



# Circuit Court Rules

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Racine County  
Second Judicial District

July 2017

[Local Court Rules are a set of procedural regulations adopted by circuit courts which are mandatory upon parties and their lawyers on matters within the jurisdiction of the court.]

RACINE COUNTY CIRCUIT COURT RULES

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Updated: July 2017

# **I. General**

## **A. CASE ASSIGNMENT**

1. Assignment of Judges shall be made to the following divisions:
  - Civil and Small Claims
  - Felony
  - Traffic
  - Criminal and Traffic Trials
  - Juvenile
  - Family
  - Probate
2. Each judge shall bear primary responsibility to hear and determine actions and proceedings as assigned.
3. Subject to the approval of the Chief Judge, rotation of assignments shall occur each even numbered year commencing August 1st. Rotation of case assignments shall be approved by the Chief Justice.
4. Upon rotation of assignments on August 1 of each even numbered year, the Clerk of Circuit Court is not required to give notice of case assignments due to rotation.
5. This rule shall be notice of rotation and case assignment; and substitutions of judge upon rotation shall be filed pursuant to §981.58 Stats. or §971.20 Stats. or §938.29 Stats.; and, computing time pursuant to §801.15(1)(b), 985.09, and 990.001(4).
6. Upon rotation or replacement of a judge, all cases assigned to that judge shall be assigned to the incoming judge unless the outgoing judge retains a case for disposition or sentencing; or, judicial economy and approved by the Chief Judge.
7. If the outgoing judge elects to retain a case, the judge shall notify the appropriate case manager prior to rotation.
8. Writs of Certiorari will be assigned to one of the civil courts by tab.

## **B. CONTINUING JURISDICTION, ASSIGNMENT OF CASES (TCA 2)**

- (a) Where practical, post-judgment matters shall be assigned to the trial judge who entered judgment.
- (b) Under guidelines established in TCA 4, the chief judge may reassign post-judgment matters on a case-by-case basis as necessary.

### **C. DISQUALIFICATION OF JUDGES (TCA 3)**

- (a) Prior to the reassignment of an action, the self-disqualification of a judge shall be reviewed by the chief judge.
- (b) The chief judge may request further clarification of the reasons for self-disqualification, prior to approving or disapproving same.
- (c) The chief judge shall review the self-disqualification for conformity with statutes, Supreme Court Rules, and existing guidelines.

### **D. REASSIGNMENT OF CASES (TCA 4)**

- (a) Upon the approval of a request for assignment pursuant to substitution or disqualification, the chief judge shall reassign the case or request reassignment by the Director of State Courts. Reassignment shall be made using the following criteria:
  - (1) availability of judges;
  - (2) physical proximity of judges;
  - (3) equalization of caseload; and other appropriate administrative considerations.
- (b) No greater weight or significance shall be attached to any specific criterion enumerated under subsection (a) of this rule by virtue of its numerical listing.
- (c) Generally, intra-district assignment of a judge from a neighboring county is preferred over the assignment of a judge from a different district.

### **E. CONSOLIDATION OF CASES**

1. Before a case may be consolidated with another from another division of the court, an order directing such consolidation shall be filed which has been approved in writing by both the judge from whose court the case is being transferred and the judge to whom the case will be assigned.
2. The oldest filed case takes priority in assignment of multiple cases or case types.

### **F. CONTINUANCES**

The court shall follow a strict continuance policy. A request for continuance shall be in writing, for good cause, and made to the assigned judge for approval.

## **G. BENCHMARKS**

The following benchmarks are for the processing of all cases and are designed to provide a guide to the judiciary and bar:

1. Civil actions, not including family actions or small claims actions, should be disposed within 12 months from the filing of the summons and complaint, except that actions involving personal injury, property damage, or other intentional tort should be disposed within 18 months from the filing of the summons and complaint.
2. Divorce actions should be disposed within 12 months after the service of the summons and petition.
3. Family actions under Chapter 767 of the Wisconsin statutes, except actions involving divorce, should be disposed within 6 months from the service of the summons and petition.
4. Contested small claims actions should be disposed within 3 months from the filing of the summons and complaint.
5. Felony actions should be adjudicated within 6 months of the date of first appearance of the defendant, and in no event longer than 90 days after demand for trial (§971.10(2), Wis. Stats.).
6. Misdemeanor actions should be adjudicated within 2 months of the date of the first appearance of the defendant, if the defendant is in custody, and within 3 months of the date of the first appearance if the defendant is not in custody (§971.10(1), Wis. Stats.).
7. Ordinance, forfeiture, and traffic violations should be adjudicated within 4 months of the date of the first appearance of the defendant or entry of initial plea by the defendant, whichever occurs first.
8. Estate actions should be disposed within 12 months from the date of the filing of the petitions for probate of will.

## **H. JURORS**

1. A list of prospective jurors will be provided two days before a trial. Note taking by jurors shall be determined by the judge pursuant to Wisconsin Statute §805.13(2).

2. A circuit court judge may assess reasonable or actual jury cost under §814.51 in addition to the costs taxed under §973.06 when a case settles within two working days.

3. After verdict the Court may poll jurors. Polling will be by number.

## **I. OUT OF COUNTY JURIES (TCA 5)**

A copy of any order under §971.22 or 971.225, Wis. Stats., changing the place of trial to another county or requiring the selection of a jury from another county shall be sent by the ordering judge to the chief judge and district court administrator prior to the scheduling of any activities in the other county. The scheduling of any activities in the other county shall be done by the chief judge or district court administrator in consultation with the ordering judge, the chief judge or district court administrator of the district in which the other county is located (if different) and the clerks of court of both counties. The chief judge or district court administrator shall confirm the chosen dates with the ordering judge, the chief judge and district court administrator of the other county and the clerks of court.

## **J. CLAIMS**

1. All claims for legal services shall be prepared in duplicate original on forms provided by the Clerk of Circuit Court office located on the eighth floor of the courthouse.

2. All claims for services in family court shall be accompanied by a separate money judgment against the parties. Forms are provided in the Clerk of Circuit Court office on the eighth floor.

## **K. FILES**

1. Files are not to be removed from the courthouse or Law Enforcement Center except on a judge's order.

## **L. NOTICE**

If notice is given in court to all interested parties, no further notice is given by mail.

## **M. RULES OF DECORUM**

1. Court may be formally opened each day upon which court business is transacted, either by the bailiff or clerk, unless the judge directs otherwise.
2. As the judge enters the courtroom, the bailiff or clerk may require all present to arise and stand. When the judge has ascended the bench, the bailiff or clerk may say: "Year Ye! Year Ye! The Circuit Court for the County of Racine, Branch \_\_\_ division is now open, silence is commanded." Thereupon all shall be seated and the business ensues.
3. In recessing, the judge may announce: "The court is now in recess. Trial shall resume at o'clock."
4. The national flag shall be displayed close to the bench on a stand to the right of the judge.
5. Lawyers shall not lean upon the bench nor engage the court in a manner depreciative of the dignity of the proceedings as viewed by the jury and public.
6. Unless otherwise permitted by the court, lawyers shall examine witnesses from a standing or seated position at counsel table except when handling exhibits. If a lectern is provided by the court, examination may be either from said position at counsel table or from the lectern. A lawyer shall not crowd a witness in examination.
7. Lawyers should not, in addressing the jury, crowd the jury box.
8. Lawyers, during trial, shall not exhibit familiarity with witnesses, jurors, or opposing counsel, and generally, use of first names shall be avoided. In jury arguments, no jurors shall be addressed individually or by name.
9. All lawyers and court officers shall wear appropriate attire while in attendance upon the court.
10. Witnesses shall be examined with courtesy and respect, and their good faith presumed until the contrary appears.
11. The administration of oaths to witnesses should be an impressive ceremony and not a mere formality.
12. In jury actions which are disposed of without a jury verdict, the judge, in dismissing the jury, should briefly explain the procedure and why a verdict was unnecessary in a manner not to prejudice future service as jurors.

13. In criminal actions, the defendant shall stand with counsel at the time of arraignment and at the time of passing sentence.

14. The judge shall wear a robe while presiding on the bench. Judicial discretion may be exercised otherwise in proper situations.

15. All court proceedings shall be free from interruption by the sounding of electronic devices such as portable telephones, pagers, beepers, and electronic watches. All persons present at a court proceeding who possess such a device shall deactivate the device to ensure that no audio signal will sound. If the device cannot be deactivated in this manner, then the device shall not be brought into the room where the court proceeding is being conducted. Law enforcement officers providing security to a court proceeding shall be exempt from this requirement.

## **N. TRANSMISSION OF DOCUMENTS TO THE COURT**

### **1. FACSIMILE**

(a) Facsimile documents transmitted directly to the courts shall be accepted for filing only if:

1. The circuit court has a facsimile machine capable of reproducing documents that meet the Supreme Court Rule 72.01 concerning retention of filed documents. Only plain paper facsimile machines currently comply with this requirement.
2. The circuit court has a facsimile machine physically located within the offices of the circuit court or the register in probate.
3. The document does not exceed 6 pages in length excluding the coversheet.
4. No filing fee is required.
5. No additional fee or charge must be paid by the circuit court for accepting or receiving the facsimile document.

(b) Facsimile documents transmitted to a non-court agency, party or company for reception and ultimate transmittal to the court shall be accepted for filing only if:

1. No filing fee is required.



2. No additional fee or charge must be paid by the circuit court for accepting or receiving the facsimile document.
- (c) The party transmitting the facsimile document is solely responsible for ensuring its timely and complete receipt.
- (d) The circuit court, judge or clerk is not responsible for:
  1. Errors or failures in transmission that result in missing or illegible documents.
  2. Periods when a circuit court facsimile machine is not operational for any reason.
- (e) A judge assigned to a particular matter may authorize in advance the filing of particular documents in that case that do not conform to these rules if good cause is shown and they are in conformance with Wisc. Stat. 801.16.
- (f) Documents that are not to be filed but are to be used by the court for reference or other purpose may be transmitted by facsimile transmission at the discretion of the judge or clerk.
- (g) Documents filed with the circuit court by facsimile transmission completed after regular business hours of the clerk of circuit court's office are considered filed on a particular day if the submission is made by 11:59 pm central time, as recorded by the court facsimile machine. Documents submitted by facsimile transmission completed after 11:59 pm are considered filed the next business day. Wis. Stats. 801.16(2)(f).

2. Electronic Filing (E-FILING)

- (a) Pursuant to Wis. Stat. 801.18, electronic filing shall be available to all parties on all cases types enabled by the Wisconsin Supreme Court/ Director of State' Court's Office.
- (b) Mandatory electronic filing shall be effective December 1, 2016, on all case types indicated by Wisconsin Supreme Court/ Director of State Court's Office pursuant to Wis. Stat. 801.18 and Supreme Court Rule 70.42.

## **O. VICTIMS/WITNESSES**

1. The Racine County judges and staff recognize that all parties and participants, including victims and witnesses, have rights in controversies pending before the

courts. Judges shall be vigilant to protect the rights of all parties and participants in the legal process.

## **P. THREATS TO THE JUDICIARY AND COURT EMPLOYEES (TCA 8)**

The circuit judges of each county shall develop a single policy which addresses threats to judges and court staff. The policy shall include, but is not limited to, the following guidelines:

(a) A law enforcement agency in each county shall be identified as the primary law enforcement agency to receive reports of threats and investigate such reports within their normal investigative procedures. The designated law enforcement agency should be encouraged to identify a liaison officer for reporting purposes.

(b) If a threat does not appear to impose imminent danger, the threat shall be reported to the law enforcement agency in a prescribed manner. If a threat appears to be immediate, the prescribed law enforcement agency shall immediately be notified and requested to provide an independent evaluation concerning the emergency of the threat and recommendation as to further procedures.

(c) All threats, regardless of their degree, shall be reported in order to allow for an independent evaluation by law enforcement.

(d) In conjunction with law enforcement, written procedures shall be developed which assist the threatened person in collecting and preserving the appropriate evidence needed by law enforcement for investigative purposes.

(e) Judges and court staff shall inform the chief judge or designee of any threat and the subsequent steps that have been taken pursuant to the guidelines. The chief judge or designee shall develop a mechanism for logging reported threats.

## **Q. RESERVE JUDGES (TCA 10)**

(a) Assignment Plan: After qualification as a reserve judge but prior to each annual appointment, the reserve judge shall confer with the chief judge of the reserve judge's home district, as determined by the Office of Court Operations. Under certain circumstances, the chief judge may waive this requirement and rely on information provided by the reserve judge to the Office of Court Operations.

Items to be discussed may include the number and types of cases the reserve judge is willing to handle, counties in which he or she is willing to act, times when unable to serve, whether he or she intends to engage in the practice of law or provide private resolution services, judicial education which may be appropriate, nature of staff support and resources desired, and other matters which might affect assignments.

The chief judge shall establish an assignment plan consistent with the skills and availability of the reserve judge and the needs of the court system, and shall provide a copy to the Director of State Courts.

Nothing contained herein shall affect the validity of any assignment or the validity of any order, judgment or action of an assigned reserve judge.

(b) Judicial Education and Mentoring: A reserve judge may request, or the chief judge may require, that the reserve judge complete a mentoring period prior to assignment. Any reserve judge who has not been assigned to act for an extended period may, at his or her request or that of the chief judge, be required to attend the Judicial College or designated Judicial Education programs prior to assignment.

(c) Notice of assignments: Notice that a reserve judge has been assigned shall be given to the chief judge or the district in which he or she has been assigned and to the chief judge of the reserve judge's "home district."

(d) Filing: All papers to be filed in matters to which a reserve judge is assigned shall be filed with the clerk of court in the county of venue. The reserve judge may require that copies be provided to him or her by the person filing.

## **R. MOTION/PETITION TO MODIFY OR ENFORCE A JUDGMENT FILED FROM ANOTHER COUNTY (TCA 11)**

(a) Upon the filing of a petition or motion to modify or enforce a family judgment under §767.025, if the clerk of court determines that the original judgment was rendered in another Wisconsin county, the clerk shall notify the judge assigned to the motion/petition that it has been filed, the county where the judgment was rendered, and the name of the judge of record.

(b) No later than 20 days after filing, but prior to any hearing on the motion/petition, the assigned judge in the county of filing shall ensure that communication between the filing court and the court of original jurisdiction takes place to determine if venue is at issue. The court's decision regarding venue shall consider the degree to which the court of record was involved in the

judgment. Communication between the courts shall take place even though it may not be requested by the parties.

(c) If the court or the parties disputes venue, the judge of record shall conduct a teleconference under Statute 807.13(3) to determine venue. If it is determined that the motion/petition will be heard in the new county, venue of the case will be changed to the new jurisdiction pursuant to Statute 801.52.

## **S. TCA 12 REPEALED**

## **T. VENUE IN MOTIONS TO CONTEST THE ADMINISTRATIVE ENFORCEMENT OF A SUPPORT OBLIGATION (TCA 13)**

(a) If the obligor or a third party receives notice from the Department of Workforce Development that an administrative enforcement action allowed by statute is being pursued, the notice shall direct the obligor or third party where to file their motion to contest the administrative procedure.

(b) All motions shall be filed with the court in the county in which the order or judgment seeking to be enforced has been entered.

## **U. EXTENSION OF TIME TO DECIDE A MATTER - NOTIFICATION TO PARTIES (TCA 14)**

Each Judicial Administrative District shall develop a procedure which ensures that the parties or their attorneys are notified in writing when the period of time to decide a matter has been extended for an additional 90 day period as authorized by SCR 70.36(1) (a). This procedure is in addition to any other requirement mandated by SCR 70.36.

Circuit court judges are to provide written notification to the parties or their attorneys of the 90 day extension. Judges may develop their own form or obtain an electronic copy of a form from the Office of the District Court Administrator.

## **V. VOLUNTEER INTER-DISTRICT ASSIGNMENTS (TCA 15)**

In the event a circuit court judge offers to work in another judicial administrative district, a request shall be submitted in writing to the chief judge and district court administrator of his or her home district. The chief judge shall review the calendar and workload status of the judge who volunteers and determine whether the judge may be authorized to work in another district. If no specific district is proposed by the volunteering judge, the chief judge may notify the Director of

State Courts office of the availability of the volunteering judge to work in another district.

If a specific county is requested/proposed by the volunteer judge, the request shall be submitted to the home district chief judge who shall review and approve or deny the request. The home district chief judge shall notify the proposed district chief judge of the approval or denial of the request. If both chief judges approve the assignment, they shall notify the Director of State Courts office which shall make the assignment.

## **W. WEAPONS AT COURT PROCEEDINGS**

No person may attend a court proceeding while possessing a weapon. For hearings occurring in the courthouse only, an exception will be made for law enforcement officers who are present as a witness or in some official law enforcement capacity to attend a court proceeding while armed. However, if the officer is a party to an action, is present in support of a party, or off duty, the officer may not be armed. No similar exception will be made for hearings occurring in the LEC, except by specific order of the court.

## **X. COURT REPORTERS (TCA 6)**

Court reporters may be required by the chief judge or Director of State Courts to report in a court other than that to which he or she is generally assigned.

Reassignment of court reporters under subsection (a) of this rule shall not be permanent, but only for specified periods of time as determined necessary by the chief judge or Director of State Courts.

1. **SECOND JUDICIAL ADMINISTRATIVE DISTRICT POLICY –**  
Assignment and Availability of Official Court Reporters: Pursuant to Trial Court Administrative Rule 6, as amended on February 8, 2002 by the Committee of Chief Judges and the Director of State Courts, and Wisconsin Statutes §751.025, this policy is hereby adopted to more effectively use official court reporters and to share reporting services among the circuit courts. The identification and efficient use of available court reporters is a critical responsibility that can be achieved with the mutual cooperation of the office of the chief judge/district court administrator, circuit judges, official court reporters and court staff.

Wisconsin §751.025 Temporary use of court reporters. If the court reporter appointed by the judge is not available or if an additional court reporter is needed, the judge, in cooperation with the chief judge and court administrator for that judicial district, shall attempt to locate and use a court reporter from another branch of court before hiring a private court reporter.

Uniform Rule for Trial Court Administration #6: COURT REPORTERS.

(a) Each judicial administrative district shall develop a policy governing the following procedures:

(1) Determining when official court reporters are available for assignment to other courts because a court will not be in session by reason of a cancellation, change of schedule or absence of the judge;

**POLICY:** Official and per diem court reporters shall immediately contact (telephone, e-mail, etc) the district court administrator's office any time a judge's calendar for a day is cleared of in-court activity.

**COMMENT:** Notifying the district court administrator's office does not mean that the court reporter will be immediately reassigned, but it will provide valuable information if an emergency occurs and another judge is in need of a court reporter. (Example: Reporters need not notify the district court administrator's office if a jury trial settles in the morning and there is only one small matter on in the afternoon. Jury trials that settle, and one or more calendar days have been cleared to accommodate that trial, shall be reported immediately).

(2) Recording instances of substitute court reporter assignments, whether official or freelance; and

**POLICY:** The district court administrator's office will document each time a per diem or official court reporter is assigned to work in another court. The reason for the assignment and length of the assignment will also be documented.

**COMMENT:** Historically, the district court administrator's office documents all per diem and official reporter assignments. The documentation has assisted the office in making assignments, providing workload assistance, and on some occasions, assisting attorneys in identifying the particular reporter for a past hearing.

(3) Advising the district court administrator of arrangements reporters make between themselves for short-term, urgent assistance, obtaining prior approval if required by district policy.

**POLICY:** Official court reporters shall notify the district court administrator's office and report each time they assist another reporter with in-court reporting. The notification should occur within a reasonable period of time by the reporter who provided the assistance.

**COMMENT:** As noted above, Wisconsin Statute §751.025 requires that if official reporters are available they are to assist other courts. It's

important that this legislative mandate be documented in order to conserve state resources, and to show the assistance and cooperation among the official reporters in the district. The documentation also provides the district court administrator's office with valuable information when requesting officials to assist other courts.

#### **Y. PER DIEM COURT REPORTERS' NOTES (TCA 7)**

- (a) The notes of per diem court reporters shall be delivered to the clerk of circuit court of the county in whose jurisdiction the notes were taken, or his or her designee under paragraph (b)
- (b) With prior approval of the chief judge, the clerk of circuit court may designate as physical custodian of per diem court reporters' notes:
  - (1) In the First Judicial Administrative District, the office of the district court administrator.
  - (2) In all other districts, the official court reporter in whose branch the notes were taken.
- (c) The clerk of circuit court or other designated custodian shall have the authority to release to a court reporter the custody of said notes for the purpose of preparing a transcript, without further order of the court

#### **Z. WORKLOAD ASSISTANCE FOR OFFICIAL COURT REPORTERS (TCA 9)**

- (a) Workload assistance requests from official reporters shall be made to the district court administrator or managing court reporter when seeking assistance to prepare a transcript in a timely manner where an expedited transcript request or Notice of Appeal has been filed with the clerk of court or register in probate. For the purpose of appeal, such assistance should not be provided for more than 10 days prior to the due date for the specifically requested transcript. The official reporter must coordinate the request for assistance with their appointing judge.
- (b) Requests for assistance will be reviewed, granted or denied utilizing the following criteria:
  - (1) The amount of time the reporter is scheduled in court;
  - (2) The length of time required to complete an expedited copy request;
  - (3) Daily copy requests;
  - (4) Court caseload;

(5) Vacations requested in close proximity of the transcript due date;

(6) The estimated number of pages due; and

(7) The number of other appeals and requests for extensions.

(c) Daily copy: If workload assistance is requested to accommodate a daily copy request, assistance may be provided as long as there is no cost to the state.

#### **AA. COURT REPORTER TRANSCRIPT REQUESTS (TCA 16)**

(a) Court reporters may require prepayment of transcript fees before a transcript is filed and/or delivered. This section does not apply to transcripts requested by the State of Wisconsin or a political subdivision thereof.

(b) Court reporters may require transcript requests to be in writing. However, court reporters are encouraged to accommodate requests for transcripts in circumstances that do not allow for the submission of a written request.



## **II. Family Court**

### **A. FEES**

1. All filing fees are paid to the clerk of court's.
2. If the petitioner is requesting an order for waiver of fees/costs based upon an affidavit of indigency (due to poverty), he or she shall affix a completed financial disclosure form to the request for waiver of filing fee. The financial disclosure shall be signed and sworn to by the requesting party and shall state all income, assets, debts and expenses of the party.
3. Income, assets, debts and expenses of both parties will be considered in fee waivers for joint petitions.
4. There is no filing fee for a responsive pleading which does not add any new issues.

### **B. FILING**

1. All pleadings to commence an action shall be filed with the clerk of courts. This would include any action affecting the family to which a case number will first be assigned; all subsequent pleadings are filed with the family court division.
2. Post-judgment actions in divorce or paternity, together with private paternity actions are filed with the family court division, after the filing fee is paid.
3. Paternity actions commenced by the Racine County Child Support Department are filed with the family court division.

### **C. SERVICE**

1. Racine County Child Support Enforcement: When any party or one or more of his or her children is presently receiving, has received, or has applied for public assistance (i.e. Wisconsin Works, AFDC, Medical Assistance or Foster Care) the moving party shall, within twenty (20) days of service on the other party, serve a copy of all pleadings on Racine County Child Support Enforcement located at 818 6th Street, Ste. 2 Racine, WI. See Sec.767.217 Wis. Stats.
2. When a guardian ad litem has been appointed, the moving party shall serve a copy of all current pleadings, together with all relevant prior orders, on the guardian ad litem, after receiving notice of the appointment.

### **D. USE OF STATE MANDATED AND OTHER FORMS**

1. Domestic Abuse: Attorneys shall use the forms provided by the clerk of courts' office in filing actions under Wisconsin Statute 813.12 (domestic abuse).
2. Other Court Forms: Attorneys as well as pro se litigants shall use all state mandated forms, which include:
  - a. Confidential Petitioner Addendum
  - b. Uniform Child Custody Jurisdiction Act Affidavit
  - c. Petitioner for Waiver of Fee/Costs - Affidavit of Indigency and Order Medical History Questionnaire
  - d. Petition, Stipulation and Order Amending Judgment Affecting Family
  - e. Notice of Hearing to Enforce Physical Placement Order
  - f. Petition to Enforce Physical Placement Order
  - g. Order to Enforce Physical Placement Order
  - h. Interim Financial Summary
3. Parenting Plans: Are issued by the Family Court Counseling Service to parents involved in custody and/or placement disputes. Each parent is responsible for filing out the form on his/her own behalf and seeing that the original is filed with court and that all attorneys and the other parent receive a copy.

#### **E. DOMESTIC ABUSE RESTRAINING ORDERS (Wis. Stats 813.12)**

1. There is no filing fee for domestic abuse restraining orders.
2. The use of State forms (available from the clerk of court on the eighth floor) is required:
  - a. Petition for Temporary Restraining Order and/or Injunction (Domestic Abuse)
  - b. Notice of Hearing and Temporary Restraining Order (Domestic Abuse)
  - c. Injunction

#### **F. HEARINGS WITHIN A DIVORCE ACTION**

1. Within the first 125 days after filing and service of the pleadings, all actions scheduled for court proceedings are handled by the office of the family court commissioner.
2. In an action for divorce, a first hearing (a hearing on the initial order to show cause) shall not be scheduled for hearing until the action has been filed, although an available date for such hearing may be obtained in advance by phoning the Office of the Family Court Commissioner.
3. First hearings are scheduled before the family court commissioner within ten (10) to fifteen (15) days of the filing of the initial pleadings.

4. If a first hearing is not scheduled by one of the parties, the family court commissioner will schedule a hearing on his or her own motion.
5. At the time of the first hearing each party shall file a preliminary financial disclosure statement listing all of their joint or individual assets and liabilities, and the individual's income and budget. A copy of the parties' most recent tax returns together with copies of his or her most recent paycheck stubs shall be attached to the disclosure statement.
6. If the parties wish to avoid appearance at the first hearing, they may file a stipulated temporary order together with their preliminary financial disclosure statements and the required attachments, as described in paragraph 4 above. If the stipulation is approved by the family court commissioner, the first hearing will be waived. The court commissioner may schedule a review hearing within the 120 day statutory waiting period to address specific concerns if appropriate.
7. Attached to each temporary order issued by the family court commissioner will be a notice to all parties and their attorneys to appear at a scheduling conference before the family court commissioner 120 days after the date of service.

## **G. ORDERS AND JUDGMENT**

1. All prejudgment orders shall be signed by the family court commissioner, unless directed otherwise by the judge assigned to that case.
2. Final stipulations, findings of fact and conclusions of law, judgments, dismissals and all orders for support must be approved by the family court commissioner.
3. If a guardian ad litem has been appointed, final stipulations, findings of fact and conclusions of law, and judgments must be approved by the guardian ad litem.
4. At the conclusion of a hearing in which a support order is established or modified, the Child Support Interim Financial Summary form will be provided if appropriate. The petitioning attorney or party shall be required to complete the form and deliver it to the clerk within 24 hours.
5. De Novo Review:
  - (a) Pursuant to §757.69(8) Wis. Stats., any party who was present at a hearing held by the Family Court Commissioner has the right to have the assigned Circuit Court Judge hold a new hearing upon the filing of a motion within 15 days of the oral decision of the Family Court Commissioner, or within 15 days of mailing of a written decision by the Family Court Commissioner if the order was not orally given by the

Family Court Commissioner at the time of the hearing. Findings and orders entered by the Family Court Commissioner by Stipulation or entered by default are not subject to de novo review. Fifteen days shall be counted consecutively and include weekends and holidays pursuant to §801.15(1) Wis. Stats.

The party requesting the de novo review shall notify in writing all interested parties including the attorneys of record, guardian ad litem, family court worker of the date and time for the hearing. The party shall file with the Court written proof of compliance of the written notification on or before the hearing date.

(b) The requesting party shall arrange a conference call between the court and the offices of all counsel, including guardians ad litem, and parties, if unrepresented, together with the court appointed social worker, to set the date for the de novo review.

(c) The party requesting the de novo review must notify in writing all interested parties including the guardian ad litem, the family court commissioner, and the family court social worker of the time and date for the hearing

## **H. SCHEDULING CONFERENCES/STIPULATED HEARING BEFORE COURT COMMISSIONER**

1. Stipulated Hearings/Pro Se Litigants: The first scheduling conference is held at least 120 days after the date of service. A divorce may be granted at that hearing provided that:

(a) Both parties appear;

(b) Both parties state under oath that they believe the marriage is irretrievably broken;

(c) A final stipulation, signed by both parties, is submitted to the family court commissioner thirty days prior to the date of the hearing and said stipulation is approved by the family court commissioner;

(d) A completed vital statistics form is submitted to the family court commissioner thirty days prior to the date of the hearing;

(e) A completed findings of fact, conclusions of law and judgment is submitted to the family court commissioner thirty days prior to the date of the hearing and said document is approved by the family court commissioner; and

(f) Both parties have attended the parent education class, if previously ordered to do so by the family court commissioner.

2. Stipulated Hearings/Represented Parties: The first scheduling conference is held at least 120 days after the date of service. A divorce may be granted at that hearing provided that:

(a) Both parties appear;

(b) Both parties state under oath that they believe the marriage is irretrievably broken;

(c) A final stipulation, signed by both parties, is filed with the family court commissioner either before or at the time of the hearing;

(d) Both parties have attended the parent education class, if previously ordered to do so by the family court commissioner.

3. Disputed Issues: If there is a dispute on a material issue, the following may occur:

(a) Proposed settlements will be discussed;

(b) Appraisals of both real and personal property may be directed to be made;

(c) Custody and/or physical placement recommendations will be given by the family court social worker and guardian ad litem;

(d) Discovery schedules will be established; and

(e) The matter may be adjourned for a subsequent pre-trial hearing.

If a stipulated default does not occur at a scheduling conference or pre-trial before the family court commissioner, the matter will be placed on the trial court calendar within sixty (60) days of the determination by the family court commissioner that there will not be a stipulation and that the parties are ready for trial

## **I. DEFAULT HEARINGS BEFORE THE CIRCUIT COURT JUDGE- INCLUDING LEGAL SEPARATIONS**

1. Before a date for a default hearing is obtained, a final stipulation must be filed which covers all issues and is signed by both parties.

2. Both parties must be present for the final hearing before the judge unless
  - (a) The respondent has consented in writing to have the judgment entered without his or her presence; or
  - (b) The respondent has been served with an order for appearance and does not appear; or
  - (c) Service was by publication;
3. Both parties must be present in joint petition cases.
4. Both parties must have attended the parent education class, if previously ordered to do so by the family court commissioner

#### **J. ARREARAGES (CHILD SUPPORT, FAMILY SUPPORT, MAINTENANCE)**

Unless otherwise provided by the court, all child support, family support or maintenance arrearages for temporary maintenance and support incurred as a result of prior orders and before the granting of a judgment shall be carried forward as an arrearage in the judgment.

#### **K. FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

1. The findings of fact, conclusions of law and judgment must be filed by the petitioner within thirty (30) days of the hearing granting the divorce.
2. In any case which is efiled voluntarily or mandatorily, the party responsible for filing the findings of fact, conclusions of law and judgment shall efile within the required time one copy of the findings of fact, conclusions of law and judgment to the clerk of family court. The same person or party shall send copies to all other necessary parties by fax, scan, or hard copy/mail.
3. Parties not required to efile pleadings shall comply with Section 767.36 Wis. Stats by submitting the original and two copies of the findings of fact, conclusions of law and judgment for transmittal of the copies to the parties.
4. The findings of fact, conclusions of law and judgment shall include:
  - (a) Each party's last known address;
  - (b) Each party's place of employment;
  - (c) Each party's gross and net monthly income;
  - (d) Each party's drivers license number, if child support, family support or maintenance is ordered; and

(e) The legal description of any real estate affected by the judgment.

5. If the divorce was upon written stipulation, the stipulation must be attached to the findings of fact.

6. If the divorce was upon oral stipulation, a transcript of the agreement shall be attached to the judgment unless otherwise ordered by the court.

7. If judgment was granted as a result of a trial, a transcript of the judge's decision shall be attached to the judgment unless otherwise ordered by the court.

#### **L. POST JUDGMENT ACTIONS**

1. All post judgment matters (i.e. to modify or enforce child support, family support, maintenance, custody, or physical placement) shall be scheduled before and heard by the family court commissioner.

2. The family court commissioner may make a ruling, or if he or she determines that an evidentiary hearing is required, may schedule the matter before the circuit court judge. The matter will be placed on the trial court's contested calendar within sixty (60) days of the initial hearing.

#### **M. EX PARTE ORDERS**

1. All requests for ex parte orders, whether prejudgment or post judgment, shall be submitted to the circuit court judge assigned to the case. If the assigned judge is not available, the request may then be submitted to the other judge assigned to hear family court matters.

2. All requests for an ex parte order shall contain a return date before the judge or family court commissioner within ten (10) days of filing and shall contain language which (a) extends the ex parte order only until the date and time of the hearing and (b) specifically permits modification or revision of said order by the family court commissioner.

3. If service is not obtained by the date of the hearing, a new ex parte order must be obtained from the circuit court to which the case is assigned.

4. If the terms of the ex parte order provide for the transfer of placement of a child or children or otherwise affect legal custody or placement rights of a parent, a guardian ad litem and court social worker shall be appointed immediately. Although a copy of the order must be served upon the family court commissioner, it is the responsibility of the person or attorney who has obtained the ex parte order to notify the family court commissioner of the issuance of the ex parte order so that office will appoint the guardian ad litem.

## **N. PATERNITY**

1. All paternity hearings, except jury trials, will be scheduled in front of the family court commissioner.
2. A minor mother shall be represented by a guardian ad litem, unless represented by a private attorney. A minor alleged father shall also be represented by a guardian ad litem, unless represented by a public defender or private attorney.
3. If paternity is admitted and the respondent is either represented or waives his right to an attorney, the adjudication will be made at that hearing.
4. At the time of the hearing an order will be entered:
  - (a) Setting support.
  - (b) Determining responsibility for providing medical and hospitalization insurance.
  - (c) Establishing each parent's obligation for uninsured medical expenses;
  - (d) Establishing legal custody;
  - (e) Establishing placement; and
  - (f) Allocating the tax of dependency exemption for state and federal tax returns.
5. If paternity is denied, a genetic test shall be ordered and a pre-trial/genetic test review date scheduled.
6. If a respondent fails to appear at any stage of the proceeding and there are no other possible alleged fathers, a default judgment may be granted on the testimony of the mother.
7. If the respondent fails to appear at any court date and there are other alleged fathers, a body attachment will issue.
8. If a respondent has not been served with the summons and petition despite due and diligent attempts at service, a body attachment will issue.
9. A guardian ad litem shall be appointed for any child born or conceived during a marriage who is the subject of a paternity action.
10. Cases shall be scheduled for a first appearance within ninety (90) days of filing. This will accommodate the provision of Wis. Stats. Sec. 767.86 that a first



appearance may not be held any sooner than thirty (30) days after summons and petition. It will also afford thirty (30) days for service.

11. Joint petitions shall be scheduled for an admission hearing within three (3) weeks of filing the petition.

12. Cases adjourned for the purpose of respondent obtaining an attorney shall be scheduled within sixty (60) days of the request for counsel.

13. Genetic testing is done at the Racine County Child Support Enforcement or on the third floor of the courthouse after the hearing.

14. Pretrial hearings for the purpose of reviewing genetic test results shall be scheduled between sixty (60) to ninety (90) days of the genetic test date. This acknowledges the average time required by the court to obtain the test results which is four (4) to six (6) weeks.

15. Pretrial hearings in anticipation of a jury trial shall be scheduled within six (6) weeks of the request for trial. This assumes that genetic test results have been completed.

16. Trial dates shall be scheduled within two (2) months of the request for trial. This should be approximately two (2) weeks after the final pretrial hearing.

## **O. ADJOURNMENTS**

1. During the pendency of a divorce action:

(a) Any party requesting an adjournment must contact the family court commissioner's office, arranging a conference call that includes the offices of all counsel, guardians ad litem, social workers and parties, if unrepresented, so that the matter can be rescheduled.

(b) If granted, the party requesting the adjournment must notify in writing all interested parties including the guardian ad litem, the family court commissioner, and the family court social worker of the new time and date for the hearing.

2. Post judgment matters and matters scheduled before the judge

(a) Requests for adjournment must be made in writing, and may be faxed, to the judge assigned in care of the clerk of the family division.

(b) If granted, the requesting party shall arrange a conference call between the court and the offices of all counsel, including guardians ad litem, and parties, if unrepresented, together with the court appointed social worker to set the new date.

(c) The party requesting the adjournment must notify in writing all interested parties including the guardian ad litem, the family court social worker and the family court of the new time and date for the hearing.

## **P. ACTIONS PURSUANT TO VOLUNTARY PATERNITY ACKNOWLEDGMENT**

1. All Actions Pursuant to Voluntary Paternity Acknowledgment will be scheduled in front of the family court commissioner.
2. Cases will be assigned a “FA” case number and scheduled for a first appearance within ninety (90) days of filing, but no earlier than sixty (60) days after the voluntary acknowledgment of paternity is filed with the State registrar.
3. Cases adjourned for the purpose of respondent obtaining an attorney shall be scheduled within sixty (60) days of the request for counsel.
4. If a respondent fails to appear, a default judgment may be entered on the testimony of the petitioner.
5. At the time of judgment, the family court commissioner will enter orders concerning custody, placement, support, expenses, insurance and allocation of the tax exemption for the child. The orders may be temporary if further proceedings are needed because an issue is disputed or more information is required.
6. The Judgment, containing driver’s license numbers and vital statistics for all parties, must be filed by the petitioner’s attorney within 30 days of the hearing.

## **III. Civil**

### **A. FILING**

1. All actions shall be filed with the clerk of circuit court office.
2. The petition, consent and order appointing guardian ad litem must be filed simultaneously with the action. The judge assigned will sign the order appointing guardian ad litem as of the date of filing.
3. Attorneys shall use the state approved forms provided by the clerk of circuit court office for the filing of actions under Wisconsin Statute 813.25 (civil harassment).

### **B. SCHEDULING CONFERENCE**

1. Scheduling conferences will be conducted by a court commissioner unless requested to be heard before a judge. Approximately 60 days after the action is filed, the clerk will send notice, indicating the date, time and place to all interested parties. Any party may appear in person or by telephone conference. It is the obligation of the party requesting the telephone conference to notice the other party and initiate the call.
2. A copy of the scheduling conference order will be provided to the parties.

### **C. MOTIONS**

1. Prior to filing, movant shall obtain from the clerk a hearing date not less than 30 days from filing the motion, brief, other supporting documents or waivers. Movant shall immediately serve a copy of his/her brief and supporting documents upon the opposing side with notice of the hearing date. If a movant files a motion without a brief, supporting documents or waiver, or without obtaining in advance an appropriate hearing date, the clerk shall return such motion papers with a copy of this rule.
2. A motion for summary judgment under Wisconsin Statute 802.08 and a motion for dismissal under Wisconsin Statute 802.06 shall be filed with the assigned judge's clerk together with any brief or other supporting documents. If 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.
3. The respondent 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 respondent fails to file a brief or waiver of the same within the 20 day period, it shall be presumed that respondent has waived this right and the court shall accept no further briefs.
4. The movant shall have 5 days from the filing of the 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.

5. 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 with the assigned judge's clerk with the notice of motion or at least ten days prior to any scheduled hearing date. Briefs in opposition to such motions must be filed with the assigned judge's clerk no later than two business days prior to the hearing of the motion. Briefs in opposition to such motions must be either personally served upon opposing counsel no later than two business days prior to the hearing or if service is made by mail, no later than three business days prior to the hearing. Briefs filed in an untimely fashion may be disregarded by the court.

#### **D. PRETRIAL HEARINGS**

Pretrial hearings are conducted approximately 30 days prior to the scheduled trial date. They are heard before a court commissioner or, if requested, before the judge assigned to the case. Any party may appear in person or by telephone conference. It is the obligation of the party requesting the telephone conference to notify the other party and initiate the call. Cases are scheduled with the oldest filed case having priority.

#### **E. ARGUMENT**

Only one attorney shall argue on motions or objections with leave of the court. No argument or discussion shall be had in the presence of the jury.

#### **F. RETURN OF VERDICT**

If an attorney desires to be present upon a return of the verdict or upon a request for further instructions, a telephone number must be left with the court where counsel can be reached.

#### **G. MOTIONS AFTER VERDICT**

Motions after verdict must be filed and served within 20 days of the verdict and accompanied by memorandum with copy to opposing party. If motions are not filed and served, judgment on the verdict shall be entered 20 days after the verdict.

#### **H. FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

1. Within 30 days of a decision/verdict, statutory pleadings shall be submitted to perfect the judgment.
2. Five days is allowed for a written objection to the proposed pleadings.
3. A clerk will not sign a judgment unless:
  - (a) Findings of fact and conclusions of law or an order for judgment has been prepared for the judge's signature;

(b) The docketing fee has been included with the papers in order to enter the judgment.

4. Taxation of costs will be scheduled at the moving party's convenience and held in the Clerk of Circuit Court office on the eighth floor of the courthouse. Any party may appear by telephone. It is the obligation of the party requesting the telephone conference to notice the other party and initiate the call.

## **I. DEFAULT MATTERS**

1. All matters for default judgment must be scheduled with the assigned judge's clerk.
2. If service is not personally made, notice of application for default judgment must be mailed to the defendant no less than ten days prior to default judgment date.
3. A court appearance is not a requisite if proof can be established by affidavit to the satisfaction of the court.

## **J. STIPULATIONS AND ORDERS FOR DISMISSAL**

The stipulation and order for dismissal shall be filed within 30 days of the notice of settlement, or the action will be set for dismissal and notice given.

## **K. MINOR COURT SETTLEMENTS**

See V. Probate Local Rule K

## **L. CHANGE OF NAME**

The vital statistics form for reporting change of name must be prepared prior to the date of the hearing. This form is available in the clerk of circuit court office on the eighth floor of the courthouse. The birth certificate as it is now must be presented to the court.

## **M. GARNISHMENTS**

1. Garnishment forms are available in the clerk of circuit court office on the eighth floor of the courthouse.
2. The order to garnishee shall indicate payment directly from the garnishee defendant to the plaintiff/attorney. Money is not ordered into the clerk's office.
3. Proofs of service should be filed simultaneously with the order to the garnishee defendant.

## **N. WRITS**

1. If the writ is related to an extradition proceeding, the case will be assigned to the judge who heard the extradition;

2. All other writs will be assigned as other civil cases. In case of absence or unavailability of the judge under (1) and/or (2), the matter will be assigned to a civil division by tab.

## **O. CONSOLIDATION OF ACTIONS**

Consolidation motions shall be addressed to the court assigned the lower numbered action. If the motion is granted, said court shall retain, hear and determine the consolidated actions, even if the lower numbered case is disposed of before trial

## **P. TELEPHONE APPEARANCE**

You are permitted to appear telephonically subject to the following procedure:

1. Telephonic appearance shall be by conference call only.
2. The party requesting telephonic appearance shall:
  - a) Initiate the call to the number listed on the NOTICE OF HEARING - see "LOCATION" ON PAGE 1.
  - b) Include all parties who wish to appear.
3. Parties appearing telephonically shall:
  - a) Call promptly at the time of hearing.
  - b) Confirm in writing to the court BEFORE the hearing.
  - c) Enclose a self addressed stamped envelope so a copy of the Scheduling Order can be mailed to the party.

If no return envelope is provided, that party is deemed to waive receipt of a copy of the Scheduling Order and shall be bound by the Order.

## **Q. FORECLOSURE - Repealed**

## **IV. Small Claims**

### **A. FILING**

1. To initiate a small claims action, the summons shall be filed along with the fee with the clerk of circuit court office.
2. All actions within the small claims jurisdiction are to be filed with the small claims division.
3. The affidavit of service shall be filed no less than 48 hours in advance of the first hearing.

### **B. SERVICE OF SUMMONS**

1. Service shall be by personal service, substitute service or by publication.
2. Upon request of the process server, a summons and complaint will be refiled in order to comply with the statutory service requirements. (§799.05[3])
3. For money and replevin actions the summons must be served at least 14 days before the return date and not more than 60 days to obtain personal service. If personal service cannot be obtained within 60 days, the case can be adjourned for publication and that publication service must be within 90 days of filing.
4. For eviction actions the summons must be served at least 5 days before the hearing and not more than 60 days from the return date.

### **C. RETURN DATE**

1. Return on money actions shall be heard before a clerk at which time a pretrial may be held. If the matter is contested after pretrial, a trial date will be immediately given by written notice. An appearance by the plaintiff is necessary unless defendant has filed responsive pleadings before the return date.
2. Returns on evictions and replevins are heard before the assigned judge. If contested, a trial date will be given in court within one week of the return date.
3. If responsive pleadings have been filed and either party is not present, a notice of the next hearing will be mailed.

### **D. GARNISHMENTS**

1. Service shall be by personal service, substitute service or by publication.
2. Orders to pay must direct the garnishee defendant to pay the money directly to the plaintiff/attorney.

### **E. RESPONSIVE PLEADINGS**

All responsive pleadings shall be in writing. Motion dates shall have the date of hearing inserted.

## **F. DISMISSALS**

1. If service is not made within 60 days of filing, the action will be dismissed.
2. If service has been made and there has been no action for six months after service, the case will be dismissed.

## **G. EVICTION ACTIONS**

1. A written notice to vacate premises must be filed with the small claims division prior to the return date.
2. A writ of restitution must be prepared in duplicate with the original filed with the court.

## **H. JUDGMENTS**

1. In uncontested matters, judgment will be granted on the return date if service has been made.
2. A combination money and replevin judgment is allowed.
3. A replevin judgment must be docketed before the clerk will issue an execution to the sheriff.

## **I. CONTEMPT**

1. That contempt petition must be filed within one year from the date of judgment.
2. That the Sheriffs of all Wisconsin Counties must honor Body Attachment issued by Wisconsin Courts under this section.



# V. Probate

## A. FILING

All petitions are filed with the probate division.

## B. ESTATES

1. A court hearing is not required after filing of a petition if all necessary waivers and documents are on file.
2. The inventory must indicate the method used in determining real estate value.
3. The assigned judge will sign a duplicate copy of the final document in an estate proceeding. The duplicate must accompany the original.
4. Only copies prepared by the probate division will be certified.
5. Upon the filing of the Order Appointing GAL, the Register in Probate will provide the name of the attorney from the list approved by Probate Court.
6. A petition and order must be filed in order to secure a refund of a filing fee.
7. Upon filing a will wherein the decedent has no assets, a letter indicating no assets must accompany the will.
8. The filing fee must be paid when the inventory is filed, or when summary petitions are filed.
9. Petition for Extension of Time and Order Extending Time must be filed if estate deadlines are not met.
10. Review hearings are scheduled before the Probate judge when an estate is delinquent. Attorneys are subject to sanctions by the court for failure to appear.
11. An affidavit of mailing as to creditors is required as proof that notice was given to creditors.
12. Benchmarks require estates to be closed within one year of dated of death.
13. If a copy of Will is filed, it must be indicated on the Application for Informal Administration, Petition for Formal Administration, Waiver and Consent, Statement of Informal Administration, and Order for Administration.
14. Wills for safekeeping must be in a sealed envelope with the filing fee.

## C. GUARDIANSHIPS FOR MINORS AND CHAPTERS 51 AND 55 MATTER FOR MINORS.

1. The judge assigned probate jurisdiction shall have they authority to hear and decide all Chapter 51 and Chapter 55 matters involving juveniles, and all minor guardianship petitions under Chapter 54.
2. As to all Chapter 54 minor guardianship petitions, the following shall apply:
  - a) All petitions for minor guardianship will be filed in probate court
  - b) If there is a CHIPS petition pending, or a CHIPS referral to the District Attorney, or a CHIPS dispositional Order entered that directly involved the minor, the minor's parents, the minor's grandparents, or

the minor's siblings, the Petition for Minor Guardianship shall be heard by the Juvenile Court Judge, unless C 2.(f) applies.

- c) The probate guardianship administrator and the GAL assigned to the case shall inquire of the Racine County Human Services Dept (HSD) if any of the above circumstances apply at the time of the filing of a petition for minor guardianship.
- d) The probate guardianship administrator shall require that any Petitioner for a minor guardianship of the person file with the court at the time of filing the petition, a statement containing the name and birth date of each individual living in the residence of the Petitioner. The statement shall be on a form provided by the probate guardianship administrator.
- e) HSD shall report to the probate guardianship administrator and the GAL assigned within 72 hours of inquiry.
- f) If the circumstances of C.2. (b) Apply, the GAL, the assistant District Attorney, and the HSD CPS worker will discuss the case. Upon their recommendation, the case may be assigned to the probate judge for the hearing. otherwise, the hearing on the petition is to be heard by the Juvenile Court Judge.
- g) Unless it is not feasible, the probate guardianship administrator will appoint the same GAL in the Chapter 54 case who is appointed in the Chapter 48 case.

#### **D. TEMPORARY GUARDIANSHIPS**

1. A Petition for a Temporary Guardian for Incompetent shall be accompanied by a summary statement from a M.D. or PhD or PsyD stating that there is a reasonable likelihood the individual is incapacitated, or testimony from a person with personal knowledge accompanied with a hospital admission report or a history and physical report establishing a reasonable likelihood the individual is incapacitated is also permissible.
2. The GAL may use the short form report available in the probate office.
3. If an emergency protective placement petition is granted and there is an existing Temporary Guardianship (or petition for Temporary Guardianship pending), the court will appoint a temporary guardian under §55.135, Wis. Stats. and dismiss the temporary guardianship under §54.50.

#### **E. GUARDIANSHIPS FOR INCOMPETENTS**

1. If a Protective Placement/Services petition is filed, the probate court administrator will make the referral to the Human Services Dept for the comprehensive evaluation report.
2. The proposed standby guardian must be present at the hearing.
3. If feasible, an existing Health Care Power of Attorney or Durable Power of Attorney or like advance directive is to be filed with the Petition for Guardianship (temporary and permanent).

## **F. SUCCESSOR GUARDIANSHIPS**

1. A petition for a successor guardian for adult guardianships may be granted without a hearing. A report from the GAL is required. If the GAL or the individual requests a hearing, one will be scheduled. At the GAL's discretion or the court's direction, a doctor's report on the approved form may be ordered for purposes of determining rights revoked and powers transferred. If the GAL requests an independent evaluation, the Petitioner will be responsible for arranging the evaluation.
2. Letters of Guardianship on the revised forms will be issued to the successor guardian. Separate Letters are required for a GOP and a GOE. The GAL report and recommendation must cover the rights revoked and powers transferred.
3. A Petition for a Successor Guardian for a minor requires a hearing.
4. If a successor guardian is appointed without a hearing, the successor guardian must file within 10 days of the signing of the Order an Affidavit of Mailing stating that all statutorily interested persons have received the Notice and Order.

## **G. FOREIGN GUARDIANSHIPS**

If all the statutorily-required paperwork supporting a Petition for Receipt and Acceptance of a Foreign Guardianship is not submitted within 90 days of the filing of the Petition, the Petition shall be summarily dismissed without prejudice.

## **H. EXPANSION OF ORDER OF GUARDIANSHIP**

The proposed order must be submitted with the written statement requesting removal of rights from the individual or the transfer of powers to the guardian.

## **I. CONSERVATORSHIPS**

This paragraph is revoked in its entirety.

## **J. ADOPTIONS**

1. All petitions for adoption shall be filed in probate court.
2. If it is a step parent adoption, the juvenile court assigned to hear the TPR petition shall hear the step parent adoption immediately following the TPR ruling, if feasible and practical. Otherwise, the petition shall be heard in probate court.
3. In step parent adoptions, the investigation will be conducted by the family court commissioner's office. A copy of the Petition and Order for Hearing shall be filed with the family court commissioner's office along with a copy of the "face sheet" available in the probate office.

## **K. MINOR COURT SETTLEMENTS**

1. All minor court settlement petitions shall be filed at least 10 days prior to the hearing and shall be assigned to probate court.
2. Upon hearing the petition for approval, the minor, attorney, and at least one parent shall be in attendance. The court may require the presence and testimony of any attending or examining physician. The court may require other evidence relating to the claim and injury.
3. If the assets of the minor are \$50, 000 or less, the petitioner shall have the option of using a statutory alternative to a guardianship of the estate pursuant to §54.12(1), Wis. Stats., provided:
  - a) the petitioner furnishes a letter from a statutorily approved financial institution confirming that the money will be deposited in a restricted interest bearing account and no withdrawals are permitted without a court order.
  - b) If feasible and practical, the order approving the minor court settlement shall direct the insurance carrier to pay the proceeds directly into the account established under this provision.
  - c) Within 30 days of the Order, the Petitioner is to furnish to the probate court office a bank statement that verifies the money was deposited.
4. Approval of the minor court settlement may be granted without a hearing if requested by all parties and at the court's discretion.

## **L. GUARDIANSHIP OF ESTATE**

The GOE may not sell, mortgage, pledge, lease, or exchange any real estate interest owned by the individual without court approval.

## **M. ACCOUNTING**

1. Annual accounting may be waived if:
  - the estate is \$10,000 or less, or
  - the individual is in a nursing facility or CBRF or group home or assisted living facility and payments for the residential care go directly to the facility, or
  - it is likely that the individual's estate will be reduced to less \$10,000 within 6 months of the Order for Guardianship, or
  - the estate consists of the individual's homestead only, or
  - the estate consists of a fixed annuity or similar-type asset in pay status
2. If the annual accounting is waived, the final accounting may also be waived.
3. If there is a corporate guardian of the estate, the corporate guardian must have on file a current certificate of indemnification insurance covering their acts as a corporate guardian in an amount of at least \$100,000.
4. Reimbursement for out of pocket expenses is subject to court approval upon request and verification. If the guardian petitions the court for compensation for

services, the guardian must provide an itemization of services rendered by date and a sufficient description of the service rendered using the Petition and Order for Fees form available at the probate court office.

5. In cases where the Individual is in independent living, the guardian may submit a monthly budget to maintain the Individual in independent living. If the court approves the monthly budget, the guardian will not be required to itemize the expenses paid under the monthly budget in the annual accounting report.

#### **N. GUARDIAN AD LITEM FEES**

Guardian ad Litem fees may be assessed from the income or assets of an individual found incompetent at the usual and customary hourly legal rate charged for other legal services. Money collected will be deposited in the fund for GAL contracts.

#### **O. ANNUAL REVIEW OF PROTECTIVE PLACEMENT (WATTS REVIEW) §55.18 AND ANNUAL REVIEW OF INVOLUNTARY MEDICATION ORDER UNDER §55.19**

- a. The probate guardianship administrator will diary the annual reviews and schedule hearings and notify Human Services Dept., GAL, Guardian and agent under a HCPOA, corporation counsel, VA, and individual
- b. The GAL appointment will continue for all annual reviews. If a new GAL is needed, the court will appoint one.
- c. HSD will file the Petition for Annual Review and report simultaneously with the court at least 30 days in advance of the hearing. HSD will provide a copy of the report filed to the individual (facility), the guardian, the GAL, and the agent under a HCPOA.

#### **P. MENTAL HEALTH REVIEW OFFICER**

The circuit court commissioner shall serve as the Mental Health Review Officer for Racine County under §51.14, Wis. Stats.

#### **Q. JUVENILE MENTAL ADMISSIONS §51.13, (2005 Wis. Acts 444)**

- a. The treatment facility director files the petition for inpatient admission of a minor with the probate court office. Filing may be by fax.
- b. The probate court judge reviews the petition within 5 days of filing.
- c. If the judge finds that the petition satisfies the statutory criteria, an order for voluntary admission is signed.
- d. If the petition is insufficient, or the minor or a parent objects to the admission or continuing inpatient treatment, the judge will order an independent evaluation, appoint a GAL, appoint legal counsel for the minor, and schedule a hearing within the statutory timeframes. The clerk of probate court will send all notices.

- e. The hearing will be at the treatment facility, if feasible. The petitioning facility must be represented by legal counsel, who shall prosecute the petition. The hearing must be on the record.
- f. The court shall permit admission if it finds by clear and convincing evidence that the minor is in need of inpatient services, that the inpatient facility offers therapy or treatment appropriate for the minor's needs, and the inpatient treatment is the least restrictive treatment consistent with the minor's needs.
  - Note: no finding of dangerousness and no involuntary medications
- g. If the court does not order admission to the facility, the court shall do one of the following:
  - dismiss the petition and release the minor
  - order the petition to be treated as a petition for involuntary commitment under Chapter 51
  - dismiss the petition and authorize the filing of a CHIPS or JIPS petition.

## **R. APPEARANCES IN CHAPTER 51 PROCEEDINGS**

The Probate Court is aware of the unique challenges facing individuals in Chapter 51 civil commitment proceedings. Many of the individuals in these proceedings are experiencing both physical and mental health issues which make transportation from a mental health facility for a physical appearance more difficult. To provide more humane treatment of these individuals, the Probate Court desires to make alternative appearance arrangements for these individuals rather than require their physical appearance whenever possible. Like the video rule found in Wis. Stat. §885.50, the Probate Court believes that telephonic/video appearances will provide much less disruption for the individual in these matters and will result in more efficient proceedings without compromising fairness and due process.

Therefore, the Probate Court in exercising its discretion in the scheduling and handling of Chapter 51 cases hereby makes the following rules with respect to individual's appearances in the proceedings:

1. Individuals shall appear by telephone/video for all probable cause hearings.
2. If the individual desires to be physically present for a probable cause hearing, the individual and his/her counsel shall notify the Probate Court and the Corporation Counsel Office in writing of the request to be physically present. (Said writing can be accomplished by email or fax).
3. If the written request is received by the Probate Court and the Corporation Counsel at least 24 hours before the scheduled time for the probable cause hearing, transportation arrangements shall be made so the individual can be physically present within the required 72-hour time frame required by statute.
4. In the event the request for a physical appearance is not made within the time referenced in subsection (3) above, then the individual and his/her counsel agree that the matter will be adjourned pursuant to Wis. Stat. §51.20(7)(a).
5. Nothing in this rule shall limit the parties from stipulating in any other 51 proceedings to allow for an individual to appear by telephone/video nor shall it be

interpreted as requiring a telephone/video appearance at the probable cause hearing or any other hearing if the parties to the proceedings agree that it is most efficient and appropriate to have an individual appear in person.

## **S. SETTLEMENT AGREEMENTS**

Pursuant to Wis. Stat. §51.20(8)(bg), the individual may waive the time period for holding a probable cause or final hearing for up to 90 days by entering a written settlement agreement with a treatment plan that is approved by the court. The Probate Court is aware that many courts, including those in our judicial district, approve settlement agreements without requiring any hearing before the court. To be most efficient and create less disruption for these individuals, the Probate Court makes the following rules with respect to settlement agreements:

1. If the Probate Court is provided with a signed settlement agreement executed by the individual, the individual's counsel and the corporation counsel before the time scheduled for the probable cause or final hearing, the Probate Court may approve the settlement agreement without a hearing.
2. Nothing in this rule shall limit the Probate Court from requiring that the parties appear for the probable cause or final hearing to approve a settlement agreement nor limit the parties from requesting that the Probate Court hold the probable cause or final hearing to approve a settlement agreement.

# VI. Felony

## A. FILING

All papers shall be filed with the felony division. The case number must be indicated.

## B. PREAPPEARANCE BAIL

1. Bail shall be one-half of the maximum fine in cash except for the following classes of felony crimes: Forgery or Uttering, and/or Theft
  - (a) If the charge(s) involves a forgery or uttering, and/or theft, and where the accused a) has no prior felony record, b) is not presently on probation or parole, c) is a resident of Racine County, and d) is not currently on bond for other pending matters, a judge or court commissioner, by telephone or in person, may allow a signature bond. No bail shall be allowed if the charge(s) involves a class A or B offense.
2. In every situation where the alleged crime involves domestic abuse, there shall be a "no contact with the victim" provision in each pre-appearance bond.
3. If property is to be considered for bond, the surety holder must furnish proof of ownership, title and equity together with proof of any outstanding mortgages or liens prior to the surety being considered. If the surety is accepted, a lien will be recorded in the register of deeds office and will not be released until the case has been completed. The recording fee is immediately collected. No application for removal of the lien will be heard without the surety producing the defendant at the hearing.
4. All bail modification motions must be in written form, with the date of the hearing indicated. The motion to modify must be served on the district attorney and any other interested party and filed with the court 24 hours prior to the scheduled hearing. The date for the hearing is secured from the case manager for felony matters and scheduled as follows:
  - (a) If filed after the first appearance and prior to the preliminary hearing.
  - (b) These motions may also be considered at any regularly scheduled court proceeding.

## C. INITIAL APPEARANCES

At the initial appearance if probable cause is found, a tab is pulled and the matter is set for preliminary hearing.

## D. PRELIMINARY HEARINGS

At the conclusion of the preliminary hearing where the defendant is in custody, the matter shall proceed to arraignment. The district attorney shall be prepared to file an Information at said time reflecting the charges in the criminal complaint. If the charges remaining after bind over are different than



those in the complaint, the District Attorney shall have 10 days to file an Information containing these charges. The Defendant shall have 15 days from the date of the arraignment at the preliminary hearing to exercise the right to substitute. The preliminary hearing court shall not take changes of plea nor impose sentences.

## **E. MOTIONS**

1. All motions shall be in written form and scheduled through the case manager regardless of the judge assigned. The hearing date shall be indicated on the motion papers.
2. Motions after arraignment should be filed within ten days of the arraignment. The court, in its discretion, may allow the filing of motions at any time.

## **F. PRETRIALS**

All jury trials will be scheduled for pretrial. Pretrials will be heard by the criminal case manager.

## **G. SUBSTITUTIONS**

Any party requesting a substitution shall comply with §971.20, Wis. Stats.

## **H. BENCH WARRANTS**

Upon issuance of a bench warrant, the provisions of §969.13, Wis. Stats., will be followed.

## **I. SENTENCINGS**

1. Upon a finding of guilt, sentencing will be scheduled within 4 weeks in custody and 6 weeks out of custody.
2. With some exceptions, sentencing will not occur until the completion of a presentence report.
3. The defense and prosecution will be allowed to review the presentence report before sentencing.
4. At least 48 hours prior to a scheduled sentencing, the Office of Probation and Parole shall make available copies of the presentence report to the sentencing judge, the district attorney, and the defendant's attorney. Counsel and the defendant shall have reviewed the report in full prior to the date of sentencing. No copies may be made of the reports distributed. Counsel shall return their copies of the report to the court at the time of sentencing.

## **J. CHANGE OF PLEA**

When a case is set for a change of plea and placed upon the court calendar, the change of plea form and waiver of rights form must be filed with the clerk of that court not less than four working days prior to the change of plea date.

All cases before the court for a change of plea that have the change of plea and waiver form on file shall be first heard by the court on the designated day.

If the change of plea form or waiver form is not filed prior to four working days before the change of plea date, the case will remain on the calendar, but proceed as a status.

Those cases without a filed change of plea or waiver form shall, at the pleasure of the judge, be held for status and either rescheduled for a change of plea, or other dispositive event; or the defendant may present a change of plea form as time permits to complete the matter on the scheduled date.

In the case of a person transported from either a State Institution or like facility, the Court may consider the date of transfer in determining whether to allow the plea or other hearing to proceed as scheduled.

## **VII. Misdemeanor**

### **A. FILING**

All papers shall be filed with the criminal division. The case number must be indicated. Letters, pleadings, Orders and other communications regarding any case shall be filed with both sides by the party filing the communication in Court.

### **B. ARRAIGNMENT**

1. All scheduled arraignments will be heard by a court commissioner. It is the goal of the Court that arraignments are to be scheduled into Court no more than 30 days after the case is approved for filing by the District Attorney.
2. Not guilty plea:
  - (a) All not guilty pleas must be made in person by the party unless otherwise allowed by the court. The status conference date will be held within 3 weeks of the initial appearance. The jury trial will be held within 6 weeks of the initial appearance.
  - (b) In the absence of a plea, the court will enter a not guilty plea and refer the matter to the Public Defender's office.
3. Guilty/No contest: Upon a guilty or no contest, see paragraph G below.

### **C. BAIL**

1. Bail shall be set in accordance with the State of Wisconsin uniform misdemeanor bail schedule. In extreme or extraordinary circumstances, a Judge or Court Commissioner, by telephone or in person, may allow a signature bond.
2. In every situation where the alleged crime involves domestic abuse, there shall be a "no contact with the victim" provision in every pre-appearance bond. All Domestic Abuse matters are to be heard by the Court Commissioner at the 1st scheduled bond hearing after arrest is made by the police. Bail and its conditions including "no contact" will be dealt with by the Court Commissioner. If the first scheduled bond hearing after arrest is not scheduled for the next time the court holds such hearings, the defendant may request relief of the conditions sooner by contacting the clerk or case manager and requesting such a hearing.
3. If property is to be considered for bond, the surety holder must furnish proof of ownership, title and equity together with proof of any outstanding mortgages or liens prior to the surety being considered. If the surety is accepted, a lien will be recorded in the register of deeds office and will not be released until the case has been completed. The recording fee is immediately collected. No application for removal of the lien will be heard without the surety producing the defendant at the hearing. Surety is also to be present in person during initial bond hearing.

4. Bail modification motions may be considered at any regularly scheduled proceeding. All other bail modification motions must be in written form, with the date of the hearing indicated. The motion to modify must be served on the District Attorney and any other interested party and filed with the court 24 hours prior to the scheduled hearing. The date for the hearing is secured from the Case Manager for Misdemeanor. The hearing will be set before the judge assigned to hear the case.

#### **D. SUBSTITUTIONS**

All requests for the substitution of a judge must be filed in accordance with Wisconsin Statute 971.20.

#### **E. STATUS CONFERENCES**

1. The change of plea date shall not exceed 45 days from status conference. A jury or court trial date shall not exceed 45 days from status conference.
2. If restitution is involved, the district attorney should appear at the status conference with the restitution amount determined. If the amount is \$300.00 or less, it must be paid in full by the change of plea date.
3. Attorneys appearing on behalf of their client must have authorization to fully negotiate plea agreements.
4. The guilty/no contest plea questionnaire and waiver of rights form shall be completed by all pro se defendants at the status conference if a plea agreement is reached.

#### **F. MOTIONS**

All motions must be in written form and scheduled through the case manager regardless of the Judge assigned. The hearing date shall be indicated on the motion papers. Copies of all motion pleadings shall be served on the opposing party or attorney. All Orders for signing by the Court shall first be presented to opposing counsel or party before being presented to the Court. If there is disagreement as to the Order or its form, a hearing shall be scheduled through the case manager.

#### **G. PLEAS OF GUILTY OR NO CONTEST**

1. Upon a plea of guilty or no contest the court may sentence the defendant immediately or shall set a sentencing date.
2. When a case is set for a change of plea and placed upon the court calendar, the change of plea form and waiver of rights form must be filed with the clerk of that court not less than four working days prior to the change of plea date.

All cases before the court for a change of plea that have the change of plea and waiver form on file shall be first heard by the court on the designated day.

If the change of plea form or waiver form is not filed prior to four working days before the change of plea date, the case will remain on the calendar, but proceed as a status.

Those cases without a filed change of plea or waiver form shall, at the pleasure of the judge, be held for status and either rescheduled for a change of plea, or other dispositive event; or the defendant may present a change of plea form as time permits to complete the matter on the scheduled date.

In the case of a person transported from either a State Institution or like facility, the Court may consider the date of transfer in determining whether to allow the plea or other hearing to proceed as scheduled.

Pro se defendants shall have their completed forms in the court file at the time of entry of plea in accord with E-3 above.

- a) No form is required for pleas to charges amended to forfeiture or ordinance violations.
- b) In cases involving multiple counts a separate form shall be submitted for each count.

## **H. BENCH WARRANTS**

Upon issuance of a warrant, the statutory provisions of Wisconsin Statute 969.13 are followed.

## **I. SENTENCING**

1. If a presentence report is allowed and ordered, a date for sentencing will be set. Written notice will be given to all parties.
2. In addition to the sentencing guidelines as adopted by the Circuit Courts, sentencing options generally are as follows:
  - (a) Community service
  - (b) Revocation/suspension
  - (c) Mental health assessment
  - (d) Jail
  - (e) Probation
  - (f) Alternatives to Incarceration Program
  - (g) Anti-shoplifting program
  - (h) Alternatives to Aggression Program
  - (i) Controlling Community Violence Program
  - (j) Huber Law privileges
  - (k) Fine and costs are allowed under law. The court may allow 30 days for payment. The court may authorize payment of the fine under a written installment plan to be monitored by court staff. If the fine is not paid and a

Pederson hearing is not requested, a commitment to jail (State ex rel Pederson, 56Wis. 2d 286 (1972)) or a motor vehicle suspension will be issued.

- (1) Alcohol or drug assessment

## **VIII. Traffic and Forfeiture**

### **A. FILING**

All papers shall be filed with the traffic and forfeiture division. The case number must be indicated. Letters, pleadings, orders and other communications regarding any case shall be filed with both sides by the party filing the communication in Court.

### **B. ARRAIGNMENT**

1. All scheduled arraignments will be heard by a Court Commissioner. It is the goal of the Court that arraignments are to be scheduled into Court no more than 30 days after the case is approved for filing by the District Attorney or the case is commenced by the issuance of a Uniform Traffic Citation or a County or Municipal citation.
2. Attorneys appearing on behalf of their client must have authorization to fully negotiate plea agreements. In criminal traffic matters, the guilty/no contest plea questionnaire and waiver of rights form shall be completed.
3. Not guilty pleas:
  - (a) All not guilty pleas made in person by the attorney/party will be given a status court date by written notice at the time of arraignment. The status court date will be scheduled within 30 days of the arraignment.
  - (b) Not guilty pleas by mail will be accepted. Notice of status court date will be mailed. Default judgment will occur if no appearance is made: In forfeiture actions with 30 days to pay or suspension of driver's license; in nonforfeiture matters, nonappearance will result in the issuance of a warrant and forfeiture of any bond on deposit.
4. Guilty/no contest: Upon a guilty or no contest plea, the court will enter judgment in accord with law. Any deposit made personally or by mail may be forfeited in accord with law.

### **C. BAIL**

1. Bail shall be set in accordance with the State of Wisconsin Uniform Bail Schedules. In extreme or extraordinary circumstances, a Judge or Court Commissioner, by telephone or in person, may allow a signature bond.
2. If property is to be considered for preappearance bond, the surety holder must furnish proof of ownership, title and equity together with proof of any outstanding mortgages or liens prior to the surety being considered. If the surety is accepted, a lien will be recorded in the register of deeds office and will not be released until the case has been completed. The recording fee is immediately collected. No application for removal of the lien will be heard without the surety producing the defendant at the hearing. Surety is also to be present in person during initial bond hearing.

3. Bail modification motions may be considered at any regularly scheduled proceeding. All other bail modification motions must be in written form, with the date of the hearing indicated. The motion to modify must be served on the District Attorney and any other interested party and filed with the court 24 hours prior to the scheduled hearing. The date for the hearing is secured from the Traffic Case Manager. The hearing will be set before the Judge assigned to the case.

#### **D. NONAPPEARANCE IN CONTESTED MATTERS**

If the defendant does not appear in a forfeiture matter, the Court Commissioner or Judge shall convict the defendant of the offense charged and impose a fine, costs and/or other disposition. Any posted money will be forfeited and/or the driver's license will be suspended or revoked in accord with law. In a criminal traffic case, nonappearance will result in the issuance of a warrant for the Defendant and forfeiture of bond.

#### **E. SUBSTITUTIONS**

All requests for substitution must be filed in accordance with §345.315 or 971.20, Wis. Stats.

#### **F. DISPOSITIONS**

Upon sentencing, sentencing guidelines are followed (see I {2} in VII. MISDEMEANOR). The disposition options generally are:

1. Jail in criminal traffic matters.
2. Fine or forfeiture and costs as allowed under law. The Court may allow 60 days for payment. The Court may authorize payment of the fine or forfeiture under a written installment plan to be monitored by Court staff. If the fine is not paid and a Pederson hearing is not requested, a commitment to jail (State ex rel Pederson, 56 Wis. 2d 286 (1972) or a driver license suspension will be issued.
3. Suspension or revocation of driver's license.
4. Forfeiture of bond money.
5. Alcohol or Drug Assessment or enrollment in driver assessment program.
6. Civil default judgment.

#### **G. OCCUPATIONAL LICENSES**

To be eligible for an occupational license, the following requirements must be met before the Judge may even consider the request as it pertains to HTO revocations/DOT appeals only:

1. All request forms and documentation are to be presented to the Traffic Court.
2. No other revocation has occurred during the previous 12 months.
3. All waiting periods have been satisfied.



4. No more than two convictions for operating a motor vehicle while intoxicated and/or refusals within a five year period.
5. Must be gainfully employed or a student or have other recognized need status.
6. All drivers must specify their hours of operation and counties of travel.
7. Exhibit proof of insurance.
8. Payment of filing fee.
9. If an occupational license is authorized, no alcohol at all may be in the driver's blood whenever he/she may be driving. Absolute sobriety is required.

## **H. COURT ORDERED CHEMICAL TESTS**

If defendant does not pay the chemical testing fee, the unpaid fee will be converted into jail time to be discharged at the same daily rate as set by the judges for the dollar credit amount for unpaid fines.

## **I. BENCH WARRANTS**

Upon issuance of a warrant, the statutory provisions of Wisconsin Statute 969.13 are followed.

## **J. MOTIONS AND ORDERS**

All motions must be in written form and scheduled through the Case Manager or Court Worker regardless of the Judge assigned. The hearing date shall be indicated on the motion papers. Copies of all motion pleadings shall be served on the opposing party or attorney. All Orders for signing by the Court shall first be presented to opposing counsel or party before being presented to the Court Clerk who will forward the proposed order to the appropriate judge. If there is a disagreement as to the Order or its form, a Hearing shall be scheduled through the Case Manager.

## **K. SCHEDULING CHANGES**

If scheduling changes are necessary, the Case Manager or Court Worker shall coordinate those changes with all parties involved upon judicial approval of written request.

# IX. Juvenile

## A. DEFINITION

Juvenile jurisdiction includes matters involving persons under age 18, (under age 17 in the case of juveniles alleged to be delinquent) as provided in Chapters 48 and 938, Wis. Status., and injunctions arising out of §813.22, Wis. Stats. Chapter 51 proceedings concerning juveniles are heard in the probate court.

## B. FILING

1. Delinquency petitions may only be filed by the district attorney. The judge may direct a petition be filed but must recuse him/herself as provided by statute.
2. Petitions alleging a child to be in need of protection or services under Chapter 48, Wis. Stats. (CHIPS) or a juvenile to be in need of protection or services under Chapter 938, Wis. Stats. (JIPS) may only be filed by the district attorney or other person authorized by law, including a parent or guardian of the minor.
3. Ordinance violation citations should be issued by law enforcement agencies. The district attorney may also file as ordinance violations matters referred to them for formal petition.
4. TRO/Injunction petitions under §813.22, Wis. Stats. may only be filed by the child victim, parent, stepparent, legal guardian of the child victim, or district attorney in conjunction with a petition for a child in need of protection or services.
5. All delinquency petitions shall be filed with the Juvenile Judge assigned to delinquency proceedings unless the juvenile has previously been granted a substitution of that Judge, and the removed proceedings is still pending, or, on a dispositional Order before a different assigned Judge; in that case the clerk shall file the proceedings to the Judge assigned to the first proceedings. The juvenile is not on an Order by any other Judge, the Order having expired or been dismissed, the proceedings shall be filed with the delinquency Juvenile Judge.
6. All non-delinquency petitions shall be filed with the Juvenile Judge assigned to non-delinquency proceedings unless the juvenile has previously been granted a substitution of that Judge, and the removed proceedings is still pending, or, on a dispositional Order before a different assigned Judge; in that case the clerk shall file the proceedings to the Judge assigned to the first proceedings. The juvenile is not on an Order by any other Judge, the Order having expired or been dismissed, the proceedings shall be filed with the non-delinquency Juvenile Judge.

## C. DETENTION HEARINGS

1. The judge(s) assigned juvenile matters or a juvenile court commissioner shall hear all requests regarding detention of juveniles on a daily basis as scheduled by the court. The judicial court commissioner, or his designee, may review detentions based on the RIVERSIDE decision on weekends.
2. The staff of the juvenile detention facility or a contracted agency, with approval from the court, shall set the rules for and shall monitor juveniles placed on any form of home detention.

#### **D. PLEA HEARINGS**

1. All scheduled plea hearings shall be heard by either a judge or a juvenile court commissioner, with the right of review by the court.
2. Upon an admission to the petition in a plea hearing held before a court commissioner, a plea and disposition hearing shall be scheduled before the court. If an admission is reasonably anticipated but not made at the plea hearing, a denial may be entered and a plea and disposition hearing may be scheduled before the court.
3. Upon a denial, a pretrial date shall be scheduled before a juvenile court commissioner.

#### **E. PRETRIALS**

1. Pretrials will be heard by a juvenile court commissioner or his or her designee.
2. All counsel and parties, excluding children whose appearance is waived by a guardian ad litem, shall be present at the pretrial at the date and time designated.
3. If resolution of the matter is reached, a date to formalize the resolution on the record before the court shall be set, allowing sufficient time for a social history to be prepared.
4. If a resolution is not reached, a fact-finding hearing shall be scheduled before the court, with notice given at the close of the pretrial hearing.
5. Any matter resolved after the pretrial hearing shall be reported to the juvenile court clerk upon resolution. Any party or counsel not complying with this provision may be subject to a penalty determined by the court.

#### **F. ORDINANCE VIOLATIONS**

1. Ordinance violations are heard and resolved by a juvenile court commissioner.
2. If the matter is contested, a pretrial date shall be scheduled before the juvenile court commissioner.
3. If resolution of the matter is reached at pretrial, the court commissioner may order the disposition at that time. If resolution is not reached, the matter shall be scheduled for fact finding before the court.
4. In appropriate cases, a juvenile may resolve an ordinance violation in advance of the scheduled court date by depositing with the court the amount indicated on the citation.

5. If a juvenile fails to appear for an ordinance hearing and has not previously paid the forfeiture amount, the court commissioner will assess a fine in the amount specified on the citation plus court costs for each violation and, if required by statute, the appropriate driver's license suspension. Notice of the default judgment will be mailed to the juvenile, allowing 60 days to pay the fine. In the event the fine is not paid within 60 days and no extension has been granted, the juvenile's driver's license will be suspended until the fine is paid, but not less than 30 days nor more than 5 years. For a juvenile who does not at that time have a driver's license, the period of suspension begins when the juvenile applies for a driver's license.

## **G. FINES AND FORFEITURES**

Money orders or cashier's checks payable to Racine County are acceptable forms of payment for any fine or forfeiture imposed by the juvenile court judge or juvenile court commissioner. Payments shall be made at the counter in Juvenile Court. Cash can only be accepted for payment of a fine or forfeiture during the hours that the traffic and misdemeanor court can process such payments. No personal checks will be accepted.

## **H. SUBSTITUTION OF JUDGE**

All requests for substitution of judge shall be governed by §48.29 and §938.29, Wis. Stats., and shall be filed in writing prior to the end of the plea hearing as required by §48.30 and §938.30, Wis. Stats.

## **I. PSYCHOLOGICAL EVALUATIONS**

As a general rule, the court will not order pre-dispositional psychological evaluations for diagnostic purposes unless coverage through private insurance or Title 19 has been verified in advance.

## **J. TIMELINES FOR JUVENILES HELD IN SECURE DETENTION**

The court has adopted the following timelines for juveniles held in secure detention:

1. Juveniles continued in secure detention after their initial detention hearing will have a plea hearing scheduled two working days later at the time of regular detention hearings for that day.
2. Juveniles continued in secure detention after their plea hearing, and by whom denials are entered will have a pretrial scheduled at the time of regular detention hearings on the soonest available date, allowing sufficient time for discovery and preparation prior to the pretrial.
3. Juveniles continued in secure detention after their plea hearing and by whom admissions are entered or reasonably anticipated, or after such a plea is entered at any stage of their proceedings, or after fact finding and a finding of

- delinquency, will have a dispositional hearing scheduled on the soonest available date, allowing sufficient time for the preparation of a court report
4. An attempt will be made to schedule hearings for juveniles who are in secure detention at the hearing room at the detention center. In the case of hearings for juveniles who are in secure detention which are scheduled at the courthouse or the law enforcement center, the juvenile may be transported to the hearing by the Sheriff's department or may appear by video-conferencing from the detention center with the approval of the court if arrangements are made prior to the hearing.

## **K. ADJOURNMENTS**

1. Any party requesting an adjournment of a scheduled hearing must submit a request in writing, stating the reason for the adjournment and giving the position of the other parties with respect to the adjournment. The court may decide the request on the basis of the written request or may require a hearing on the record. If the adjournment is granted, it is the responsibility of the requesting party to notify all other parties of the new date.
2. As a general rule, no adjournments will be granted for juveniles held in secure detention.

## **L. APPOINTMENT OF COUNSEL FOR CHILDREN UNDER 10 YEARS OF AGE**

1. Any person or agency bringing a petition against a child under 10 years of age alleging a delinquent act as defined in Chapter 938, Wis. Stats. shall, in addition to service of the petition upon the juvenile, the parent of the juvenile, the guardian of the juvenile or any person having legal custody or control of the juvenile, also serve a copy of the petition upon the state public defender in Racine County for review and providing counsel as may be appropriate for the juvenile.
2. Any counsel representing a juvenile under the age of 10 alleged to have committed a delinquent act may petition the court for the appointment of a guardian ad litem for the juvenile pursuant to §938.23 or §938.235, Wis. Stats.

## **M. MOTIONS**

All motions shall be made in writing and filed with the Juvenile court and served upon opposing counsel and upon any unrepresented party at least five days prior to the scheduled motion hearing. Motion hearing dates are to be scheduled through the Juvenile Court Case Manager or Deputy Clerk.

## **N. WALK-IN HEARINGS**

Walk-in hearings before a Juvenile Court Judge or court commissioner may be scheduled by the social worker or an attorney. A date for the hearing must be

obtained from the Juvenile Court Case Manager or Deputy Clerk. A written "Request for Walk-In Hearing" form must be completed, with the original to be filed with the court and copies to be distributed to all other parties.

## **O. MISCELLANEOUS**

1. Individuals arriving for a court proceeding shall immediately inform the bailiff which case they are appearing on.
2. Any non-party authorized by the court to attend a juvenile court proceeding or to examine juvenile court records shall not divulge the identities of the participants or persons involved without prior approval of the judge.
3. When a social history or court report is ordered, it shall be filed with the court by the Human Services Department at least 48 hours prior to the hearing for which the report is prepared. Copies of the report for all counsel in the matter shall also be available at the juvenile court at least 48 hours prior to the hearing. If counsel wishes to have the court report faxed to his/her office, those arrangements must be made directly with the worker assigned to prepare the report.
4. Policies are on file with the juvenile court regarding detention and intake procedures.
5. Parties, attorneys, or social workers may appear at court proceedings by video-conferencing with the approval of the court if arrangements are made prior to the scheduled proceeding.

## **P. NOTICE TO VICTIMS OF JUVENILES' ACTS**

Pursuant to the duty imposed by §938.346(5), Wis. Stats., the following procedures are established to specify when, how, and by whom the required notices to victims of juveniles' acts shall be provided and with whom victims may confer. All notices shall be given in writing, delivered personally or by regular mail, except that notice of the time and place of any hearing may be given verbally if written notice cannot reasonably be given under the circumstances. All notices of any right of the victim to confer on a matter shall specify the person who the victim is to contact to exercise such right.

1. The Racine County Human Services Department shall provide the following notices to victims:
  - (a) Offer an opportunity to confer before entering into a deferred prosecution agreement. (§938.24(5) & 938.245(1m), Wis. Stats.)
  - (b) Notice that a case is being closed, given at the time that the decision to do so is made. (§938.24(5) & 938.24(5m), Wis. Stats.)
  - (c) Notice of the procedure to obtain identity of the juvenile and the juvenile's parents, the procedure to obtain police reports, and the potential liability of the juvenile's parents, given prior to completion of the intake inquiry. (§938.346(1) (a), (b), & (c), Wis. Stats.)

- (d) Notice of the right to be accompanied by a service representative; to restitution; to crime victim compensation; to a speedy disposition; to have personal property returned; and to complain to the department of Justice concerning the treatment of crime victims and to request review by the crime victims rights board of the complaint, given prior to completion of the intake inquiry. (§938.346(1) (h), Wis. Stats.)
  - (e) Information regarding any deferred prosecution agreement which is entered, given at the time the agreement is made. (§938.346(1m), Wis. Stats.)
2. The District Attorney shall provide the following notices to victims:
- (a) Notice of a decision not to file a petition for determination of status, given at the time that the decision is made. (§938.25(2m), Wis. Stats.)
  - (b) Upon issuing a petition for determination of status, notice shall be given of the procedure for requesting HIV or STD testing of a juvenile; the right to request and receive notice of hearings; the right to a separate waiting area; the right to have his or her interest considered concerning continuances; the right to have victim impact information included in a court report and to have the person preparing the court report attempt to contact the victim; the right to employer intercession services; the right to make a statement to the court; the right to information regarding any consent decree or dispositional order; the right to request an opportunity to confer, if requested, on amendment of petitions, consent decrees and disposition recommendations and if the district attorney decides not to file a petition or the proceeding is terminated without a consent decree or dispositional order after the filing of a petition. (§938.346(1m), Wis. Stats.)
  - (c) Notice of any hearings involving the juvenile to victims who have requested such notice, given as soon as reasonably possible after the hearing has been scheduled. (§938.27(4m), Wis. Stats.)
  - (d) Notice that a petition has been dismissed or did not result in a consent decree of dispositional order, given as soon as reasonably possible after such event has occurred. (§938.12, Wis. Stats.)
  - (e) Notice of the right to make a statement to the court, given before entering into a consent decree. (§938.32(1) (b) 2, Wis. Stats)
  - (f) Notice of the right to make a statement to the court given after a finding of delinquency or JIPS under Sec. 938.13(12), Wis. Stats. Or prior to a plea and dispositional hearing at which it is anticipated that such a finding will be made. (§938.335(3m) (b), Wis. Stats)
  - (g) Notice of information regarding any consent decree or dispositional order, given as soon as reasonably possible after the entry thereof. (§938.346(1m), Wis. Stats)

## **Q. RACINE COUNTY JUVENILE INTAKE POLICY**

1. Screening for jurisdiction
  - (a) Upon receiving an apprehension, the intake worker shall first determine whether the juvenile court has jurisdiction.

- (b) Juvenile court jurisdiction exists for the following:
  1. Delinquent juveniles ages 10, 11, 12, 13, 14, 15 and 16.
  2. Juveniles in Need of Protection or Services ("JIPS").
  3. Uncontrollable. (Private proceeding brought by a parent or guardian.)
  4. Habitual truants from school.
  5. School dropouts. A "dropout" is defined in §118.153(1)(b) as one who ceased to attend school, does not attend a public or private school, technical college or home-based private educational program on a full-time basis, has not graduated from high school and does not have an acceptable excuse under §118.15(1)(b) to (d) or (3).
  6. Habitual truants from home. (Private proceeding brought by a juvenile, parent or a relative in whose home the juvenile resides.)
  7. Under 10 delinquents.
  8. Not responsible by reason of mental disease or defect or incompetent.
  9. Interstate Compact proceedings.
- (c) Original adult court jurisdiction exists in the following situations. The cases are filed directly in adult court, without waiver out of juvenile court:
  1. Battery by prisoner, assault by prisoner, and battery to probation, parole or aftercare agent. (§§940.20(1), 946.43, 940.20(2m))
    - (i) The offense must have been committed by an inmate of a secured correctional facility, secure detention facility, secured child caring institution, or secured adolescent treatment unit or the victim is a probation, parole or aftercare agent and;
    - (ii) The juvenile who commits the offense must have been previously adjudicated delinquent.
  2. First degree intentional homicide, first degree reckless homicide, or second degree intentional homicide (§§940.01, 940.02 or 940.05), including attempts.
  3. Juveniles who have been previously waived or subject to adult court jurisdiction:
    - (i) The juvenile has been convicted of a previous violation in adult court following a juvenile court waiver; or
    - (ii) The juvenile has been waived into adult court and proceedings are pending; or
    - (iii) The juvenile has been convicted of a previous violation over which the adult court has original jurisdiction; or
    - (iv) The criminal proceedings involving adult court jurisdiction are pending when the new charges against the juvenile are filed.
- 2. Venue screening
  - (a) If venue outside of Racine County is an option in a given case; HSD shall inform the District Attorney's Office in writing as to the county in which it is recommended the case should be prosecuted.
  - (b) All decisions regarding whether a particular matter shall be prosecuted in this county or referred to another county for prosecution shall be made by the District Attorney's Office.



- (c) No case shall be referred to another county without the written consent of the District Attorney's Office.
- 3. Intake inquiry
  - (a) The intake worker shall refer the following cases immediately to the District Attorney's Office for prosecution:
    - 1. Any offense for which this Intake Policy mandates that the juvenile shall be detained.
    - 2. Any offense for which the juvenile is detained at the discretion of HSD.
    - 3. Any offense for which the intake worker has scheduled a 72 hour hearing.
    - 4. Any offense for which it appears that juvenile court jurisdiction does not exist.
  - (b) In all other cases, the intake worker shall conduct the intake inquiry in accordance with Wis. Stat. §938.24.
- 4. Custody Decisions
  - (a) Mandatory detention for serious offenses:
    - 1. An intake worker shall detain juveniles who are alleged to have committed or attempted to commit the following offenses:
      - (i) Crimes against life and bodily security:
        - (a) First degree intentional homicide (§940.01)
        - (b) First degree reckless homicide (§940.02)
        - (c) Felony murder (§940.03)
        - (d) Second degree intentional homicide (§940.05)
        - (e) Felony battery (§§940.12(2)-(6))
        - (f) Mayhem (§940.21)
        - (g) First degree sexual assault (§940.225(1))
        - (h) Kidnapping (§940.31)
        - (i) Intimidation of Victims/Witnesses (§§940.24-940.45)
      - (ii) Crimes against public health and safety:
        - (a) Drive by shooting (§941.20(3))
      - (iii) Crimes against property:
        - (a) Arson of buildings (§943.02(1))
        - (b) Burglary to occupied dwelling (§943.10)
        - (c) Operating vehicle without owner's consent where there is an attempt to elude officers (Statute 943.23).
        - (d) Operating vehicle without owner's consent when juvenile has no driver's license (Statute §943.23).
        - (e) Carjacking (§§943.23(1g), (1m) or (1r)
        - (f) Armed or strong armed robbery (§943.32)
      - (iv) Crimes against public peace:
        - (a) Various forms of stalking (§947.013(1t), (1v) or (1x)
        - (b) Bomb scares (947.015)
      - (v) Crimes against children:

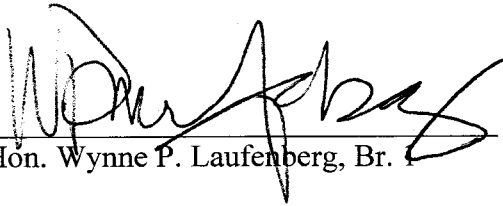
- (a) First degree sexual assault and second degree sexual assault of a child where force is used (Statutes §948.02(1) and §948.02(2)).
  - (b) Repeated sexual assault of a child (§948.025)
  - (c) Physical abuse of child (§948.03)
- (vi) Weapons offenses:
  - (a) Possession or use of a handgun, short-barreled rifle or short-barreled shotgun in committing a felony under Chapter 940 Statute 938.208(1) (b).
  - (b) Threatened use of a handgun, short-barreled rifle or short-barreled shotgun in committing a felony under Chapter 940 Statute 938.208(1) (b).
- (vii) Drugs:
  - (a) Possession of any controlled substance with intent to deliver.
  - (b) Delivery of any controlled substance.
- (b) Discretionary detention for all other offenses
  1. An intake worker may detain a juvenile who has committed a crime other than those listed in subsection (A), if it is determined, based on the facts and circumstances, as follows:
    - (i) Probable cause exists to believe the juvenile has committed a delinquent act; and
    - (ii) Either of the following:
      - (a) The juvenile presents a substantial risk of physical harm to himself or another person; or
      - (b) The juvenile presents a substantial risk of running away so as to be unavailable for a court hearing.
- 5. 72-hour hearing rule
  - (a) Definition of 72-hour hearing:
    1. The hearing is heard by a juvenile court judge or juvenile court commissioner.
    2. The hearing is scheduled by HSD within 72 hours excluding Saturdays, Sundays, and legal holidays, from the date juvenile intake receives the apprehension.
    3. Notice of the 72-hour hearing must be made by HSD to the juvenile, juvenile's parents, District Attorney's Office and Public Defender's Office at least 24 hours prior to the hearing.
    4. HSD must provide the police reports to the District Attorney's Office at least 24 hours prior to the hearing.
  - (b) When a 72-hour hearing must be scheduled:
    1. Denial by intake worker of a request for detention: If a law enforcement officer requests placement of a juvenile in secure detention, and that request is denied by the intake worker, and a consensus is not reached, the intake worker or the juvenile's case manager shall schedule a 72-hour hearing.
    2. Juvenile on supervision commits new offense: If a juvenile who is on a dispositional order is apprehended for a new delinquency and not

otherwise detained, the intake worker or the juvenile's case manager shall schedule a 72-hour hearing.

3. Juvenile with pending charges commits new offense: If a juvenile with pending charges in juvenile court is apprehended for a subsequent delinquency, the intake worker or the juvenile's case manager shall schedule a 72-hour hearing.
6. Short-term detention for violation of order
  - (a) HSD may detain for not more than 72 hours a juvenile who is alleged to have violated a condition of the dispositional order where the case manager believes it appropriate to detain the juvenile while investigating the violation. The following are examples of situation where detention may be appropriate:
    1. The juvenile is alleged to have committed a crime while subject to a delinquency order; or
    2. The juvenile presents a substantial risk of physical harm to himself or another person; or
    3. The juvenile presents a substantial risk of running away; or
    4. The juvenile has been previously sanctioned for noncompliance with a court order and the worker has probable cause to believe the juvenile is continuing to violate that court order.
7. Notices to victims
  - (a) HSD shall provide the following notices to victims:
    1. If an apprehension is terminated with a counsel and release, HSD shall provide the victim with the notice required by Wis. Stat. §938.346(1) (a) to (c).
    2. If a deferred prosecution agreement is entered into, the HSD shall provide the victim with the notice required by Wis. Stat. §938.346(1) (a) to (d).

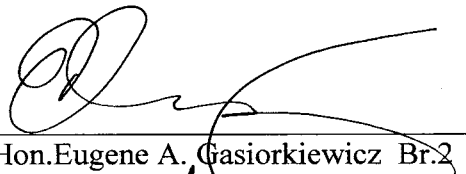
# Approval

We, the undersigned Racine County Circuit Court Judges, hereby approve the Racine County Circuit Court Rules of July 2017.



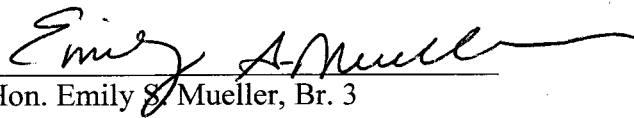
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Hon. Wynne P. Laufenberg, Br. 1



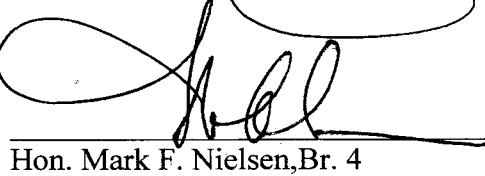
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Hon. Eugene A. Gasiorkiewicz, Br. 2



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Hon. Emily S. Mueller, Br. 3



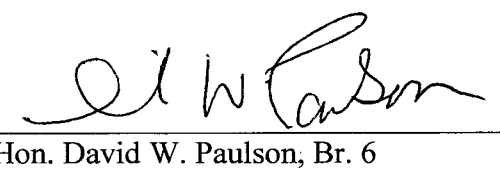
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Hon. Mark F. Nielsen, Br. 4



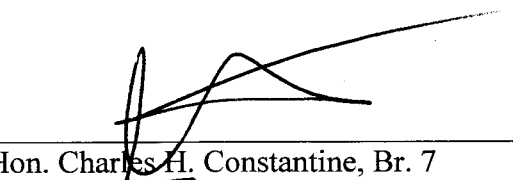
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Hon. Michael J. Piontek, Br. 5



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Hon. David W. Paulson, Br. 6



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Hon. Charles H. Constantine, Br. 7



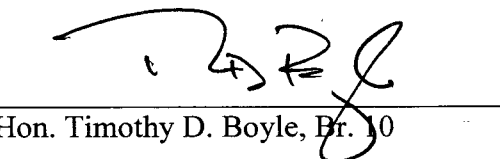
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Hon. Faye M. Flancher, Br. 8



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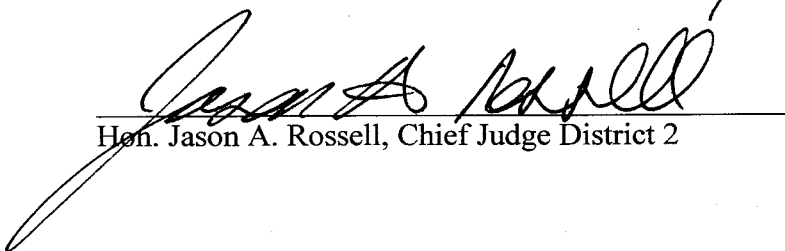
Hon. Robert S. Repischak, Br. 9



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Hon. Timothy D. Boyle, Br. 10

APPROVED THIS 17 DAY OF August, 2017



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Hon. Jason A. Rossell, Chief Judge District 2