

# Burnett County Circuit Court Rules

## *Tenth Judicial District*

Effective Date: July 7, 2007

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## **Part 1: Tenth Judicial District Rules 101 District Rule Adoption and Promulgation**

101.01 Pursuant to §753.35(2) the Tenth Judicial District Court Rules are incorporated herein by reference.

## **Part 2: Court Practice**

### 201 Continuances

201.01 Court proceedings will not be adjourned by the Court except upon formal motion for good cause shown or with the specific approval of the Court upon stipulation by all parties.

### 202 Facsimile Transmission Of Document To The Court

202.01 Pursuant to §801.16(2)a, the Burnett County Clerk of Circuit Court shall accept and file facsimiles transmitted to a plain paper fax machine owned and operated by the Burnett County Circuit Court, which fax number is 715-349-7659. This document is not to exceed 15 pages. Any document with more than 15 pages shall be sent by regular mail. Once a facsimile document has been transmitted to the Court, it is not necessary to mail the original document to the Court.

### 203 Rules Of Decorum

203.01 The flag of the United States and the State of Wisconsin shall at all times while court is in session be displayed in close proximity to the bench, or on standard to the side of the judge.

203.02 No one shall ever lean upon the bench or appear to engage the court in a manner which would lessen the dignity of the proceedings in the eyes of the jury and public.

203.03 Witnesses shall be examined from a position behind the counsel table or lectern except when handling exhibits. Persons examining witnesses may either stand while examining a witness or remain seated. In no case shall a witness be crowded during examination.

203.04 When a lawyer or party is addressing the jury, he or she shall not crowd the jury box.

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

203.06 During trial, no lawyer or party shall exhibit familiarity with witnesses, jurors or opposing counsel and generally the use of first names shall be avoided. In jury arguments no juror shall be addressed individually or by name.

203.07 Lawyers and court officers shall, while in court, be attired in such a manner as not to lessen the dignity of the court or of proceedings in the eyes of the jury and public. This includes for men neckties, suits or sport jackets.

203.08 Lawyers shall advise their clients and witnesses of the formalities of court, and seek their full cooperation. It is expected that lawyers will guide clients and witnesses as to appropriate attire.

203.09 Witnesses shall be examined with courtesy and respect, and their good faith presumed until the contrary appears.

203.10 Attorneys and parties shall be prepared to proceed at the time matters are scheduled. Failure to proceed on time may be grounds for sanctions, including but not limited to costs, dismissal, judgment, and ruling against the late party on the particular matter before the court.

203.11 An attorney wishing to approach the witness box shall make an initial request to do so. The request need be made only once per witness.

203.12 Attorneys shall request permission before approaching the bench.

## 204 Telephonic Hearings

204.01 Telephonic Appearances will be allowed upon prior approval of the Court. The party wishing to appear by telephone shall contact the Court at least 48 hours prior to the scheduled court appearance to obtain permission to appear by telephone.

## 205 Videoconferencing

205.01 Use of videoconferencing shall be allowed upon agreement of all parties involved and upon court approval.

### **Part 3: Civil Practice**

301 Service And Answer – All civil cases will be reviewed for service and answer 90 days after filing. If a case has not reached issue, a dismissal order or default proceeding may be initiated by the court.

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

302.01 Telephone Testimony – When testimony is taken by telephone, the party calling the witness is responsible for any long distance charges.

### **Part 4: Criminal Practice**

401 Defendant's Presence Required – Defendants must be present at all initial appearances, status conferences, motion hearings, arraignments and trials. The judge, for good cause, may approve authorizations to appear upon advance request in misdemeanor cases.

402 Motion Practice – A party filing a motion shall be responsible for securing a hearing date. Failure to secure a date shall constitute waiver of the motion.

### **Part 5: Family Law Practice**

501 Guardian Ad Litem

501.01 Appointment Of Guardian Ad Litem – Upon appointment of a guardian ad litem, each party shall pay \$300.00 directly to the Clerk of Court for deposit in a trust account, subject to further order of the court. If any party is financially unable to make payment, the court may waive all or part of the advance fee. At the conclusion of the case, the court may direct the county to pay the guardian ad litem fees, and may direct that one or both of the parties reimburse the county.

### **Part 6: Foreclosure Practice – No Local Rules Adopted**

### **Part 7: Juvenile Practice – No Local Rules Adopted**

### **Part 8: Probate Practice**

801 Jurisdiction of the Probate Court include the following: Probate actions under Wis. Stat. Chapters 851 through 879; Guardianship and protective placements under Wis. Stat. Chapters 54 and 55; Trust actions under Wis. Stat Chapter 701; Civil commitments under Wis. Stat. Chapter 51.

802 Responsibility within the Probate Court

## 802.01 Responsibility of Register in Probate/Probate Registrar

802.01.1 The Register in Probate is responsible for the opening, reviewing, filing, maintenance and closing of all files and papers dealing with civil commitment, probate, trust, protective placement, guardianships (both adult and minor), as well as administrative matters dealing with probate court.

802.01.2 The Probate Registrar handles uncontested informal probate hearings.

802.01.3 Pursuant to §865.065(2) the Probate Registrar, the deputy or members of the staff of the Probate Registrar, or other persons designated to perform the duties of the Probate Registrar under Chapter 865, shall advise, within their competence, in the preparation of any of the documents required to be prepared and filed by the personal representative under Chapter 865.

802.01.4 The Register in Probate shall perform the duties of the clerk of the court assigned to exercise jurisdiction under Chapters 48 and 938 unless these duties are performed by a person appointed under s.48.04.

## 802.02 Responsibility of Court Commissioners

802.02.1 The Probate Court Commissioner administers uncontested hearings on formal probates and trusts matters, under the supervision of the Circuit Court.

## 803 Filing of Documents

803.01 All documents relating to probate court subject matter are to be filed in the office of the Register in Probate. Documents required shall be filed prior to the hearing.

## 804 Scheduling

804.01 The Register in Probate schedules informal probate hearings and uncontested formal hearings.

## 805 Estates

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

805.01.1 Wills of a decedent which will not be subject to probate proceeding shall be filed and shall be accompanied by an affidavit.

805.01.2 Wills of living persons filed for safekeeping shall be accompanied by the statutory filing fee and other information as the Register in Probate may require.

805.01.3 Objection for admission of the will or appointment of the personal representative shall be in writing accompanied by the statutory filing fee.

805.02 Summary Settlement, Summary Assignment and Special Administration: Proof of heirship should be filed with all opening papers for Summary Settlement, Summary Assignment and Special Administration petitions.

805.03 Selection of Personal Representative: Only Wisconsin residents may be appointed as Personal Representative of an estate, unless, at the discretion of the court, the nominated non-resident is then required to have a resident agent and post a bond with the probate court in an amount determined by the probate court. If the decedent died intestate, an automatic surety bond will be required unless waived by all heirs/interested persons.

805.04 Hearing or Waiver of Hearing: A hearing is not required when waivers are filed by interested parties. Hearings will be held if notice is required or upon request of the attorney for the estate, the personal representative, or the probate court.

805.05 Objections to Claims Filed: An objection to a claim must be in writing and filed with the probate court. When the objection is filed, the personal representative or attorney for the estate shall send notice of the objection to all interested parties. A notice of hearing will be sent to all interested parties from the court.

805.06 Inventory: The general inventory is due no later than six months after the appointment of the personal representative, unless the court has by order extended or shortened the time. A statutory filing fee shall accompany the inventory.

805.07 Final Account: Filing of a final account in an informal is requested to be filed. A statement of attorney fees shall be filed when the final account is not filed in the probate office.

805.08 Tax Clearances: A Wisconsin closing certificate for fiduciaries shall be filed and a federal estate tax closing letter (if the estate met the standard to file a federal estate tax return) shall be filed with the court prior to the closing of any estate.

805.09 Closing Estates: Signed receipts from heirs or beneficiaries and documentation that the residual beneficiaries or heirs have been advised as to the amount of the personal representative and attorney fees must be filed with the court.

805.10 10th Judicial District Timelines to Close Estates: Estate actions shall be disposed of within twelve (12) months from the date of the filing of the petition or application to open estate.

805.11 Extensions of Time to Closing Estates: When an estate cannot be closed within the required time limits, a petition setting forth the reasons for the request of an extension of time to close the estate must be filed with the court. A proposed order shall also be submitted. The court will review each request individually. See section 805.09 and section 809.

## 806.01 Inventory

806.01.1 The trust inventory shall be filed before the estate will be closed. If the inventory is not timely filed, the Register in Probate shall notify the trustee that the trust inventory is past due.

## 806.02 Closing

806.02.1 At the time of the termination of the trust, all annual accountings for prior years and the final account must be on file with the court.

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

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

## 807 Guardianships

### 807.01 Temporary Guardianships

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

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

807.01.3 A guardian ad litem shall be appointed in all temporary guardianship matters.

### 807.02 Guardianships

807.02.1 The Court shall appoint a guardian ad litem for the proposed ward if the petition is filed by a pro se individual, otherwise counsel will retain the GAL; the guardian ad litem shall file a report with the court prior to the hearing. The wards assets shall pay the GAL fee.

807.02.2 The guardianship inventory shall be filed within 60 days of the appointment of a guardian of the estate.

807.02.3 Unless previously ordered by the court, the guardian must sign and date a Guardian's Fee and Payment contract for reimbursement of expenses and/or guardian fees.

### 807.03 Conservatorships

807.03.1 The conservatorship inventory shall be filed within 60 days of the appointment of a conservator.

807.03.2 A hearing is required to terminate a conservatorship

#### 807.04 Protective Placements

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

807.04.2 A comprehensive evaluation must be completed and filed with the court on all protective placement petitions.

#### 807.05 Protective Placement Reviews (Watts)

807.05.1 The Court will hold annual summary hearings on Watts reviews.

#### 807.06 Termination of Guardianships

807.06.1 Guardianship of the person – deceased ward: upon notification to the probate court that the ward died, the court will issue an order of discharge of the guardian of the person.

807.06.2 Guardianship of the estate – deceased ward: upon notification to the probate that the ward died and filing of: the final account as approved by the court; a proper receipt from the person/entity receiving the remaining assets in the ward's estate; the court will issue an order of discharge of the guardian of the estate.

#### 808 Civil Commitments

808.01 Commencement: all civil commitment matters under Chapter 51 originate with the county corporation counsel office.

#### 809 District Probate Timelines

809.01 The judges of the 10th Judicial District have set the case processing benchmark for closing estates at twelve (12) months from the date of filing the petition or application.

809.02 See Rule 805.09 regarding extensions for time to close the estate.

#### 810 Forms — District and State

810.01 Standard statewide forms are required for filing.

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

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

## **Part 9: Small Claims Practice**

### 901 Service

901.01 Alternatives for Service of Summons and Complaint in Small Claims Actions. The service of the Summons in small claims Cases, except in eviction and replevin actions, may be by regular Mail, pursuant to the requirements of Wis. Stats. §799.12(3). See Wis. Stats. §799.12(2). Personal service is required in eviction Actions. In replevin actions, service may be made by personal Service or by certified mail, pursuant to the requirements of Wis. Stats. §799.12(3).

### 902 Appearance

902.01 Appearance in Small Claims Actions (Except Evictions). Except for eviction actions, a defendant may contest any small Claims action without appearing on the initial return date by Delivering a written Answer to the Clerk of Courts no later than 2:00 p.m. On the day of the scheduled return date. See Wis. Stats. §799.22(4). The Answer shall state in plain simple language the basis for contesting the lawsuit. The defendant must also provide a copy of any such Answer to the plaintiff (or the plaintiff's attorney) prior to the return date. The box provided on the standard form must be utilized to provide a brief explanation of the claim or it will not be accepted for filing.

902.02 Appearance in Small Claims Eviction Actions. In eviction actions, all parties (including landlords and tenants) must personally appear at the initial return date (even if the defendant files a written Answer prior to the return date) if the defendant objects to the eviction or other relief requested in the lawsuit. However, a defendant is not required to appear if that party does not object to the granting of the eviction and other relief requested.

## **Part 10: Traffic (Non-Criminal) & Forfeiture Practice**

1001 Initial appearances for traffic and/or ordinance citations are held before the Court Commissioner.

1002 Individuals receiving traffic or ordinance citations may appear at the initial appearance or may enter a not guilty plea by mail or phone to the Office of the Clerk of Court prior to the initial appearance date.

### 1003 Pretrial Conference

1003.01 Any individual who enters a not guilty plea, either in person at the initial appearance, by mail or phone, (except in Village Citations) will be assigned a pretrial conference with the District Attorney's office.

1003.02 If a pretrial conference is awarded to an individual and if that Individual fails to appear at the pretrial conference, a default Judgment will be entered against the individual on the Citations.



1003.03 Request for a jury trial (and the applicable fee) must be made within 10 days after the initial appearance.

1004 If an individual fails to appear at the initial appearance and fails to enter a not guilty plea by mail or phone prior to the initial appearance, a default judgment will be entered on the traffic or ordinance citations.

1005 If an individual appears at the initial appearance and enters either a guilty or no contest plea to a citation, a fine will be assessed; points on the individual's license may be affected; and the individual's driving privilege may be affected.

## **Part 11: Selection of Jurors**

1101 Juror List: The Clerk of Circuit Court shall use the Department of Transportation list when selecting names of potential jurors.

1102 Service Period: Jurors shall serve for a period not exceeding one month, unless a trial in progress takes them past the one month period, in which case they shall finish that trial. Jurors who serve 5 days shall be excused from further service unless a trial in progress takes them past the 5 day period, in which case they shall finish that trial.

1103 Selection of Additional Jurors: The Clerk of Circuit Court shall have the power to select additional jurors if the original list provides insufficient numbers.

1104 Excusing of Jurors: The Clerk of Circuit Court shall have the discretion to excuse jurors who meet the statutory requirements. The Circuit Judge may be consulted, if necessary, regarding whether or not a juror should be excused. If statutory requirements are not clearly met, a request to be excused from jury duty shall be presented to the Judge.