

## **Milwaukee County Circuit Court Rules**

(First Judicial District)

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### **PART 1. ORGANIZATION**

#### **I. OFFICE OF THE CHIEF JUDGE ("The Office")**

##### **101. EFFECTIVE DATE OF RULES**

The effect date of each sub-set is as stated above rules shall take effect as provided by Rule 219.

##### **104. EFFECT OF RULES: CITATION**

These rules shall be known and cited as Rules for the First Judicial Administrative District ("District I Rules") of the State of Wisconsin. Effective August 1, 1978, these rules supersede all rules heretofore adopted by the former Board of Judges for Milwaukee County, which are hereby repealed in their entirety. The words "action" and "case" are equivalent.

##### **105. NEW RULES; AMENDMENTS; REPEALS; PROMULGATION OF ALL RULES**

The Chief Judge shall prepare new rules as required, and may amend or repeal existing rules. Such rules, modifications, or repeals are effective upon mailing to the judges of the District. Copies shall be made available to the public.

##### **106. ANNUAL MEETING**

Upon reasonable notice, the Chief Judge shall call a meeting of the District I Judges at an appropriate time in January. At that time, he/she shall:

1. Report upon the previous year's operations;
2. Take up other business.

##### **107. OTHER MEETINGS**

Upon reasonable notice, the Chief Judge may call a meeting at any time. The Chief Judge shall call such meetings upon written request of seven active judges. In the

event a quorum is not present at such meeting, the Chief Judge may dismiss or adjourn it.

### **108. MEETINGS OPEN TO PUBLIC**

All meetings shall be held in the Chief Judge's conference room in the Courthouse, or other appropriate place in the Courthouse or Safety Building. They shall be open to the public.

### **109. COMMITTEES**

There are no standing committees. The Chief Judge shall appoint and dissolve, at his/her pleasure, committees to expedite the administration of justice. When requested by the Chief Judge, a committee shall present a prompt report.

### **110. PROCESS FOR SELECTING AND APPOINTING PROBATE COURT COMMISSIONER**

1. Applicable Statutes. Sec. 757.72(10), Wis. Stats. provides: In counties having a population of 500,000 or more, there is created in the classified civil service the office of the probate court commissioner. Sec. 757.72(4), Wis. Stats. provides: In counties having a population of 500,000 or more, the chief judge of the judicial administrative district shall appoint...probate court commissioners under Secs. 63.01 to 63.17.
2. Certification List Process
  1. Announcement/Request for Names. A Certification Request is submitted to the Milwaukee County Department of Human Resources by the Chief Judge and Register in Probate to initiate the process of obtaining a civil service certification list of persons eligible for appointment to the position. A new list of eligible persons shall be requested if one of the following exists:
    1. There is not an existing list of eligible persons for the specific position;
    2. The current list of eligible persons is more than two years old or is determined to be not sufficiently diverse;
    3. The job description is in need of modification; or
    4. The Chief Judge determines that such a request is appropriate for any other reason.

If creation of a new list is requested, the Department of Human Resources and the Office of the Register in Probate shall cooperate to insure that the position is advertised in the Milwaukee Journal-Sentinel, the Daily Reporter, in major newspapers serving minorities, the Milwaukee Bar Association newsletter, the Association of Women Lawyers newsletter, the Wisconsin Hispanic Lawyers Association newsletter, through Wisconsin Association of Minority Attorneys and through other appropriate communication sources. It shall be requested that the list remain open long enough to allow for dissemination through these organizations.

2. Selection. Upon receipt of the certification list, it shall be reviewed by an initial panel of three persons selected by the Chief Judge, including one circuit judge assigned civil/probate calendars and the presiding judge of the civil division. A list of persons shall be selected based upon merit and fitness for the position. Among criteria to be considered in this selection are demeanor

and knowledge of the law as observed by any of the judges and the creation of a diverse pool of applicants. Once a list of persons to be interviewed is created, the Register in Probate shall contact by letter all persons on the interview list and create an interview schedule. The interview shall be done by a panel of five persons including the Register in Probate, a circuit judge assigned civil/probate calendars other than the circuit judge that served on the initial panel, the presiding judge of the civil division and two other persons selected by the Chief Judge and presiding judge of the Civil Division, keeping in mind that such persons should have a thorough knowledge of all aspects of Probate and Mental Health jurisdiction court operations. The interview panel shall conduct oral interviews with the applicants individually. The interview shall include, without limitation, questions concerning demeanor and work habits, knowledge and experience concerning probate and mental health law. Upon completion of the interviews, the panel shall forward the unranked names of three to five persons for consideration by the Chief Judge. At appropriate times in the selection process, the Chief Judge will inform the judges of the district of the following:

1. The time table for the selection and appointment, and
  2. The names of individuals appointed to the review and interview.
3. Appointment. The Chief Judge may appoint from among the names, may request further interviews of the recommended candidates or may reject the list and request further interviews by the interview panel. The final appointment to the position, and the setting of compensation for that position, rests with the Chief Judge. Upon appointment, the person appointed shall take the oath of office prior to commencement of duties of the position and such oath and the order of appointment shall be filed in the Office of the Clerk of Circuit Court. If a further opening occurs within a reasonable amount of time, the Chief Judge may appoint a person from the list of previously recommended candidates instead of requesting the process to be started over.
  4. Emergency Appointment. In the event that there is not an eligible list for the position, the Chief Judge may fill the position on a temporary basis by an emergency appointment pursuant to Sec. 63.05(3), Wis. Stats., and Rules of the Civil Service Commission.
  5. Temporary Appointment. When a need exists to fill a position for a period not to exceed six (6) months, a temporary appointment may be made by the Chief Judge from the certification list pursuant to Sec. 63.07, Wis. Stats.
3. Selective Certification Process (AB 306). The Chief Judge may submit to the Director of Human Resources a Request for Selective Certification of a Named County Employee pursuant to Sec. 63.05(1), Wis. Stats., accompanied by a statement of the basis for the recommendation and how it is based on the employee's merit and fitness and how the employee meets the established minimum qualifications for the position and why the named county employee is suited for appointment to the position. If selective certification of a named county employee is approved by the Director of Human Resources, the selectively certified person is appointed to the position by the Chief Judge. Upon appointment, the person appointed shall take the oath of office prior to commencement of any duties of the position and such oath and order of appointment shall be filed in the Office of the Clerk of Circuit Court.
  4. Compensation. All compensation matters regarding court commissioners shall be in the sole discretion of the Chief Judge subject to all existing statutory law, county ordinances, union agreements and civil service rules.

## **II. EXECUTIVE COMMITTEE**

### **116. EXECUTIVE COMMITTEE; DEPUTY CHIEF JUDGE; PRESIDING JUDGES (EFFECTIVE 4/4/2007)**

The Chief Judge shall, by directive, designate the Deputy Chief Judge(s) and shall appoint an Executive Committee consisting of, at a minimum, the following:

- The Chief Judge
- The Deputy Chief Judge (s)
- The Presiding Judges of each Division, including Civil, Felony, Misdemeanor, Family, Children's and Probate
- No more than three (3) judges to serve as At-Large members
- The Clerk of Circuit Court

Each member shall serve at the pleasure of the Chief Judge.

## **III. THE DISTRICT COURT ADMINISTRATOR ("The Administrator")**

### **119. GENERAL DUTIES**

It shall be the duty of the Administrator, under the supervision of the Chief Judge, to:

1. Assist in the preparation of budgets for all courts and supporting services;
2. Provide a monthly record to the Chief Judge of flow for each branch of the courts and each full-time court commissioner ("commissioner");
3. Maintain records of requests for case transfers between and among the divisions;
4. Keep a daily record of each active judge assigned from outside the District, and reserve judges on specific assignments through the Director of State Courts under the Chief Justice, and the dates of their appearance;
5. Provide statistics at the request of the Chief Judge;
6. Provide liaison between the judges, Clerk of Court's office, District Attorney's office, Public Defender, County Board, and County Executive, for the Chief Judge;
7. Supervise hiring of free-lance court reporters;
8. Cooperate with the deputy sheriff in fulfilling his/her duties under Rule 125;
9. Serve as executive secretary for Executive Committee;
10. Trace lost or missing files;
11. Ascertain facts concerning actions which are confused in the system;
12. Keep a record of courtroom availability, and secure the cleaning of courtrooms;
13. Calendar visitation of probate hearings and miscellaneous matters; and
14. Prepare assignments within the District.

## **IV. DEPUTY SHERIFF**

### **125. DUTIES**

The duties of the deputy sheriff assigned to the Chief Judge shall be designated by the Chief Judge. Among other things, the deputy sheriff shall:

1. Provide security;

2. Provide liaison with the Sheriff's office;
3. Fulfill special requests of the Chief Judge relating to his/her office;
4. Act as bailiff as needed when the Chief Judge tries actions or conducts hearings.

## **V. CLERK OF CIRCUIT COURT AS DIRECTOR OF COURT SERVICES ("The Director")**

### **128. FUNCTIONS**

The Director, under the supervision of the Chief Judge, shall perform the following functions, in addition to the duties prescribed by Statute for the Clerk of Circuit Court, to-wit:

1. Prepare and submit budget estimates of appropriations necessary for the maintenance and operation of the courts and the supporting services thereof; make recommendations to the Chief Judge; and appear at budget hearings alone, or with the Chief Judge or the Administrator, or such other person or persons designated by the Chief Judge;
2. Present with the Administrator, and such person or persons as the Chief Judge may designate, the needs of the courts to the County Board, State Legislature, Supreme Court, Judicial Council, and committees thereof;
3. File requests for appropriations or requisitions for the courts and approve all invoices for same, keep a record of such requisitions and expenditures, and make recommendations with respect to any necessary budget transfers;
4. Make necessary arrangements for the use of courts and clerks and supporting services thereof, and for the purchase, exchange, transfer and distribution of equipment and supplies for said courts, clerks and services.
5. Investigate and collect statistical data, and prepare reports relating to expenditures for the operation and maintenance of the court and supporting services;
6. Maintain liaison with the County Board, County Executive, Corporation Counsel, District Attorney, Sheriff, Human Resources Department, and administrative and budgetary offices of the County, relating to court administration;
7. Provide a monthly case flow record of each branch of the District; and,
8. Attend to and perform such other matters as may be assigned by the Chief Judge.

## **VI. THE DIVISIONS**

### **132. DIVISIONS: PRIMARY RESPONSIBILITY**

Assignment of judges shall be made to various trial divisions. Each judge so assigned shall bear primary responsibility to hear and determine actions and proceedings that are assigned. The divisions are:

1. Civil;
2. Felony;
3. Misdemeanor-Traffic;
4. Family;
5. Children's; and
6. Probate and Mental Health.

Assignments shall be made by Chief Judge Directive.

#### **145. SPOKESPERSON**

The Chief Judge shall be spokesperson for the judges of the District.

#### **146. ROTATION OF JUDICIAL ASSIGNMENTS (AMENDED DECEMBER 9, 2002)**

1. Seniority
  1. A judicial seniority list shall be prepared and maintained by the Chief Judge. Placement on the list shall be determined by the judge's total length of continuous service as a trial judge, a member of the Court of Appeals, or a justice of the Supreme Court. Continuity of service for seniority purposes shall not be lost by a judge's serving in the military, by sick leave, by maternity leave, or by a period of suspension. However, no credit shall accrue for a period of suspension. The continuous service of a judge shall not be considered interrupted for purposes of this rule if the judge returns to the bench within three years after retirement, defeat in an election, or voluntary resignation from office. No credit will be given for any period of time out of office.
  2. Two or more persons commencing service as a circuit judge on the state payroll on the same day have equal seniority; however, if preference must be decided between two persons of equal seniority, it shall be determined by lot on the first such occasion, and subsequently by turn.
2. Divisional Assignments
  1. Service in a division is limited to one, four-year term. Divisional assignments shall be based primarily on overall seniority.
  2. A judge with four years service in a division must move to another division.
  3. Rotation shall occur on an annual basis as of August 1. The Chief Judge shall determine and prepare the list of persons required to rotate by virtue of this plan and include any other judges required to rotate in the discretion of the Chief Judge and the best interests of the First Judicial District.
  4. Room Assignments: Room assignments shall be made among vacant courtrooms on the basis of total seniority of each judge, unless assignment to a specialty calendar requires the use of a particular facility. It is the stated policy of District I to discourage judges who are not subject to rotation from changing room assignments.
  5. Calendar Assignments: Calendar assignments among open calendars shall be made on the basis of total seniority, except for assignments to specialty courts which are governed by Section D. Civil calendar assignments automatically follow room assignments.
3. Interim Vacancies
  1. An interim vacancy is one that occurs at any time other than a regular rotation.
  2. To be eligible to rotate into an interim vacancy, a judge must have a minimum of two years in a present assignment.
4. Intra-divisional Specialty Court Assignments
  1. Intra-divisional specialty court assignments shall be made to judges assigned to that division on an intra-divisional seniority basis by the presiding judge of the respective division with the concurrence of the Chief Judge.

2. If intra-divisional seniority is equal among two or more judges assigned to a division, then specialty court assignments shall be made on the basis of total seniority.
3. If no judge within the division elects assignment to a particular specialty court, the assignment shall be made by the presiding judge of the division with the concurrence of the Chief Judge.
4. In the event a judge has already been assigned to a particular specialty court, he or she shall not be eligible to return again to the same specialty court unless all other judges in the division have declined such assignment.
5. Assignment to Small Claims Court: Annually at the time of rotation, the judge who is rotating in to the Civil Division who has the least total seniority as a judge who has not been assigned as the Small Claims Judge, shall be assigned to Small Claims Court. "Assigned as the Small Claims Judge" means serving a one-year assignment to the one civil branch designated as the Small Claims Judge pursuant to Rule 397. It does not mean judges who were assigned small claims cases for one calendar month as a large claims court prior to the creation of Rule 397. If all the judges rotating into the Civil Division have been assigned as the Small Claims Judge, then the judge with the least total seniority who has served three years in the civil division (4th Year Civil Judge), but who has not served in small claims within the current civil assignment, shall be assigned to Small Claims Court. If all of the 4th year Civil Judges have been assigned to small claims court, then the judge in the civil division with the least total seniority who has not served in small claims shall be assigned to Small Claims Court. If all the judges in the Civil Division have served in Small Claims Court, the judge with the least total seniority who has not served in the Small Claims Court during their current civil assignment shall be assigned to Small Claims Court. Assignment to Small Claims Court shall be for a period of one year unless the judge elects to remain in the assignment and no other judge requests the assignment.

**(AMENDED DECEMBER 9, 2002)**

Comments: The purpose of this rule is to reduce disruption of calendars by rotating judges in and out of calendars during their assignment in the civil division. Therefore, assigning either a judge rotating into the division or a judge who will rotate out of the division the next year (4th year judge) to small claims court would cause the least disruption in calendars. Additionally, a judge who has served in small claims court in the past should not be obligated to serve a second time if there is any judge in the civil division who has not been assigned to small claims court. Finally, no judge should have to serve more than one year as the small claims judge during a current civil assignment unless that judge volunteers to do so.

5. All rotation assignments and interim vacancy assignments are subject to the approval of the Chief Judge and shall be filled by the Chief Judge in the best interests of the First Judicial District.

#### **147. WORK RULE**

When a judge is not actually involved in trial, he/she shall notify the Chief Judge of such fact, and the Chief Judge shall direct other available assignment.

#### **148. ABSENCE FROM COURT**

If a judge is to be absent from the court for more than three working days, he/she shall advise the Chief Judge in writing in advance of the absence.

#### **149. VACATIONS AND EDUCATION (EFFECTIVE 2/2/99)**

1. Vacations: A judge shall receive five weeks (25 days) per year. A maximum of twenty-five (25) days may be carried over from the previous year.
2. In-state Education or Teaching: Each judge shall take no more than ten (10) working days for in-state judicial education or teaching. Education or teaching in excess of ten (10) working days without prior approval from the Chief Judge may be deducted from the judge's vacation leave. A judge may carry over any unused education time from the previous year.
3. Out-of-state Education or Teaching: Judges may attend additional education programs out-of-state or may be involved in out-of-state teaching, but must receive approval from the Chief Judge. Unapproved out-of-state education or teaching may be deducted from the judge's vacation leave.
4. Committee Assignments: Judges selected to judicial state-wide committees shall, in advance, notify the Chief Judge in writing of the dates they will be attending meetings. Judicial state-wide committee work is not counted as judicial education or vacation leave. Any other judicial or legal committee work without prior approval of the Chief Judge may be deducted from the judge's vacation leave.
5. Limitation on Vacations and Education.

A judge seeking to use consecutive vacation time in excess of three weeks must receive approval by the Chief Judge in advance of the leave.

Each judge shall notify the Chief Judge in writing at least twenty-five (25) calendar days prior to taking a vacation or education or teaching leave if a replacement is required. If a replacement is not required, each judge shall notify the Chief Judge in writing at least five (5) days prior to an absence of more than three (3) working days. Waiver of the five (5) day rule must be approved by the Chief Judge.

At no time shall all judges of the same division take vacations and/or education simultaneously without prior approval of the Chief Judge.

### **VII. LEGAL INTERNS AND LAW CLERKS**

#### **148. ASSIGNMENT**

Legal interns and law clerks shall be assigned by the Chief Judge or Deputy Chief Judge.

#### **151. PRIVILEGE**

All transactions and communications between a judge and his/her assigned legal intern or law clerk, during the period of each assignment, are privileged to the judge.

#### **154. WORK PRODUCT**

The work product of a judge who has been assisted by a legal intern or law clerk is the sole responsibility of the judge.

### **VIII. FULL-TIME COURT COMMISSIONERS ("Commissioners")**



**156. SELECTING AND APPOINTING CIRCUIT COURT COMMISSIONERS  
(EFFECTIVE 2/2/1999)**

1. Applicable Statutes. Sec. 757.68(1)(b), Wis. Stats. and Supreme Court Rule 75.02(1)
2. Announcement/Request for Names. The position is advertised in the Milwaukee Journal-Sentinel, Daily Reporter, in major newspapers serving minorities, in the State Bar of Wisconsin news publications, the Milwaukee Bar Association newsletter, the Association of Women Lawyers newsletter, the Wisconsin Hispanic Lawyers Association newsletter, through Wisconsin Association of Minority Attorneys and through other appropriate communication sources. All applications are returned to the Office of the Chief Judge.
3. Selection. Upon receipt of the applications, the Chief Judge shall appoint a committee comprised of two presiding judges, one commissioner, one administrator and one additional person to screen all applications. This screening committee shall submit an unranked list of applicants to the Office of the Chief Judge for interviews.

Once a list of persons to be interviewed is created, the Chief Judge shall appoint a committee comprised of two presiding judges, the presiding court commissioner, one administrator and the small claims judge.

The interview panel shall conduct oral interviews with the applicants individually. The interview shall include, without limitation, questions concerning demeanor and knowledge of law. Upon completion of the interview, the panel shall forward the unranked names of three to five persons for consideration by the Chief Judge.

At the appropriate times in the selection process, the Chief Judge will inform the judges of the District of the following:

  1. The time table for the selection and appointment, and
  2. The names of individuals appointed to the review and interview panels.
4. Appointment. The Chief Judge may appoint from among the names, may request further interviews of the recommended candidates or may reject the list and request further interviews by the interview panel. The final appointment to the position, and the setting of compensation for the position rests with the Chief Judge. Upon appointment, the person appointed shall take the oath of office prior to commencement of duties of the position and such oath and order of appointment shall be filed in the Office of the Clerk of Circuit Court pursuant to SCR 75.03.

If a further opening occurs within a reasonable amount of time, the Chief Judge, at his/her discretion, may appoint a person from the list of previously recommended candidates instead of requesting the process to be started over. A new list of eligible persons shall be requested if one of the following exists:

  1. There is not an existing list of eligible persons for the specific position;
  2. The current list of eligible persons is more than two years old or is determined to be not sufficiently diverse;
  3. The job description is in need of modification;
  4. The Chief Judge determines that such a request is appropriate for any other reason.
5. Emergency Appointment. In the event that there is not an eligible list for the position, the Chief Judge may fill the position on a temporary basis by an emergency appointment pursuant to Sec. 63.05(3), Wis. Stats., and the Rules of the Civil Service Commission.

6. Temporary Appointment. When a need exists to fill the position for a period not to exceed six (6) months, a temporary appointment may be made by the Chief Judge from the certification list pursuant to Sec. 63.07, Wis. Stats.
7. Selective Certification Process (AB 306). The Chief Judge may submit to the Director of Human Resources a Request for Selective Certification of a Named County Employee pursuant to Sec. 63.05(1), Wis. Stats., accompanied by a statement of the basis for the recommendation and how it is based on the employee's merit and fitness for the position and how the employee meets the established minimum qualifications for the position and why the named county employee is suited for appointment to the position. If selective certification of a named county employee is approved by the Director of Human Resources, the selectively certified person may be appointed to the position by the Chief Judge. Upon appointment, the person appointed shall take the oath of office prior to commencement of any duties of the position and such oath and order shall be filed in the Office of the Clerk of Circuit Court.
8. Compensation. All compensation matters regarding court commissioners shall be in the sole discretion of the Chief Judge subject to all existing statutory law, county ordinances, union agreements and civil service rules.

#### **157. TITLE**

Commissioners shall use the title "full-time court commissioner". Commissioners shall not use the title "judge" or present themselves to the public as judges.

#### **159. ATTIRE**

Commissioners shall don suitable dress, which shall not include a robe.

#### **161. DECORUM**

Dignity and decorum consistent with a courtroom shall attend proceedings before a commissioner.

#### **163. LAW PRACTICE**

Commissioners shall not practice law or present themselves to the public as practitioners.

#### **165. DUTY ASSIGNMENT**

Except as otherwise provided by law, duties of a commissioner shall be designated by the Chief Judge.

#### **167. POLICY**

Commissioners shall not make, but shall implement, policy; they shall be bound by Rule 145.

#### **169. PUBLIC HEARINGS**

Except as otherwise provided by law, all proceedings before a commissioner shall be public.

### **171. SELF-DISQUALIFICATION**

Self-disqualification by a commissioner shall be effective only upon approval of the Chief Judge.

### **173. ETHICS**

Commissioners shall neither solicit nor receive gifts.

## **IX. MISCELLANEOUS**

### **185. REQUESTS**

1. Judicial functions. Exclusive of the annual Judicial Conference, requests to attend judicial conferences and judicial education programs shall be addressed to and processed by the office.
2. Capital improvements; equipment. Requests for the following shall be addressed to the Director, with a copy to the Office, to-wit:
  1. Capital improvements;
  2. Equipment;
  3. Exchanges of equipment;
  4. Removal of furnishings and equipment;
  5. Telephone number changes.
3. Statistics. Requests for statistics shall be addressed to the Office.

### **189. DOCUMENT RETIREMENT**

Office documents consist of:

1. Correspondence;
2. Chief Judge memos;
3. Orders.

The office may discard correspondence in its discretion; directives, two years after the end of the calendar year; orders, three years thereafter.

### **191. RECORDS DESTRUCTION**

The Chief Judge may order the destruction of court records of any division pursuant to Statute, and with approval of the Executive Committee, under the following circumstances:

1. The approval of a majority of the judges in a division; or
2. On his/her own initiative, if:
  1. A court be abolished; or
  2. In other cases, upon twenty (20) days notice by the Chief Judge to judges in such division, provided a majority of judges therein do not object in writing within such twenty (20) days.

3. In the event a majority of judges in a division do not approve, the Chief Judge may, in his/her discretion, refer the matter to all judges of the District who, by majority vote, may order destruction, or take other action.

## **PART 2. RULES APPLICABLE TO ALL DIVISIONS**

### **1.1 Amendments to These Rules**

A. These rules are subject to amendment by directive of the Chief Judge.

B. Amendments to these rules shall be filed with the secretary of the Milwaukee Bar Association, the District Court Administrator for the First Judicial District, the Clerk of Circuit Court, the State Bar of Wisconsin, the State Law Library, and the Director of State Courts.

C. Because these rules are continuously being improved, parties who rely on these rules should verify that they are relying on a complete current version of these rules. A complete, current version of these rules shall be made available to the public by posting on the Milwaukee County website ([www.county.milwaukee.gov](http://www.county.milwaukee.gov)) and the State Bar website ([www.wisbar.org](http://www.wisbar.org)).

### **1.2 Supremacy of State Statutes and Supreme Court Rules**

These rules are intended to supplement, not supersede, state statutes and Supreme Court Rules. Rules that conflict with state statutes or Supreme Court rules shall not be enforced.

### **1.3 Plenary Power of Chief Judge over Case Assignment**

The Chief Judge may order the assignment and reassignment of cases from branch to branch to facilitate the fair and efficient operation of any division. The Chief Judge may delegate this authority to the Presiding Judge.

### **1.4 Reassignment of Cases by Substitution and Recusal**

A. Requests for substitution shall be made in writing.

1. In cases assigned to the civil and family divisions, the request shall be filed in the branch to which the case is assigned

2. In cases assigned to the criminal and children's divisions, the request may be made in intake court, preliminary hearing court or in the branch to which the case is assigned.

B. After a judicial determination that the request is timely and valid, the case shall be reassigned as provided in paragraph E, except for small claims eviction and replevin cases, which are governed by Rule 3.75.B. (assignment of small claims cases to duty judge).

C. If a judge deems it necessary to disqualify himself or herself under Wis. Stat. § 757.19(2), the judge shall state in writing the reasons for disqualification on the form provided by the Chief Judge and request reassignment of the case. If approved by the Chief Judge, the case shall be reassigned as provided in paragraph E, except for small claims eviction and replevin cases, which are governed by Rule 3.75.B. (assignment of small claims cases to duty judge).

D. Parties who become aware of a reason for disqualification promptly shall notify the judge and the other parties in writing.

E. The Chief Judge's office and the Clerk of Circuit Court shall record the number of substitution requests and disqualifications filed in each branch and maintain even caseloads within each division and within the specialty subdivision (such as homicide/sexual assault, drug, domestic violence, etc.) by reassigning cases according to the following procedures:

1. Transfer cases in which substitution is requested or in which the judge disqualifies himself/herself to the branch having the most cases so transferred, or, in the event of substitution requests or disqualifications in the branch with the most cases so transferred, the case shall be transferred to the branch having the second most cases so transferred.

2. If all caseloads within the division are balanced, cases shall be transferred on a rotating basis.

3. All reassignments are subject to Rule 1.3 (plenary authority of Chief Judge over case assignment).

### **1.5 Temporary Assignment of Cases to Pair Judges**

A. When a matter requires immediate judicial review and the assigned branch is unavailable, the matter is temporarily assigned to one of the pair judges assigned to that branch, except in cases assigned to the small claims branch of the civil division, which cases are temporarily assigned to the duty judge. The deputy court clerk shall assist the parties in locating a pair judge or duty judge.

B. In cases assigned to the civil or family division, in the event no pair judge is available, the matter is temporarily assigned to the duty judge.

C. The Chief Judge, in consultation with the Presiding Judge of each division, shall establish a list of pair judges from which such assignments may be made.

D. A listing of pair judge assignments may be obtained from the Clerk of Circuit Court's office or the Chief Judge's office.

E. All judges should notify their pair judge(s) of their absences from court for any length of time, planned or unplanned, as soon as is practical, so the pair judge has reasonable notice of the need for coverage.

F. If a pair judge is not available at the time that a request is made for a hearing or other proceeding before a pair judge, and if the deputy court clerk in the branch to

which the case is otherwise assigned has not assisted the parties in locating a pair judge or duty judge the deputy court clerk in the pair judge branch shall assist.

### **1.6 Assignment of Cases to Duty Judges**

A. For one week on a rotating basis, each judge assigned to the civil and family divisions shall serve as daytime duty judge pursuant to Rule 3.5. The duty judge schedule shall be issued by the Chief Judge.

B. For one week on a rotating basis, each judge assigned to the felony and misdemeanor divisions shall serve as duty judge between 5:00 p.m. and 8:00 a.m. on weekdays and all day and evening during the weekend and on holidays. The duty judge schedule shall be issued by the presiding judge of the felony division. The schedule may be obtained from the Clerk's office or the Chief Judge's Office.

C. The following proceedings are assigned to the nighttime duty judge:

1. Emergency bail requests; and
2. Requests for warrants and orders under Wis. Stat. Ch. 968.

D. The nighttime duty judge is not assigned requests for emergency guardianship; such requests may be made to a judge in the civil/probate division during regular business hours.

E. [Reserved for additional rules regarding Children's Court duty judge.]

F. Upon substitution or recusal of the duty judge, the proceedings shall be transferred to the next available judge on the duty judge schedule.

### **1.7 Reassignment of Cases Upon Calendar Reassignment**

Upon reassignment of a calendar from one branch to another, all cases assigned to the calendar are reassigned to the new branch, except for cases which, by law, or in the interest of justice and with the consent of the Chief Judge, remain assigned to the transferor branch.

### **1.8 Hours of Operation**

Courts may not hear cases any earlier than 8:00 a.m. on weekdays and will stop hearing cases no later than 5:00 p.m. on weekdays, except with permission of the Chief Judge. Weekend hours, if any, shall be determined by the Chief Judge.

### **1.9 Supreme Court and Milwaukee County Circuit Court Forms**

Parties shall use the Supreme Court forms and Milwaukee County Circuit forms specified by these rules, or, where permitted, a substantial equivalent. Supreme Court forms are available at <http://www.wicourts.gov/forms1/circuit.htm>. Milwaukee County Circuit Court Forms are contained in the Appendix to these Rules.

### **1.10 Format of Documents Acceptable for Filing**

A. Letters, pleadings, motions, briefs, affidavits and other documents shall conform to the provisions of this rule; if not, the document shall not be filed.

B. All documents submitted for filing shall:

1. be printed on 8 1/2 by 11 inch paper; exhibits exceeding those dimensions may be filed, but only if the paper is folded so as to reduce the size of the document to 8 1/2 by 11 inches or smaller;
2. state the case number and names of the principal parties to the case;
3. be double-spaced;
4. be paginated at the bottom center of each page except for the first page of the document;
5. when referring to published decisions of Wisconsin appellate courts, include the Callaghan reporter citation (Wis. 2d);
6. prominently state the electronic mail address of the person signing the document, unless the person does not have an electronic mail address;
7. if signed by an attorney, state the attorney's State Bar Identification Number.
8. be hole-punched at the head of the document with a standard two-hole punch, for efficient maintenance and preparation of the court record; the holes shall be set apart 2 3/4 inches center to center and have a diameter of no less than 9/32 inch;
9. if consisting of more than one page, be stapled or otherwise bound at the top left-hand corner of the document; documents shall not be bound in such a way as to prevent them from being opened when they are bound to the court file through the holes punched at the head of the document;
10. unless otherwise permitted by state statute or court order, include a certification signed by the party or an attorney for the party filing the document stating that a copy of the document has been served on all parties to the action, following the procedures set forth in Rules 1.12 and 1.13, identifying the name and address of each party served and stating the date and method of service; and
11. conform to any page limitations on briefs or appendices set forth in these rules.

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

### **1.11 Discovery Documents Shall Not be Filed**

Discovery documents shall not be filed unless permitted by statute, offered in evidence, offered in support of a motion, or otherwise permitted by the court. The parties shall retain custody of discovery documents as specified in Wis. Stat. § 804.01(6).

### **1.12 Service of Papers Before Filing**

Unless otherwise required by statute, these rules or court order, no document shall be filed until a copy of the document is served upon all parties who have appeared or otherwise must be served.

### **1.13 Methods of Service of Motions, Briefs, Affidavits, Notices and Other Such Documents**

A. Unless required otherwise by statute, these rules or court order, a copy of any document filed with the court shall be served upon all parties to the action.

B. For parties represented by an attorney whose name appears in the court record, the copy shall be served on the attorney.

C. Unless otherwise required by statute, these rules or court order, copies may be served by personal delivery, by mail, or by facsimile or electronic mail transmission, provided that a copy of the document also is mailed on the same day as the facsimile or electronic mail transmission.

D. All documents served pursuant to this rule shall include a certification signed by the party or an attorney for the party filing the document stating that a copy of the document has been served on all parties to the action, identifying the name and address of each party served, and stating the date and method of service.

E. Service of summonses, complaints and landlord-tenant notices shall be accomplished by the method stated in the applicable state statute.

### **1.14 Filing of Documents by Facsimile and Electronic Mail Prohibited**

A. The court does not accept for filing any document submitted by facsimile transmission or by electronic mail, except for correspondence with the court permitted under Rule 1.15 (correspondence with the court).

B. Electronically stored information may not be filed in lieu of hard copy unless specifically permitted by the court.

### **1.15 Correspondence with the Court by Facsimile and Electronic Mail**

A. Parties may not communicate with the court by facsimile transmission unless specifically invited by the court, on such terms as the court prescribes, and then only if all parties receive a copy of the transmission simultaneously with delivery of the transmission to the court.

B. Parties may not communicate with the court by electronic mail unless specifically invited by the court, on such terms as the court prescribes, and then only



if all parties receive a copy of the message simultaneously with delivery of the message to the court. If the court invites communication with the court by electronic mail, copies of all messages received by or sent by the court shall be printed in hard copy by the court and filed, unless the court directs one of the parties to print the message and submit it for filing.

### **1.16 Waiver of Certain Costs and Fees**

A. Except in cases in which a person seeks a harassment or domestic abuse restraining order or injunction (which cases are governed by paragraph C.), all applications for waiver of costs and fees under Wis. Stat. § 814.29 shall be made in the office of the Chief Judge.

B. Persons, other than prisoners as defined in Wis. Stat. § 801.02(7)(a)2., who apply for the waiver of costs and fees shall:

1. complete and file a Supreme Court Form CV-410 affidavit demonstrating his or her indigency; and
2. except as provided in paragraph A.3., appear in person and provide (i) proof of the applicant's identity (for example, a driver's license or picture identification card) and (ii) proof of income or proof that the applicant receives means-tested public assistance in his or her name (for example, AFDC, TANF, W-2; medical assistance; SSI; food stamps; Veterans Benefits under Wis. Stat. § 45.351; block relief under Wis. Stat. Ch. 49, county relief under Wis. Stat. § 59.53(21)) or (iii) proof that the applicant is otherwise unable, due to indigency, to pay costs and fees.
3. The application may be made on behalf of the applicant without the applicant appearing in person if the application confirms the applicant's indigency and (i) the application is presented by an attorney of an organization that provides legal services only for indigent persons, or an attorney who represents the applicant *pro bono*; or (ii) the application is presented by an employee of such attorney and the application is accompanied by a letter on the letterhead of the attorney, firm or agency and a self-addressed, stamped return envelope for return of the signed order.

C. All applications for waiver of costs and fees in cases in which the petitioner seeks a harassment or domestic abuse injunction or restraining order shall be submitted to the Family Court Commissioner through the office of the Task Force on Family Violence. If the application is denied, petitioner may request review by the Chief Judge. There is no filing fee for a domestic abuse petition.

D. Prisoners, as defined in Wis. Stat. § 801.02(7)(a)2., who apply for the waiver of costs and fees shall submit to the Chief Judge's office the pleadings to be filed with the court together with:

1. a completed Supreme Court form CV-438 Affidavit of Indigency;
2. a Department of Justice Certification of Three or More Dismissals;

3. a certified copy of the prisoner's trust account for the previous six months from the prisoner's institution;
  4. a Department of Corrections Form 1930 Authorization to the agency having custody of the prisoner's trust account to release funds;
  5. when filing a new case, an original and at least one copy for each defendant who must be served; when filing a writ of certiorari, an original and 2 copies; and
  6. a self-addressed, stamped, return envelope with proper postage for return of filed documents.
- E. The Chief Judge is not authorized to waive transcript charges or charges for photocopies made by the Clerk of Circuit Court.

### **1.17 Substitution or Withdrawal of Attorney**

An attorney who has made an appearance in any case shall not withdraw, nor shall a substitute attorney appear, without permission of the court.

### **1.18 Admission *pro hac vice***

A. An attorney not a member of the state bar of Wisconsin may appear in a particular case pending in this court if the attorney (i) is admitted to practice in another jurisdiction, (ii) is in good standing, (iii) appears with a member of the state bar of Wisconsin in compliance with Supreme Court Rule 10.03(4), and (iv) obtains the permission of the court pursuant to paragraph B.

B. Permission to practice *pro hac vice* may be granted upon the filing and service under Rule 1.21 (the five-day rule) of:

1. a motion that complies with SCR 10.03(4) signed by an active member of the state bar of Wisconsin;
2. an affidavit of counsel or other proof that the attorney seeking permission is in good standing in the jurisdiction in which the attorney practices;
3. a signed, notarized statement of the attorney seeking permission that the attorney will comply with these local rules;
4. a proposed order granting permission; and
5. a self-addressed, stamped envelope for return of the signed order.

C. The court may require local counsel to personally appear and actively participate in certain proceedings, including a trial. If at any time the court revokes the permission granted under this rule, local counsel shall be prepared to appear immediately in all further proceedings.

### **1.19 Hearing Dates**

A. Unless otherwise ordered by the court, a party, before filing a motion that requires a hearing, shall contact the deputy court clerk of the branch to which the case is assigned in person or by telephone and request a hearing date. A motion filed without a hearing date may not be heard.

B. Postconviction motions and petitions for writs of *habeas corpus* and *certiorari* do not require a hearing unless otherwise ordered by the court.

C. All motions requiring a hearing shall be accompanied by a written notice to all parties of the date, time and place of the hearing.

**1.20 Good Faith Effort to Resolve Differences Before Bringing a Motion; Notice to Court upon Resolution of Pending Motion**

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

B. Except as permitted by statute, by these rules or by court order, all motions signed by an attorney, whether scheduled before a judge or a court commissioner, shall be accompanied by a written certification stating:

1. that the attorney has made a sincere attempt to resolve the issues or differences that give rise to the motion;

2. that the attorney spoke face-to-face or by telephone with the opposing party or, if represented, with the opposing party's attorney; or that written communication was necessary because reasonable attempts to make face-to-face or telephone contact failed; and

3. the manner, date, time and place of such conference or communication, and the names of all the parties who participated.

C. This rule does not apply when compliance cannot be had before the filing of a motion, as long as the attorney (i) states in the certification accompanying the motion the reasons why compliance cannot be had, (ii) continues to make a diligent attempt to resolve the differences between the parties prior to the hearing on the motion, and (iii), at the time of the hearing on the motion, files a written certification under oath with the court that complies with paragraph B.

D. This rule does not apply to:

1. dispositive motions, including motions to dismiss, for judgment on the pleadings or for summary judgment;

2. motions to suppress or postconviction motions;

3. petitions for *habeas corpus* or for *certiorari*; or

4. actions in which compliance with the rule would cause a party to violate a court order, including a no-contact order, domestic abuse injunction or harassment injunction.

E. Whenever any scheduled motion is resolved or withdrawn before it is heard, the moving party promptly shall so advise the court and all parties.

### **1.21 Proposed Orders; the "Five-Day Rule"**

A. If the court invites the submission of a proposed written order, and unless the proposed order is stipulated in writing, the proposed order shall be:

1. filed with the court,
2. served upon all parties (following the procedures set forth in Rules 1.12 and 1.13) under cover of a letter giving notice of the provisions of this rule, and
3. held by the court for 5 business days after it is received.

B. On or before the fifth business day after the order is received by the court, any party that objects to the form of the proposed order or any failure of the proposed order to express the court's intended or suggested order shall file a written objection accompanied by a proposed order consistent with the objection. The objection and counter-order shall be filed, served and held following the procedures in paragraph A. The provisions of this paragraph apply to objections to the counter-order.

C. This rule does not apply to judgment documents submitted under Rule 5.\_\_\_\_ (rule reserved for preparation of judgment document in contested divorces).

### **1.22 Issuance of subpoenas in civil and criminal cases venued outside Wisconsin**

A. A party to a civil case venued in a court outside Wisconsin ("the underlying case") may procure a subpoena for the attendance of a witness at a deposition and, if applicable, the production of documents or other things for inspection by compliance with Wis. Stat. §§ 887.24-887.26 completing the following requirements:

1. Obtain a certified copy of a certificate, commission, letters rogatory or other order of the court in the underlying case authorizing the issuance of a subpoena by this court.
2. File an original plus two copies of a petition requesting issuance of a subpoena.
  - a. The caption of the petition should be the same as the caption of the underlying case, except that the case number on the petition will be issued by the Clerk of this Court.
  - b. The petition shall be accompanied by:
    1. a copy of the reciprocal statute(s) governing the underlying case, in compliance with Wis. Stat. §§ 887.24 and 887.25(3);
    2. the certified copy of the certificate, commission, letters rogatory or other order to which paragraph 1 refers;

3. if the witness is being commanded to appear in the court where the underlying case is pending, the subpoena issued by the court in the underlying case;
4. a proposed order authorizing the issuance of the subpoena by this court;
5. a proposed subpoena using Form GF-126 or its substantial equivalent, signed by an active member of the state bar of Wisconsin or presented to the Clerk of the Circuit Court for signature;
6. the fee charged by the Clerk of the Court for the issuance of subpoenas; and
7. a self-addressed, stamped envelope for return of the signed copies if they are submitted by mail.

3. After the filing of the petition and payment of the required the fee, the petitioner shall bring the court file to the office of the Chief Judge for review and signature.

B. A party to a criminal case venued in a court outside Wisconsin ("the underlying case") may procure a summons for the attendance of a witness in proceedings in a court in another state by compliance with Wis. Stat. § 976.02(2).

### **1.23 Courtroom Attire and Decorum**

A. Lawyers shall, while in a courtroom or a commissioner's hearing room for any court proceeding, be dressed in professional attire and in such a manner so as to show respect for the dignity of the court. Professional attire means that men will wear coats and ties and women will wear dresses, suits or pantsuits. Each Judge and Court Commissioner may make exceptions to these rules as they think appropriate.

B. Absent specific authorization from the Judge or Court Commissioner presiding in that courtroom, all electronic communication devices (including, but not limited to, cellular or mobile phones, pagers, iPods) shall be turned off when in a courtroom or a commissioner's hearing room and microphones or earpieces for such devices shall not be worn in a courtroom or commissioner's hearing room.

C. Lawyers, litigants, witnesses and all other members of the public shall conduct themselves in a manner which demonstrates sensitivity to the necessity of preserving decorum and the integrity of the judicial process. Only attorneys and members of their staffs may be seated in front of the bar while waiting for their case(s) to be called. Absent specific authorization from the Judge or Court Commissioner presiding in the courtroom, the following are prohibited from courtrooms and commissioner hearing rooms:

1. the reading of newspapers; and
2. food or beverages, except water.

### **1.24 Notice of Need for Interpreter**

A. If, at the time of filing any action, the party filing the action knows of a need for a language or sign interpreter for any party, witness, guardian or any person specified in Wis. Stat. § 885.38, the party shall notify the Clerk of the Court.

B. If after the filing of any action, any party learns of the need for a language or sign interpreter for any party, witness, guardian or any person specified in Wis. Stat. § 885.38, the party shall notify the court as soon as reasonably possible and no later than 2 weeks before any evidentiary hearing or trial.

### **1.25 Jurors**

A. No branch may request more than 50 prospective jurors, except with the permission of the Chief Judge.

B. The jury manager may recall from the branch a jury panel that is requested by the branch but is not seated for jury selection within 30 minutes after the panel leaves the jury assembly area.

### **1.26 Photography in Courtrooms**

No photography of any kind or by any means, including still and video photography, is permitted in any courtroom, except of a wedding or adoption or as provided by SCR Chapter 61 or a court order in a particular case.

### **1.27 John Doe and Inquest Proceedings**

A. Requests for John Doe examination and inquests shall be submitted in writing and be filed directly with the Chief Judge's office.

B. The Chief Judge shall assign the matter for hearing pursuant to Rule 1.3 (plenary authority of Chief Judge to assign cases).

### **1.28 Courthouse Security Passes**

A. Attorneys in good standing with the State Bar may apply for a pass permitting entrance to the courthouse during normal business hours without submitting to security screening.

B. To obtain a courthouse security pass, the attorney shall file an application in person for approval by the Chief Judge accompanied by personal identification and a check in the amount of \$25.00 made payable to the Milwaukee County Sheriff's Department, and be photographed by the Sheriff's Department during designated hours.

C. An attorney whose privilege to practice law in Wisconsin is suspended or revoked shall return the courthouse security pass to the Chief Judge's office.

## **PART 3. RULES FOR THE CIVIL DIVISION**

### **3.1 Case Processing Goals**

A. Large Claims: Ninety percent (90%) of all cases classified as personal injury/property damage should be resolved within 540 days. Eighty percent (80%) of all cases classified as contracts/real estate or other civil cases should be resolved within 360 days.

B. Small Claims: Except as otherwise provided by statute, eighty percent (80%) of all contested small claims cases should be resolved within ninety (90) days of the return date or, when trial de novo is requested, within ninety (90) days of the request.

### **3.2 Assignment of Cases**

Subject to Rule 1.3 (plenary authority of Chief Judge), all civil actions shall be assigned electronically by lot among the large claims branches, except that small claims, replevin and eviction actions shall be assigned to the small claims calendar.

### **3.3 Consolidation of Cases**

A. Cases pending in a single branch that satisfy the prerequisites of Wis. Stat. § 803.04 may be consolidated by the court on its own motion.

B. Subject to Rule 1.3 (plenary power of Chief Judge over case assignment), cases pending in more than one branch that satisfy the prerequisites of Wis. Stat. § 803.04 may be consolidated in the branch to which the case with the lowest case number is assigned:

- 1.. upon the motion of that branch with the written consent of the other branch or branches;
- 2.. upon stipulation of all parties and the written consent of each branch; or
- 3.. if contested, upon a motion filed in the case with the lowest case number; the only relief the court may grant is consolidation in the branch to which the case with the lowest case number is assigned.

C. Upon consolidation, all further proceedings shall take place in the branch in which the cases have been consolidated regardless of when any of the cases is resolved.

### **3.4 Dismissal Calendar**

In cases which are not being diligently prosecuted, including without limitation (1) cases in which no party has been served with process within the applicable period and (2) cases in which no timely answer has been filed and no motion for default judgment has been filed within a reasonable time, the court shall give notice that the case will be dismissed unless cause is shown why dismissal is not appropriate. If good cause is not shown, the case shall be dismissed without further notice.

### **3.5 Daytime Duty Judge**

A. For one week on a rotating basis, each judge assigned to the family and civil divisions shall serve as daytime duty judge. The duty judge schedule may be obtained from the Calendar Clerk's office or the Chief Judge's Office.

B. The following proceedings are assigned to the duty judge:

1. Petitions for writs of *habeas corpus*;
2. *De novo* appeals from proceedings before court commissioners concerning injunctions and restraining orders under Wis. Stat. Chapter 813;
3. Small claims cases, if the judge assigned to the small claims branch is unavailable;
4. Petitions for change to vital records;
5. Matters concerning the issuance of marriage licenses; and
6. Proof of age applications under Wis. Stat. § 889.28.

C. The daytime duty judge shall preside in proceedings in which immediate judicial review is necessary and the branch to which the case is assigned is not available, including the small claims branch, nor is a pair judge available. In the absence of the duty judge, the next available judge, in the order listed on the duty judge schedule, shall preside.

D. Upon substitution or recusal of the duty judge, the proceedings shall be transferred to the next available judge on the duty judge schedule.

### **3.6 Filing Papers**

A. In addition to the general rules governing format and filing stated in Rules 1.10 through 1.13, the following rules govern filings made in the civil division:

B. The summons and complaint and all papers filed contemporaneously with them, and all papers the filing of which requires the payment of a fee, shall be filed in Room 104. All other papers shall be filed with the deputy court clerk of the branch to which the case is assigned, unless the courtroom is closed, in which case the papers may be filed with the Calendar Clerk's office.

C. The first page of the summons and complaint shall state the case classification type and code number, as designated by the Director of State Courts (available at <http://wicourts.gov/about/filing/circuitcodes.htm>); subsequent filings need not.

D. Notice of appeal shall be filed with the Civil Appeals Division in Room G-8. The appropriate fees should be included with the notice of appeal.

E. Unless the court grants permission in writing and in advance, the clerk shall not accept for filing any affidavit, including exhibits, which exceeds 250 pages in length, except affidavits in actions contesting insurance coverage to which the attached exhibits consist only of insurance policy documents.

### **3.7 Filing of Garnishment Actions**



A. Each action for garnishment on property other than earnings shall be commenced as a separate action and be assigned a separate case number. Regarding actions for garnishment on earnings, however, each notice issued to the same garnishee shall bear the number of the case in which the judgment was entered.

B. The Clerk's office may issue earnings Garnishment forms upon payment of the appropriate fee and prior to the filing of the earnings garnishment notice provided that the earnings garnishment notice is filed with the Clerk's office no later than 5 business days after the date the garnishee is served.

### **3.8 Scheduling Conferences and Scheduling Orders**

A. Within a reasonable time after the case is filed, the court shall conduct a scheduling conference pursuant to Wis. Stat. § 802.10(3).

B. Before the scheduling conference, the parties shall submit a written description of the factual background and issues presented by the case on a form prescribed by the court.

C. The court may issue a scheduling order in a standard form prescribed by the chief judge.

D. Before issuing a scheduling order governing deadlines for the filing of dispositive motions, the court shall ask the parties whether they agree to be bound by the local rules governing briefing deadlines under Rule 3.15.

### **3.9 Payment of Jury Fee**

Unless the court orders otherwise, the jury fee shall be paid within 30 days after the court issues the scheduling order pursuant to Rule 3.8. Payment of the jury fee by any party preserves the right to a jury for all parties, consisting of the number of jurors for which the fee has been paid. If no party pays the jury fee, the right to a jury is waived by all parties.

### **3.10 Hearing Dates**

Subject to the provisions of Rule 1.19 (obtaining hearing dates), motion hearings shall be scheduled on Monday mornings, except as otherwise provided by law or scheduled at the discretion of the court.

### **3.11 Non-dispositive Motions**

A. Except for motions to dismiss, for judgment on the pleadings and for summary judgment or partial summary judgment (see Rules 3.14 and 3.15) and motions for temporary restraining orders (see Rule 3.13), all motions and supporting papers shall be filed not less than 15 days before the hearing date.

B. All papers filed in opposition to such motions shall be filed no later than 7 calendar days (including Saturdays, Sundays and holidays) before the hearing date.

C. No reply briefs shall be considered without the permission of the court.

D. The court may modify these deadlines upon a showing of good cause.

E. Briefs in support or in opposition to such motions shall not exceed 10 pages in length, except that briefs filed in support or opposition to a motion for class certification shall not exceed 25 pages. Briefs in excess of the permitted length may be disregarded by the court. The court may modify these limitations upon a showing of good cause.

### **3.12 Venue Motions**

Rulings upon motions for change of venue under Wis. Stat. §§ 801.51 or 801.52 shall employ Supreme Court Form GF-120 "Order for Change of Venue."

### **3.13 Motions for Temporary Injunctions and Restraining Orders**

A. Any *ex parte* motion for temporary injunction or restraining order shall be accompanied by the certification required by Rule 1.19 and a written, signed certification that:

1.. a good faith effort was made before filing the motion to contact the party against whom relief is sought (or counsel for the party, if known) to inform the party of the time and place of the anticipated hearing; or

2.. good cause exists for excusing the party from the requirement in paragraph A.1.

B. Before issuing an *ex parte* temporary injunction or restraining order, the court shall attempt to contact by telephone the party against whom relief is sought (or counsel for the party, if known), unless the court finds good cause for not doing so.

C. This rule does not apply to petitions filed under Wis. Stat. §§ 813.12, 813.122, 813.123 and 813.125.

D. Briefs in support or in opposition to motions for temporary injunctions or restraining orders shall not exceed 10 pages in length. Briefs in excess of the permitted length may be disregarded by the court. The court may modify these limitations upon a showing of good cause.

### **3.14 Motions to Dismiss or for Judgment on the Pleadings**

A. Motions to dismiss or for judgment on the pleadings shall be filed not less than 45 days before the hearing date, except as provided in paragraph D.

B. Briefs or other papers in response to such motions shall be filed not less than 25 days before the hearing date.

C. Reply briefs or other papers in support of such motions shall be filed not less than 15 days before the hearing date.

D. In actions which allege the failure to pay a debt and in which the answer does not deny the debt, a motion for judgment on the pleadings shall be filed not less than 15

days before the hearing date. All papers filed in opposition to such a motion shall be filed no later than 7 calendar days (including Saturdays, Sundays and holidays) before the hearing date.

E. The court may modify these deadlines upon a showing of good cause.

F.. Briefs in support or in opposition to such motions shall not exceed 20 pages in length and reply briefs shall not exceed 10 pages in length, exclusive of exhibits. Briefs in excess of the permitted length may be disregarded by the court. The court may modify these limitations upon a showing of good cause.

### **3.15 Summary Judgment Motions**

A. The Civil Division Scheduling Order shall designate whether the parties agree to comply with the briefing deadlines set forth in this rule in place of the briefing deadlines set forth in Wis. Stat. § 802.08(2).

B. Motions for summary judgment shall be filed not less than 45 days before the hearing date.

C. Briefs or other papers in response to such motions shall be filed not less than 25 days before the hearing date.

D. Reply briefs or other papers in support of such motions shall be filed not less than 15 days before the hearing date.

E. The court may modify these deadlines upon a showing of good cause.

F.. Briefs in support of or in opposition to such motions shall not exceed 25 pages in length and reply briefs shall not exceed 10 pages in length, exclusive of affidavits and exhibits. Briefs in excess of the permitted length may be disregarded by the court. The court may modify these limitations upon a showing of good cause.

G. Briefs in support shall state plainly and succinctly the material undisputed facts which support judgment, together with specific references to the record. Failure to comply with this rule may result in denial of the motion.

H. Briefs in opposition shall plainly and succinctly state, together with specific references to the record, which facts stated in the brief in support, if any, are disputed. Failure to comply with this rule may result in granting of the motion.

I. . Affidavits in support of or opposition to a motion for summary judgments shall comply with the page limitations stated in Rule 3.6.E.

### **3.16 Default Judgments**

A. A party entitled to judgment by default due to the failure of an adverse party to answer the complaint may submit a motion for default judgment under Rule 1.21 (the five-day rule).

B. If the action in which judgment is sought is subject to service of a summons pursuant to Wis. Stat. § 801.11, proof of service shall be made as follows:

1.. If the party against whom judgment is sought is a natural person and is served personally within the State of Wisconsin, the motion shall be supported by a Form CV 1 Affidavit of Personal Service, or its substantial equivalent, printed on green paper.

2.. If the party against whom judgment is sought is a natural person and is served by substitute service within the State of Wisconsin, the motion shall be supported by a Form CV 2 Affidavit of Substitute Service, or its substantial equivalent, printed on blue paper.

3.. If the party against whom judgment is sought is a corporation or limited liability company and is served personally within the State of Wisconsin, the motion shall be supported by a Form CV 3 Affidavit of Personal Service on Corporation or Limited Liability Company, or its substantial equivalent, printed on green paper.

4.. This rule does not apply to proof of service furnished by a county sheriff's department located in Wisconsin or to service that is effected outside Wisconsin.

5.. If the party against whom judgment is sought is served by publication, within or outside Wisconsin, the motion shall be supported by a Form CV 4 Affidavit of Reasonable Diligence, or its substantial equivalent, printed on yellow paper, and proof of publication and mailing of the publication summons.

6.. The court will accept an original affidavit printed on paper whose color does not conform with these rules if the affidavit is accompanied by a photocopy of the affidavit on the paper of the required color.

C. In tort actions subject to Wis. Stat. § 802.02(1m), the motion for default judgment shall itemize the damages and shall be supported by documentary evidence of the damages sought. If the damages cannot be documented (*e.g.*, pain and suffering damages), the party seeking judgment shall request a hearing.

### **3.17 Briefing of *Habeas* Petitions and *Certiorari* Petitions in Criminal Matters**

Briefs in support or opposition to petitions for *habeas corpus* or *certiorari* in cases arising from or related to criminal convictions shall not exceed 20 double-spaced pages in length and shall comply with Rule 1.10 (format). Reply briefs shall not exceed 10 pages. Motions and briefs exceeding these page limits shall be disregarded. The court may modify these limitations upon a showing of good cause.

### **3.18 Citation to Non-Wisconsin Legal Authorities**

Unless the court orders otherwise, if a brief contains a citation to an authority other than the Wisconsin Statutes or a decision of the Wisconsin Supreme Court or the Wisconsin Court of Appeals, a copy of the authority shall be appended to the brief. Copies of such authorities shall not be made part of the record on appeal.

### **3.19 Form of Discovery Responses**

Responses to interrogatories, requests for production of documents and requests to admit, including responses consisting solely of objections, shall restate the interrogatory or request to which the response or objection refers.

### **3.20 Limitations on Interrogatories**

A. Except as provided in paragraph B., no party may serve more than a total of 35 interrogatories in any one case.

1. Each sub-part of an interrogatory shall be counted as 1 interrogatory.
2. Parties represented by the same attorney or law firm shall be regarded as 1 party.
3. Interrogatories inquiring about the names and location of parties, expert witnesses, and other persons having knowledge of discoverable information, or about the existence, location, or custodian of documents or physical evidence shall not be counted toward the limit.

B. Parties may agree to permit additional interrogatories to be served. Upon compliance with Rule 3.22 (meeting and conferring before bringing a discovery motion), a party may request permission from the court to serve additional interrogatories.

### **3.21 Timely Completion of Discovery**

Except for good cause, the court shall not compel a party to respond to an interrogatory, document request or request to admit that is served less than 30 days before a discovery deadline set forth in the scheduling order.

### **3.22 Meeting and Conferring before Filing Discovery Motions**

A. Before a party may move to compel discovery, or for permission to serve interrogatories in excess of the limitation stated in Rule 3.20 (limitations on interrogatories), the party shall confer in person or by telephone with the party against whom relief is sought and make a sincere attempt to resolve the issue.

B. No motion to compel or for permission to serve interrogatories in excess of the limitation stated in Rule 3.20 will be heard unless the motion demonstrates compliance with this rule, including a statement of the date and place of the conference and the names of all parties participating therein.

### **3.23 Trial Depositions**

A deposition taken for the purpose of preserving testimony for use at trial pursuant to Wis. Stat. § 804.07(1)(c) may be taken after the deadline for completion of discovery set forth in the scheduling order, but not later than 10 days before the commencement of trial. Such depositions may be taken at any time upon stipulation of the parties or upon leave of the court.

### **3.24 Filing of Learned Treatises**

A party giving notice of the intended use of a learned treatise under Wis. Stat. § 908.03(18) shall append a copy of the document to the notice served on other parties but shall not append a copy to the notice filed with the court. A copy of the document offered in evidence shall be filed only if the document is offered in evidence during trial or if the party's right to offer the document is contested before trial.

### **3.25 Argument and Examination of Witnesses by Multiple Attorneys**

Only one attorney for a party may argue motions or objections or examine a witness, unless permitted by the court.

### **3.26 Presence of Counsel and Parties during Deliberations and upon Return of Jury Verdict**

If the court permits counsel, or any party not represented by counsel, to leave the courtroom during deliberations and specifies a time within which the parties or counsel must return to the courtroom upon receipt of a verdict, a question from the jury or a request for further instructions, such counsel or party shall leave with the deputy court clerk the telephone number where he or she can be reached. A failure to return within the prescribed time period may be deemed a waiver of the party's right to be present.

### **3.27 Appearances by Telephone in Non-Evidentiary Proceedings**

A. The court, in its discretion, may conduct non-evidentiary proceedings by telephone. The court may assign responsibility to one party for arranging the conference call, notifying all parties, and the costs of the call. The court may permit some parties to appear in person.

B. In proceedings involving scheduling in cases in which a party is represented by an attorney whose office is located outside Milwaukee County, and unless the court deems the matter too complex or unmanageable for teleconferencing, the court may permit all parties to appear by telephone, provided that the attorney whose office is located outside Milwaukee County arranges the call, notifies all parties, and bears the cost of the call.

### **3.28 Appearances by Telephone and Videoconference in Evidentiary Proceedings**

The court shall permit oral testimony to be communicated to the court by telephone or videoconference if (a) a request is made at least 1 day before the scheduled testimony (exclusive of weekends and holidays); (b) the court finds that the equipment available to the court will enable the court to make a sufficient record; and (c)(1) all parties agree or (c)(2) the court grants the request after considering the objection of any party unwilling to agree.

### **3.29 Petitions for Approval of Minor Settlements**

A. A petition for approval of a minor settlement shall concisely state the age of the minor, the nature and extent of the injury giving rise to the claim and whether the

injury is permanent, the cause of the injury and the circumstances in which the injury was suffered, and the proposed distribution of the settlement funds.

B. The court shall presume that sums distributed for the payment of attorney fees will not exceed 25% of the settlement but may approve a larger portion if extraordinary circumstances so justify.

C. Unless the court orders otherwise, the minor, his or her attorney, and at least one of the parents or guardians shall attend in person the hearing on the petition.

D. Proceeds of a minor settlement to be deposited or invested for the benefit of the minor shall be paid into a restricted account that will not permit any withdrawal from the account until the minor's 18th birthday or upon further order of the court. The court shall not approve a settlement that proposes to deposit the settlement funds into a bank account that does not bear interest.

E. No guardian ad litem may be relieved of responsibility on any case until he or she files with the court written confirmation that the funds have been deposited or invested as provided in the court's order.

### ***Rules Applicable to the Probate Branches of the Civil Division***

#### **3.50 Assignment of Cases to Civil/Probate Branches**

A. Two branches of the civil division shall be assigned probate and mental health proceedings, including proceedings concerning trusts, guardianship, protective services, protective placement, adoption of adults and individuals at risk.

1.. The children's division shall have jurisdiction of all petitions concerning the appointment and removal of a guardian of the person of a child under Wis. Stat. Chapter 54, and proceedings there from, except that if such a petition is uncontested and a petition for guardianship of the estate of the child is filed, the proceedings shall be assigned to one of the civil/probate branches. If a petition concerning the appointment and removal of a guardian of the person of a child is disputed but the dispute is resolved, proceedings concerning the guardianship of the person and the estate of the child shall be transferred to the civil/probate branches.

2.. The civil/probate branches shall be assigned petitions for restraining orders and injunctions concerning individuals at risk.

B. Odd-numbered cases shall be assigned to the civil/probate branch located in Room 206. Even-numbered cases shall be assigned to the civil/probate branch located in Room 208.

#### **3.51 Nonresident Personal Representative**

A. A person who is not a resident of Wisconsin may be appointed as personal representative with bond if a resident agent is appointed to accept service of process.

B. A person who is not a resident of Wisconsin who is nominated by a will to serve as personal representative without bond may be appointed as a co-personal representative without bond if an otherwise eligible Wisconsin resident (1) is appointed as co-personal representative and (2) retains control and possession of all assets within Wisconsin until final distribution.

### **3.52 Appointment of Guardians ad Litem, Advocate Counsel and Successor Fiduciaries**

A. The court or probate registrar may dispense with appointment of a guardian ad litem:

1.. if, upon a petition, the court or probate registrar is satisfied that a party fulfills the requirements of Wis. Stat. § 879.23(5); or

2.. for a minor whose interest is limited to that of a contingent beneficiary of a revocable *inter vivos* trust.

B. Attorneys appointed as guardian ad litem shall have training and experience deemed sufficient by the appointing judge. The court may select from a list of qualified candidates maintained as follows:

1.. Attorneys may apply to the Register in Probate for inclusion on the list. The application shall state the attorney's relevant experience and whether the attorney meets the qualifications stated in paragraph B.3. An application shall be approved if either of the two judges assigned to the civil/probate branches determines that the applicant has sufficient experience and qualifications to serve as a guardian ad litem.

2.. The list shall designate whether the attorney listed will accept assignments in the following categories:

- a.. estate and trust proceedings generally;
- b.. guardianship and protective placement proceedings;
- c.. annual reviews of protective placement; and
- d.. individual at risk injunction proceedings.

3.. Attorneys named on an appointment list shall maintain the following qualifications:

a.. Attorneys seeking appointments in estate and trust proceedings shall have attended continuing legal education relating to estate or trust proceedings, in courses approved for credit by the Board of Bar Examiners. Attendance shall consist of at least (i) 30 hours of credit earned at any time, or (ii) 6 hours of credit earned during the current or most recent preceding reporting period.

b.. Attorneys seeking appointments in guardianship or protective placement proceedings shall have attended continuing legal education relating to guardianship and protective placement proceedings, in courses approved for credit by the Board of Bar Examiners consisting of at least (i) 30 hours of guardian ad litem education approved under SCR 36.03, or (ii) 6 hours of guardian ad litem education approved under SCR 36.03 during the combined current reporting periods specified in SCR



31.01 (7) (consisting of the period during which the appointment is accepted and the immediately preceding period).

### **3.53 Signing Fiduciary Bonds**

An attorney, employee or associate of an attorney shall not sign a corporate surety bond as "attorney in fact" when the attorney is acting as personal representative, attorney for the personal representative or as other fiduciary or attorney for the fiduciary.

### **3.54 Uncontested Proceedings**

All proceedings may be scheduled for hearing and disposition by the circuit court commissioner assigned to assist with probate matters unless an objection or cross-petition is filed.

### **3.55 Contested Proceedings**

A. Proceedings are contested when an interested person files an objection or cross-petition. Objections may not be raised by filing a motion.

B. All objections and cross-petitions shall comply with these rules:

1.. All objections and cross-petitions shall be filed in the Register in Probate Office, Room 207 of the Courthouse.

2.. Any objection or cross-petition filed in an estate being administered informally shall be accompanied by a demand for formal proceedings.

3.. All required fees shall be paid before or at the time of filing.

4.. Objections and cross-petitions shall be accompanied by proof that the objection has been served upon the attorney of record for each party who has appeared in the proceeding (for example, the petitioner, guardian, trustee, claimant or personal representative) or upon the party if not represented by an attorney.

5.. Service may be accomplished by any method authorized under Rule 1.13 (methods of service).

C. Upon filing, all objections and cross-petitions shall be reviewed by a deputy register in probate and assigned to either Track I or Track II. Track I contests are assigned for pretrial before a deputy register in probate/acting circuit court commissioner. Track II contests are assigned to a circuit judge.

D. Contested proceedings assigned to Track II are scheduled by the deputy court clerk in the civil/probate branch to which the case is assigned.

E. Upon securing a date and time for a hearing in a contested proceeding, the party who filed the objection or cross-petition shall serve written notice of the scheduled proceeding upon all interested parties. Service may be accomplished by any method authorized under Rule 1.13 (methods of service). The original notice and proof of

service of the notice shall be filed before the scheduled hearing in the civil/probate branch to which the case is assigned.

### **3.56 Continuances**

A. A request for a continuance in a contest assigned to Track I shall be filed with the assigned deputy register in probate/acting circuit court commissioner.

B. A request for a continuance in a contest assigned to Track II shall be filed in the civil/probate branch to which the case is assigned.

C. Requests for continuance shall be filed within 10 days after service of notice of a scheduled proceeding. If a request for continuance is filed more than 10 days after service of notice of a scheduled proceeding, the request may be granted only upon a personal appearance before the judge or circuit court commissioner and a showing of good cause. Agreement of counsel shall not, of itself, be considered good cause for a continuance.

### **3.57 Proposed Orders (Thirty Day Rule)**

A. All orders, certificates, and judgments, other than final judgments, shall be submitted to the judge or circuit court commissioner for signature not later than 30 days after the date on which the subject of the order is heard or was to be heard by the court. A proposed order embodying a ruling by the court shall be prepared and filed by the prevailing party.

B. Attorneys shall promptly notify the deputy clerk of the assigned court or the acting circuit court commissioner of a settlement or dismissal of a contest and shall file a stipulation and order not later than 30 days after the scheduled hearing date.

C. If a proposed order has not been filed as required by this rule, the objection and/or the case may be dismissed without further notice. Further proceedings may not be held in contested proceedings unless the dismissal is vacated.

D. Orders submitted under this rule are subject to review and objection under Rule 1.21 (the five-day rule).

### **3.58 Timeliness of Claims against Estates**

A. For purposes of determining the claims filing deadline in cases where the order limiting time for filing claims does not specify a day but merely specifies a month (e.g., the third or fourth month from the date of the order), the deadline is the last date in the specified month (e.g., February 28 or 29, April 30, June 30, September 30 or November 30).

B. When a claim is filed after the deadline for filing claims but within one year after the decedent's death, a receipt for payment of the claim, a release of the claim or an objection to the claim shall be filed.

### **3.59 Proof of Ownership**

Evidence of assets is required in the verification of guardianship accounts. The following evidence of title is satisfactory evidence of ownership:

- A. Real estate: original or certified copy of deed.
- B. Registered stocks, bonds, certificates of deposit: original or photocopy of certificates or letters from transfer agent or financial institution.
- C. Bearer securities: physical possession.
- D. Bank accounts: original or photocopy of account statement or passbook, or letter from financial institution.
- E. Refunds, cash items, and miscellaneous intangibles: original or photocopy of check, letter, or other documentary evidence.
- F.. Automobiles, boats, snowmobiles, and other licensed vehicles: original or photocopy of registration.
- G. Unregistered tangible personal property: testimony as to ownership and physical possession.

### **3.60 Summary Assignment Where Decedent Executes an Apparently Valid Will**

An order for summary assignment may assign assets according to an apparently valid will where the will contains a valid attestation clause.

### **3.61 Closing Estates**

- A. Estates in which no claims are filed or where no objection to any claim has been filed shall not be closed until at least 14 days after the deadline for creditors to file claims.
- B. Estates shall be closed within a reasonable time without unnecessary delay and within 18 months from filing the petition or application unless the court extends the time for closing the estate. A petition for extension of time shall be filed before the end of the 18-month period, and shall be supported by an affidavit setting forth reasons why the estate cannot be closed. The petition for an extension of time may be executed by the person having knowledge of the reasons for delay, including the personal representative or attorney. The petition may be reviewed without notice or testimony.
- C. If an estate is not closed on a timely basis or an inventory is not filed on a timely basis, and if an attorney representing the estate or the personal representative fails to respond to notice issued by the court, the court may remove the attorney or personal representative and may appoint a successor attorney or personal representative. The pendency of a contest does not stay the court from issuing such a notice or an order to show cause.

D. An attorney found by the court to repeatedly have been delinquent in closing estates may be barred from filing any new proceedings in probate, including applications for informal administration, until all delinquencies have been remedied. The court or register in probate may refer the matter to the Office of Lawyer Regulation.

### **3.62 Review Prior to Hearing on Estate Final Account**

Before the hearing on a petition for approval of a final account in administration of an estate proceeding, the petition and the proposed final account shall be reviewed by a deputy register in probate for compliance with procedural requirements and as to form and content.

### ***Rules Applicable to the Small Claims Branches of the Civil Division***

#### **3.75 Assignment of Small Claims Cases; Recusal; Substitution; Duty Coverage of the Small Claims Branch**

A. One branch of the civil division shall be assigned all cases governed by Wis. Stat. § 799.01, which cases are referred to generally by these rules as "small claims."

B. Upon a valid recusal or valid request for substitution of the judge assigned to the small claims branch, all proceedings over which a judge must preside shall be assigned to another judge in the civil division pursuant to Rule 1.4.E. (reassignment of cases), except that eviction proceedings shall be transferred to the duty judge.

C. The duty judge shall preside in cases in which immediate judicial review is necessary and the judge assigned to the small claims branch is not available.

1.. In the absence of the duty judge, the next available judge, in the order listed on the duty judge schedule, shall preside.

2.. The duty judge shall hear all cases calendared for hearing before the small claims judge, including any trials, and any emergency cases assigned to the small claims judge.

3.. During a planned absence, the judge assigned to the small claims branch will calendar matters in consideration of the duty judge. In anticipation of a planned absence, the judge assigned to the small claims calendar will give the duty judge and the presiding judge of the division as much notice as possible.

4.. The duty judge shall calendar matters in consideration of the need to hear cases in the small claims branch.

#### **3.76 Issuance, Filing and Service of Small Claims Summons and Complaint**

A. An action shall be commenced by the issuance by the Clerk of Circuit Court, upon payment of the filing fee, of a summons form or payment seal for use on a summons form approved by the court.

B. After the summons form is completed, the original shall be filed with the Clerk of Circuit Court. An authenticated copy of the original shall be served on the defendant.

C. The Clerk of Courts shall not accept the summons for filing unless

- 1.. the pertinent portions of the form appear complete, and
- 2.. the summons is verified.

D. Service shall be made pursuant to Sec. 799.12, Wis. Stats., except that service by mail is not authorized.

E. An affidavit of service of the summons shall be filed on the return date.

### **3.77 Answering the Small Claims Complaint**

A. A defendant who resides in Milwaukee County shall appear in person or by an attorney on the return date specified in the summons. Answering or appearing by mail, by facsimile or by telephone is not permitted.

B. A defendant who does not reside in Milwaukee County may

- 1.. appear in person or by an attorney on the return date specified in the summons, or
- 2.. on or before the return date, serve a written answer on the attorney who represents the plaintiff, or on the plaintiff if the plaintiff is not represented by an attorney. A copy of the answer shall be filed on or before the return date.

### **3.78 Order in which Small Claims Cases are Called**

The judicial court commissioner presiding in the small claims branch shall have discretion to determine, based upon efficiency and fairness, in what order the cases should be called, subject to the supervision of the judge assigned to the small claims branch and the presiding judge of the civil division.

### **3.79 Procedure upon Calling Cases on the Return Date**

A. If the plaintiff fails to appear on the return date or any adjourned date, the case shall be dismissed.

B. If the defendant fails to appear on the return date or any adjourned date, default judgment shall be entered in favor of the plaintiff.

C. If both parties appear, the court may accept from them a written stipulation disposing of the case if the stipulation is signed by each party. The stipulation of the tenant in an eviction action is not binding unless approved by a judicial court commissioner.

D. In the absence of a stipulation, and unless the action is subject to immediate dismissal, the judicial court commissioner shall personally inquire of the defendant whether the defendant claims any defense. If no defense is claimed, the court may accept a written stipulation under paragraph C.

E. If it appears to the commissioner that the defendant claims a defense to the action, the commissioner shall attempt to resolve the dispute through informal mediation.

F.. If the dispute cannot be resolved through informal mediation, the commissioner shall schedule a hearing before a judicial court commissioner of all contested issues, except that eviction and replevin cases shall be transferred to the judge assigned to the small claims branch. Eviction cases shall be called on the next available date on the afternoon docket of the small claims branch, unless the parties and the court agree to a later date.

### **3.80 All Contested Small Claims Proceedings Conducted Initially before Judicial Court Commissioners**

Except as required by Wis. Stat. Ch. 799 or by these rules, all contested small claims proceedings shall be heard before a judicial court commissioner.

### **3.81 Motions for Summary Judgment and to Reopen**

Motions for summary judgment and motions to reopen shall be heard in the first instance by the judge assigned to the small claims branch, except that if it is plain on the face of a motion to reopen, without need for response, that the motion lacks merit, the motion may be denied by a judicial court commissioner.

### **3.82 Civil Contempt and Civil Bench Warrants**

Requests for civil contempt and civil bench warrants shall be heard initially by a judicial court commissioner assigned to the small claims branch. If the commissioner recommends a finding of contempt and the issuance of a civil bench warrant, the recommendation shall be heard forthwith by the judge assigned to the small claims branch. Civil bench warrants issued in small claims cases shall be returned to the small claims branch.

### **3.83 Jury Trial of Small Claims Cases**

Upon a timely, proper demand for a jury trial under Wis. Stat. § 799.21 and upon payment of the fee, the case shall be transferred by tab to a civil division branch to which large claims civil actions are assigned, except that evictions actions shall be transferred to the duty judge for expedited scheduling.

### **3.84 Effective Date of Notices Terminating Tenancy for Failure to Pay Rent or for Other Breach**

A. The court cannot issue a writ of restitution in an eviction action for failure to pay rent or other breach unless the landlord provides at least 5 days or 14 days (whichever is applicable by statute) after the date the notice is given to cure the

breach or vacate the premises. The notice period must have concluded no later than the day before the eviction action is filed. (For example, if a 5-day notice is given on September 2, the tenant may pay rent or otherwise cure the breach at anytime until the end of the day on September 7; the first date on which the eviction action may be filed is September 8.)

B. If the 5-day or 14-day notice is served by certified or registered mail to an address within Wisconsin, the notice is considered by the court to have been given on the second day after the day of mailing. (For example, if a landlord sends a five-day notice by certified mail on September 2, then the notice is considered by the court to have been given on September 4 and the tenant may pay rent or otherwise cure the breach at anytime until the end of the day on September 9; the first date on which the eviction action may be filed is September 10.)

#### **PART 4. RULES FOR THE FELONY AND MISDEMEANOR DIVISIONS**

##### ***Rules Applicable to the Felony and Misdemeanor Divisions***

###### **4.1 Case Processing Goals**

1. Ninety percent (90%) of all felony cases should be resolved within 180 days.
2. Ninety-five percent (95%) of all misdemeanor, criminal traffic and contested traffic forfeiture cases should be resolved within 180 days.
3. Attorneys whose schedules prevent the court from meeting these goals in a given case may be disqualified and a party may be ordered to retain substitute counsel.

###### **4.2 Courtroom Operations**

1. Courtroom doors shall be opened at 8:15 a.m. and 1:15 p.m. when the court is in session.
2. Branches shall not unnecessarily restrict movement of attorneys between branches and, in particular, shall not secure courtroom exits in such a way as to detain attorneys merely for convenience and without regard to the need for attorneys to attend proceedings in other branches.
3. Proceedings other than jury trials requiring the transportation of defendants from outside Milwaukee County shall not be scheduled to begin on Mondays, Fridays or weekdays immediately following or preceding a holiday, except upon a finding of extraordinary circumstances.

###### **4.3 Assignment of Cases When Defendant Named in More than One Case**

1. Except as provided in paragraph C., when there is more than one felony case pending against the same defendant, all the cases shall be transferred to the felony branch in which the case with lowest case number is pending.
2. Except as provided in paragraph C., when there is more than one misdemeanor or traffic case pending against the same defendant, all the cases shall be transferred

to the misdemeanor branch in which the case with the lowest case number is pending.

3. Cases involving charges of homicide, sexual assault, drug offenses, gun offenses and/or domestic violence, which may be assigned to a specialty court, may be assigned according to different procedures necessary to the fair and efficient operation of those specialty courts.
4. The assignment of proceedings relating to reconfinement and sentencing after revocation proceedings are governed by Rule 4.16. The assignment of postconviction motions is governed by Rule 4.17.

#### **4.4 Resolution of Misdemeanor Cases in Felony Branch**

1. If a defendant in a case pending in a felony branch agrees with the State to resolve all cases pending in the felony branch as well as any cases pending against the defendant in any misdemeanor branch other than a domestic violence specialty branch, and if the judge presiding in the felony branch agrees, the misdemeanor case shall be transferred forthwith to the felony branch without further proceedings in the misdemeanor branch.

#### **4.5 Assignment of Cases Upon Remand from the Appellate Courts**

1. Cases remitted from the appellate courts shall be assigned to the judge who presided over the case when the notice of appeal was filed, or to that judge's successor, unless the case is assigned to a specialty court (homicide, sexual assault, drug offenses, etc.) and the judge who presided over the case when the notice of appeal was filed is, at the time of remand, assigned to a specialty court of the same specialty.

#### **4.5 Assignment of Petitions for Return of Property**

1. All petitions under Wis. Stat. § 968.20 for return of firearms, dangerous weapons or ammunition shall be assigned to the Gun Court.
2. Petitions for return of property other than firearms, dangerous weapons or ammunition shall be assigned as follows:
  - A. If the property is held in connection with a previously-filed felony case, the petition shall be assigned on the same basis as the previously-filed case, *e.g.*, petitions for return of property relating to homicide cases shall be assigned in the same manner as homicide cases.
  - B. If the property is held in connection with a previously-filed misdemeanor case or if the property is not held in connection with any previously-filed case, the petition shall be assigned randomly to a general misdemeanor branch.

#### **4.7 Expedited Guilty Plea Hearings**



1. A defendant in custody in Milwaukee County may request a speedy guilty plea hearing. Subject to victim notice requirements, the hearing shall take place within 2 business days after the filing of a written request in the branch to which the case is assigned and service of a written notice upon the District Attorney, whichever occurs later.

#### **4.8 Huber Privileges for Work and Work Release from Confinement Time as a Condition of Probation**

1. Regarding court records, judgments of conviction and forms issued at sentencing, the designations "Huber work" and "Huber work privileges" (regarding jail sentences) and "work release privileges" (regarding condition time) shall be construed by the House of Correction to permit release, without further order, for the following purposes:

1. attendance at work at no more than two (2) places of employment;
2. seeking employment;
3. participating in employment training, new employment orientation or tours and programs open to the public that address employment-related needs and barriers, including programs that assist in the reinstatement of driving privileges;
4. obtaining clothing, tools and equipment appropriate to job-seeking or commencing employment, as well as haircuts;
5. obtaining proof of identity needed for employment, including birth certificate and social security documentation;
6. attending court proceedings, including proceedings necessary to clear warrants and make or revise arrangements for payment of fines and court costs; and
7. laundry.

B. The total time that an inmate may be released to enjoy Huber privileges and release privileges shall not exceed seventy-two (72) hours over six (6) days per week, including travel time.

D. The designations "Huber work," "Huber work privileges" and "work release privileges" do not include release for child care (see Rule 4.9), elder care (see Rule 4.10), medical treatment and counseling (see Rule 4.11), participation in the Community Justice Resource Center (see Rule 4.12), school attendance, community service or any other purpose, unless the court record and judgment of conviction so specify.

E. In individual cases, a court may expand or limit these privileges, or the time period set forth in subsection B, by written order or by explicitly so stating on the record.

F. The court may cancel or modify Huber work privileges and work release privileges at any time with or without notice.

#### **4.9 Huber Privileges for Child Care and Child Care Release from Confinement Time as a Condition of Probation**

A. A defendant who requests Huber privileges or release privileges for child care shall submit to the court at the time of sentencing, for each child for whom care is to be provided:

1. the name, age and address of the child and whether the child or the defendant is subject to any current order of the children's or family division regarding custody or placement, together with a copy of the order(s);
2. if the defendant is a custodial parent, a copy of the child's birth certificate demonstrating that the defendant is the child's parent;
3. if the defendant is not a custodial parent, a written, signed request from the custodial parent:
  - a. requesting child care from the defendant;
  - b. stating whether or not the defendant has previously provided child care for the child; and
  - c. stating that the custodial parent is not receiving W-2 child care services and/or a child care stipend; and
4. a copy of the custodial parent's work schedule from that parent's employer(s).

B. Regarding court records, judgments of conviction and forms issued at sentencing, the designations "Huber child care" and "Huber child care privileges" (regarding jail sentences) and "release privileges for child care" (regarding condition time) shall be construed by the House of Correction to permit release, without further order, for the following purposes:

1. child care;
2. shopping for food and other supplies needed for the child;
3. transporting the child to and from and attending medical appointments; and
4. laundry.

C. The court may cancel or modify Huber child care privileges and child care release privileges at any time with or without notice.

#### **4.10 Huber Privileges for Elder Care and Elder Care Release from Confinement Time as a Condition of Probation**

A. A defendant who requests Huber privileges or release privileges for elder care shall submit to the court at the time of sentencing, for each elder for whom care is to

be provided, a written, signed statement of the elder's doctor that the defendant is needed in the home to provide care for the elder.

B. Regarding court records, judgments of conviction and forms issued at sentencing, the designations "Huber elder care" and "Huber elder care privileges" (regarding jail sentences) and "release privileges for elder care" (regarding condition time) shall be construed by the House of Correction to permit release, without further order, for the following purposes:

1. elder care;
2. shopping for food and other supplies and conducted errands needed by the elder;
3. transporting the elder to and from and attending medical appointments; and
4. laundry.

C. The court may cancel or modify Huber elder care privileges and elder care release privileges at any time with or without notice.

#### **4.11 Huber Privileges for Medical Treatment and Counseling and Medical Treatment/Counseling Release from Confinement Time as a Condition of Probation**

A. Regarding court records, judgments of conviction and forms issued at sentencing, the designations "Huber medical care," "Huber counseling care," "Huber medical care privileges" and "Huber counseling privileges" (regarding jail sentences) and "release privileges for medical care" or "release privileges for counseling" (regarding condition time) shall be construed by the House of Correction to permit release, without further order, for the following purposes:

1. medical care, including a visit to a doctor, dentist, clinic or emergency room;
2. obtaining prescriptions;
3. obtaining health insurance or other assistance for payment of health services; and
4. counseling and treatment provided by an approved public treatment facility, including attendance at a substance abuse assessment or substance abuse treatment.

B. The court may cancel or modify Huber medical care and counseling privileges and medical care and counseling release privileges at any time with or without notice.

#### **4.12 Huber Privileges for Attendance at the Community Justice Resource Center and Community Justice Resource Center Release from Confinement Time as a Condition of Probation**

A. A defendant who requests Huber privileges or release privileges for attendance in programming at the Community Justice Resource Center ("CJRC") shall submit to a

risk assessment, an addiction severity index assessment and an academic assessment.

B. The court may permit the defendant to participate in programming recommended by the CJRC without specifying the particular programming. Regarding court records, judgments of conviction and forms issued at sentencing, the designations "Huber CRJC" (regarding jail sentences) and "release privileges for attendance at CJRC" (regarding condition time) shall be construed by the House of Correction to permit release, without further order, for the following purposes:

1. programming conducted at the CJRC;
2. counseling and treatment not provided by the CJRC but provided at an approved public treatment facility, including domestic violence, grief and sexual abuse counseling;
3. medical care, including a visit to a doctor, dentist, clinic or emergency room;
4. mental health care, including evaluation and counseling;
5. obtaining prescriptions;
6. obtaining health insurance or other assistance for payment of health services;
7. seeking employment;
8. participating in employment training, new employment orientation or tours and programs open to the public that address employment-related needs and barriers, including programs that assist in the reinstatement of driving privileges;
9. obtaining clothing, tools and equipment appropriate to job-seeking or commencing employment, as well as haircuts;
10. obtaining proof of identity needed for employment, including birth certificate and social security documentation;
11. attending school, if the defendant is 17 years old and is registered at Milwaukee Area Technical College;
12. GED testing;
13. attending court proceedings, including proceedings necessary to clear warrants and make or revise arrangements for payment of fines and court costs; and
14. visiting government offices for purposes of securing W-2 benefits, obtaining transitional housing assistance before the completion of the sentence or the confinement, meeting with agents of the Department of Corrections.

C. The court may cancel or modify Huber privileges and release privileges for attendance in programming at the CJRC at any time with or without notice.

#### **4.13 Failure to Report to Serve Huber Sentence**

Upon notice that a defendant has failed to report at the time designated by the House of Correction to begin serving a sentence in the Community Correctional Center, the court shall issue a commitment for the defendant's arrest and shall cancel all Huber privileges and electronic monitoring privileges.

#### **4.14 Good-Time Credit Against Condition Time**

If the court determines that the defendant shall be eligible for good time credit against a jail term being served as a condition of probation, the judgment of conviction shall so state, or the defendant shall not be entitled to such credit.

#### **4.15 Juvenile Traffic Offenses**

If a juvenile is convicted of a traffic offense and is treated by the court as an adult for sentencing purposes pursuant to Wis. Stat. § 938.17, and if the court imposes a jail sentence of 6 months or more, the court shall submit the required petition to the administrator of the Clerk of Circuit Court-Children's Division, whereupon the case will be transferred to a branch of the Children's Division for disposition. If the defendant is out of custody and if the court remands the defendant, the defendant shall be transported to the juvenile detention facility.

#### **4.16 Reconfinement and Sentencing After Revocation**

All proceedings relating to reconfinement hearings and sentencing after revocation shall be assigned to the judge who presided at sentencing, or to that judge's successor, except that when such proceedings are commenced against a defendant against whom another case is pending in the same division, such proceedings shall be assigned to the branch in which the pending case is assigned.

#### **4.17 Postconviction Motions**

A. The following rules apply to all postconviction motions, including without limitation those brought pursuant to Wis. Stat. §§ 809.30, 973.19, 974.02 and 974.06, as well as motions to modify or adjust sentence, to withdraw a guilty plea, for sentence credit and for new trial, as well as petitions for writs of certiorari, for conditional release or reexamination or to administer medication involuntarily.

B. The motion, including any accompanying brief, shall not exceed 20 double spaced pages in length and shall comply with Rule 1.10 regarding format. Responsive briefs shall not exceed 20 pages in length. Reply briefs shall not exceed 10 pages. Motions and briefs exceeding these page limits may be disregarded. Upon a showing of good cause made at or before filing a motion or brief, the court may permit the filing of a motion or brief exceeding these page limits, except that in no event may a motion brought pursuant to Wis. Stat. §§ 974.06 exceed 20 pages in length. All submissions (motions and briefs) must use a minimum of at least 12-point font size in the body and at least a 10-point font size for quotes footnotes.

C. All motions, except petitions for writs of certiorari, shall be filed with the appellate section of the criminal division of the Clerk of Court (Room 117, Safety Building).

Before filing, a copy of the motion shall be served upon the State. A petition for a writ of certiorari shall be filed in the civil division.

#### **4.18 Search Warrants Outside Milwaukee County**

[Reserved for revised procedure regarding warrants for searches of property or persons located outside Milwaukee County]

#### **4.19 Attendance of Inmates at Funerals and Wakes**

The court will not consider a request to attend a funeral or wake by an inmate of the Criminal Justice Facility or at the House of Correction unless the inmate completes the form required by the Clerk of Court, files the form and serves a copy upon the Sheriff. The Sheriff may require the inmate to pay for the cost of an escort to the funeral home and the Sheriff may limit the attendance to a brief visit before the public is allowed to attend the funeral or wake. If granting the request would require the assignment of bailiffs to the escort and would prevent a branch from being in session in compliance with Rule 4.2.A., the request shall be denied.

#### ***Rules Applicable Only to the Felony Division***

#### **4.20 Assignment of Cases to Specialty Courts**

Cases shall be assigned as follows:

A. To homicide/sexual assault courts, all cases charging homicide, sexual assault, or offenses arising under Chapter 948, except those charging failure to support or weapons possession or receiving stolen property from a child;

B. To drug courts, all cases charging felony drug offenses;

C. To the gun court, only cases charging possession of a firearm by a felon, possession of a short-barreled shotgun, reckless injury involving the use of a firearm, recklessly endangering safety involving the use of a firearm, other felony possession of firearm, or explosives offenses, except that cases charging carrying a concealed weapon may be assigned if another charge described in this paragraph also is charged; and

D. To general felony branches, all other felony cases, and all failure to support and extradition cases.

E. [Reserved for rules regarding assignment of domestic violence and Section 980 cases.]

#### **4.21 Probable Cause Determinations**

A. No detainee held in custody as a result of a probable cause determination ("PCD"), including those detained by felony summary warrantless arrest or by probation/parole/ extended supervision holds, warrants and commitments, and including those who are hospitalized, may be held for more than 72 hours without

being charged or without a further PCD, which, if approved, shall extend the period by which the detainee must be charged or released for no more than 72 hours.

B. The Sheriff's Department shall notify the District Attorney's Office no later than 48 hours after the PCD if a detainee has not been charged. The Sheriff's Department shall notify the District Attorney's office prior to the release of any uncharged detainee.

C. A detainee may be held in custody beyond 72 hours only if:

1. the Sheriff's Department shall present arrest and detention reports (ADR) to a court commissioner; and

2. a Court Commissioner in Intake Court after a full bail hearing on the record with the detainee present, together with the usual bail investigation services, determines that there is probable cause for continued detention for up to an additional 72 hours. If no action is taken to extend detention beyond 72 hours, or if the court determines that there is no probable cause for doing so, the detainee shall be released. If a signed complaint is filed before the 72-hour period elapses and the detainee is merely awaiting an initial appearance in intake court, the detainee shall not be released.

D. A detainee who is hospitalized need not be produced for a hearing under paragraph C.2.

#### **4.22 Intake Court Rules**

A. All bail hearings before the preliminary hearing shall be conducted in intake court. The presiding judicial officer shall determine whether the defendant is produced to attend the hearing.

B. If a misdemeanor case relating to a felony case is assigned to a felony court, the defendant shall make his or her initial appearance in intake court and the case shall be scheduled for a status hearing on the same date in preliminary hearing court as the felony case to which it relates.

C. The defendant may waive preliminary hearing in intake court; if so, the defendant shall be arraigned without delay, or the case may be transferred to the assigned judge for arraignment and scheduling.

#### **4.23 Preliminary Hearing Court Rules**

A. Preliminary hearings shall be scheduled during the week following the initial appearance, except for good cause shown or upon the consent of the parties.

B. Preliminary hearings in cases charging escape, failure to support and domestic violence offenses shall be conducted in the branch to which the case is assigned.

C. A preliminary hearing may not be waived unless the defendant completes a preliminary hearing questionnaire and waiver form.

D. If the preliminary hearing is waived, the defendant shall be arraigned without delay, except that, upon a showing of good cause, arraignment may be scheduled in the branch to which the case is assigned.

E. If the defendant is arraigned in preliminary hearing court, a scheduling conference shall take place in the branch to which the case is assigned no later than the second Friday following the preliminary hearing or waiver.

F. Immediately following the preliminary hearing or waiver, the State shall provide all available discovery materials to the defendant.

G. Bail motions shall be served and filed in writing at least 48 hours in advance of the scheduled hearing, unless the parties agree to shorten this notice period. If either party objects to the lack of reasonable notice pursuant to Wis. Stat. § 968.08, the motion shall be scheduled and heard within a reasonable period of time in the branch to which the case is assigned.

H. The judicial officer presiding in the preliminary hearing court shall have the primary responsibility for handling search warrant applications between 8:00 a.m. and 5:00 p.m. on the days that the court is in session.

#### **4.24 Arraignment**

A. Upon arraignment, the State forthwith shall make a plea offer to the defendant.

B. If the arraignment occurs before the judge presiding in the branch to which the case is assigned, a scheduling conference shall be conducted immediately upon arraignment, except if good cause is shown that it should occur on another date.

#### **4.25 Scheduling Conference**

A. In any case scheduled for trial, whether to a jury or to the court, a Pretrial Scheduling Order, in a form prescribed by the felony division, shall be completed and filed.

B. At the scheduling conference, the parties shall notify the court of any issues concerning the availability of lay or expert witnesses or need for interpreters, of joinder or severance, or of a need for scientific tests which might prevent the court from trying the case on the scheduled date.

#### **4.26 Trial Scheduling**

A. In order to attain the case processing goals stated in Rule 4.1, trials shall be scheduled no more than 90 days after the date of the initial appearance.

B. The court may schedule trials outside these time limits whenever the interests of justice require.

C. In computing the time within which the trial shall be scheduled, the court may exclude any period of time:



1. during which proceedings are suspended for competency evaluation or for evaluations following the entry of an NGI plea;
2. during which a bench warrant for a defendant who fails to appear has been issued but not served;
3. during an interlocutory appeal that has been accepted for review.

#### **4.27 Motions**

- A. All motions other than postconviction motions (see Rule 4.17) shall be filed in the courtroom of the branch to which the case is assigned.
- B. All motions shall comply with the format requirements of Rule 1.10.
- C. The party filing the motion shall obtain a hearing date from the court before or at the time of filing the motion. The court may ignore motions filed without a hearing date.
- D. Discovery demands, including without limitation demands made pursuant to Wis. Stat. § 971.23(1), and motions relating to them, shall not be filed unless the demand is contested and the defendant requests that the demand or motion be heard by the court.

#### **4.28 Special Rules Applicable to Drug Courts**

- A. The preliminary hearing shall be scheduled no later than 10 days from the date of initial appearance, regardless of whether the defendant is in custody.
- B. The scheduling conference shall be conducted no later than the second Friday after the date of the preliminary hearing.
- C. Motions for severance or consolidation shall be filed at or before the scheduling conference. Such motions shall be made in writing and shall be filed no later than at the scheduling conference. Such motions are exempt from briefing requirements of standing pretrial orders.

#### **4.29 Restraining Defendants**

- A. During all sentencing hearings, in-custody defendants shall be restrained by hand-cuffs and belly-chains, or by such other means as the bailiff shall prescribe.
- B. When the verdict is received, in-custody defendants shall be restrained by ankle cuffs secured to the floor, or by such other means as the bailiff shall prescribe, unless the judge presiding determines that a greater or lesser level of security is appropriate. In making such determination, the judge shall take into consideration the safety of all participants, as well as potential prejudice to the defendant's presumption of innocence.

C. The judge presiding, after consultation with the bailiff, may order the defendant restrained during any other proceeding if the defendant is in custody and the circumstances warrant restraints.

D. If a deputy sheriff assigned to the courtroom as a bailiff or additional security determines that, in his or her opinion, the proceedings are not secure, the deputy sheriff shall inform the judge and recommend steps to assure security. If the judge decides to proceed in a way that does not meet the concerns of the deputy sheriff, the deputy sheriff shall immediately inform his or her supervisor who shall notify the Chief Judge's Office. At that point, the proceedings shall be halted until the Sheriff's Department, the Chief Judge's Office and the trial judge agree on appropriate measures to ensure security in the courtroom.

### ***Rules Applicable Only to the Misdemeanor-Traffic Division***

#### **4.33 Procedure Upon Failure to Appear**

A. If a defendant fails to appear for a scheduled court proceeding, and if the court issues a bench warrant, the court shall stay the bench warrant for at least 7 calendar days but no more than 14 calendar days, shall schedule a proceeding on the day that the stay elapses, and shall contact the court's pretrial service agency to attempt to locate the defendant and encourage the defendant to return to court.

B. If the pretrial service agency cannot locate the defendant, the agency shall so report to the court and the court may lift the stay.

C. If the defendant fails to appear on or before the date on which the stay elapses, the court may lift the stay.

D. If the defendant appears on or before the date on which the stay elapses, the warrant shall be cancelled and further proceedings may be scheduled.

#### **4.34 Procedure Upon Report of a Violation of Bail Conditions**

A. If the pretrial agency detects a violation of the defendant's bail conditions while the defendant is in the courthouse complex, the agency shall escort the defendant to the branch to which the defendant's case is assigned for immediate review of the conditions of bail. If the judge to whom the case is assigned is not available, the defendant and the case file shall be escorted to a pair judge, or to the presiding judge if no pair judge is available, or to the intake commissioner if the presiding judge is not available.

B. If the defendant is not in the courthouse complex at the time the pretrial agency reports a violation of the defendant's bail conditions to the court, the court promptly shall decide whether and when to modify the conditions of bail and shall inform the agency.

## **PART 5. RULES FOR THE FAMILY DIVISION**

### **Rules Applicable to the Family Division**

#### **5.1 Exceptions to General Rules**

Rules 1.1 through 1.29 apply to proceedings in the Family Division except that Rule 1.12 requiring service of certain documents before filing does not apply to petitions under Wis. Stat. §§ 813.12 (domestic abuse restraining orders and injunctions), 813.122 (child abuse restraining orders and injunctions) and 813.125 (harassment restraining orders and injunctions).

#### **5.2 Use of Equivalent Forms**

Parties are encouraged to use the Supreme Court forms and Milwaukee County Circuit forms specified by these rules, but may submit forms that are substantially the same in form and content. Supreme Court forms are available at <http://www.wicourts.gov/forms1/circuit.htm>. Milwaukee County Circuit Court Forms are contained in the Appendix to these Rules.

#### **5.3 Case Processing Goals**

Ninety percent (90%) of all divorce actions should be resolved within twelve (12) months of commencement. Ninety percent (90%) of all paternity actions should be resolved within one hundred and eighty (180) days of commencement. Ninety-five percent (95%) of all other family actions should be resolved within twelve (12) months of commencement.

#### **5.4 Designation and Assignment of Cases**

A. All cases assigned to the Family Division shall be designated "FA" except for

1. Cases in which the court is asked to determine paternity, which shall be designated "PA;"
2. Cases in which a party seeks a harassment injunction, which shall be designated "CV;" and
3. Cases in which an injunction is sought on behalf of a child, by a child or against a child and which cases are assigned to the Family Division under Rule 5.37.C., which shall be designated "JI."

B. All FA cases shall be assigned electronically by lot among the branches of the division, except

1. as provided in Rule 5.4.D., 5.4.E. and 5.4.G.; and
2. de novo motions in certain FA cases shall be assigned for a hearing in a branch of the Criminal Division if all of the following criteria apply:
  - a. a domestic abuse injunction is issued under Wis. Stat. § 813.12; and
  - b. the respondent in the FA case is a defendant in a case pending in the Criminal Division, and

c. the claim against the defendant in the Criminal Division case arises from the same facts and circumstances that give rise to claim in the FA case.

C. All Harassment injunction CV cases are assigned according to Rule 1.6 (daytime duty judge).

D. Assignment of PA cases shall rotate from branch to branch within the division each month. All PA cases filed in a given month shall be assigned to a single branch.

E. When more than one case involves one or more of the same parties, the cases may be reassigned as follows:

1. For purposes of Rule 5.4 a case is “pending” during any period of time during which any proceeding is scheduled to be heard before the court or during which a bench warrant issued by the court is outstanding.

2. Purposes of this rule:

a. to consolidate multiple cases involving the child support obligations of a single family unit (consisting of the father and mother of the same child or children) for the administrative convenience of the Department of Child Support Enforcement; and

b. to assign multiple cases involving one or more of the same parties to the branch in which, by virtue of previous proceedings, the judge may have become familiar with the parties and the issues their cases present; and

c. to assign multiple cases involving one or more of the same parties to one branch for hearing on a common issue.

3. Except as provided in Rule 5.4.B., such cases shall be assigned to the same branch to which any pending FA or PA case involving the same parties is assigned.

4. PA cases involving children presumed to be of a marriage shall be reassigned to the same branch to which is assigned any pending divorce case involving that marriage.

5. All FA and PA cases which have in common the same family unit and in which a custody, placement or child support issue has been raised shall be reassigned to the branch to which the most recently filed case is assigned, unless a case involving the same parties is already pending before or has been heard by another judge currently in the division, in which situation, all cases shall be reassigned to the judge with the pending case or who previously heard the case most recently.

6. All FA and PA cases which have in common the same payor and in which a child support issue has been raised shall be reassigned to the branch to which the most recently filed case is assigned, unless a case involving the same payor is already pending before or has been heard by another judge currently in the division, in which situation, all cases shall be reassigned to the judge with the pending case or who previously heard the case most recently.

7. This rule does not affect the policy of consolidating financial orders into the most recently filed case on motion of the Department of Child Support

Enforcement.

F. Cases in which a petition for a temporary restraining order and/or an injunction under Wis. Stat. Chapter 813 is filed on behalf of a child, by a child or against a child are assigned as provided in Rule 5.37.

G. The Chief Judge or the Presiding Judge of the division may order the transfer of cases from branch to branch to facilitate the fair and efficient operation of the division.

## **5.5 Orders to Appear**

If in any case the court questions the validity of service of the initial pleadings or if the circumstances warrant exceptional means to give notice to an adverse party, the court may order a party to appear in person for any proceeding and direct another party to serve an Order to Appear pursuant to Wis. Stat. § 801.11.

## **5.6 Appearances of Counsel**

A. No attorney shall appear in court on behalf of a party without filing a notice of appearance, except with permission of the court. The signature of an attorney for a petitioner upon the initial pleading shall be deemed a notice of appearance.

B. Except as permitted in paragraphs C. and D., the court shall not permit an attorney to withdraw or another attorney to be substituted unless a stipulation between attorney and client is submitted for the court's approval, or upon motion with notice to the client. If a trial has been scheduled, any motion or stipulation seeking such approval shall state the date of the trial.

C. If a party and the party's attorney have agreed pursuant to Supreme Court Rule 20:1.2(c) to limit the scope of the attorney's representation in any way which limits the appearances an attorney is expected to make on behalf of the client in court, then the notice of appearance shall state the proceedings at which the court may expect the attorney to be present or other function for which the court may expect the attorney to be responsible.

D. An attorney whose appearance is limited under paragraph C. may withdraw at the point in the proceedings contemplated by the limited appearance agreement by submitting a proposed order for withdrawal under Rule 1.21 (the five-day rule) and serving a copy of the proposed order upon the client and all parties.

## **5.7 Information Regarding Identity in Child Custody Pleadings**

If a party to a child custody proceeding requests, pursuant to Wis. Stat. § 822.29(5), that required identifying information be sealed, the party shall prepare and submit Supreme Court Form GF-177, or provide equivalent information, together with proof of service pursuant to Rule 1.13. Any party may object to such

a request by filing a written objection and requesting a hearing.

### **5.8 Extensions of Time to Serve Pleadings**

Circuit court commissioners assigned to the Family Division may grant extensions of time to serve pursuant to Wis. Stat. §§ 767.215(4) and 767.815.

### **5.9 Number of Copies Required for Filing**

Whenever these rules call for the filing of a document with the court, the party making the filing shall supply the signed original and 3 copies, unless otherwise specified in these rules or ordered or directed by the court.

### **5.10 References in these Rules to Divorce, Legal Separation and Annulment**

All the rules of the family division that apply to actions for divorce apply equally to legal separation and annulment, except:

- A. Rule 5.17 (administrative dismissal) does not apply to actions for annulment.
- B. Neither the Family Court Commissioner nor court commissioners assigned to the family division are authorized to preside in actions for annulment.

### **5.11 Commencement of Actions for Divorce**

- A. Upon filing the papers necessary to commence an action for divorce, the petitioner shall proceed immediately to the office of the Family Court Commissioner to obtain a deadline for administrative dismissal, and, where applicable, an order requiring attendance at parent education. The petitioner shall present to, or obtain from, the office of the Family Court Commissioner either (i) the Notice and Order - Administrative Dismissal Date (Form 1 in the Appendix of Forms) or (ii) the Notice and Order - Administrative Dismissal Date & Requirement to Attend Parent Education Program (Form 2 in the Appendix of Forms).
- B. Copies of the Notice and Order - Administrative Dismissal Date or Notice and Order - Administrative Dismissal Date & Requirement to Attend Parent Education Program, with deadlines inserted by the Office of the Family Court Commissioner, shall be attached to and served upon the respondent with the summons and petition.
- C. All divorce petitions and responsive pleadings, except in cases in which, at the time of the filing of the action, there are no minor children born to or adopted by either spouse during the marriage, shall be accompanied by a Supreme Court Form GF-150 Uniform Child Custody Jurisdiction and Enforcement Act

Affidavit.

## **5.12 Temporary Orders**

A. All requests for temporary orders under Wis. Stat. § 767.225 shall be presented to the court in the form of a proposed order to show cause or a motion.

B. The request shall be accompanied by an affidavit setting forth the grounds for a temporary order.

C. All proceedings involving a request for a temporary order shall be scheduled for hearing before the Family Court Commissioner.

D. The court will not hear a request for a temporary order until both parties have made the required financial disclosure to the court before or at the hearing on the motion. Failure to disclose the required financial information may subject a party to sanctions.

1. Financial disclosure shall be made using Supreme Court Form FA-4139 or its substantial equivalent, and shall include proof of the party's income from any source during the 12 weeks preceding the filing, including, as applicable, wage statements issued by the party's employer(s), statements of government benefits received from any source, retirement benefits, pension payments, child support, maintenance, rent, dividends, interest, annuity payments and distributions from a trust.

2. The moving party shall serve on the responding party a copy of Supreme Court Form FA-4139 or its substantial equivalent, together with instructions to the responding party to complete the form, provide proof of income as in the preceding subparagraph, and file both at the hearing on the request for a temporary order.

3. The responding party shall complete Supreme Court Form FA-4139 or its substantial equivalent, provide proof of income and file the original and 2 copies of both at the hearing on the request for a temporary order.

E. Both parties shall appear personally unless excused by the Family Court Commissioner.

F. If the movant fails to appear, the court commissioner may deny the motion, impose costs, or order otherwise as necessary.

G. If the responding party fails to appear and if the movant proves that the responding party was served with the motion, the court commissioner may grant the motion, issue a bench warrant for the arrest of the responding party, impose costs, or issue other appropriate orders.

H. The parties may submit an agreed-upon temporary order for the court's

approval using Supreme Court Form FA-4126 or FA-4127. The parties shall attach to the proposed order a completed Supreme Court Form FA-4139 financial disclosure for each party. Proof of income, such as wage statements, need not be attached.

### **5.13 Mediation of Custody and Placement Disputes**

A. At the earliest opportunity in all divorce and paternity cases in which custody or placement is disputed, the Family Court Commissioner shall inform the parties of the benefits of mediation and financial commitments which will be incurred by the parties should it become necessary for the court to appoint a guardian ad litem.

B. The Family Court Mediation Service shall make available to all parties in such cases information concerning mediation.

C. The Family Court Commissioner may, without a hearing, refer parties in such cases to the Family Court Mediation Service for an initial session to determine whether mediation is appropriate if:

1. the parties agree to mediation;
2. a parent gives notice of a proposed move of a child pursuant to Wis. Stat. § 767.481, and the request is disputed; or
3. the judgment of divorce or paternity calls for mediation.

D. Referrals to the Family Court Mediation Service shall be made using the form Order Referring Parties to Mediation (Form 3 in the Appendix of Forms).

E. The Family Court Commissioner may order the payment or deferral of any appropriate mediation fees.

### **5.14 Mandatory Completion of Parent Education**

A. Parties who have any children who have not yet reached the age of 18, children who are either born to or adopted by both parties before or during the marriage, shall complete a parent education program approved by the court. This requirement does not apply in paternity actions.

B. Each party shall certify compliance with this requirement by filing in the office of the Family Court Commissioner a Report Concerning Completion of Parent Education Requirements (Form 4 in the Appendix of Forms). If either party fails or refuses to complete the program, the other party shall attend and certify his or her compliance. The court will not conduct any proceedings, except proceedings under Rule 5.12 (temporary orders), until at least one party certifies compliance.

C. The Family Court Commissioner may excuse a party from compliance with this requirement for good cause. A party seeking to be excused shall make a



request in writing to the Family Court Commissioner. The request shall state the complete case number, the names of both parties and a detailed reason why participation should not be required.

D. The Family Court Commissioner shall, in consultation with the judges assigned to the Family Division, review and approve one or more programs that may be attended in compliance with this requirement.

### **5.15 Appointment of Guardian ad litem**

A. A Guardian ad litem may be appointed:

1. by the court upon the recommendation of the Family Court Commissioner to the judge presiding in the branch to which the case is assigned after a hearing; such recommendation shall be submitted on the standard form Petition and Notice for Appointment of a Guardian ad Litem/Appointing Guardian ad Litem (by Family Court Commissioner) (Form 5 in the Appendix of Forms);

2. upon a petition of a party to the judge presiding in the branch to which the case is assigned, submitted on the standard form Petition and Notice for Appointment of a Guardian ad Litem/Appointing Guardian ad Litem (Form 6 in the Appendix of Forms);

3. by the judge presiding in the branch to which the case is assigned upon a signed stipulation of the parties; or

4. by the court on its own motion.

B. If the court grants the petition, it shall make the appointment on the form Order Appointing Guardian ad Litem (Form 7 in the Appendix of Forms) according to Rule 5.40 (registration and qualifications of guardians ad litem).

### **5.16 Suspension of Proceedings to Effect Reconciliation**

A. An application for suspension of proceedings to effect reconciliation shall state whether either of the parties is subject to any order of the court barring contact with the other party, including a no-contact order issued in a criminal proceeding, a domestic abuse injunction or a harassment injunction.

B. Stipulations for suspension of proceedings to effect reconciliation, together with five copies and return envelopes with postage affixed, shall be presented for approval to the judge to whom the case is assigned.

C. If the court approves the stipulation, it shall schedule a date on which the suspension ends, no later than 90 days beyond the date the stipulation is approved, as well as a date on or after which the court, without further notice to the parties, may dismiss the action if neither party has requested any further relief from the court, no later than 120 days beyond the date the stipulation is approved. The court shall notify the parties of the suspension and dismissal deadlines by returning to the parties a copy of their stipulation together with an Addendum to Order

Suspending Proceedings (Form \_\_\_ in the Appendix of Forms).

D. If the stipulation is approved, the deputy clerk in the branch to which the case is assigned shall provide copies to the Family Court Commissioner and the Department of Child Support Enforcement.

#### **5.17 Administrative Dismissal of Unprosecuted Cases**

A. A case shall be dismissed if, as of 180 days after the date a case is filed, or upon such other deadline ordered by the Family Court Commissioner, the case is not scheduled for a final hearing, pretrial conference or trial.

B. Before dismissing a case for failure to prosecute the case, the court shall give notice.

#### **5.18 Distinctions among Default, Stipulated and Contested Divorces**

A. Different procedures apply in “default” and “stipulated” divorces, which are also referred to as “uncontested” divorces, as opposed to “contested” divorces.

B. “Default” divorces, in which the adverse party is served, by publication or otherwise, and does not appear or otherwise participate in any proceeding, are governed by Rule 5.20 (uncontested divorce proceedings).

C. “Stipulated” divorces, in which parties agree in writing to resolve all disputes between them, are governed by Rule 5.20 (uncontested divorce proceedings).

D. “Contested” divorces include all divorces, other than default or stipulated divorces in which both parties appear but disagree as to any issue which must be resolved by the court. Contested divorces are governed by Rule 5.22 (contested divorce proceedings).

#### **5.19 Completion of Settlement Documents before Final Hearing**

In order to ensure finality and to minimize the need for and scope of postjudgment proceedings and the burden of such proceedings on the parties and on the court, parties shall complete and file the applicable checklist and documents required by Rules 5.20 (uncontested divorce proceedings), 5.22 (contested divorce proceedings) or 5.25 (documents to be filed at the commencement of trial), except as these rules or the court otherwise permits, or else the court will not conduct a final hearing.

#### **5.20 Uncontested Divorce Proceedings**

A. All uncontested divorce proceedings shall be heard by the Family Court Commissioner, except (i) cases in which the parties agree to divorce after the scheduling of a pretrial conference, which cases are subject to Rule 5.22 (contested divorce proceedings), and (ii) cases in which the judge agrees to preside over the proceedings, which cases are subject to paragraph G and Rule 1.5 (authority of pair judges).

B. All uncontested divorce proceedings shall be scheduled by the Family Court Commissioner for a final hearing before the Family Court Commissioner.

C. Before a final hearing may be scheduled, the parties shall complete and file for approval by the office of the Family Court Commissioner the checklist entitled "Pro Se Documents Required to File for Stipulated/Default Divorce Hearing Date" (Form 8 in the Appendix of Forms) and all of the items set forth in checklist, including the following:

1. A Supreme Court form FA-4139 Financial Disclosure or its substantial equivalent for at least one of the parties; a joint filing may be made for both parties, but both parties must sign the joint filing.

2. A Supreme Court Form FA-4150 or FA-4151 Marital Settlement Agreement or its substantial equivalent addressing all issues between the parties.

3. If the marital settlement agreement provides for the payment of child support, family support or spousal maintenance, a proposed Supreme Court Form FA-612 Interim Financial Summary to Child Support Agency, or its substantial equivalent.

4. The original, state-issued Certificate of Divorce or Annulment form prescribed by the State of Wisconsin Vital Records Section (the state-issued form is available in Courthouse Room 411) completed in black ink. No information on the form shall be erased or crossed out or covered with correcting fluid or tape.

5. An Order to Appear (see Form 9 in the Appendix of Forms), completed except for the date, time and location of the final hearing, which information will be inserted by the office of the Family Court Commissioner upon approval of the submission.

6. Report Concerning Completion of Parent Education Requirements (Form 4 in the Appendix of Forms), if not previously filed.

7. Proof of service of the summons and petition, if not previously filed.

8. Supreme Court Form GF-175 Affidavit of Nonmilitary Service, if not previously filed.

9. An original and 2 copies of a Supreme Court Form FA-4160 or FA-4161 Findings of Fact, Conclusions of Law & Judgment ("the judgment document").

a. The parties need not, until the final hearing, complete those portions of the judgment document requiring the name of the judicial officer presiding at the hearing or the income for each party.

b. Unless stated specifically in the marital settlement agreement, the judgment document shall state with specificity

(i) any life insurance policies, by face amount, carrier, policy number and

owner, to be included in the personal property division; and

(ii) the details of any retirement plan of any nature to be included in the personal property division, including the name of the plan, account number, value or estimated value of the plan and owner, together with a statement of how the plan is to be divided, expressed as a fixed amount or percentage.

10. Two (2) 9" x 12" envelopes, one completely addressed to the petitioner and the other completely addressed to the respondent, with postage affixed (4 first class stamps on each).

11. A cashier's or certified check or money order payable to the Clerk of Circuit Court for the judgment filing fee (\$5.00), unless the office of the Family Court Commissioner grants permission to the parties to bring the funds in cash to the final hearing.

D. If one or more parties is represented by an attorney, and if the complexity of the issues or the uncertainty of the proceeding so warrants, the court, upon request, may relieve a party of the requirements of paragraphs C.8 through C.10. If the court conducts the final hearing without a party submitting the items identified in paragraphs C.8 through C.10 in advance or at the time of the final hearing, they shall be submitted for the court's approval, and served on all parties to the action, including the Department of Child Support Enforcement, no later than 30 days after the hearing. If a party fails to submit the required papers within the time allowed by the court, the court may order the party to show cause why he or she should not be held in contempt. Any costs and disbursements, including the cost of service, may be assessed against the delinquent party and/or that person's attorney.

E. The parties shall submit the required number of copies; the office of the Family Court Commissioner may reject requests for a final hearing if an insufficient number of copies are submitted.

F. All documents filed in compliance with this rule shall be served upon the adverse party by any of the means specified in Rule 1.13 (methods of service). A party who has been served by publication and has not appeared or participated in any proceeding may be served with such documents by mail at the address to which the publication summons was mailed.

G. The final hearing may be heard by the judge to whom the case is assigned if the parties (i) agree to divorce after the scheduling of a pretrial conference (see Rule 5.22) and (ii) have the permission of the judge to proceed before the judge. The judge may decline to hear the final hearing if the submissions required by this rule are not complete.

## **5.21 Collaborative Divorce**

A. Unless otherwise ordered by the judge assigned to the case, all proceedings in divorce cases in which the parties have agreed to be bound by principles of collaborative divorce shall be heard by the Family Court Commissioner. Parties who so agree promptly shall request that the Family Court Commissioner assign a

final hearing date no more than 7 months from the date of the filing of the action.

B. If, at the time of the final hearing, any issue remains unresolved, the case shall be referred immediately to the assigned branch for further proceedings, which may include referring the case back to the Family Court Commissioner for a final hearing at a later date.

C. If at any time proceedings are suspended to effect reconciliation pursuant to Wis. Stat. § 767.323, then, upon request, the Family Court Commissioner may issue a revised final hearing date taking into account the duration of the suspension.

## **5.22 Contested Divorce Proceedings**

A. Proceedings which formerly were contested but have since been resolved, leaving no dispute as to any issue which must be resolved by the court, are governed by Rule 5.20 (uncontested divorce proceedings). If all disputes are resolved before a scheduled proceeding (for example, a pretrial conference) the parties are encouraged to schedule a final hearing under Rule 5.20 before the FCC, and then to contact the clerk in the branch to which the case is assigned to remove the previously-scheduled proceeding from the calendar. Previously-scheduled proceedings will remain on the court's calendar until a final hearing is scheduled on the FCC's calendar.

B. The parties shall attempt to resolve all disputes between them. If the parties are unable to resolve all disputes before the administrative dismissal date, then:

1. Before the administrative dismissal date, at least one of the parties shall file in the branch to which the case is assigned a Request for Pretrial (Form 11 in the Appendix of Forms).

2. Before the administrative dismissal date, at least one of the parties shall contact the deputy clerk in the branch to which the case is assigned and obtain a date for a pretrial conference and an Order for Pretrial/Order to Appear (Form 10 in the Appendix of Forms).

3. The Order for Pretrial/Order to Appear shall be served upon all parties by one of the means specified in Rule 1.13 (methods of service), together with a Request for Pretrial (form 11 in the Appendix of Forms) and all attachments to it. If the validity of service of the summons and petition is questionable, the court may order that the Order for Pretrial/Order to Appear and Request for Pretrial be served personally pursuant to Wis. Stat. § 801.11.

C. The Request for Pretrial (form 11 in the Appendix of Forms) shall require, at a minimum, the completion and filing of:

1. a Supreme Court Form FA-4139 or its substantial equivalent,

disclosing the party's finances, current as of the date of filing, which shall include proof of income as set forth in Rule 5.12.D.1. (temporary orders).

2. either, as the court shall direct the parties, a detailed statement of the issues that the parties are unable to resolve; or a Supreme Court Form FA-4152 or FA-4153 Proposed Marital Settlement Order or its substantial equivalent addressing all issues between the parties;

3. a Report Concerning Completion of Parent Education Requirements (Form 8 in the Appendix of Forms), if not previously filed;

4. proof of service of the summons and petition and Supreme Court Form GF-175, Affidavit of Nonmilitary Service, if not previously filed;

5. a proposed Pretrial Order (Form 12 in the Appendix of Forms); and

6. any other document which the parties are directed to file by the branch to which the case is assigned.

D. All parties and all attorneys participating in the case shall appear at the pretrial conference. The court may permit a party to appear by telephone according to the protocols authorized in Rule 3.27.A.

E. Once the Pretrial Order is executed, and unless it is served on the parties at the pretrial conference, the party who presented the Pretrial Order shall serve it on all parties, by one of the means specified in Rule 1.13 (methods of service).

### **5.23 Discovery**

Discovery is governed by Rules 3.19. through 3.22.

### **5.24 Appraisals**

A. Unless the parties request that the court appoint a real estate appraiser, the parties shall submit appraisals on or before the deadline ordered by the court or the court may rely upon the fair market value determined by the tax assessor.

B. The parties shall divide equally and pay all expenses of a court-appointed appraiser, unless otherwise ordered by the court.

C. An appraisal by a court-appointed appraiser may be received in evidence at trial without testimony of the appraiser. Other appraisals are not admissible unless the appraiser testifies, except upon the agreement of the parties or with the court's permission.

D. A party may call a court-appointed appraiser as a witness at the party's expense and if the party serves notice in writing at least 30 days before the trial.

E. A party may call an appraiser of his or her own choosing at his or her own expense, but shall disclose the name of the appraiser to the opposing party and serve a copy of the appraisal on or before the deadline set by the court in the

pretrial order.

## **5.25 Documents to be Filed at the Commencement of Trial**

A. To insure an efficient closure of the proceedings upon the conclusion of a trial, all parties at trial shall file the following at or before the commencement of the trial:

1. An updated Supreme Court Form FA-4139 Financial Disclosure Statement, or its substantial equivalent, current as of the date of trial;
2. An original version (not a photocopy) Certificate of Divorce or Annulment form prescribed by the State of Wisconsin Vital Records Section completed in black ink; no information on the form shall be erased or crossed out or covered with correcting fluid or tape; and
3. a Supreme Court Form FA-612 Interim Financial Summary to Child Support Agency, or its substantial equivalent, current as of the date of trial, if applicable.

B. Parties shall comply with this requirement whether or not the requirement is stated in the Pretrial Order, unless excused by the court.

## **5.26 Preparation of Judgment Document in Contested Divorces**

A. The findings of fact, conclusions of law and judgment (“the judgment document”) required by Wis. Stat. § 767.251 of the petitioner’s attorney, or the petitioner if appearing without an attorney, unless otherwise ordered by the court, shall be submitted on Supreme Court Form FA-4160 or FA-4161 (Findings of Fact, Conclusions of Law and Judgment) or its substantial equivalent, shall state all information required by statute and all information required by paragraph B, current as of the date of the trial, and shall be accompanied by a completed Form FA-4150 or FA-4151 Marital Settlement Agreement or Form FA-4152 or FA-4153 Proposed Marital Settlement Order or a substantial equivalent.

B. Unless stated specifically in the marital settlement agreement, the judgment document shall state:

1. if spousal maintenance is held open, that "Maintenance for the petitioner/respondent/joint petitioner wife/husband is held open" followed by a statement of the reasons why;
2. with specificity any life insurance policies, by face amount, carrier, policy number and owner, to be included in the personal property division;
3. with specificity the details of any retirement plan of any nature to be included in the personal property division, including the name of the plan, account number, value or estimated value of the plan and owner, together with a statement of how the plan is to be divided, expressed as a fixed amount or percentage; and
4. if custody or placement was contested, a statement of specific facts supporting the court’s determination under Wis. Stat. § 767.41(5) of the best interests of the children.

C. Unless submitted previously, the party submitting the judgment documents also shall submit:

1. Two copies, in addition to the original documents.
2. Two 9" x 12" envelopes, one completely addressed to the petitioner and the other completely addressed to the respondent, with postage affixed (4 first class stamps on each).
3. A cashier's or certified check or money order payable to the Clerk of Circuit Court for the judgment filing fee (\$5.00).
4. An original version (not a photocopy) Certificate of Divorce or Annulment form prescribed by the State of Wisconsin Vital Records Section (available in Room 411 of the Courthouse, in the Legal Resource Center and in the Milwaukee Justice Center) completed in black ink, unless filed previously; no information on the form shall be erased or crossed out or covered with correcting fluid or tape.
5. A Supreme Court Form FA-612 Interim Financial Summary to Child Support Agency, or its substantial equivalent, if applicable unless filed previously.

D. If a party fails to submit the required judgment document within the time allowed by the court, the court may order the party to show cause why he or she should not be held in contempt. Any costs and disbursements, including the cost of service, may be assessed against the delinquent party and/or that person's attorney.

E. The judgment document shall be served on all parties, including the guardian ad litem and the Department of Child Support Enforcement, before being submitted for the court's approval as follows:

1. upon any party represented by an attorney by any of the means specified in Rule 1.9 (methods of service), after which that party's attorney shall sign the proposed judgment document and return it to the party assigned to submit the judgment document to the court, or, no later than 10 days after service of the judgment document, file a written objection stating with particularity why the proposed judgment document does not conform to the findings made at trial; or
2. upon any party not represented by an attorney by any of the means specified in Rule 1.9 (methods of service) and pursuant to Rule 1.21 (the five-day rule).

## **5.27 Postjudgment Proceedings in Divorce Cases**

A. The following postjudgment proceedings shall be heard by the judge to whom the case is assigned, and all papers relating to the proceedings shall be filed in the judge's branch:

1. All proceedings the judge agrees at the time of trial or final hearing to hear.
2. All motions for contempt brought within 1 year of the date of the judgment document entered pursuant to Rule 5.20 or 5.27, except those filed by the



Department of Child Support Enforcement, which shall be heard first by the Family Court Commissioner.

3. All motions to reopen a judgment in a case arising under Wis. Stat. Ch. 767.

4. All petitions arising under Wis. Stat. § 767.471. See Rule 5.29 (enforcement of physical placement orders).

5. All jurisdictional motions.

6. All requests for review of a decision of the Family Court Commissioner under Rule 5.31 (review of decisions of the Family Court Commissioner).

B. All other postjudgment proceedings shall be heard first by the Family Court Commissioner.

C. All stipulations proposing a modification of a judgment, except those made orally on the record before a judge, shall:

1. be presented to the Family Court Commissioner for approval;

2. be submitted on Supreme Court Form FA-604 Stipulation and Order to Amend Judgment;

3. state information sufficient to enable the Family Court Commissioner to make all determinations required by statute, including, in cases involving child support, family support or spousal maintenance, any pertinent financial data required by statute.

D. Decisions of the Family Court Commissioner in postjudgment proceedings are final unless reviewed under Rule 5.31 (review of decisions of the Family Court Commissioner).

E. In all postjudgment proceedings in which child custody or placement is disputed (including in proceedings seeking enforcement or modification of court orders):

1. all proceedings, except proceedings under Wis. Stat. § 767.471 to enforce a physical placement order (see Rule 5.29), shall be heard initially by the Family Court Commissioner, all pleadings shall be filed in the office of the Family Court Commissioner and the Family Court Commissioner's office shall schedule all proceedings;

2. the court shall order the parties to attend mediation pursuant to Wis. Stat. § 767.405 unless prohibited by statute;

3. the Family Court Commissioner shall attempt to resolve the matter upon the first hearing of the matter and, if the parties agree to mediate, may order additional hearings before referring the matter to the judge to whom the case is assigned.

F. If a court commissioner determines that a party may be held in contempt, the court commissioner shall issue written findings, propose specific sanctions and or purge obligations, and order further proceedings before the judge to whom the

case is assigned. The court commissioner also shall advise the party of the right to obtain legal counsel and that failing to appear at the date and time ordered may result in an order for arrest being issued by the court.

### **5.28 Exemption from Certain Filing Fees in Postjudgment Proceedings**

No filing fee shall be charged to the Milwaukee County Department of Child Support Enforcement for filing judgment modification motions on behalf of a party receiving W-2, medical assistance, SSI or food stamps.

### **5.29 Enforcement of Physical Placement Orders under Wis. Stat. § 767.471**

A. All motions requesting enforcement of a physical placement order under Wis. Stat. § 767.471 shall be submitted on Supreme Court Form FA-609 or its substantial equivalent, together with a proposed order on Supreme Court Form FA-611 or its substantial equivalent.

B. All such motions requesting enforcement of a physical placement order shall be scheduled before and heard by the judge to whom the case is assigned.

C. Other motions or requests for relief made at the same time as a request for such enforcement of a physical placement order shall be scheduled before and heard by the Family Court Commissioner. The court may disregard such other motions and requests until they are scheduled properly.

D. This rule does not apply to motions filed under any statutory provision other than Wis. Stat. § 767.471.

### **5.30 Child Custody/Placement Requests of Parties Other than Parents**

Parties other than parents, including grandparents, who seek the custody or placement of a child, may commence proceedings on such a request by filing a petition and summons or by filing a motion in any previously filed family action involving the child(ren) and the parents. All such requests shall be heard by the Family Court Commissioner, subject to review under Rule 5.31.

### **5.31 Review of Decisions of the Family Court Commissioner**

A. Except as provided in Rule 5.38 (review of decisions of the Family Court Commissioner in Chapter 813 Actions), any order, ruling or decision of the Family Court Commissioner is subject to *de novo* review pursuant to Wis. Stat. § 757.69(8) by the judge to whom the case is assigned, at the request of any party to the action, including the guardian ad litem.

B. A request for review shall be made by motion. The motion shall be filed in the branch to which the case is assigned no later than 15 business days after the

date of the order, ruling or decision to be reviewed, or, if the order, ruling or decision is delivered to the parties by mail rather than in person, no later than 18 business days after the date of mailing of the order, ruling or decision.

C. Before serving the motion, the party requesting review shall obtain a hearing date from the deputy clerk in the branch to which the case is assigned. The motion shall give notice of the date and time of the hearing on the motion and shall be served by any of the means specified in Rule 1.13 (methods of service). The motion shall be served on all parties, including, if applicable, the guardian ad litem and the Department of Child Support Enforcement. If the court has reason to doubt that an adverse party probably was served with motion, the court may order the party to serve the adverse party pursuant to Wis. Stat. § 801.11.

D. The motion shall have attached to it a copy of the order, ruling or decision to be reviewed, and, to the extent the issue in dispute involves spousal maintenance, property division or child support, a current financial disclosure statement that complies with the requirements of Rule 5.12.D.1.

E. To the extent the issue in dispute involves spousal maintenance, property division or child support, the party opposing the motion shall file, at or before the hearing on the motion, a current financial disclosure statement that complies with the requirements of Rule 5.12.D.1.

### **5.32 Prejudgment Paternity Proceedings**

A. All paternity proceedings shall be scheduled before and heard by the Family Court Commissioner except those specified in this rule.

B. The Family Court Commissioner may grant judgment of paternity upon a default or if the alleged father, in the presence of the Family Court Commissioner, signs an acknowledgment of paternity (available in paternity hearing rooms). If the alleged father appears by telephone or videoconference, the Family Court Commissioner may grant judgment of paternity without a written acknowledgement if the alleged father acknowledges paternity on the record.

C. If judgment of paternity is granted, the Family Court Commissioner may make appropriate orders regarding custody, physical placement, child support, payment of expenses and costs relating to the child's birth, court costs, genetic testing, change of the child's name and health insurance. Disputes over placement shall be heard initially by the Family Court Commissioner.

D. The Family Court Commissioner may appoint a guardian ad litem only:  
1. in prejudgment proceedings matters to rebut the presumption of paternity, to represent a minor parent, to represent a deceased alleged parent, or upon a motion of the Department of Child Support Enforcement; the Family Court Commissioner may appoint the Legal Aid Society, or, in case of a conflict of

interest, Centro Legal; or

2. if exigent circumstances justify an immediate appointment and the judge presiding in the branch to which the case is assigned is not available.

3. *The Family Court Commissioner may reappoint the Legal Aid Society to continue to serve as Guardian ad Litem after the rebuttal of the presumption of legitimacy if necessary to address custody and placement issues in entering judgment of paternity (added per CJD 14-16)*

E. If paternity or any other issue is contested by any party, including the guardian ad litem, the Family Court Commissioner shall hear the evidence and make a recommendation to the judge to whom the case is assigned, together with all appropriate prejudgment orders, and then transfer the case to the branch to which the case is assigned for scheduling of further proceedings.

F. Discovery is governed by Rules 3.19 through 3.22.

### **5.33 Post Judgment Paternity Proceedings**

The procedures set forth in Rule 5.27 (postjudgment proceedings in divorce cases) shall also apply in postjudgment proceedings in paternity cases.

### **5.34 Extension of Child Support Upon Child Reaching Age 18 and Attending High School**

A. A request to extend child support beyond the child's 18<sup>th</sup> birthday because the child is still attending high school shall be submitted in writing to the Department of Child Support Enforcement before the child's 18<sup>th</sup> birthday. The request shall be accompanied by a document on school letterhead stating (1) that the child is enrolled in high school and (2) the date on which the child is expected to graduate.

B. If a party does not agree with the Department's determination, the party may request review of the decision by filing a motion and scheduling a hearing before the Family Court Commissioner.

### **5.35 Credit for Payments of Child Support Made Directly to the Payee**

A. A request that child support payments made directly by the payor to the payee be credited in the financial records of the Wisconsin Support Collections Trust Fund shall be made either by:

1. submitting to the Department of Child Support Enforcement a notarized statement of the payee specifying the exact amount of direct payment to be credited; or

2. submitting to the Family Court Commissioner a stipulation signed by both parties specifying the exact amount of direct payment to be credited.

B. If the Department of Child Support Enforcement denies a request made under paragraph A.1. or the Family Court Commissioner refuses to accept the stipulation submitted under paragraph A.2., either party may request that the Family Court Commissioner order the Department of Child Support Enforcement to credit the amount of the direct payment. The party seeking such an order shall file a motion and schedule a hearing before the Family Court Commissioner.

### **5.36 Termination of Child Support Upon Death of Payer or Child**

A. The Family Court Commissioner may terminate child support upon submission of a death certificate of the payer.

B. The Department of Child Support Enforcement may terminate child support as of the date of the child's death upon submission of a death certificate of that child, unless the payer supports more than one child under the same child support order. If more than one child is supported under the same child support order, child support may be modified as provided in Rule 5.27.B. or 5.27.C. (postjudgment proceedings in divorce cases).

### **5.37 Assignment of Petitions for Temporary Restraining Orders and Injunctions under Wis. Stat. Chapter 813; Assignment of Child Abuse and Juvenile Harassment Injunctions as between the Family Division and the Children's Division**

A. All petitions for temporary restraining orders under Wis. Stat. §§ 813.12, 813.122, and 813.125 initially shall be heard by the Family Court Commissioner. The assignment of subsequent proceedings among branches of the Family Division is governed by Rules 5.4 (designation and assignment of cases), 5.31 (review of decisions of family court commissioners in Chapter 813 harassment and domestic abuse actions) and this rule.

B. All hearings on the issuance of an injunction sought on behalf of a child, by a child, or against a child, including child abuse and harassment injunctions ("JI injunction"), shall be conducted by a judge or judicial court commissioner in the Children's Division, except as provided in Rule 5.37.C.

C. All hearings on petitions seeking a JI injunction shall be conducted by a judge or family court commissioner in the Family Division (and shall be assigned according to the rules for assigning Family Division cases in Rule 5.4) if:

- a. both parties to the petition are adults who are parties to a pending FA or PA case; or
- b. both of the parents of the child are parties to the same pending FA or PA case and the respondent named in the petition is married to one of the parents or is in a dating relationship, as defined in Wis. Stat. § 813.12(1), with one of the parents;

c. except that if the child named in the petition is the subject of a CHIPS action in which future proceedings are scheduled in the Children's Division, the hearing shall be conducted by a judge or judicial court commissioner in the Children's Division;

d. for purposes of Rule 5.37.C. a case is "pending" during any period of time during which:

1. Any proceeding is scheduled to be heard;
2. A bench warrant issued by the court is outstanding; or
3. Any proceeding was heard by the court within the previous twelve months.

### **5.38 Review of Decisions of the Family Court Commissioner in Chapter 813 Actions Concerning Harassment or Domestic Abuse**

A. Decisions of the Family Court Commissioner in actions arising under Wis. Stat. Chapter 813 concerning harassment or domestic abuse shall be reviewed as follows:

1. If the decision of the Family Court Commissioner of which review is sought consists of the denial of a temporary restraining order in a case arising under Wis. Stat. § 813.125 (harassment), or the denial of a request for a temporary restraining order or the denial of a hearing on a request for an injunction in a case arising under Wis. Stat. § 813.12 (domestic abuse), the decision shall be reviewed by the daytime duty judge. The request for review may be made in writing or in person and shall be filed with or made to the deputy court clerk assigned to the daytime duty judge. The request shall be made as soon as possible but no later than 10 days after the date of the decision of which review is sought. If the daytime duty judge orders a hearing on a request for an injunction in a case arising under Wis. Stat. § 813.12 (domestic abuse), the Family Court Commissioner shall preside over the hearing.

2. If the decision of the Family Court Commissioner of which review is sought consists of the issuance or denial of an injunction, the decision shall be reviewed by the judge presiding in the branch to which the case is assigned. Such a motion shall be filed within the time limitations set forth in Rule 5.31.B. (review of decisions of the Family Court Commissioner). If cross-petitions are filed and the petitions are heard together by the Family Court Commissioner, and if neither party is a party to a pending FA case, then all requests for review of the decision of the Family Court Commissioner shall be consolidated and heard by the judge presiding in the branch to which the case with the lowest case number is assigned.

3. A decision of the Family Court Commissioner denying approval of a fee waiver shall be reviewed, upon a timely motion, by the Chief Judge, except in cases in which the Family Court Commissioner denies both approval of a fee waiver as well as a request for a temporary restraining order, in which case the decision shall be reviewed, upon a timely motion, by the daytime duty judge.

B. While a decision of the Family Court Commissioner is being reviewed, the Family Court Commissioner may not vacate or modify any previously issued temporary restraining order or injunction.

### **5.39 Return of Firearms**

A party seeking the return of a firearm upon the expiration of a domestic abuse or harassment injunction shall file with the Family Court Commissioner (i) a Supreme Court Form CV 433 Petition to Return Firearm and (ii) a receipt for the firearm issued by the authority to which it was surrendered.

### **5.40 Registration and Qualifications of Guardians ad Litem**

A. Attorneys appointed as guardian ad litem shall have training and experience deemed sufficient by the appointing judge. The court may select from a registry of qualified candidates maintained as follows:

1. Attorneys may apply to the Family Court Commissioner for inclusion in the registry. Registration is good until July 31; applicants must re-apply annually. The application shall be made on (name of form), (Form 13 in the Appendix of Forms).

2. An applicant shall certify that the applicant meets all certification requirements imposed by statute or Supreme Court rule and also that, in the 3 years immediately preceding the date of the application, the applicant has represented clients and/or served as a guardian ad litem in at least 25 family law or paternity cases involving issues of custody or placement. If the applicant cannot meet this qualification, the applicant may request a waiver of this qualification from the presiding judge of the division.

B. All attorneys named in the registry occasionally shall take guardian ad litem appointments at county pay rates.

### **5.41 Privileged Counseling Communications**

Communications among the parties and counselors in co-parenting and communications counseling programs are entitled to the privileges conferred on settlement negotiations by Wis. Stat. § 904.08 and on mediation by Wis. Stat. § 904.085.

## **PART 6. RULES FOR THE CHILDREN'S DIVISION**

### **6.1 RESPONSIBILITY**

The Children's Division is responsible for hearing a variety of matters involving persons under the age of 18, and occasionally age 21. Cases heard in the Children's Division are governed by Chapters 48, 938, 54, and 813 of the Wisconsin Statutes and include juvenile delinquency cases, juveniles in need of protection or services (JIPS), children in need of protection or services (CHIPS), termination of parental rights (TPR), adoptions of minors, guardianship of minor persons, county ordinance violations, and certain injunctions involving minor respondents.

## **6.2 CASE PROCESSING GOALS**

1. Termination of Parental Rights: Ninety-five percent (95%) of all cases classified as voluntary TPR cases shall be disposed of within 120 days. Ninety-five percent (95%) of all cases classified as involuntary TPR cases shall be disposed within 180 days.
2. CHIPS: Eighty-five percent (85%) of all cases shall be disposed of within 90 days.
3. Delinquency: Ninety-five percent (95%) of all cases shall be disposed of within 90 days.

## **6.3 DUTIES OF THE PRESIDING JUDGE**

In lieu of a regular or specialty calendar assignment, the Presiding Judge of the Children's Division is assigned to administer the division, hear specialty case assignments pursuant to Chief Judge Directives and assist in relieving calendar congestion.

## **6.4 ASSIGNMENT OF CASES**

1. Petitions filed by, on behalf of, against, or in the interest of a child, and authorized in Wis. Stat. Chapter 48, 938, or authorized in Wis. Stat. Chapter 54, 767, as indicated by Wis. Stat. §801.18(3)(a), shall be eFiled by attorneys or eFiled or paper filed by non-legal party/pro se litigant filers in the office of the Clerk of Circuit Court Children's Division ("Clerk's Office").
2. When more than one case involving one or more of the same parties is scheduled for proceedings in the Children's Division, the cases may be reassigned according to the "One Family/One Judge" model of decision making so that, to the greatest degree reasonably possible, cases involving maternal siblings may be heard together.
3. Except as stated in this rule, all petitions filed in the Children's Division shall be assigned on a weekly rotating basis except "daily delinquencies". Daily delinquencies shall be assigned to one of the five general courts on a rotating basis. The Presiding Judge and the Children's Court Judicial Operations Manager shall devise a weekly intake schedule. All requests for temporary physical custody by the Division of Milwaukee Child Protective Services (DMCPS), for emergency changes of placement in CHIPS cases, for emergency transfer of temporary guardianship and for pick-up orders shall be assigned to the intake branch without regard to the pendency of other CHIPS cases unless the assigned court wants to handle the matter.
4. Active CHIPS, delinquency, and Ch. 54 guardianship cases:
  - A. A CHIPS, delinquency, or Ch. 54 guardianship case is active if no dispositional order or transfer of guardianship has been made, an unexpired dispositional order is in effect, or Ch. 54 guardianship has been transferred.



- B. If at the time of filing a CHIPS, delinquency, or guardianship petition there is an active CHIPS, delinquency, or guardianship case involving the child or his or her sibling, then the petition shall be assigned to the branch to which the active case is assigned.
  - C. This rule takes precedence over all other assignment rules except rules regarding substitution, assignment of termination of parental rights cases, and specialty courts.
5. TPR cases:
- A. Petitions seeking termination of parental rights ("TPR") shall be assigned to the branch to which the District Attorney team filing the petition is assigned.
  - B. A TPR case is open if a TPR order is sought but has not yet been granted or denied, if termination of parental rights has been ordered but the child has not been adopted, guardianship has not been transferred, and the child has not attained 18 years of age or 21 years of age as permitted under Wis. Stat. 48.355(4)(b)4.
  - C. If at the time of filing there is an open TPR case involving a sibling, the petition shall be assigned to the branch to which the sibling's open TPR case is assigned.
  - D. If at the time of filing there is an active CHIPS case involving the same child:
    - I. Except for hearings scheduled prior to the initial hearing on petition of the TPR, all scheduled CHIPS proceedings shall be re-scheduled and heard by the judge presiding in the branch to which the TPR petition is assigned. If the case is assigned to the Family Drug Treatment Court (FDTC), all team meetings will remain in the FDTC.
    - II. If termination of parental rights is ordered, all remaining proceedings in the CHIPS case shall be heard in the branch to which the TPR petition is assigned.
    - III. If the TPR petition is dismissed, further proceedings in the CHIPS case shall be heard in the branch to which the CHIPS case was assigned at the time of the filing of the petition, or the successor branch unless the TPR court agrees to keep the CHIPS case through entry of the next CHIPS related order.
  - E. If at the time of filing of a Ch. 54 guardianship petition there is an open TPR case involving the same child, the guardianship case shall be assigned to the branch to which the open TPR case is assigned.
6. Initial Delinquency Hearings:
- A. Delinquency detention hearings pursuant to Wis. Stat. §938.21 shall be conducted before the delinquency intake court commissioner. The commissioner court shall schedule the plea hearing before the assigned judge within 21 days if the juvenile is not held in secure detention and within 10 days if the juvenile is held in secure detention.
  - B. In cases where a juvenile is not detained pursuant to Wis. Stat. §938.19 before a petition is filed, the plea hearing shall be conducted before the delinquency intake court commissioner within 21 days after the petition is filed. But for 6(C), further proceedings shall be scheduled before the assigned judge.
  - C. At the detention and plea hearings pursuant to 6(A) and 6(B), further proceedings in uncontested misdemeanor delinquency cases (not sexual assault or gun related cases) may be scheduled before the delinquency intake court commissioner for resolution with the consent of all parties.
7. Child abuse and harassment petitions:

- A. A petition for a temporary restraining order and/or an injunction filed on behalf of a child, by a child or against a child shall be assigned as provided in Local Rule 5.37.
  - B. Except as provided in this rule, petitions are assigned according to the weekly intake schedule to the branch whose intake week falls on the date the injunction hearing is first scheduled.
  - C. All child abuse injunction hearings shall be heard by a judge.
  - D. All harassment injunction hearings shall be heard initially by a judicial court commissioner.
8. Parental Consent Waivers: A petition filed pursuant to Wis. Stat. §48.375(7) shall be assigned to the judge selected by the petitioning minor.

## **6.5 DISCOVERY**

1. Discovery in proceedings under Wis. Stat. Chapter. 48 are governed by Local Rules 3.19 through 3.22.
2. In all original jurisdiction CHIPS proceedings, immediately after the temporary physical custody (TPC) hearing, the Assistant District Attorney shall provide to counsel for all parties copies of all available Division of Milwaukee Child Protective Services intake notes, records, and documents relied upon by the petitioning Assistant District Attorney in preparing the request for a TPC order, together with copies of all available relevant medical records and police reports without need of a discovery demand. Copies of subsequent discovery materials shall be made available upon demand.
3. In all contested TPR cases, immediately after the plea hearing, the Assistant District Attorney shall provide to counsel for all parties copies of all available Division of Milwaukee Child Protective Services intake notes, records, and documents relied upon by the petitioning Assistant District Attorney in preparing the TPR petition, together with copies of all available relevant medical records and police reports without need of a discovery demand. Copies of subsequent discovery materials shall be made available upon demand.
4. Copies of materials required by this rule that are not immediately available to the Assistant District Attorney after the TPC hearing or TPR plea hearing shall be provided without need of a discovery demand as soon as available, but no later than 10 days after the hearing unless additional time is granted by the court.

## **6.6 FILING OF PAPERS**

1. All attorneys shall file papers via e-Filing pursuant to Wis. Stat. §801.18.
2. All petitions, motions, or requests which by statute require the Clerk's Office to give notice to an interested party shall be eFiled or paper filed with the Clerk's Office (if a non-legal party/pro se litigant filer opts to not eFile), which will designate a hearing date. The party or entity filing the petition, motion, or request shall provide the Clerk's Office with the names and addresses of all persons to whom notice must be given. The Clerk's Office shall provide notice to such persons at the addresses provided by the party, as well as to any possible alternative addresses.
3. All other petitions, motions, or requests shall be eFiled or filed (if a non-legal party/pro se litigant filer opts to not eFile), in the branch to which the case is assigned, which will designate a hearing date. If the assigned branch is unavailable to accept the filing, the non-legal party/pro se litigant filer may file in the Clerk's Office, which will designate a hearing date.

4. Any petition, motion or request may be filed by a non-legal party/pro se litigant filer in court during or immediately before a hearing, provided that all parties are present and are served in court. All attorneys must eFile prior to the hearing.

### **6.7 GOOD FAITH EFFORT TO RESOLVE DISPUTES**

1. In all cases under Chapter 48, the parties and representatives of the Division of Milwaukee Child Protective Services (DMCPS) shall strive to resolve any disputed issues before the first hearing date on any motion, petition, request, or objection to notice. Counsel shall be prepared at the first hearing date on any motion or petition to inform the court what efforts were made to resolve any issues that are presented to the court for resolution.
2. If there is no dispute regarding a request to revise a dispositional order pursuant to Wis. Stat. §48.363, the parties and a representative of DMCPS are encouraged to file/eFile a stipulation and proposed order in advance of any scheduled hearing date, to eliminate the need for a hearing.
3. Regarding any other motion, petition, or objection to notice that has been scheduled for hearing, if there is no dispute the parties and a representative of the DMCPS are encouraged to file/eFile a stipulation and proposed order.

### **6.8 PROPOSED ORDERS**

1. If an order is not reduced to writing at the time the court makes an oral ruling, then within five (5) days of the hearing, or within such time as the court orders, the attorney for the prevailing party shall eFile with the court and serve all parties a proposed written order.
2. Local Rule 1.21 (the "five-day rule") applies to all such proposed orders, except temporary guardianship orders, pick-up orders, temporary physical custody orders, orders agreed to in writing by all parties, and orders for guardianship or termination of parental rights submitted on Supreme Court forms without any addenda.

### **6.9 RESCHEDULING**

1. Scheduled proceedings may not be re-scheduled or canceled except by the court. The person or party requesting the rescheduling or cancellation shall provide notice in advance as soon as reasonably possible to all interested parties, including, without limitation, attorneys, Division of Milwaukee Child Protective Services (DMCPS) representatives, Division of Youth and Family Services (DYFS) human service workers and witnesses.
2. If all issues in dispute in a contested proceeding are resolved in advance by agreement, the parties may request, after notice to all interested parties, that the agreement be scheduled for the court's consideration at an earlier date.

### **6.10 DUTY JUDGE**

1. For one month on a rotating basis, pursuant to a schedule approved by the Presiding Judge, each judge assigned to the Children's Division shall serve as duty judge on evenings, weekends, holidays and at all other hours the court is not in operation pursuant to Local Rule 1.8.
2. The duty judge shall hear all emergency requests made by the DMCPS, DYFS, and the District Attorney Juvenile Division.

3. A party making an emergency request to the duty judge shall contact the duty judge first. If the duty judge is not available, the party shall contact the Presiding Judge of the Children's Division. If the Presiding Judge is not available, the party shall contact the other judges assigned to the Children's Division in reverse order on the Duty Judge schedule starting with the most recently assigned judge.

### **6.11 REQUEST FOR JURY**

The deputy court clerk shall schedule or cancel jury panels. Jurors may be ordered for TPR trials on the morning or afternoon of the first day of the week, however morning panels shall be ordered only if necessary to accommodate the trial schedule. Jurors may be ordered for non-TPR cases on the afternoon of the first day of the week or the morning of the second day, however panels shall be ordered on the first day of the week only if necessary to accommodate the trial schedule. No more than two courts may order jurors for any one morning or afternoon, with preference to be given to TPR trials. Exceptions may be taken to this rule in extraordinary circumstances with the approval of the Presiding Judge Children's Division.

### **6.12 CONSENT DECREES**

1. No consent decree in a Chapter 938 case shall be approved by the court until the human service worker assigned to the case approves, or has been provided the opportunity to object and be heard.
2. No consent decree in a Chapter 48 case, shall be approved by the court until the case manager assigned to the case approves, or has been provided the opportunity to object and be heard.

## **PART 8. RULES OF THE MUNICIPAL COURT OF THE CITY OF MILWAUKEE**

### **I. Primary Responsibility**

### **II. Court Rules**

### **III. Administration**

## **I. PRIMARY RESPONSIBILITY**

### **801. DEFINITION**

An action in Municipal Court for violation of a Municipal ordinance, or violation of a resolution or bylaw, if the resolution or bylaw is authorized by statute, is a civil action, and the forfeiture or penalty imposed by an ordinance in the City of Milwaukee may be collected in an action in the name of the municipality.

## **II. COURT RULES**

### **816. INTAKE AND TRIAL ROTATION**

1. The intake and trial duties shall be rotated in accordance with a schedule approved by the Presiding Judge and the Chief Judge.
2. All initial appearances shall be before the judge assigned to intake duty when the first appearance was scheduled, unless otherwise directed by a municipal judge or by the Chief Judge.

3. When a defendant, defense attorney, or city attorney requests an initial date appearance court date that is different from the scheduled date, the initial appearance must be rescheduled before the branch in which the case was originally scheduled. Any exception requires agreement between the judges involved.
4. All warrants issued as a result of a defendant failing to appear at trial, with the exception of warrants issued on operating while intoxicated (OWI) and on .10% blood alcohol concentration (BAC) cases, will be returned to whatever branch presiding in intake court. This procedure will cover all outstanding warrants, as well as any warrants that will be issued in the future.
5. The Court Administrator will be responsible for equally distributing summons and complaints issued by the city attorney via a tab method.

### **817. COURT APPEARANCE BY IN-CUSTODY DEFENDANTS**

1. This section is adopted to fulfill the requirement of Sec. 800.01(b), Wis. Stats. It applies to defendants who are in custody of a law enforcement officer and who are scheduled for court appearance via the interactive video system.
2. If a defendant has a physical disability such as hearing, seeing and/or speaking that will make communication via video difficult for either the defendant or the judge or both, the defendant shall be brought personally before the judge, unless an interpreter is made available and both the defendant and the interpreter can be heard and seen via video during the proceedings.
3. If the judge has reason to believe that the defendant is mentally incompetent, Municipal Court procedures relating to appointment of a guardian ad litem shall apply.
4. The in-custody calendar shall be prepared by the law enforcement officer with custody of the defendants in accordance with the directions of the court, and provided to the court staff in time for preparation of the physical and computer case files as necessary.
5. The video proceeding shall be as follows:
  1. The judge shall ask the defendant to state his/her name and address.
  2. The judge shall order judgement, adjournment, program referral, extension of time to pay, or other action.
  3. Judicial notices, referral notices, adjournment slips or other notices as required by judicial action shall be given personally to the defendant.
6. The courtroom shall have a video monitor that enables the public to hear and see the proceedings as conducted in the area where the defendant is physically located.
7. The courtroom shall have a video monitor that enables the judge to hear and see a clear image of the defendant and to hear a clear transmission of the defendant's (or his/her interpreter's) voice.
8. The video appearance area where the defendant is physically located shall have a video monitor that enables the defendant to see a clear image of the judge and the courtroom, and to hear a clear transmission of the judge's voice.

### **819. TRANSFER OF CASES WITHIN THE MUNICIPAL COURT**

If a judge deems it necessary to transfer a case that is ready for trial for the convenience of the litigants, and/or the speedy resolution of the case, the case shall be transferred to a branch that is prepared to try the case on the day of the transfer.

## **820. SUBSTITUTION OF MUNICIPAL JUDGE**

1. In cases specified in Sec. 800.02(1), Wis. Stat., a person charged with a violation may file a written request for a substitution of a new judge for the municipal judge assigned to the trial of that case. The written request shall be filed no later than seven (7) days after the initial appearance in person or by the attorney. The municipal judge against whom a request has been filed may set initial bail and accept a plea of "not guilty".
2. Except as provided in Sub. D, no person may file more than one such written request in any one action.
3. When a request for substitution of judge is granted, the case shall be referred to the Chief Court Administrator's office. The Administrator shall determine to which municipal court judge the case shall be transferred by lot, using a random tab system. The case shall be immediately assigned to the municipal judge so tabbed. The municipal Chief Court Administrator shall notify, in writing, the District Court Administrator, the judge who was substituted, and the judge to whom the case is assigned.
4. If, upon an appeal from a judgment or order, or upon a writ of error, the appellate court orders a new trial, or reverses or modifies the judgment or order in a manner such that further proceedings in the municipal court are necessary, the person charged with a violation may file a request under Sub. A within twenty (20) days after the entry of the judgment or decision of the appellate court, whether or not another request was filed prior to the time the appeal or writ of error was taken.

## **821. DISQUALIFICATION OF MUNICIPAL JUDGE**

If a judge deems it necessary to disqualify himself/herself from a case, he/she shall state the reasons for disqualification. The action shall then be processed under Rule 820 C.

## **822. ADJOURNMENTS**

Adjournment or postponement of cases may be granted only by the authority of the judge. Each adjournment or postponement of a case shall be to a day and time certain.

## **824. ILLNESS, ABSENCE, OR VACANCY; PENDING ACTION TRIABLE BY COURT WHICH RECEIVES PAPERS; CONTINUANCE ON VACANCY AND NOTICE OF TRIAL**

1. If any municipal judge is to be temporarily absent, or sick or disabled, the municipal judge may, by written order filed in the court and with the Chief Judge of the Judicial Administrative District for approval, designate another municipal judge of the county to perform his/her duties for a single period not to exceed thirty (30) days.
2. If any municipal judge is incompetent, unable, or fails to act, or in the event of a vacancy, Sec. 751.03(5), Wis. Stats., applies. The parties and their attorneys shall be notified of the transfer to another municipal judge prior to trial. The municipal judge to whom the case transferred may issue execution upon, or give a certified transcript of, any unsatisfied judgment appearing in the docket.

3. Each judge shall notify the Chief Court Administrator promptly when such judge intends to be absent from court duties. Absence of more than one day shall be reported in writing. Conflicts because of absences shall be resolved by the Chief Judge.

#### **825. TEMPORARY RESERVE JUDGE: SERVICE**

1. In this action, "temporary reserve judge" means a judge for a municipal court for any municipality within the Judicial Administrative District appointed by the Chief Judge of that District to perform such specified duties on a day-by-day basis as the Chief Judge may direct.
2. Eligibility. Any of the following persons may serve as a temporary reserve judge:
  1. A person who has served a total of eight or more years as a municipal judge.
  2. A person who has served four or more years as a municipal judge and who was not defeated at the most recent time he/she sought election to judicial office.
3. Compensation. Temporary reserve judges shall receive compensation in an amount agreed to by contract between the municipality and the temporary reserve judge. The judge may not serve until the contract is entered into and the judge has complied with Sec. 755.03, Wis. Stats.
4. Training. All persons serving as temporary reserve judges are subject to Sec. 755.03, Wis Stats.

#### **826. VACATION AND EDUCATION**

1. Vacation. Pursuant to Supreme Court Rules, a judge shall take no more than five weeks, or 25 work days, vacation per year.
2. Education. Each judge shall take no more than two weeks, or 10 work days, for judicial education purposes each year.

#### **828. MOTION PRACTICE**

1. Consolidation of Cases, General.
  1. If a defendant has more than one matter pending, he/she may request consolidation by a motion to the court.
  2. If the motion for consolidation is granted, the case will be automatically consolidated before the judge before whom the matter with the lowest-numbered case is pending, unless the judge with the lowest-numbered case determines that such consolidation shall not occur.
2. A motion for discovery shall be made in writing and filed in person by the defendant or by an attorney with the court within thirty (30) days of initial appearance.
3. Motions for discovery and motions to reopen shall be served on the City at least five (5) days prior to the hearing date, unless the court orders otherwise.
4. Hearings on motions for discovery and motions to reopen shall be scheduled on the motion calendar.

#### **830. SCHEDULING CONFLICTS**

Notwithstanding the lowest-numbered case file, if an attorney has more than one matter scheduled for the same day, but before different judges, the action which was scheduled earliest shall have precedence over the others.

### **831. WAIVER OF JURY FEES OR APPEAL FEES**

All requests for waiver of jury fees or of appeal fees shall be made in writing to the Chief Judge, on a form available at the municipal court, at the time of filing the jury or appeal demand.

### **832. PRE-TRIAL**

1. A judge may order a defendant to appear before the court for a pre-trial conference with the prosecutor.
2. The pre-trial conference shall be scheduled to occur no later than sixty (60) days from the entry of a plea.
3. If a defendant ordered to a pre-trial conference fails to appear on the scheduled date and time, a default judgment may be taken against him/her.

### **833. GUARDIAN AD LITEM**

1. When the court has reason to believe that a defendant is mentally incompetent, the court shall, whenever possible, arrange for an in-court conference between the defendant and the prosecutor for a decision as to whether the City will continue to prosecute or will move to dismiss the case.
2. If the City decides to prosecute a case against a defendant that the court has reason to believe is mentally incompetent, the court shall appoint a guardian ad litem for the defendant.
3. A judge may order a competency evaluation of a defendant at the recommendation of the guardian ad litem.
4. The guardian ad litem shall consult the records of the court or of its agents to assist in locating the defendant and obtaining pertinent personal and medical information.

### **835. TRIAL: PROOF OF CONVICTION**

The standard of proof for conviction of any person charged with violation of any municipal ordinance, by law, or resolution specified in Sec. 300.02 (1) Wis. Stats., shall be evidence that is clear, satisfactory, and convincing.

### **837. RULES OF EVIDENCE**

Municipal courts shall be bound by the rules of evidence specified in Chapters 901 to 911, , Wis. Stats.

### **839. SETTING OF CALENDARS**

Each Judge shall be responsible for setting his/her judicial calendar.

### **842. RECORDING OF PROCEEDINGS**

1. Every proceeding in which testimony is taken under oath in a municipal court shall be recorded by electronic means for purposes of appeal.
2. Notwithstanding Sub. A, a municipal court is not a court of record.



#### **843. FILING PAPERS (EFFECTIVE 10/31/00)**

1. The filing of pleadings and other papers with the court shall be made by filing them at the office of the court at 951 North James Lovell Street, Milwaukee, Wisconsin 53233.
2. The filings of pleadings and other court papers may be performed by facsimile transmission to the office of the court. Papers filed by facsimile transmission will be considered filed when transmitted except papers filed by facsimile transmission completed after 4:30 p.m., Monday through Friday or during weekends and holidays shall be considered filed the next business day.
3. When papers are filed by facsimile transmission, additional copies are not required to be filed with the court.

#### **844. WITHDRAWAL AND CONTROL OF FILES AND RECORDS**

1. No file, document, or paper may be taken from offices of the court for the use outside of the court premises without permission of the Chief Court Administrator, or unless authorized by a judge, in writing, on a form prescribed by the Chief Court Administrator.
2. All case files should be returned to the filing section on a daily basis.
  1. When cases are laid over to the following day, an appropriate "out card" will be filled out for the filing section.
  2. A tag date will be set by the judge when action on cases is delayed beyond one working day.

#### **850. RULES OF DECORUM**

1. Court shall be formally opened each day upon which court business is transacted, by either the bailiff or the court clerk.
2. As the judge enters the courtroom, the bailiff or court clerk shall require all present to stand. When the judge has ascended the bench, the bailiff or clerk shall say: "The Municipal Court for the City of Milwaukee, Branch \_\_\_\_\_, the Honorable \_\_\_\_\_ presiding, is now in session. Everyone should please be seated and remain quiet during the court session."
3. In recessing, the bailiff or clerk shall announce: "The Court is now in recess. Court shall resume at \_\_\_\_\_ o'clock."
4. At all times while court is in session, the national flag shall be displayed close to the bench on a standard to the right of the judge.
5. Lawyers shall not lean upon the bench or engage the court in a manner depreciative of the dignity of the proceedings as viewed by the 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 examining him/her.
7. Lawyers, during trial, shall not exhibit familiarity with witnesses or opposing counsel; and, generally, use of first names alone shall be avoided.
8. All lawyers and court officers shall wear proper attire while in attendance upon the court, provided that judicial discretion may be exercised in extreme situations.
9. The administration of oaths to witnesses should be an impressive ceremony, and not a mere formality.

10. Witnesses shall be examined with courtesy and respect, and their good faith presumed until the contrary appears.
11. The defendant shall stand with his/her attorney, before the bench, at the time of arraignment and at the time of passing sentence.
12. The judge shall, pursuant to Sec. 755.17, Wis. Stats., be properly attired in a robe or other suitable clothing when officially presiding in court.
13. The courtroom for a municipal judge shall be provided by the municipality. The courtroom shall be designed and furnished to create and promote the proper atmosphere of dignity and decorum for the operation of the court.

### **III. ADMINISTRATION**

#### **852. PRESIDING JUDGE**

1. The Presiding Judge of the Municipal Court shall be appointed by the Chief Judge from among the municipal judges, for a renewable term of two years, commencing with August 1 of the year of the appointment. If the Presiding Judge leaves the Municipal Court or otherwise removes himself/herself from the position before the two-year term expires, the Chief Judge shall appoint an acting Presiding Judge for the balance of the term.
2. The Presiding Judge shall appoint the Chief Court Administrator, with confirmation by the Common Council, for a renewable term of three years.
3. The Presiding Judge, in consultation with the other judges and the Chief Court Administrator, unless otherwise provided by ordinance or law, and with the approval of the Chief Judge of the District, shall:
  1. Establish judicial policy and guidelines.
  2. Establish and promulgate written judicial work and rotation schedules.
  3. Articulate requests for budgetary appropriations, staff, and equipment for the maintenance of the court, and appear at budget hearings before the Common Council or committees thereof when requested, or when he/she deems appropriate.
  4. Supervise the expenditure of funds allocated for judicial purposes.
  5. Make recommendations to the Chief Judge for the orderly and efficient administration of justice.
  6. Preside over regularly-scheduled meetings of the judges of the municipal court, the Chief Court Administrator, and such other persons as are deemed appropriate.
  7. Approve the form of papers, documents, process, and pleadings filed with the court.
  8. Perform such other duties as may be, from time to time, assigned by the Chief Judge.

#### **853. PART-TIME MUNICIPAL COURT COMMISSIONERS: SELECTION (eff. 4/12/00)**

1. Applicable statutes and ordinances: Wis. Stats. Sec. 755.19 and Chapter 315 of the Milwaukee Code of Ordinances.
2. Announcement/Request for Names. The position is advertised in the Milwaukee Journal Sentinel, Daily Reporter, in major newspapers serving minorities, in State Bar of Wisconsin news publications, in the Milwaukee Bar Association newsletter and through other appropriate communications sources such as the Association of Women Lawyers, the Wisconsin Hispanic Lawyers Association and the

Wisconsin Association of Minority Attorneys. All applications are returned to the Office of the Presiding Judge.

3. Selection. Upon receipt of the applications, the Presiding Judge shall designate staff to review the applications and identify applicants who have not satisfactorily documented that they meet the minimum qualifications for the position, and may also direct staff to make any necessary inquiries to determine eligibility of applicants. An interview panel consisting of the three judges of the court shall establish a list of applicants to be interviewed from the list of eligible applicants. The interview panel shall conduct oral interviews with the applicants individually. The interview shall include, without limitation, questions concerning demeanor and knowledge of law. Upon completion of the interviews, the panel shall evaluate the merits of the applicants with a final decision to be made by the Presiding Judge after consulting the other judges on the panel.
4. Appointment. The Presiding Judge may appoint from among the names, may decide upon further interviews of the candidates or may reject the list and request that new applicants be sought. Appointment to the position, made after consultation with the other judges on the panel, and the compensation for the position rests with the Presiding Judge. Upon appointment, the person appointed shall take the oath of office prior to commencement of duties and such oath shall be filed in the Office of the Presiding Judge.  
If a further opening occurs within a reasonable amount of time, the Presiding Judge, at his/her discretion, may appoint a person from the list of previously recommended candidates instead of requesting the process to be started over. A new list of eligible persons shall be requested if one of the following exists:
  1. There is not an existing list of eligible persons for the specific position.
  2. The current list of eligible persons is more than two years old or is determined to be not sufficiently diverse.
  3. The job description is in need of modification.
  4. The Presiding Judge determines that such a request is appropriate for any other reason.
5. Compensation. All compensation matters shall be in the sole discretion of the Presiding Judge, subject to all applicable city ordinances, union agreements and city civil service rules.

#### **854. CHIEF COURT ADMINISTRATOR**

1. The Chief Court Administrator shall be appointed by the Presiding Judge and confirmed by the Common Council for a renewable term of three years.
2. The Chief Court Administrator, in addition to the duties prescribed by ordinance, statute, or case law, shall, in cooperation with the Presiding Judge:
  1. Administer the non-judicial services of the court.
  2. Hire, assign, train, and discipline staff, and perform such other personnel management duties required to meet civil service and labor contract requirements.
  3. Initiate and implement procedures for the effective and efficient operation of the court.
  4. Develop budget requests necessary for the maintenance and operation of the court, appear at budget hearings as needed, and implement the approved budget.
  5. Present the needs of the court to the appropriate agencies of the City, County, and State.

6. File requests for appropriations or requisitions for the court, and approve all invoices for the same; keep a record of such requisitions and expenditures; and make any necessary budget adjustments.
7. Secure the services of substitute judges.
8. Prepare management information on revenues, expenditures, case adjudication, and court operations.
9. Provide statistics on each branch of the court to each judge and to the Chief Judge of the District.
10. Prepare and deliver to the appropriate authority for execution all orders and process of the court.
11. Maintain liaison with Mayor's office, the Common Council, City Attorney, law enforcement agencies, and such other offices and agencies necessary for proper administration of the Chief Court Administrator's office and the court.

**856. Conflicts of an administrative, judicial, or procedural nature may be referred to the Chief Judge for resolution.**