

# Marathon County Circuit Court Rules

*(Ninth Judicial District)*

Effective October 1, 2012

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## **CHAPTER 1: COURT RULES & DECORUM**

### **1.01 ADOPTION OF COURT RULES**

The Marathon County Circuit Court Judges, in order to provide for a system of efficient court administration, and to encourage uniformity between the various branches of this court, hereby codify, adopt and promulgate the following rules and policies effective October 1, 2012. All previous rules and policies not otherwise incorporated herein shall have no force or effect after this effective date.

### **1.02 AMENDMENT OF COURT RULES**

(1) Enactment of Changes: The Marathon County Circuit Court Judges expressly retain their inherent right and power to amend, add to, or delete from these rules and policies as needs and circumstances require, either with or without prior opportunity of any persons to comment.

(2) Policy of Procedure: It will be the policy of the Marathon County Judges to give adequate prior notice of changes to these rules and policies to the Marathon County Bar Association through the president thereof and the Association may, from time to time and as circumstances permit, seek comment on any proposed changes through the Bar Association.

### **1.10 COURT DRESS STANDARD**

Counsel, courtroom staff, litigants, and witnesses shall dress in a manner appropriate to the dignity of the legal process. Attorneys shall wear business attire.

### **1.11 CALLING OF COURT**

The court shall call the case by case name and number which commences the recorded proceedings. The Attorney for plaintiff or petitioner shall then state the appearances for the record.

### **1.12 COURT ROOM CONDUCT**

Lawyers shall conduct themselves in a manner that enhances the dignity of the proceedings in the eyes of the jury and the public by observing the minimum standards of conduct established by Supreme Court Rule 62 and these rules:

(1) Manner of Address: The judge and opposing counsel shall be addressed formally.

(2) Position Upon Examining Witnesses: Unless otherwise permitted, lawyers shall examine witnesses from a position at counsel table or at the lectern, except when handling exhibits.

(3) Eating and Smoking: Smoking, eating or drinking in the courtroom is prohibited.

Electronic Devices: Electronic devices shall be silenced in the courtroom.

### 1.20 WEAPONS IN COURT FACILITIES

(1) General Prohibition: Except as provided herein below, no weapons are permitted in the Marathon County Courthouse Circuit Court facilities.

(2) Law Enforcement Exception:

(a) Security Holsters: Except as provided in subsection (3), uniformed law enforcement officers may carry weapons in the circuit court facilities if the weapons are in a holster approved by their department and designed to ensure the weapons can only be removed from the holster by the law enforcement officer.

(b) Holster Policies: Each law enforcement agency in Marathon County shall establish policies regarding holsters that meet the criteria set forth in subsection (2)(a).

(3) Law Enforcement As Party To Action: In all cases, law enforcement officers who are parties to a judicial proceeding as a plaintiff, defendant or other interested party, and outside the scope of their employment, shall not be permitted to bring weapons into the circuit court facilities.

### 1.31 GENERAL MEDIA REGULATIONS

(1) Adoption of Supreme Court Rules: The manner, method and restrictions as to media coverage is as set forth in Chapter 61 of the Wisconsin Supreme Court Rules. A current copy of such rules will be furnished to the media upon request.

(2) Use of Media Coordinator: In order to minimize multiple requests, whenever time permits all requests and communications between media outlets and the courts should be through the court appointed Media Coordinator.

(3) Courtroom Decorum: The rules of courtroom decorum shall apply to the media and to all others observing court proceedings.

### 1.32 CLOSURE ORDERS

Unless deemed impractical by the trial judge, a party requesting any judicial proceeding be closed to the news media must notify the court, media coordinator and opposing counsel at least 72 hours prior to the time set to hear such a request. The purpose of this rule is to permit legal counsel to appear on behalf of the media and to be heard. The burden shall be upon the moving party to show cause why Wis. Stat. § 757.14 should not apply.

### 1.35 LOCATION OF MEDIA EQUIPMENT

(1) Location Generally: Pursuant to Supreme Court Rule 61.05, the trial judge shall designate the location in the courtroom for any camera equipment and operators so that media coverage will not obstruct the view of others in the courtroom. Any media member planning to cover any court proceeding shall advise the court in advance so the court may instruct where to place media equipment.

Source: Railing per Supreme Court Directive, 1995

(2) Microphones: Unless otherwise authorized, only four microphones will be permitted in the courtroom; one on the judge's bench, one on the witness stand and one on each counsel table.

(3) Cameras: Cameras allowed in the courtroom shall be used in a manner that does not disrupt courtroom proceedings.

(4) Removal of Equipment: The disassembly and removal of media equipment will occur during breaks in court proceedings, unless it can be done without disrupting court.

### 1.36 PHOTOGRAPHY & RECORDING

(1) Persons Protected: There shall be no visual photography in any form or any audio recording of any of the following, except upon request and specific advance authorization for each separate proceeding;

- (a) Juveniles;
- (b) Victims of sex crimes;
- (c) Undercover agents;
- (d) Police informants;
- (e) Relocated witnesses, and;
- (f) Any juror called or selected to serve.

(2) Manner Protection Enforced: To ensure compliance with this provision, all hand-held or mounted cameras and microphones shall be capped, turned away from such persons or dismantled entirely during the testimony of any such persons, unless otherwise authorized in advance.

## CHAPTER 2: CASE MANAGEMENT

### 2.12 FACSIMILE TRANSMISSIONS

(1) Filing By Facsimile Transmissions Permitted: Facsimile documents transmitted to the either the Clerk of Courts or the Register in Probate shall be deemed suitable for filing if sent to the respective facsimile number and otherwise complies with this rule.

Clerk of Courts (715) 261-1319  
Register in Probate (715) 261-1269

(2) When Permitted; Direct Court Filing: Facsimile documents may be directly transmitted to the courts and shall be accepted for filing only if;

(a) Length: The document does not exceed fifteen (15) pages in length, excluding the cover sheet;

(b) Filing Date: Papers filed by facsimile transmissions after the regular business hours of the Clerk of Court's or Register In Probate's offices shall be considered filed on the next business day. The regular court hours are 8:00 a.m. to 4:30 p.m. week days.

(c) Singular Filing: The facsimile document shall be date stamped by the Clerk of Court's or Register in Probate's offices and docketed. The party submitting the facsimile shall mail the original document with a notation written in red on the top of the first page that this replaces the faxed copy. The party shall also provide a courtesy copy for the Judge which will be retained in the Judge's office. When the original is received, the Clerk of Court's or Register in Probate's offices will attach the first page of the facsimile to the original and destroy the remainder of the facsimile.

(3) When Permitted; Indirect Filing: Facsimile documents transmitted to a non-court agency, party or company shall be accepted for filing only if the transmission otherwise complies with this rule.

(4) Judicial Authorizations: Documents that do not conform to these rules may be transmitted only if the judge assigned to a particular matter authorizes, in advance, the filing of non-conforming documents in that case if good cause is shown and they are in conformance with Wis. Stat. 801.16. Facsimiles exceeding fifteen (15) pages in length must bear a certification that the assigned judge or court commissioner has approved it.

### 2.14 CONFIDENTIALITY OF COURT REPORTS

(1) Reports Deemed Confidential: In all actions and proceedings, all reports to the court are confidential until such time as released by the court. The original report shall be provided to the court. In addition, the author of confidential reports shall provide copies to all attorneys of record in the proceeding, including any guardian ad litem.

(2) Responsibilities and Limits Upon Counsel: Counsel for any party may make such report available to their client for viewing only in the presence of counsel or counsel's representative. Unless approved by the court in advance, counsel shall not make a copy of the report or permit the report to be viewed or disseminated to any other person.

## 2.18 FILE REVIEW

Subject to any legal restrictions, access to court files may be in an area provided by the Clerk of Court/Register in Probate upon proper identification.

## 2.21 COURT APPOINTED ATTORNEYS

(1) Rate of Pay: Whenever the court appoints an attorney to act in a case the county shall compensate the attorney at a rate of \$70 per hour whenever the county becomes responsible for the payment.

(2) Compensation Limits: Compensation shall be for time the attorney devotes to the case and not time incurred by paralegals, secretaries or other law firm personnel, unless authorized by the court in advance.

(3) Allocation of Reimbursement: The judge shall approve the billing before payment, allocate the bill between the parties if appropriate and, whenever the party has ability, order reimbursement by the party together with a payment plan.

## 2.25 CONSOLIDATION OF CASES

(1) Consolidation of Cases: To promote efficiency, the Marathon County Circuit Court Judges shall attempt to transfer for consolidation any action involving a related case already pending in another branch of circuit court. This policy is meant to cover, but is not limited to, juvenile, family, criminal and civil court actions involving the same parties and similar issues.

(2) Newly Filed Criminal Cases: To be assigned to the intake branch, except:

(a) Cases with charges filed as a result of a dismissal shall be assigned to the branch that ordered the dismissal, and

(b) Cases with charges filed against a defendant with an open criminal case shall be assigned to the branch with the pending case(s).

## 2.30 MOTION PRACTICE

(1) Attorneys Duty to Give Notice: In all civil and family matters the moving party or their attorney is responsible for providing notice of hearing on any motion filed by that party. Prior to sending out such notice, the party or their attorney shall call the judicial assistant for the assigned branch to set an appropriate date and time.

(2) Piggy-Back Practice: No attorney or party shall schedule additional motions on a pre-existing motion date for the same case without first advising the court, to determine if sufficient time has been set aside for an additional motion and, if not, to get another date for the motion.

## 2.31 SCHEDULING CONFERENCES

Scheduling conferences will be held at a party's request, or if the judge believes a conference will define the issues and assist the attorneys in preparing the case for trial.

### 2.33 PRE-FILING OF LEGAL BRIEFS

Parties shall deliver to the assigned Judge a courtesy copy of briefs.

### 2.35 FINAL PRETRIAL CONFERENCES

Final pretrial conferences shall be held pursuant to Wis. Stat. § 802.11 and counsel shall observe these additional rules:

(1) Proposed Jury Verdict and Instructions: Attorneys shall file their proposed verdicts and jury instructions with the judge and opposing counsel at the time of the final pretrial conference unless a different procedure is set forth in the scheduling order.

(2) Appearance By Trial Counsel: Unless otherwise allowed, each party shall be represented by the attorney who will be trying the case, who shall be prepared to discuss the case's specifics.

(3) Discovery: All discovery, including any video depositions for use at trial, shall be completed no later than the time set for the pretrial, unless the court otherwise orders.

### 2.40 SCHEDULING CONFLICT

(1) Conflict With Schedule of Judge: No case shall be taken before a judge of another branch without the consent of the judge initially assigned to the case or a written transfer by the chief judge.

(2) Conflicts Between the Courts: If a conflict arises between the circuit court judges where two or more judges have trials scheduled with the same attorney, the judges shall consult with each other to determine which case should have priority based upon type of case, age of case and other factors. One of the judges shall then make the necessary arrangements to notify the parties.

### 2.52 EXHIBITS

In order to limit unnecessary waiting for jurors, witnesses, counsel and the court:

Copies of Exhibits: Whenever counsel expects to have a witness rely on a detailed exhibit, such as a medical report, a financial statement, a stipulation or a contract, the attorney shall be responsible for presenting an extra copy to the judge and opposing counsel.

## **CHAPTER 3: CRIMINAL and TRAFFIC PROCEDURES**

### 3.05 DA's STATEMENT OF APPEARANCE

At the beginning of any criminal case other than the initial appearance, and after the court has called the case, the district attorney shall state the parties appearances and whether victim's rights legislation has been complied with.

### 3.11 BOND ON MISDEMEANOR WARRANTS

(1) Amount of Bond: Unless the court otherwise sets upon signing an arrest warrant on a misdemeanor action, bond shall be \$250 cash. If no bond is directly specified on the warrant, bond shall be \$250 cash and the sheriff shall so indicate before entry into any state computerized record of outstanding warrants.

(2) Return Date; Bond Posted: Whenever bond on a misdemeanor arrest is posted during a weekend to secure a defendant's appearance before the Marathon County Circuit Court, the defendant shall be ordered to appear as follows;

Domestic — Monday @ 2:00 p.m.

All others — Tuesday @ 2:00 p.m.

### 3.17 RETRIEVING NECESSARY PERSONAL BELONGINGS

The court minutes shall specifically reflect that the court has ordered as a condition of bond that the defendant be allowed to retrieve his or her necessary personal belongings from the alleged victim's residence only in the presence of law enforcement officers. Law enforcement officers shall be responsible for carrying out the order. Arrangements to effectuate retrieval shall be made between the law enforcement agency and the defendant. It shall be the responsibility of the defendant to contact the appropriate law enforcement agency to make those arrangements.

### 3.22 INSTANT ARRAIGNMENT

If the district attorney has any information prepared for filing immediately after bind over at the preliminary hearing, arraignment may follow without delay. A defendant's plea entered at this time is subject to the defendant's right to request substitution of judge or other motions filed within ten (10) days thereafter.

### 3.35 WRITTEN PLEA ADVISEMENT REQUIRED

At the time of the taking of any plea, defendant's counsel shall present to the court a completed, state approved, written plea advisement signed by the defendant and their attorney.

### 3.62 LIABILITY FOR RESTITUTION

Unless otherwise ordered by the court for cause, all restitution orders shall be joint and several with any other co-defendant to help ensure the earliest recovery by crime victims.

### 3.69 OWI SENTENCING GUIDELINES; POLICY

(1) Adoption of OWI Guidelines: The 9th Judicial District and Marathon County Circuit Courts, in recognition of the danger and devastation caused by those operating motor vehicles under the influence of intoxicants, and consistent with the requirements of law, automatically adopt the guidelines, updated from time to time, for sentencing those convicted of Operating a Motor Vehicle While Under the Influence of an Intoxicant, or with a Blood/Breath Alcohol Concentration as adopted by the 9th Judicial District.

(2) Adoption of OAR Guidelines: The 9th Judicial District and Marathon County Circuit Courts, in order to encourage uniformity within the district, adopt the 9th District Operating After Revocation Sentencing guidelines, as well as future amendments to the guidelines, for sentencing those convicted of Operating After Revocation or Suspension.

(3) Collection of Alcohol Assessment Fee: Any defendant residing in Marathon County who is convicted of a Marathon County offense of Operating a Motor Vehicle While Intoxicated or having a Prohibited Breath/Blood Concentration may be ordered to pay the state mandated OWI assessment to the Clerk of Courts Office. The amount of this assessment is \$165. The Clerk of Court will disburse the assessment funds to the local service provider.

### 3.70 COMPUTATION OF JAIL TIME

Unless otherwise specified by the court at sentencing, each month of a sentence expressed in terms of months shall consist of 30 days, regardless of the exact number of days in the actual months during the sentence term.

### 3.72 SENTENCE CONVERSION PROCEDURES

(1) Conversion Factor: In converting unpaid fines to jail or community service and uncompleted community service to jail time, the court shall use the current federal hourly minimum wage rate together with the standard 8 hour working day.

(2) Conversion of Fines to Jail Time: The court divides the amount of unpaid fines by the federal minimum wage to arrive at the hourly conversion and then divides by 8 to arrive at the number of days in jail to serve. Any fractional day is rounded to the next highest day.

(3) Conversion of Fine and Forfeitures to Community Service: A defendant certified to perform, or ordered to perform, community service may receive credit for the service against any fine or jail time owed at a rate based on the federal hourly minimum wage with each hour worked equaling the federal minimum wage as a credit against the defendant's monetary obligations.

### 3.79 PETITION FOR OCCUPATIONAL LICENSE

(1) Review of Department of Transportation Denial: Any petition for judicial review of the Wisconsin Department of Transportation's denial for an occupational license under Wis. Stat. § 343.10(4). shall be accompanied by a copy of the petitioner's current driver's record as obtained from the Department and the Department's denial letter setting forth the reasons and rationale for the denial.

(2) Habitual Traffic Offenders: Any habitual traffic offender's petition for an occupational license under Wis. Stat. § 351.07 shall be accompanied by a copy of the petitioner's current driver's record obtained from the Wisconsin Department of Transportation.

(3) Assigned Judge: When an occupational license petition is received, the materials provided by the petitioner together with the underlying criminal traffic file shall be



forwarded to the judge who handled the last case leading to the revocation. In the event the underlying case was from another county, or if the responsible judge is unavailable, the request will be forwarded to the intake judge.

(4) Administrative Procedures: The judicial assistant shall notify the petitioner of the judge's decision, place a copy of the order granting or denying the petition in the criminal traffic file and return the file to the traffic division. The traffic division will provide the defendant with a copy of the order granting the petition so he or she can take it to the department of transportation.

## **CHAPTER 4: CIVIL ACTIONS**

### **4.07 CIVIL CASES IN BANKRUPTCY**

When any party to any proceeding in the Marathon County Courts files, or has reason to know of any filing, requesting relief under the federal bankruptcy laws, the party shall immediately file with the court either a copy of the stay entered by the bankruptcy court or the discharge in bankruptcy. No hearing, trial or other proceeding will be adjourned until this requirement is satisfied.

### **4.15 FILING OF DISCOVERY MATERIALS**

(1) General Rule: Pursuant to Wis. Stat. § 804.01(6), no discovery materials, as that term is hereinafter defined, may be filed with the court except as provided in subparagraph (2).

(2) Materials Necessary For Trial or Hearing: Discovery materials necessary for any hearing, or that may become necessary during any trial, may be filed with the court no earlier than 5 days prior to the time set for such hearing or trial. Any party filing such materials shall do so with a cover letter advising the clerk of the date and time of the hearing or trial at which the materials may be required.

(3) Retrieval Upon Disposition: Except for any depositions used as part of the record, 60 days following settlement, the passage of any appropriate appeal period or remittitur following an appeal, any party who filed discovery materials not received as a part of the record shall retrieve the materials or the clerk may dispose of them in any appropriate manner.

### **4.20 SUMMARY JUDGMENT & DISMISSAL**

(1) Briefs Prior To Hearing: The party filing the motion for summary judgment shall contact the Judicial Assistant to obtain a hearing date.

(2) Applicability; Exceptions: This rule applies to all civil matters except the following:

- (a) Small claims actions under Wisconsin Statutes Chapter 799;
- (b) Motions for judgment on the pleadings;
- (c) Real estate matters not likely to be contested;
- (d) Cases where a scheduling order has been entered that specifically covers motions for summary judgment or dismissal.

#### 4.30 MINOR SETTLEMENTS

(1) Guardian ad Litem. The plaintiff's attorney shall select an independent Guardian ad Litem from outside his or her law firm. Once appointed, the Guardian ad Litem shall be responsible to determine the extent of his or her involvement in the proceedings leading to a minor settlement. This authority does not prevent the court from reviewing the reasonableness or necessity of the Guardian ad Litem's fees paid as a part of any settlement. The Guardian ad Litem's fees shall be split equally between the parties.

(2) Hearings. No hearing shall be required for approval of minor settlements under \$10,000 or approval of derivative claims under \$10,000 unless the court deems appropriate. If the amount paid to the parent(s) exceed 5 % of the anticipated recovery, over and above the actual non-reimbursed expenses and attorney fees, the court shall require a hearing.

#### 4.33 DEFAULT FORECLOSURE BY MAIL

The Marathon County Courts will accept default foreclosures by mail provided all necessary paperwork, including affidavits as to the outstanding balance and appraisals, is furnished to the court with a notice of motion for a specific date and time sent to any party who may have made an appearance in the action. If no appearances are made at the time set, the court will sign the submitted judgment of foreclosure or confirmation of sale.

#### Small Claims Procedures

#### 4.70 SERVICE IN SMALL CLAIMS

Service By Mail Authorized: Except in eviction, replevin or contempt proceedings under Wis. Stat. § 799.26(2), service of any small claims pleadings may be made by 1st class or certified mail, return receipt requested as provided in Wis. Stat. § 799.12(3).

#### 4.71 PROCEDURE ON RETURN DATES

(1) Appearance By Parties: Except as provided in par. (3), both parties are required to appear on the return date unless adjourned for cause under Rule 4.72. The failure of any party to appear at the return date shall result in the following dispositions:

Of Plaintiff: Dismissal with Prejudice

Of Defendant: Default Judgment

Both Parties: Dismissal Without Prejudice

(2) Trial Dates in Evictions: Eviction trials shall be set for the following week with the duty judge. Hearings on damages will occur approximately 30 days after the eviction trial date and the damage hearing date will be scheduled at the time of the return date. Upon being restored to the premises, landlords seeking damages above and beyond those stated in the original petition shall file an amended petition and have the respondent served by first class mail, certified mail, return receipt requested, or personal service. This service

shall occur at least five (5) days prior to the trial on damages or the landlord will be limited to the amount of damages originally plead in the complaint.

(3) Exceptions to Personal Appearance Requirement: The personal appearance rule stated in par. (1) has the following exceptions:

(a) Non-earnings Garnishment; Pleading in Lieu of Appearance: The mandatory appearance rule stated in par. (1) shall not apply to non-earnings garnishment actions filed as small claims actions. The defendant or the garnishee may join issue by filing a written answer at or before the time of the return date, without being required to appear.

(b) Defendants Who Reside Outside Wisconsin: Pursuant to Wis. Stat. §799.22(4)(am), defendants who are not residents of Wisconsin may join issue without personally appearing on the return date, provided they file a written answer prior to the return date.

#### 4.72 ADJOURNMENTS & DISMISSAL

(1) Adjournments of Return Dates: Upon cause shown, the clerk of courts may permit an adjournment of a return date.

(2) Dismissal by Clerk: The clerk of courts shall dismiss any action in which the above time limits have not been complied with.

#### 4.73 RELIEF; DEFAULTS & DISMISSALS

(1) Relief From Dismissal With Prejudice: A plaintiff whose action was dismissed with prejudice for failure to appear may, within 30 days from the dismissal, petition the court to commence a new action upon the payment of the filing fee, unless the fee is waived as permitted by statute.

(2) Relief From Dismissal Without Prejudice: A plaintiff whose action was dismissed without prejudice for failure to appear may, within 30 days from the dismissal, file a petition to re-open the matter for good cause shown. This determination shall be made by the judge of the branch where the last return date within the time limit was set.

(3) Relief From Default: A defendant who has a default judgment entered against him/her may, within 12 months of such judgment, petition the court to reopen the judgment and permit a hearing, by showing cause and a meritorious defense to the action.

#### 4.74 EXTENDED SETTLEMENT STIPULATIONS

(1) Rule Against Extended Stipulations: No stipulation providing that a pending action will remain open for more than 6 months to guarantee a party's compliance with the stipulation's terms will be permitted.

(2) Policy To Encourage Stipulations: When a stipulation requires performance over a period of more than 6 months the parties shall file the stipulation, dismiss the action without prejudice, and provide for either the entry of judgment upon notice, or the proceedings will be reopened in the event of any failure to comply with the stipulation's terms and conditions.

#### 4.75 SMALL CLAIMS HEARINGS BEFORE THE COURT COMMISSIONER

When Held: Except in eviction actions, small claims trials shall be scheduled before the court commissioner two weeks after the return date, or as soon thereafter as the court commissioner's calendar will allow.

#### 4.76 PROCEDURE ON SERVICE OF CAPIAS

Any person picked up on a Marathon County small claims capias in Marathon County shall be brought before intake court as soon as practical after such detention. If a person is detained in a county other than Marathon County, the sheriff may advise the county where the person has been detained that the person may be released immediately after the person completes the small claims financial disclosure statement. The sheriff shall advise that county to forward the completed financial disclosure statement to the Marathon County Clerk of Courts Office.

### **CHAPTER 5: FAMILY MATTERS**

#### 5.09 FAMILY PARENTING PROGRAMS

(1) Definition of Terms: As used herein, the term "Co-Parenting Program" refers to the 4-hour educational program approved by the courts for use in divorce and paternity actions.

(2) Co-Parenting Program: All parents with minor children in actions for divorce, legal separation or paternity, shall attend and complete an educational program established or approved by the court concerning effective co-parenting skills. Fathers in paternity cases shall be ordered to attend upon the entry of judgment determining paternity.

#### 5.10 FAMILY COURT COMMISSIONER (FCC) JURISDICTION IN POST JUDGMENT MATTERS

The FCC may conduct post-judgment proceedings to modify the judgment only if the responsible Judge is unable to do so in a timely manner and refers the matter to the FCC for the entry of a temporary order.

#### 5.20 MEDIATION OF PLACEMENT DISPUTES

(1) Policy Statement: To encourage an atmosphere of understanding and cooperation between parents in all matters dealing with their children, and in realizing custody and visitation arrangements made by parents' mutual agreements are more lasting and cause less conflict between parents than court imposed solutions, the Marathon County Courts adopt the following mediation rules to promote both the best interests of the children involved in such litigation as well as judicial economy.

(2) Limitation on Requests: Unless referred by the responsible judge, there shall be no referrals to mediation within two years following a prior mediation order.

#### 5.21 CONDUCT OF MEDIATION SESSIONS

(1) Children of Parties: Upon the consent of the parties, the mediator may speak to the minor children involved in the controversy if the parties and the mediator agree that such a meeting will assist in arriving at an agreement.

(2) Other Persons: The mediation session should be between the parties with the mediator as the neutral third person. Therefore, no other persons shall be present, unless agreed to by both parties and the mediator.

(3) Impaired Parties: Parties who appear at a mediation session while under the influence of intoxicants, controlled substances or medications not only present a risk of harm to the other participants but make any agreement arrived at during the session legally suspect. Therefore, mediators shall cancel any mediation sessions where it appears the judgment of one or both of the parties may be impaired by alcohol, controlled substances or medication. If canceled for such a reason, the cost of that meeting shall be charged in full to the party who appeared at the meeting in an impaired condition.

(4) Incarcerated Persons: If a party is incarcerated in the Wisconsin State Prison or Wisconsin Mental Health System mediation should not be used, but instead the matter should be referred to the assigned judge, a guardian ad litem appointed and a hearing set. The guardian ad litem may talk to interested persons and the parole agent in making a recommendation. Mediation, however, can occur when release is imminent and mediation concerns placement after the inmate's release. The inmate has the burden to verify release is imminent.

## 5.22 MEDIATED SETTLEMENT AGREEMENTS

(1) Referral of Mediated Settlement Agreements: After adopting a mediated settlement agreement, the mediator shall send copies of the agreement, whether signed or unsigned, to the parties' attorneys. The parties and their attorneys have 30 days thereafter to review the document and to register any concerns with the assigned mediator. If concerns are registered the parties shall return to the mediator to discuss and attempt to resolve such concerns.

(2) Adoption of Mediated Settlement Agreements: In the event there are no concerns registered within the 30 day period, the mediator shall file the signed mediated settlement agreement with the court. The court may, without any further notice to either party, enter judgment approving the agreement.

(3) Mediator's Certification: Each mediated settlement agreement shall bear a certification by the mediator that in their opinion the proposed settlement agreement appears to be in the best interests of the child or children. In the event the mediator has specific concerns that the agreement may not be in the best interests of the child, the mediator may make such certification "with reservation" but without being required to disclose the basis of that concern, except in confidence to the judge upon request and with notice to each of the parties. In the event an agreement is forwarded by the mediator without an expressed certification, it shall be deemed to certify the agreement appears to be in the best interests of the child or children.

## 5.30 GUARDIAN AD LITEM DEPOSIT; FEE

(1) Preconditions of Appointment: Unless otherwise ordered upon motion, all requests for the appointment of a guardian ad litem shall be accompanied by the each of the following:

(a) The certification of impasse required by the mediator.

(b) A deposit of \$1,500 to secure payment of the guardian ad litem's fees. Unless otherwise ordered, the deposit shall be equally shared by the parties.

(2) Fee Schedule of Guardian Ad Litem: Except as provided in sub. (3), the attorney appointed to serve as guardian ad litem shall be paid according to the number of hours devoted to the matter at their usual and customary rates for similar work, subject to the court's approval.

(3) Payment By County: In those cases where the parties are found unable to pay the fees and costs of the guardian ad litem within a year, the county may then be ordered to pay the guardian ad litem according to the rate established by Wisconsin Supreme Court Rule 81.02 or its successor.

(4) Reimbursement to County: By the court's order or as a part of any judgment the parties may be required to reimburse the county for paying any guardian ad litem fees incurred in the matter. Enforcement shall be by Marathon County Corporation Counsel at child support hearings held during intake.

(5) Initial Threshold of GAL Fees: A total threshold fee of \$1,500 for any guardian ad litem is hereby established. In the event it appears to the guardian ad litem that fees in the particular proceedings may exceed \$1,500, the guardian ad litem shall advise the court and parties of that fact at which time the court may require additional deposit(s) to be paid by the parties.

### 5.36 UNIFORM PLACEMENT GUIDELINES

Because the courts are to maximize minor children's placement with both parents, the following schedule is intended to be a minimum schedule of placement and a beginning point for the parties, mediators, family court commissioner, guardians ad litem and the courts in formulating a settlement, recommendation or resolving a placement schedule when the parties are unable to agree. [Chart Located in Appendix]

(1) Biweekly Placement: Every other weekend from 6:00 p.m. Friday until 6:00 p.m. Sunday.

(2) Midweek Placement: One day per week from 6:00 p.m. until the following morning at 8:00 a.m.

(3) Holiday Placements: The parents shall alternate holiday placements for the following holidays.

Easter 8:00 a.m.- 8:00 p.m.

Memorial Day Weekend Fri. 6:00 p.m. to Mon. 6:00 p.m.

July 4th 8:00 a.m. to Next day at 8:00 a.m

Labor Day Weekend Fri. 6:00 p.m. to Mon. 6:00 p.m.

Thanksgiving Day 8:00 a.m.- 8:00 p.m.

(4) Placement During Christmas/Winter Break: Parents are encouraged to adopt a tradition such that one parent has placement every Christmas Eve from 9 a.m. until Christmas Day at 9 a.m. while the other parent has placement Christmas Day from 9 a.m. until December 26th at 9 a.m. If the parents are unable to agree, the father shall have the Christmas Eve placement in even years and Christmas Day placement in odd years. The mother shall have the Christmas Eve placement in odd years and Christmas Day placement in even years. The parent with the Christmas Eve holiday shall have the portion of the winter break that precedes Christmas Eve continuing until Christmas Day at 9 a.m. The parent with the Christmas Day placement shall have the portion of the winter break that commences on Christmas Day at 9 a.m. continuing until the return to school at the end of the winter break.

(5) Parent's Days Placements: Mother's and Father's Day shall be devoted to the parent who is being honored. If for the non-custodial parent, the placement shall be between 8:00 a.m. to 8:00 p.m.

(6) Spring Break: The parents shall share equally the children's spring break. If the parents are unable to agree on which half of the break will be their placement time with the children, the father will have the first half of the break in odd years and the second half in even years. The mother shall have the first half of the break in even years and the second half in odd years. The parents shall transfer the children at 5 p.m. on the day that is the mid-point of the spring break. If there are an odd number of days in the break, the parent with the first half of the placement shall have the extra day.

(7) Summer Placement in Cases Other Than Equal Shared Placement Cases: The parent with less placement shall have physical placement for a minimum of four weeks during the summer months. The parties should determine whether the weeks occur consecutively, except for children less than two-years-old, when placement with the non-custodial parent shall not exceed one week for each summer month.

(8) Priority of Placement: Holiday and Parent's Days placements specifically enumerated in these guidelines take precedence over biweekly, midweek, and summer placements.

#### 5.68 DIVORCE JUDGMENT FORM.

(1) Judgment To Be All Inclusive: Where parties in a divorce action have reached an oral stipulation or where the matter was contested, the judgment shall contain all necessary court orders. This is deemed imperative since it is the judgment's provisions that can be enforced by the court and not that recited in the findings of fact or conclusions of law. This may be especially important where out of state enforcement is sought.

#### 5.69 DELINQUENT ORDERS; DIVORCE JUDGMENT; FEES

Unless otherwise authorized by the court, all orders, findings, conclusions and judgments of divorce are to be prepared by the attorney responsible for drafting, approved by opposing counsel, if any, and filed with the court within 30 days from the date judgment was granted. Failure to do so shall permit opposing counsel to prepare the same within the subsequent 30 days and be awarded \$250 from the defaulting attorney, irrespective of whether the defaulting attorney prepares the same after that date. In the event the delay is

approved by opposing counsel, the party who has prepared the divorce documents may submit a duplicate with the court and simultaneously with opposing counsel who shall then have 5 days to object. In the absence of any objection, the court shall sign the judgment, approval being deemed given by the absence of objection.

#### 5.71 DIVORCE VITAL STATISTICS FORM

The party to whom a judgment of divorce is granted shall provide to the court at the time of divorce an original certificate of divorce or annulment. This document shall be on the form and in the manner required by the Wisconsin Department of Health and Social Services.

#### 5.90 PROTECTIVE ORDER PROCEDURES

(1) Uniform Hearing Time: All hearings on protective orders brought under Wisconsin Statutes Chapter 813 shall be heard at a uniform time before the intake judge or the circuit court commissioner.

(2) Temporary Restraining Order: All petitions for a Wisconsin Statutes Chapter 813 protective order shall be reviewed, approved or rejected by the intake judge or circuit court commissioner. If approved, the hearing shall be set at the next hearing time within the applicable time limits before the judge on intake at the time of the hearing or the circuit court commissioner.

(3) Adjournment For Counsel: If the matter is adjourned to permit a party to obtain an attorney, the matter shall be adjourned to the next regularly scheduled date before the intake judge or the circuit court commissioner.

(4) Adjournment For Time: In the event there is insufficient time to hear a contested matter, the matter shall be adjourned before the judge or circuit court commissioner granting the adjournment. The date of the adjourned hearing shall occur within a reasonable time not to exceed 10 days.

(5) Extension of Restraining Order: In the event of any adjournment, the temporary restraining order shall be extended to the date of the adjourned hearing unless the court has heard sufficient evidence indicating an extension may not be warranted.

(6) Security & Weapons Collection: In recognition of emotions involved in such matters and the necessity to make arrangements for surrendering firearms in domestic abuse proceedings, the sheriff shall provide a deputy or detective for every domestic abuse or harassment injunction hearing. The officer shall provide security at the hearing and have the power to make arrangements with the respondent to surrender firearms ordered held by the sheriff.

#### 5.95 REMOVAL OF NECESSARY PERSONAL BELONGINGS

On all Domestic Abuse, Child Abuse and Harassment Orders entered under Chapter 813 Wis. Stats., law enforcement officers of Marathon County are ordered to permit the person subject to such an order to remove and take his/her necessary personal belongings as follows:



(1) At Time of Service: If circumstances otherwise permit, when serving a Temporary Restraining Order the officer serving such upon a respondent located at the residence from which he/she is restrained, shall give said respondent a reasonable opportunity to remove his/her necessary personal belongings before departing the premises.

(2) Ordered At Hearing: When, as part of an injunction order, the Court orders that the respondent be allowed to retrieve his or her necessary personal belongings from the petitioner's residence only in the presence of law enforcement, the minutes shall specifically reflect that order. At the completion of the hearing, the clerk shall immediately make a copy of the minutes and provide a copy thereof to the Sheriff's Department officer attending the injunction hearing. It shall then be the responsibility of the Sheriff's Department to distribute a copy of the minutes to the appropriate law enforcement agency and to the Sheriff's Department dispatch. Final arrangements allowing the respondent to retrieve his or her necessary personal belongings will be made between the appropriate law enforcement agency and the respondent.

(3) Necessary Personal Belongings: shall refer to those items of personal clothing, toiletries, papers, tools and other items that might be necessary in the person's ordinary occupation, together with all other personal property which will be needed by the respondent in his/her daily living. Unless otherwise agreed to by the parties, it does not include utensils, appliances, furnishings or other items of personal property that may be or become the subject of other court proceedings.

### Appendix

#### Marathon County Uniform Placement Guideline Chart Under Rule 5.31

TYPE	DAY or DESCRIPTION	BEGIN TIME	END TIME
Bi-Weekly	Alternating Weekends	Friday 6:00 p.m.	Sunday 6:00 p.m.
Midweek	One Day Per Week	6:00 p.m.	Next Day @ 8:00 a.m.
Alternating Holidays	Easter Day	8:00 a.m.	8:00 p.m.
	Memorial Day Weekend	Friday 6:00 p.m.	Monday 6:00 p.m.
	July 4th	8:00 a.m.	Next Day 8:00 a.m.
	Labor Day Weekend	Friday 6:00 p.m.	Monday 6:00 p.m.
	Thanksgiving Day	8:00 a.m.	8:00 p.m.
Christmas			
Adopt A Family Tradition OR			

<p>Father to have Christmas Eve in even years from 9 a.m. on December 24 to 9 a.m. on December 25 and Christmas Day in odd years from 9 a.m. December 25 to 9 a.m. December 26.</p> <p>Mother to have Christmas Day in even years from 9 a.m. on December 25 to 9 a.m. December 26 and Christmas Eve in odd years from 9 a.m. December 24 to 9 a.m. December 25.</p>			
Parent's Day	Mother: Every Mother's Day	8:00 a.m.	8:00 p.m.
	Father: Every Father's Day	8:00 a.m.	8:00 p.m.
School Holiday Vacations	Winter Break	<p>The parent with Christmas Eve placement: Portion of the break that precedes Christmas Eve continuing to Christmas Day at 9 a.m.</p> <p>The parent with Christmas Day placement: Portion of the break commencing Christmas Day at 9 a.m. continuing to the return to school at the end of the winter break.</p>	
	Spring Break	<p>Father: First half in odd years, second half in even years.</p> <p>Mother: First half in even years, second half in odd years.</p> <p>Transfer to occur at 5 p.m. on the day that is the mid-point of Spring Break. If there are an odd number of days in the break, the parent with the first half of the break shall have the extra day.</p>	

**Summer Placements in other than equal shared placement cases**

Children up to 2-years-old  
 One week each summer month

Children greater than 2-years-old  
 Minimum of four weeks per summer, parties to determine whether the weeks occur consecutively

**ADDITIONAL CONVENTIONS:**

1. Priority: Holiday and Parent's Day placements take precedence over bi-weekly, midweek and summer placements.
2. Flexibility and Reasonableness: This schedule is intended to be a minimum schedule of placement. The parties are free to mutually agree to modify the schedule to meet their needs or their children's needs. Also, the parties must be flexible to accommodate the other parent in terms of beginning and ending placement times. Any attempt to rigidly or

inflexibly enforce the times without consideration of the other parent or children will be considered by the court as poor parenting and a violation of the spirit of this schedule.

3. Distance Between Parties: The court recognizes greater distances between the parties necessitates a need to modify the foregoing placement schedule to accommodate such things as travel time and expense. In cases where transportation is a significant issue, the court presumes the cost and/or transportation time will be shared equally between the parties. Either party may rebut this presumption upon a proper showing of financial or other circumstances justifying otherwise.

## **CHAPTER 6: JUVENILE PROCEDURES & POLICIES**

### **6.75 FILING DISPOSITIONAL REPORTS**

All dispositional reports and recommendations in juvenile court shall be filed at least 3 business days prior to the hearing date and forwarded to the assigned judge. This does not prohibit the court from allowing such report filed less than 72 hours but more than 24 hours prior to any hearing when circumstances and the interests of justice require. Failure to file such reports within the period of time provided by this rule or an order of the court requires adjournment of the hearing.

## **CHAPTER 7: PROBATE MATTERS**

### **7.00 FEES FOR GUARDIANSHIP SERVICES**

If a guardian wishes to be compensated for his/her services, the guardian shall put a request in writing to the Marathon County Register in Probate who will submit an order to the assigned judge. The Register in Probate can submit a modification to the assigned Judge if the ward's assets become inadequate for payment of such fees.

The guardian fee shall include the cost of basic supplies (i.e., stamps, envelopes, etc.) or as the Marathon County Register in Probate directs. The cost of mileage is reimbursable per the federal government guidelines.

### **7.10 GUARDIAN AD LITEM DEPOSIT IN ADULT GUARDIANSHIP CASES**

There shall be a \$250 guardian ad litem deposit to be paid by the petitioning party at the time of filing a petition in a guardianship case.

### **7.20 GUARDIANSHIP AD LITEM DEPOSIT/CUSTODY STUDY IN JUVENILE GUARDIANSHIP, ADOPTIO AND TERMINATION OF PARENTAL RIGHTS CASES**

There shall be a \$250 minimum guardian ad litem deposit for one child with an additional deposit of \$50 for each additional child paid at the time of filing.

There shall be a \$250 minimum custody study deposit for one child with an additional deposit of \$50 for each additional child paid at the time of filing.

### 7.30 RECOUPMENT OF FEES PAID BY MARATHON COUNTY

Any fees paid by Marathon County shall be entitled to re-payment as follows:

**Juvenile Guardianship:**

Parent(s), petitioning party and/or guardian shall be responsible for repayment.

**Termination of Parental Rights:**

The petitioning party or in CHIPS cases the parents shall be responsible for repayment.

**Juvenile Commitments:**

The parents of any juvenile shall be responsible for repayment.

**Adult Commitments:**

The person in need shall be responsible for repayment.