a notice that the matter shall be set for pretrial with the DA.
- (c) The District Attorney will verify that their office has an open file, and if not, will create a file.
- (d) The District Attorney will then notify the Clerk of Court of the scheduling conference.

#### 9.2.02 Written Not Guilty Plea Entered

- (1) If an individual enters a not guilty plea in writing before the initial appearance, the matter will be set for a pretrial conference with an officer from the agency on the next date the officer is available.
  - (a) The Clerk of Courts will send notice of the date, time, and location of the pretrial conference to the defendant and the officer.
  - (b) If the officer reaches an agreement with the defendant, the agreement shall be provided to the Court using a stipulation and order form.
  - (c) If the officer is unable to reach agreement with the defendant, the officer shall provide the District Attorney with a notice that the matter shall be set for scheduling conference with the District Attorney.
  - (d) The District Attorney will verify that their office has an open file; and if not, will create a file.
  - (e) The District Attorney will then notify the Clerk of Court of the scheduling conference.

#### 9.2.03 Attorney Written Not Guilty Plea Entered

- (1) If an attorney enters a written not guilty plea on behalf of a defendant before the initial appearance.
  - (a) The traffic clerk will send an email message to the District Attorney notifying that office of the plea.
  - (b) The District Attorney will open a file and provide the traffic clerk with the District Attorney case number and the name of the assigned prosecutor.
  - (c) To ensure prompt case management, the District Attorney will provide that information within four hours of receiving the email message from the traffic clerk.

### **9.3 REQUESTS FOR JURY TRIALS**

- 9.3.01 Requests for jury trials shall be filed in writing along with payment of the jury fee with the Office of the Clerk of Court no later than ten (10) calendar days after the pretrial conference.

### **9.4 DEFAULT JUDGMENTS**

- 9.4.01 If an individual fails to enter a not guilty plea prior to or during the initial appearance, a default judgment shall be entered on the traffic or ordinance citations.
- 9.4.02 If an individual fails to appear for the pretrial conference, a default judgment shall be entered against the individual on the citations. The default judgment may be requested by an officer or prosecutor in writing.
- 9.4.03 If the Court grants a motion to reopen a traffic or forfeiture matter, the Court may assess a motion fee in the Court's discretion.
  - (1) The Clerk of Courts shall notify the defendant that the matter may be reopened upon payment of the fee.
    - (a) If the fee is not paid within thirty days, the Clerk of Courts will administratively close the matter and treat the motion to reopen as denied.
    - (b) If the fee is paid and the matter is reopened, the traffic clerk will schedule the matter for an intake date, regardless of the procedural status of the matter.

## **9.5 MOTION DEADLINES**

9.5.01 Motions in traffic and ordinance matters shall be filed no later than ten days from the pretrial conference, unless the deadline is extended by the Court.

## **9.6 REFUSAL HEARINGS AND ADMINISTRATIVE SUSPENSIONS**

9.6.01 Requests for refusal hearings shall be sent to the Court, which will determine if the request is timely filed.

- (1) If the request is timely filed, the Court will contact the District Attorney to schedule the matter for a refusal hearing.
- (2) The District Attorney will provide the Clerk of Courts with a District Attorney file number and the name of the prosecutor, which will be added to the Court file.

9.6.02 Requests for stay of an administrative license suspension arising from an OWI related matter. If a defendant files a request to stay an administrative suspension in an OWI-type matter, the Court will wait five days before signing the order to allow the District Attorney to object. If there is no objection within five days, the Court will sign the order.

## **9.7 UNDERAGE ALCOHOL MATTERS**

9.7.01 For underage alcohol violations age 17 and over, the following guidelines will apply:

- (1) First offense with BAC less than or equal to .08%, the court will order a fine and no suspension of driving privileges.
- (2) First offense with BAC great than .08%, the Court will order a fine and a license suspension of 30-90 days.
  - (a) The suspension can be reduced or vacated by the Court upon defendant's completion of an approved alcohol education program.
- (3) Second offense with prior offense more than one year preceding the current offense, guidelines will be the same as first offense, except the Court will impose a license suspension of one year.
  - (a) The suspension may be reduced to 90 days if the defendant completes an alcohol education course, and the defendant has not previously had a suspension reduced or waived by completion of the course.
- (4) Second offense with prior offense within one year, the Court will order a fine and one year license suspension.

9.7.02 For underage alcohol violations under the age of 17, the following guidelines will apply:

- (1) For a first offense, the Court will order a fine and a 90 day license suspension, but the suspension may be waived by the completion of an alcohol education course.
- (2) For a second offense within one year, the Court will order a fine and one year driver's license suspension. The suspension may not be reduced or waived by completion of an alcohol education course.
- (3) For a second offense with prior offense more than one year before the current offense, the Court will order a fine and a one-year license suspension.
  - (a) The suspension may not be reduced or waived by completion of an alcohol education course.

## **9.8 RIDE-ALONG ASSIGNMENT**

9.8.01 Any traffic or ordinance citation issued to an individual, who has also been charged with a criminal offense arising out of the same incident, shall be handled by the prosecuting agency and judge assigned to the criminal case.



# **SEC. 10: TEMPORARY RESTRAINING ORDER (TRO) / INJUNCTION PRACTICE**

## **10.1 General Information**

- 10.1.01 Filing a restraining order is generally a two-step process. The petitioner first requests a temporary restraining order (TRO), then there is generally a hearing for an injunction.
- 10.1.02 There are five restraining order types: domestic violence, harassment, individual at risk, child abuse, and juvenile. Further information about restraining order types is available at <https://www.wicourts.gov/services/public/selfhelp/restord.htm>
- 10.1.03 Instructions for obtaining a domestic abuse and harassment restraining order are available on the Portage County Clerk of Court's website: <https://www.co.portage.wi.gov/233/Temporary-Restraining-Order-Information>
- 10.1.04 Instructions for obtaining a child abuse and individual at risk restraining order are available on the Wisconsin Court System website or by contacting the Portage County Clerk of Courts.
- 10.1.05 Instructions for obtaining a juvenile restraining order are available on the Wisconsin Court System website or by contacting the Portage County Register in Probate. Local rules regarding juvenile TROs and injunctions are contained in the juvenile section of these rules: 6.16 Harassment and Child Abuse Injunctions.

## **10.2 TRO PROCESS**

- 10.2.01 For all cases, the matter is not assigned to a judge until the TRO process is complete and the case is filed with the Clerk of Courts.
- (1) The matter should only be filed and assigned to a branch after the TRO is approved or denied.
- 10.2.02 If the petitioner opts to forego the TRO process, the matter may be referred to the appropriate branch or the family court commissioner for scheduling.
- 10.2.03 Domestic violence and harassment TRO's are obtained by presenting the petition and other required documents to the Family Court Commissioner's office for review.
- 10.2.04 Child abuse, individual at risk, and juvenile TRO's should be reviewed by a judge and directed to the appropriate branch based on the Portage County Rotation Order.
- (1) If a judge is not available, then the Family Court Commissioner may review the TRO and further direct the matter to the appropriate branch if further scheduling is required.
- 10.2.05 The judicial official assigned to review the TRO will promptly review the TRO and determine whether there is a sufficient basis to grant the TRO.
- 10.2.06 Whether the TRO is granted or denied, the judicial official's assistant will contact the petitioner and advise of the result of the review, and that the matter can be filed with the Clerk of Courts.
- 10.2.07 The assigned judicial official will schedule a hearing for the injunction within statutory deadlines and advise the petitioner of the date and time of the hearing before returning the petition and other documents to the petitioner for filing.
- 10.2.08 Upon receiving the documents from the petitioner, the Clerk of Courts will file the matter and assign a branch.
- (1) The Clerk of Courts will collect a filing fee if required, provide the petitioner with a copy of the original documents, and advise the petitioner that the documents must be served on the respondent by the Portage County Sheriff.

## **10.3 SERVICE**

- 10.3.01 TRO'S are not effective until they are served on the respondent. An injunction hearing can not proceed until the respondent is served with the petition pursuant to statutory service requirements.

- 10.3.02 The Sheriff is not able to serve the TRO or petition for injunction unless the respondent is clearly identified by full name, date of birth, gender, and address.
- (1) The petitioner is responsible for providing this information before service will be made.
  - (2) If the Petitioner does not have the necessary information about the Respondent, the Sheriff may communicate this information with court staff.
- 10.3.03 If service fees are waived, the Clerk of Courts will send the documents to the Sheriff for service.
- (1) If service fees are not waived, the petitioner must provide the Sheriff with two copies of the documents and pay the service fees at the sheriff's department.
- 10.3.04 The Sheriff's Department will attempt to serve the respondent with the TRO and petition for injunction.
- (1) Whether service is successful or not, the Sheriff's Department will provide the Clerk of Courts with proof of service or non-service before the hearing date for the injunction.
- 10.3.05 If the respondent has not been served before the scheduled injunction hearing, the Court will ask whether the petitioner plans to continue efforts to serve the respondent.
- (1) The Court will consider an extension, but can only grant one 14-day extension to hold the hearing.

## **10.4 HEARINGS**

- 10.4.01 All hearings are held in person unless otherwise approved by the Court.
- (1) A request to appear by video must be made to the assigned official at least 48 hours before the scheduled hearing.
  - (2) Requests to appear remotely for these hearings will only be granted if the judicial official determines there is a compelling need.
- 10.4.02 If a petitioner fails to appear for a hearing the petition for injunction will be denied, and any TRO granted in the case will be vacated.
- (1) If a respondent has been served and fails to appear, the judicial official will ask questions of the petitioner to determine whether there is a sufficient basis to grant the injunction.
  - (2) If there is a sufficient basis, and the respondent fails to appear after service, the injunction will be granted.
- 10.4.03 Contested injunction hearings are evidentiary, and the Wisconsin rules of evidence apply. The Court will enforce the rules of evidence. Information about the rules of evidence may be obtained from the Family Court Commissioner.
- (1) Witnesses and exhibits may be offered by each party. Hearsay is not allowed, which means one person cannot testify about the observations or statements of another person.
  - (2) Evidence which is located on cell phones or electronic devices will not be considered unless the material is printed or saved on electronic media and admissible pursuant to the rules of evidence.
  - (3) A party planning to introduce evidence must have extra copies so that a copy can be provided to the other party during the hearing.
  - (4) Police reports contain hearsay and are generally not accepted as evidence.
  - (5) If a party wants evidence from police reports or others admitted into evidence, the party may subpoena the individual(s) having personal knowledge of the facts to the hearing.

## **10.5 FIREARM SURRENDER HEARINGS**

- 10.5.01 A firearm surrender hearing in Wisconsin is a court proceeding where a judge or commissioner decides whether to order someone to surrender their firearms.
- (1) If a judge or commissioner grants an Injunction, they may also order a respondent to surrender their firearms.
  - (2) The respondent may surrender their firearms to the sheriff or to a third party approved by the court.
  - (3) The third party must be present at the hearing and the judge will inform them of their responsibilities.
- 10.5.02 The court may also issue a "surrender and extend order" that limits the respondent's ability to possess or transport firearms. The respondent may only possess or transport firearms for the purpose of complying with the surrender order. Possessing or transporting a firearm for any other reason may result in criminal penalties.