

# Marinette County Circuit Court Rules

*(Eighth Judicial District)*

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## **RULE 1: PUBLICATION AND REVISION OF CIRCUIT COURT RULES**

100 Revised Effective date: February 4, 2002.

101 Pursuant to §753.35, Wis. Stats., the Circuit Court of Marinette County may adopt and amend rules governing practice in court that are consistent with rules adopted under §751.12, Wis. Stats., and other statutes relating to pleading practice and procedure. These rules supersede existing rules and practices.

102 Court rules, prior to adoption or revision, shall be presented at two (2) successive meetings of the Marinette County Circuit judges. This requirement and Rule 103 may be suspended for good cause upon the order of the Marinette County Circuit Judges.

103 Proposed rules shall be posted for public review in the County Courthouse by the Clerk of Circuit Court and copies shall be forwarded to the secretary of the Marinette County Bar Association at least thirty days prior to formal adoption.

104 Notice of proposed rules as described in Rule 102 and 103 shall constitute sufficient public notice.

105 Rules shall be adopted by written order of the Marinette County Circuit Judges subject to approval of the Chief Judge. Orders adopting rules shall specify an effective date.

106 Once adopted, court rules shall be filed with the Clerk of Circuit Court, and the Clerk of Circuit Court shall provide copies to the secretary of the Marinette County Bar Association, the court administrator for the Eighth Judicial District, the State Bar of Wisconsin, the State Law Library and the office of the Director of State Courts. The Clerk of Circuit Court shall print and make available to the public, at cost, all rules adopted or amended under this section.

107 In an emergency, the assigned circuit judge may order modifications to these rules to assist in the efficient administration of justice.

108 A person may submit to the court written comments on a rule for the court's consideration in determining whether revision of the rule is needed.

## **RULE 2: GENERAL PROVISIONS**

200 Effective date: August 1, 1996.

201 Closure of Proceedings. Unless good cause has been shown to the judge, a party moving that any judicial proceedings, required by law to be public, be closed to the news media, must notify the court and the media coordinator of the Eighth Judicial Administrative District in writing at least 72 hours prior to the time set to hear the motion. The purpose of this rule is to permit legal counsel to appear on behalf of the media and be heard. The burden shall be upon the moving party to show cause why the proceedings should not be public as required by statute.

202 All papers, pleadings, motions, etc., shall be on substantial paper, contain the case number assigned and designate in the caption, the branch of circuit court assigned to the case. Where appropriate, only approved forms shall be used.

All papers, pleadings, motions, briefs, etc. must conform to the following specifications:

- (a) Produced by duplicating or copying process that produces a clear, black image of the original on white paper.
- (b) Produced on 8-1/2 by 11 inch paper.
- (c) A one inch margin on the left side and a one inch margin on all other sides.
- (d) Minimum 12 point body text, 11 point for quotes and footnotes.

The Clerk of Court shall receive all filings of pleadings regardless of the assigned judge. All pleadings should be addressed to the Clerk of Courts for filing. The judge may require parties filing the papers to forward copies of documents to the assigned judge whether or not he/she is located outside the county.

The Clerk of Circuit Court and the Register in Probate shall refuse to accept for filing any document not in compliance with this rule and the appropriate state statutes. Parties are to include both the State Bar Code and the appropriate case classification on all pleadings filed with the court.

203 No Circuit Court files shall be removed from the Marinette County Courthouse without an order of a Circuit Judge.

204 In all actions, except felony and misdemeanor proceedings, in which a party seeks waiver of costs and fees due to indigency, a Petition for Waiver of Fees/Costs, Affidavit of Indigency and Order must be completed for review by the court. The final decision on waiver will be at the discretion of the court. [Petition for Waiver of Fees/Costs-Affidavit of Indigency and Order available at Clerk of Court office.]

205 When counsel submits a document to the court for signature, a copy shall be simultaneously forwarded to all other counsel and/or unrepresented parties. Objections to the form or content of the document submitted shall be filed in writing with the court within 5 days of service or mailing. Failure to file written objections shall be deemed a waiver of objections. The document will be deemed signed unless objections have been filed.

206 There is hereby delegated to the Clerk of Courts, the Deputy Clerks of Courts and the Judicial Assistants, the following ministerial and clerical duties: calendaring traffic regulations/crimes, civil, small claims, ordinance and family cases for trial; and, to administer oaths to witnesses, jurors and bailiffs and such other duties as designated by the Court.

207 The non-refundable jury fee is payable at or before the scheduling or pretrial conference, whichever comes first.

208 Guardian ad litem shall not incur any expenses for experts, either as a witness or as a consultant, without prior approval of the assigned judge.

209 Counsel should use good judgment in subpoenaing witnesses to appear in court. Counsel should respect the time necessary in order to select a jury and not have witnesses waiting inordinately for their opportunity to testify.

210 Only active members of the state bar of Wisconsin may practice law in Marinette county courts. A Marinette County Circuit Judge may, by written motion, permit non-resident counsel to appear in his or her court with an active member of the state bar of Wisconsin who must also appear and participate in that particular action or proceeding. Permission to the non-resident lawyer may be withdrawn by the judge granting it if the lawyer by his or her conduct manifests incompetency to represent a client in a Wisconsin court or by his or her unwillingness to abide by the rules of professional conduct for attorneys and the rules of decorum of the court.

211 All exhibits must be marked prior to any court hearing. Counsel/parties maintain the responsibility to coordinate this marking with the Clerk of Courts and shall be prepared to provide a description of each exhibit to the Clerk at the time of marking.

212 The judges of Marinette County may, with or without a motion being filed, upon determining that an action or proceeding is an appropriate one in which to invoke a settlement alternative under §802.12, Wis. Stats., order the parties to select a settlement alternative as a means to attempt settlement.

Parties are required to inform the responsible judge the settlement alternative that they select and the name of the person to provide that alternative.

If the parties cannot agree on the settlement alternative, the judge shall specify the least costly settlement alternative that the judge believes is likely to bring the parties together in settlement, except that unless all of the parties consent, the judge may not order the parties to attempt settlement through binding arbitration, non-binding arbitration or summary jury trial or through multiples of any other settlement alternative.

If the parties cannot agree on the payment of a provider of a settlement alternative, the judge shall direct that the parties pay reasonable fees and expenses of the provider or that the parties pay into an escrow account sums sufficient to pay the fees and expenses of the provider.

213 Counsel are to provide both line and page number when referring to any deposition testimony during court hearings and in any briefs submitted to the court. Advance notification of specific depositions intended to be used must also be made in advance of any scheduled hearings.

214 Counsel are to provide marked copies of all transcripts to counsel and the court at least 48 hours prior to their intended use.

215 The judge having the most years of service as a judge of the Marinette County Circuit Court shall have the right to choose which chambers and which courtroom the judge shall use.

NOTE: It is the intention of Rule 215 to permit the judge with the most seniority to select which chambers and courtroom that judge chooses to use. This rule does not permit the judges to change branches. For example, the judge of Branch I would remain the judge of Branch I even though the judge of Branch I would choose the chambers and courtroom presently being used by the judge of Branch II. Signs designating courtrooms would be switched. Effective October 1, 1996 by order dated September 5th, 1996.

#### 216 De Novo Review of Circuit Court Commissioner Decisions

- (a) Any party who was present at the hearing may request a de novo hearing on matters decided by the circuit court commissioner. The de novo hearing will be by the circuit court judge of the branch to which the case has been assigned.
- (b) Unless a different time limit is provided by statute, any request for a de novo review of the circuit court commissioner's decision pursuant to Wis. Stat. §757.69(8), must be made in writing and filed with the Marinette County Clerk of Court within 30 days of the commissioner's decision.
- (c) Upon obtaining the de novo hearing date from the court, the moving party shall have the notice of motion and motion served on the other party, guardian ad litem, if any, and the Child Support Agency, if state assistance is involved.
- (d) Notices requesting de novo hearing will not stay the court commissioner's order unless the judge specifically grants a stay of the order.

217 When an attorney is appointed by the court as a guardian ad litem or to represent an individual(s) in a Family, Probate, Guardianship or Juvenile matter, the attorney shall promptly sign the consent to act and familiarize himself/herself with the file.

At the time of disposition, it will be the obligation of the attorney to advise the court whether he/she was appointed; the amount of the billing and whether or not any payments have been made on the bill.

The attorney shall submit to the court, opposing counsel (if appropriate) and the client(s) or other responsible party(ies) his/her final bill within 90 days of completion of the case or the attorney's representation. For good cause shown prior to the expiration of 90 days, an extension of 60 days may be granted. If the bill is not submitted within said 90 day period or an extension thereof, it shall not be paid, absent extraordinary circumstances. Attorneys accepting appointments by the court as described above, accept this provision as a contractual term and condition of the appointment. Revised August 1, 2007

218 Attorneys appointed by the Marinette County Circuit Court shall be compensated at the following hourly rates:

Guardian and Civil Commitment cases	\$100.00
Adoption, Termination of parental rights, Juvenile and establishment of paternity	\$100.00
<u>Dean</u> appointments	\$100.00
Family Guardian ad litem for placement/ custody issues (including post-paternity judgment revisions)	\$125.00

No reimbursement shall be made for mileage traveled.

No reimbursement shall be made for copies made on attorney's owned or leased equipment. Copy fees paid to third parties shall be reimbursed upon proof of payment.

Long distance telephone charges in excess of \$5.00 per call shall be reimbursed upon proof of payment.

Revised October 1, 2014  
Effective January 1, 2015

### **RULE 3: CASE PROCESSING TIME GUIDELINES**

300 Effective date: August 1, 1996.

301 The following case processing time guidelines are designed to provide a guide to the judiciary and bar. Unless otherwise indicated, the guidelines represent the time period from filing to final disposition:

Misdemeanor [from initial appearance] [in custody]	2 months
Misdemeanor [from initial appearance] [not in custody]	3 months

Felony [from initial appearance]	6 months
Traffic/Ordinance [from initial appearance]	4 months
Personal Injury/Property Damage	18 months
Contract/Money Judgment/Other Civil	12 months
Divorce	12 months
Probate	12 months
Small Claims	3 months
Child Support	6 months
Paternity-Contested	12 months
Paternity-Uncontested	6 months

302 It will be the practice of the court to schedule every case for a next action or review date at every stage in the life of the case. [Scheduling Conference Order-Available from Clerk of Court office]

303 A Notice and Order of Dismissal shall be prepared, and if signed, mailed to litigants or their counsel for all case types specified below when there has been no apparent activity in the case for the period of time specified below. No Notice and Order shall be prepared if activities have been suspended due to the issuance of an arrest warrant; bench warrant; in traffic cases, an operator's license suspension order; or the filing of a Petition in Bankruptcy:

Traffic/Ordinance [from Initial Appearance]	4 months
Personal Injury/Property Damage	9 months
Contract/Money Judgment/Other Civil	6 months
Divorce	6 months
Small Claims	3 months
Child Support	6 months
Paternity-Contested	6 months
Paternity-Uncontested	3 months

304 Objections to dismissal shall be made in writing to the assigned judge of the action to be dismissed. The judge may deny the objections, vacate the order of dismissal or schedule a hearing.

305 No action pending will be stayed unless a certified copy of the Bankruptcy Petition and all schedules are filed with the Circuit Court upon filing with the Bankruptcy Court. All actions suspended due to the filing of a Petition in Bankruptcy will be dismissed, without notice to any party, one (1) year from the date of filing unless a petition is filed to extend the suspension and/or a certified copy of the Discharge in Bankruptcy and all schedules is presented to the presiding judge before the expiration of the one year period.

306 Nothing in these rules shall restrict the inherent power of the judge of these courts to make additional orders, rules or policy that would expedite the efficient and effective disposition of litigation.

## **RULE 4: RULES OF DECORUM**

400 Effective date: February 4, 2002.

401 As the judge enters the courtroom, the Bailiff or Clerk of Court shall require all present to rise and stand. At the commencement of jury trials, when the judge has reached the bench, the Bailiff or the Clerk of Court shall say "Hear ye! Hear ye! The Circuit Court for the County of Marinette is now open. Silence is commanded." All shall be seated and the business of the court shall proceed.

402 In recessing, the judge shall announce: "The court is now in recess," or the equivalent.

403 The flag of the United States shall at all times while court is in session be displayed at, on, or in close proximity to the bench, or on standard to the right of the judge.

404 In the courtroom, beverages except as provided by the court, food and gum-chewing are not allowed. Hats of any type are not permitted to be worn in the courtroom. Coats not worn are to be placed on the coat racks located outside of the courtrooms. Newspapers are not to be read during court proceedings. Feet are not to be placed on chairs or benches. Silence is to be maintained and noisy or restless children should be immediately removed by their caregiver.

405 Witnesses shall be examined from a position at the counsel table except when handling exhibits unless a lectern is provided by the court, in which case the examination shall be either from the position at the counsel table or the lectern. Persons examining witnesses may either stand while examining a witness from the counsel table or remain seated. In no case shall a witness be crowded during examination.

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

407 Individual voir dire is prohibited except upon prior approval of the presiding judge.

408 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.

409 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.

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

411 The swearing of witnesses shall be an impressive ceremony and not a mere formality.

412 During jury trials, objections to questions or evidence shall be made solely by stating: "objection" and the succinct legal ground therefore (e.g. relevancy, hearsay, etc.) without argument or elucidation. Responses from opposing counsel are to be made only upon a request to be heard and leave of the presiding judge.

413 Sidebar conferences shall not be allowed except upon extreme emergencies as determined by the presiding judge.

414 In jury cases which are disposed of upon a motion for dismissal or directed verdict, the judge in dismissing the jury should briefly explain the procedure and why a verdict was unnecessary.

415 Any person who fails to comply with these rules may be found in contempt of court and/or removed by the court officer or the bailiff.

416 (1) Judges, court commissioners, lawyers, clerks and court personnel shall at all time do all of the following:

(a) Maintain a cordial and respectful demeanor and be guided by a fundamental sense of integrity and fair play in all their professional activities.

(b) Be civil in their dealings with one another and with the public and conduct all court and court-related proceedings, whether written or oral, including discovery proceedings, with civility and respect for each of the participants.

(c) Abstain from making disparaging, demeaning or sarcastic remarks or comments about one another.

(d) Abstain from any conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive.

(e) While in court or while participating in legal proceedings, dress in a manner showing proper respect for the court, the proceedings and the law. Judges shall wear black robes while presiding on the bench except when exceptional circumstances exist.

(f) Advise clients, witnesses, jurors and others appearing in court that proper conduct and attire is expected within the courthouse and, where possible, prevent clients, witnesses or others from creating disorder or disruption.

(g) In scheduling all hearings, meetings and conferences, be considerate of the time schedules of the participants and grant reasonable extensions of time when they will not adversely affect the court calendar or client's interests.

(h) Conduct themselves in a manner which demonstrates sensitivity to the necessity of preserving decorum and the integrity of the judicial process.

(2) Judges, court commissioners, and lawyers shall be punctual in convening and appearing for all hearings, meetings, and conferences and, if delayed, shall notify other participants, if possible.

(3) Lawyers shall do all of the following:

(a) Make all reasonable efforts to reach informal agreements on preliminary and procedural matters.

(b) Attempt expeditiously to reconcile differences through negotiation, without needless expense and waste of time.



- (c) Abstain from pursuing or opposing discovery arbitrarily or for the purpose of harassment or undue delay.
  - (d) If an adversary is entitled to assistance, information or documents, provide them to the adversary without unnecessary formalities.
  - (e) Abstain from knowingly deceiving or misleading another lawyer or the court.
  - (f) Clearly identify for the court and other counsel changes that he or she has made in documents submitted to him or her by counsel or by the court.
  - (g) Act in good faith and honor promises and commitments to other lawyers and to the court.
- (4) Adherence to standards of professionalism and courtesy, good manners and dignity is the responsibility of each judge, court commissioner, lawyer, clerk and other personnel of the court who assist the public.

NOTE: The purpose of this amendment is to adopt the "Standards of Courtesy and Decorum for the Courts of Wisconsin" that were adopted by the Wisconsin Supreme Court in SCR Chapter 62. Duplications in the local rules were eliminated and the remaining rules were renumbered. Effective October 1, 1996 by order dated September 5, 1996.

## **RULE 5: SCHEDULING/ADJOURNMENTS**

501 Effective date: August 1, 1996.

502 Requests for adjournments must be in writing, addressed to the assigned judge, served on all opposing parties and received by the assigned judge not later than 10 days prior to the scheduled hearing. The time limits may be waived for good cause.

503 Ex parte requests for scheduling are limited by SCR 20:3.5, "Code of Professional Conduct for Attorneys-Impartiality and decorum of the tribunal."

504 Adjournments are not a matter of right and will only be granted for good cause.

505 All adjournments shall be made to a date certain, and no adjournment shall be indefinite or day-to-day.

506 The party receiving the adjournment shall be solely responsible for notifying opposing counsel and, where appropriate, all parties and witnesses that the hearing, trial, etc., has been adjourned.

507 If necessary, scheduling conflicts will be resolved in favor of the first scheduled hearing, unless, for good cause, the presiding judge agrees otherwise.

508 Where applicable, the Rules of Civil and Criminal Procedure and specific local court rules will control all requests for adjournments.

509 All law enforcement requests for adjournments shall contain written approval of the prosecuting attorney and shall be served on opposing counsel or unrepresented parties at the time it is forwarded to the presiding judge.

510 Attorneys are required to have their calendars with them in court so that dates can be set in the courtroom when possible. In the event that an attorney does not have his or her calendar in court, a date will be set in accordance with the judge's calendar.

## **RULE 6: FEES/LATE SETTLEMENT ASSMTS/RECEIVING AND DISBURSING FEES**

600 Effective date: August 1, 1996.

601 Late Settlement Assessments-The circuit judge requests trial counsel to pursue settlement at the earliest possible time. When any attorney feels the court can be helpful, a request for a pretrial conference can be made. Recognizing the great inconvenience and expense that can be caused to parties, jurors, and witnesses, early settlements will be promoted by attorneys who are prepared to discuss all aspects of the case.

602 The court shall have discretionary authority in any civil or criminal action or proceeding triable to a jury to assess the entire cost of one day's jurors fees for a jury, including all mileage costs, against either the plaintiff or the defendant or counsel, or additional parties plaintiff or defendant, if a jury demand has been made in any case and if a jury demand is later withdrawn within 2 business days prior to the time set by the court for the commencement of the trial. The party assessed shall be required to make payment to the clerk of circuit court within a prescribed period and the payment thereof shall be enforced by contempt proceedings.

603 Every party ordered to make payments of an annual receiving and disbursing fee shall be notified of the requirement to pay the fee and the amount of the fee by including the provisions concerning the fee in any subsequent written order.

604 Any stipulation between parties under which a party is to make maintenance payments, child support or family support payments shall include the requirement to make the annual receiving and disbursing fee.

605 Future legislative modifications of §814.61(12)(b), Wis. Stats., are incorporated into these rules as they become effective.

## **RULE 7: FACSIMILE TRANSMISSIONS OF DOCUMENTS TO THE COURT**

700 Effective date: February 4, 2002.

701 A. Pursuant to sec. 801.16, Stats., the filing of pleadings and other papers with the clerk of court, that do not require a filing fee, may be by facsimile transmission to a plain-paper facsimile machine at a telephone number designated by the court. Documents submitted by facsimile transmission shall not exceed 15 pages, unless an exception is approved by the assigned judge or court commissioner on a case-by-case basis.

B. Documents may be transmitted under the authority of this rule if no additional fee or charge must be paid by the clerk of circuit court for accepting or receiving the facsimile document.

C. If the facsimile transmission exceeds 15 pages, the party or attorney shall certify that the assigned judge or court commissioner has approved the facsimile transmission.

D. Documents filed under this rule may be transmitted to the following number: (715) 732-7461.

E. Facsimile papers are considered filed upon receipt by the clerk of circuit court and are the official record of the court and may not be substituted. No additional copies may be sent. The clerk of circuit court shall discard any duplicate papers subsequently received by the clerk of circuit court, assigned judge or court commissioner.

F. Papers filed by facsimile transmission completed after regular business hours of the clerk of circuit court's office are considered filed the next business day.

G. The party transmitting the facsimile document is solely responsible for ensuring its timely and complete receipt. The circuit court, judge, court commissioner or clerk are not responsible for errors or failure in transmission that result in missing or illegible documents or periods when a circuit court facsimile machine is not operational for any reason.

702 If papers are transmitted to a plain-paper facsimile machine of a noncourt agency, party, or company for the receipt, transmittal, and delivery to the clerk of circuit court, the clerk of circuit court shall accept the papers for filing only if the transmission complies with the local rule or has been approved by the assigned judge or court commissioner and certified by the party or attorney.

703 Documents that are not to be filed, but are submitted to the judge or court commissioner for reference or other purpose, may be transmitted at the discretion of the judge or court commissioner.

## **RULE 8: SECURITY POLICY-THREATS TO JUDICIARY & COURT EMPLOYEES**

800 Effective date: August 1, 1996.

801 The Marinette Police Department is the primary law enforcement agency to receive reports of threats and investigate such reports within their normal investigative procedures. The Marinette Police Department has identified the shift commander as the liaison officer for reporting purposes.

802 If a threat does not appear to impose imminent danger, the threat shall be reported to the Marinette Police Department as outlined in the Marinette County Courthouse Alarm/Incident Procedure. If a threat appears to be immediate, the Marinette Police Department shall be immediately notified and requested to provide an independent evaluation concerning the urgency of the threat and recommendation as to further procedures.

803 All threats, regardless of their degree, shall be reported in order to allow for an independent evaluation by the Marinette Police Department.

804 In conjunction with the Marinette Police Department, written procedures shall be developed which assist the threatened person in collecting and preserving the appropriate evidence needed by the Marinette Police Department for investigative purposes.

805 In conjunction with this policy the Sheriff's Department's Operational Guidelines for Courtroom Security will detail other security procedures to be followed.

806 Judges and court staff shall inform the District Court Administrator of any threat and the subsequent steps that have been taken pursuant to the guidelines by forwarding a copy of any Threat/Incident Reports completed to them along with the evaluation by the Marinette Police Department liaison officer. The District Court Administrator shall maintain a log of reported threats/incidents and corrective measures implemented for each event.

## **RULE 9: CIVIL PRACTICE**

900 Effective date: February 1, 2007.

901 All civil cases will be reviewed for filing of proof of service and answer 80 days after filing by the judicial assistant. If at that time it is found that a case has not reached issue, a dismissal order or default proceeding shall be prepared by the judicial assistant.

902 A motion for summary judgment and/or dismissal shall be filed with the Clerk of Courts and a copy with the assigned judge together with any brief or other supporting documents.

The parties shall follow the summary judgment procedures set forth in Wis. Stat. §802.08. Unless a scheduling order has been entered, the movant shall contact the court and opposing counsel to establish a briefing schedule and hearing date.

903 If the movant desires to file a brief in support of a motion other than one for summary judgment or dismissal, the brief shall be served and filed with the Clerk of Courts; a copy shall be served and filed on all opposing counsel; and a copy shall be filed with the assigned judge with the notice of motion or at least days 10 days prior to any scheduled hearing date. Briefs in opposition to such motions must be filed no later than two business days prior to the hearing of the motion. Briefs in opposition to such motions must be either personally served upon opposing counsel no later than two business days prior to the hearing or if service is made by mail, no later than three business days prior to the hearing. Briefs filed in an untimely fashion may be disregarded by the court.

904 Except as to mortgage/land contract foreclosures, notice to defendant is not required prior to entry of a default judgment in large claim civil actions where personal service was obtained upon the defendant.

905 In cases where personal service is not obtained upon the defendant (i.e., substitute or published), notice of motion for default judgment shall be given to defendant by regular mail at defendant's last known address.

906 In actions where damages are not liquidated, the court shall require proof in order to determine the amount of the judgment. The court may order a hearing or consider affidavits to determine the amount of the judgment in any case.

907 Any judge may in an individual case require further notice or proof regarding service, damages or costs, if appropriate.

908 No default mortgage/land contract foreclosure shall be granted except upon a hearing in open court by affidavit or testimony, due notice of which shall have been given to all defendants 10 days prior to the hearing.

909 In all pretrial matters, attorneys must have the authority to negotiate in the absence of their clients or, if authority is not granted, immediate telephonic access to the clients shall be required.

910 Any judgment debtor who applies to have a judgment removed from the docket because of bankruptcy shall file a verified petition and proposed order together with a certified copy of the discharge in bankruptcy. The judgment debtor shall also file an affidavit showing that the debtor has served a copy of the completed application and the proposed order on each judgment creditor described in the application. The court shall wait at least five business days after the notice to the creditors and shall sign the proposed order only upon payment of the clerks fee of \$5.00 per judgment.

911 A court in which an action is pending may appoint a referee who shall have such qualifications as the court deems appropriate. The fees allowed to a referee shall be fixed by the court and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court, as the court may direct.

## **RULE 10: CRIMINAL LAW AND TRAFFIC PRACTICE**

1000 Effective date: August 1, 1996.

1001 The circuit court judge to whom a felony case has been assigned shall hear the entirety of the case from commencement to completion, absent a substitution request pursuant to Wis. Stat. §971.20. Revised April 1, 2007

1002 Motions for discovery in felony and misdemeanor cases shall be filed by defense counsel within 5 working days of the date of arraignment. The State shall respond to the demand for discovery within 10 working days of the date of filing.

Upon demand, the State shall, not later than thirty (30) days prior to trial, disclose to the defendant or his or her attorney a list of all witnesses and their addresses whom the district attorney intends to call at trial. This paragraph does not apply to rebuttal witnesses or those called for impeachment only.

Upon demand, the defendant or his or her attorney shall, not later than fifteen (15) days prior to trial, disclose to the district attorney a list of all witnesses, other than the defendant, whom the defendant intends to call at trial, together with their addresses. This paragraph does not apply to rebuttal witnesses or those called for impeachment only.

1003 The time in which a defendant must file pre-trial motions shall not commence to run until the date that discovery is given to the defendant under the Code of Criminal Procedure.

1004 All motions must state with specificity the grounds and factual basis therefore. General assertions of violations of Constitutional rights will not be considered specific. Such non-specific motions may be denied sua sponte by the assigned judge with notice to the parties of such denial and leave to renew the motions in a timely manner.

1005 If a defendant has criminal cases pending in more than one court, and there has been an agreement reached as to the disposition of all cases, they shall transfer to the agreed upon court but only with leave of that court.

1006 Motions for consolidation of misdemeanors with felonies shall be brought before the judge assigned the felony case. Motions to consolidate cases shall be brought before the judge before whom the lowest numbered felony case is pending. A motion to consolidate a misdemeanor "CM" with a criminal misdemeanor traffic case "CT" will be brought before the judge assigned to the traffic case. A motion to consolidate two or more criminal misdemeanor cases will be brought to the judge before whom the lowest numbered misdemeanor case is pending. If a motion for consolidation is granted, further proceedings in all consolidated cases shall be heard by the judge who granted the motion.

1007 The prosecuting attorney shall have absolute authority to enter into binding plea agreements without the approval of the arresting officer(s) and/or victim(s).

1008 A stipulated request for continuance of the trial date shall require the consent of the named parties in writing or on the record and must be for good cause shown. A contested request for continuance must be on motion and hearing and for good cause shown by the party. All requests for continuance are subject to the approval of the court.

1009 All pleas must be of record on or before the scheduled trial dates. Plea hearings will not be conducted after the scheduled trial date, except for good cause.

1010 Plea Questionnaires shall be completed prior to the commencement of any scheduled proceedings [Plea Questionnaire available in Clerk of Court Office].

1011 Not later than 7 days prior to the scheduled sentencing hearing, the Division of Community Corrections shall mail or deliver the original to the clerk of court's office and mail or deliver a copy of the Pre-Sentence Investigation report the District Attorney and defense counsel, if any. Defense counsel, District Attorney and defendant shall have reviewed the PSI report prior to the time scheduled for sentencing. Attorneys are prohibited from making photocopies of such reports or allowing any individual to remove the report from their presence. Revised April 1, 2007

1012 Petitions for Occupational Licenses shall be forwarded to the judge assigned Traffic jurisdiction except for those cases in which loss of licenses occurred for revocation/suspension for a non-traffic matters. Those cases shall be presented to the judge who presided at the sentencing hearing.

1013 Occupational licenses, under Sec. 343.10, Wis. Stats., shall only be issued pursuant to the authority of the Wisconsin Statutes, as set forth in ch. 343, Wis. Stats.

1014 Any appeal to the Circuit Court from Municipal Court shall be returned to the Municipal Court for disposition when settlement is reached prior to trial in Circuit Court.  
Revised April 1, 2007

1015 If any person has posted bond to obtain the release of an accused from custody and a criminal complaint is not filed within eight weeks thereafter, the clerk of court is authorized to return any bond money to the person who deposited it.

1016 When an attorney is appointed by the court to represent a defendant, the attorney shall promptly prepare and forward to the appointing judge for signature, an order appointing the attorney in the matter, together with all other pertinent terms of the appointment.

At the time of disposition, it will be the obligation of the attorney to advise the court whether he/she was appointed; the amount of the billing and whether or not the defendant has made any payments on the bill.

The attorney shall submit to the court and defendant his/her final bill within 90 days of completion of the case or the attorney's representation of the defendant. For good cause shown prior to the expiration of 90 days, an extension of 60 days may be granted. If the bill is not submitted within said 90 day period or an extension thereof, it shall not be paid, absent extraordinary circumstances. Attorneys accepting appointments by the court to represent defendants, accept this provision as a contractual term and condition of the appointment. Revised August 1, 2007

## **RULE 11: SMALL CLAIMS PRACTICE**

1100 Effective date: August 1, 1996.

1101 Marinette County by this rule authorizes the service of summons in all small claims actions, except eviction and replevin actions, by mail in lieu of personal or substituted service. Regular mail is limited to Marinette County. Personal or substituted service outside of the county is acceptable. Eviction actions require service by personal or substituted service and Replevin actions require service by person, substituted or by certified mail with return receipt requested. Parties are wholly responsible to secure service of their pleadings.

1102 All plaintiffs and all defendants in small claims matters must personally appear on the return date. No party may appear by telephone.

1103 All pleadings under ch. 799, Wis. Stats., shall be in writing unless specifically ordered otherwise by the assigned judge.

1104 If the defendant fails to appear on the return date or fails to file and serve a written answer pursuant to Rule 902, a default judgment will be entered according to the demands of the complaint.

Rule 1102 was amended by order dated April 27, 1999, effective May 1, 1999. The appearance of both parties on the return date is designed to facilitate early settlement by the Court Commissioner.

## **RULE 12: FAMILY LAW PRACTICE**

1200 Effective date: August 1, 1996.

1201 At temporary hearings both parties shall bring wage statements from their respective employers for a period of twelve weeks prior to the hearing date, financial disclosure statements signed under oath, and copies of state and federal income tax returns for the two prior years in the possession or control of each party. Failure to file these documents shall authorize the Family Court Commissioner to accept the statement of the other party as accurate. The Family Court Commissioner may, at his/her discretion continue any matter until Financial Disclosures are filed.

1202 The party petitioning for a temporary hearing shall give the other party at least forty-eight hours notice prior to said hearing.

1203 All stipulations for orders to suspend proceedings in divorce actions to attempt reconciliation shall be submitted in the form as set forth as Stipulation and Order to Suspend Proceedings or Reconciliation form which is available in the Clerk of Court Office.

1204 The stipulation and order referred to in Rule 1203 shall indicate the date by which the parties must report to the court the status of the reconciliation together with the request for dismissal of the divorce action or a resumption of proceedings.

1205 If no report is received as required by Rule 1204, the judge or court commissioner shall dismiss the action.

1206 Any party raising the issue regarding primary physical placement or custody shall be referred to Mediation Services of Marinette County.

1207 The cost for custody and physical placement mediation provided by family court counseling services shall be paid equally by the parties unless otherwise ordered by the judge or court commissioner. Revised April 9, 2008.

1208 Fees for mediation and custody or physical placement studies are payable directly to the Marinette County Family Mediation Services, 2500 Hall Avenue, Suite A, Marinette, WI 54143.

1209 In any action affecting the family in which a guardian ad litem is appointed by the court a \$1500.00 deposit shall be paid directly to the clerk of court for payment to the guardian ad litem, subject to further order of the court. After payment of the fee to the guardian ad litem, the clerk shall, without further order of the court, disburse any excess to the person who posted it.

1210 Guardians ad litem shall be compensated as provided in Wis. Stats. s. 767.045(6) or as otherwise ordered by the circuit court judges. Guardians ad litem shall not incur any expenses for the hiring or consultation with experts without prior approval of the court. Guardians ad litem must submit a statement within 60 days after completion of their services or the court may, in its discretion, deny payment. The statement for services



shall include an itemization of time spent and expenses incurred. The guardian ad litem shall mail copies of the statement to the attorneys of record in the matter or directly to any party who is not represented by counsel.

1211 In an original action where custody or physical placement of a child or children is an issue the parties shall be equally responsible for the payment of any fees for mediation, custody or physical placement studies or guardian ad litem fees due in advance and will be presumed to be equally responsible for the total fees, unless otherwise ordered by the court.

1212 In a post-judgment matter relating to the custody or physical placement of a child or children, the party seeking a change in the judgment with respect to those issues shall be responsible for any payments due in advance.

1213 If one or both of the parties allege that they are indigent, that party may request relief from payment of any fee or cost by motion made to the court. If one of the parties is indigent, the court may order the other party to pay the fee.

1214 The court or court commissioner may also require a party to reimburse the other party for fees advanced by that party. Factors to be considered as to reimbursement are the relative ability of the parties to pay, the results of the action, the conduct of the parties with respect to attempts to obtain a settlement by other than resort to the judicial system, and other equitable factors which the court might consider.

1215 At the time of the filing of any action for divorce, legal separation, or annulment, the Clerk of Courts shall issue to the filing party a copy of a pretrial order signed by the judge or court commissioner to whom the case has been assigned. The copy is to be served upon the other party along with the summons and petition in the action.

1216 The pretrial order will show the date 120 days after the filing of the action, or as soon thereafter as the court is available, when a pretrial hearing is scheduled. Any requests for adjournments for the pretrial hearing must be made as soon as counsel are aware of a conflict. No adjournments will be granted without court approval. At least 10 days prior to the pretrial hearing counsel shall provide to the court and opposing counsel the information as required by the pretrial order. Upon failure of counsel to provide the information at least 10 days prior to the hearing date, appropriate sanctions may be imposed.

1217 The final stipulation/marital settlement agreement and each party's financial disclosure statement shall be filed with the Court prior to the hearing date. The findings of fact, conclusions of law and judgment of divorce and the original certificate of divorce or annulment must be filed at the start of the hearing. Failure to file these documents in a timely fashion will result in the cancellation of the hearing.

1218 Prior to obtaining a date and time from the court, any party seeking to enforce a judgment or portion of judgment of divorce or a temporary order of the Family Court Commissioner, shall file with the Clerk of Courts an Order to Show Cause or other appropriate motion and pay such fee as required. Upon proof of filing and payment of any required fee, the court will provide the filing party with the date and time for hearing. Such date and time shall be included in the notice of hearing and such notice shall be served upon the opposing party within the time prescribed by statute and/or local rule.

1219 If the Family Court Commissioner determines that he/she should disqualify him/herself under Section 757.19 of the Wisconsin Statutes, the commissioner shall then refer the matter to the Family Court Commissioner of Oconto County who will then preside over the matter as Acting Family Court Commissioner for Marinette County.

1220 Attorneys are to file a notice of retainer in all family and paternity cases.

Rule 1219 was created by order dated April 27, 1999, effective May 1, 1999. It adopts the informal arrangement that has existed for many years between the Family Court Commissioners of Marinette and Oconto Counties.

### **RULE 13: JUVENILE POLICY AND PROCEDURE**

1301 Wisconsin Statutes Chapter 48 and 938 are controlling in all juvenile activities.

1302 All requests for adjournments must be in writing and received not later than 48 hours prior to the hearing.

1303 Court reports shall be submitted to the juvenile clerk 72 hours prior to the disposition hearing.

1304 The District Attorney's Office shall prepare all juvenile orders within 10 days of the disposition hearing. The court may designate responsibility for the preparation of orders to another party as appropriate.

1305 In a delinquency action, an admission questionnaire must be completed prior to the acceptance of any pleas. [Plea Questionnaire, Juvenile Admission and Waiver of Rights and Parents CHIPS Waiver of Rights forms are available in Clerk of Juvenile Court Office.]

1306 When necessary, the juvenile clerk will select a guardian ad litem, from a predetermined list, prepare the necessary paperwork, have the judge sign the appointment and the guardian ad litem sign the consent.

1307 Juvenile court records are deemed confidential and disclosure about same is prohibited by statute.

1308 Juvenile case records are the responsibility of the juvenile clerk and are not to be removed from that office without written permission of the court.

1309 Guardian ad litem in juvenile matters shall be compensated as provided in Wis. Stats. Sec. 48.235(8). Guardian ad litem shall not incur any expenses for hiring or consultation with experts without prior approval of the court. Guardian ad litem must submit a statement within 60 days after completion of their services or the court may, in its discretion, deny payment. The statement for services shall include an itemization of time spent and expenses incurred. The guardian ad litem shall mail copies of the statement to the attorneys of record in the matter or directly to any party who is not represented by counsel.

1310 The "Policy and Procedure Manual for the Juvenile and Children's Court of Marinette County" attached hereto as Appendix A is adopted as though fully set forth in these rules. Amendments to this rule may be made by the Judges of Marinette County Circuit Court without regard to Rule 1.

Rule 1310 was adopted by order dated April 1, 1998, effective April 1, 1998. Rule 1308 was amended by the same order.

## **RULE 14: TERMINATION OF PARENTAL RIGHTS AND ADOPTIONS**

1401 Effective date: June 1, 2005.

1402 In termination of parental rights proceedings, the petitioners shall advance the sum of \$500.00 for the appointment of a guardian ad litem for the minor child and/or the minor natural parent(s), unless otherwise ordered by the court.

1403 The parent whose rights are being terminated shall complete all necessary medical and genetic reports and file them with the clerk of juvenile court prior to the hearing.

1404 The adoptive parents shall be responsible for all other costs associated with the adoption proceedings.

Rule 14 was adopted by order dated and effective April 1, 1998.

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## **RULE 15: PROBATE PRACTICE**

1500 Effective date: February 1, 2007.

1501 All probate proceedings shall be closed not later than 12 months after filing of the petition. If any estate is not closed within 11 months of the filing of the petition, the Register in Probate shall send a letter to the personal representative and the attorney for the estate advising them that the estate must be closed. If the estate is still not closed within 12 months, the attorney and the personal representative shall be required to show cause before the court why the estate has not been closed. The court may impose any sanction it deems appropriate including, but not limited to, the removal of the personal representative and/or attorney or dismissal of the entire proceeding and such monetary sanctions as the court deems appropriate.

1502 Any person who objects to the probate of a will must file their objection in writing with the Register in Probate and pay the required fees. The objector shall then contact the Probate Judge for the scheduling of further proceedings. It is the responsibility of the objector to provide proper notice to all interested parties of future proceedings.

1503 When an objection to a claim is filed, the personal representative or attorney for the estate shall send a notice of the objection to all interested parties and shall schedule the matter for hearing with the Probate Judge. The personal representative and attorney shall provide notice to all interested parties of the hearing on the objection. If the claimant fails to attend the hearing, the court may disallow the claim.

1504 Unless otherwise ordered by the court, the inventory must be filed within 90 days from the date the domiciliary letters are issued. If not filed, the Register in Probate shall send notice to the personal representative that the inventory is delinquent. If the inventory is not filed within 6 months, the court shall issue an order directing the personal representative to appear before the court to show cause why the inventory has not been filed. The appropriate filing fee must be paid at the time the inventory is filed.

1505 Unless otherwise ordered by the court, the inventory of the guardian, conservator or trustee shall be filed within 60 days from the date letters are issued. If not filed, the Register in Probate shall send a notice to the guardian, conservator or trustee that the inventory is due. If no inventory is filed within 60 days of the date the letters are issued, the court shall issue an order directing that the guardian, conservator or trustee appear before the court to show cause why the inventory has not been filed. Filing fees shall be paid at the time the inventory is filed.

1506 In January of each year, the Register in Probate shall send forms for annual accounts to all guardians, conservators and trustees. It is the responsibility of the guardian, conservator or trustee to complete the report and file it in the office of the Register in Probate together with the verification of all assets. The report must be filed not later than April 15th of the year in which it is due. Failure to receive this annual form does not exempt the guardian, conservator or trustee from preparing and filing the annual report. Failure to file the annual report may cause the guardian, conservator or trustee to be subject to penalty and/or removal. Guardians, conservators and trustees shall keep the court informed of their current mailing address.

1507 The court shall determine the compensation for services rendered by guardians, conservators and trustees which are just and reasonable. The guardian, conservator or trustee shall petition the court for approval of fees. All requests should be made on an annual basis unless otherwise ordered by the court.

1508 When any hearing regarding any alleged incompetent is requested, the Register in Probate shall notify the public defender's office to determine representation. If a public defender is unable to provide representation, the Register in Probate shall so inform the court. The court will then determine whether or not adversary counsel should be appointed. The corporation counsel shall provide notice to all interested parties and shall be responsible for arranging for the incompetent to be present at all hearings unless otherwise ordered by the court.

1509 When filing a petition for guardianship of a minor, the petitioner shall advance the sum of \$500.00 for the appointment of a guardian ad litem for the minor child. If the deposit is more than the guardian ad litem fees, any remaining amount will be returned to the petitioner. If the guardian ad litem fees are more than the deposit, the Court will order the additional amount to be paid.

Rule 15 was adopted by ordered dated and effective April 1, 1998, and revised effective February 1, 2007.

## **RULE 16: JURY PROCEDURE**

1600 Effective date: August 1, 1996.

1601 The Clerk of Courts shall call in 40 jurors for all scheduled jury trials unless notified otherwise by the judge.

## **RULE 17: LAW LIBRARY**

1700 Effective date: August 1, 1996.

1701 The hours the Law Library is open are: 8:30 a.m. to 4:30 p.m. during regular work days. Parties wishing to use the library must first obtain the key from the Clerk of Courts Office on the 2nd Floor of the Courthouse.

1702 Any volumes removed from the shelves must be correctly replaced by the user.

1703 Requests to check out books must be in writing on OUT cards which are located in the Law Library. Books may be checked out for a maximum of 10 days. Failure to return books timely will result in loss of library privileges or such other sanctions deemed appropriate by the court.

1704 Borrower assumes responsibility for the condition and custody of any volumes removed. Any damage or loss of volumes will be assessed against the borrower.

1705 The above rules apply to volumes removed from the office of the Register in Probate.

Rule 1705 was created by order dated and effective April 1, 1998.

Marinette County Circuit Court Rules (Appendix A)

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## **APPENDIX A**

### **POLICY AND PROCEDURE MANUAL OF THE JUVENILE AND CHILDREN'S COURT OF MARINETTE COUNTY**

This local court rule establishes the policies and procedures of the juvenile and children's court of Marinette County. It shall supersede all previous statements of the policies and procedures of the Marinette County Circuit Court concerning proceedings under chs. 48 and ch. 938 in whatever form or format promulgated.

#### **Definitions:**

1. **Child:** Refers to a person under the age of 18 involved in a chapter 48 CHIPS proceeding.
2. **CHIPS:** Child In need of Protection or Services; a ch. 48 proceeding concerning a child who is within the jurisdictional requirements of §48.13, Wisconsin Statutes, generally involving orphaned, abandoned, abused, neglected, special treatment children, and children with alcohol or other drug abuse impairments.
3. **Court:** When used without further qualification, means the court assigned to exercise jurisdiction under chapters 48 or 938, Wisconsin Statutes.
4. **Court Intake:** The process of submitting to the juvenile intake worker written referrals from agencies or departments authorized in chapters 48 or 938 to refer a child/juvenile to the court.
5. **Custody Intake:** The process by which a person is taken into custody under §§48.19 and 938.19, Wisconsin Statutes, and delivered to the juvenile intake worker for a custody determination.
6. **JIPS:** Juvenile In need of Protection or Services; a ch. 938 proceeding concerning a juvenile who is within the jurisdictional requirements of §938.13, Wisconsin Statutes, generally involving uncontrollable juveniles, habitual truants, school dropouts, under 10, who commits a delinquent act, not responsible because of mental disease or defect, or not competent to proceed.
7. **Juvenile:** Refers to a person under the age of 17 involved in a delinquency proceeding or a person under the age of 18 involved in a JIPS proceeding.

#### **General Policies:**

1. It is the express policy of the court to implement the legislative purposes expressed in §§48.01 and 938.01, Wisconsin Statutes. Statutorily-mandated procedures are the law and do not constitute policies. Statutory mandates are to be explicitly followed in the performance of all matters involving chapters 48 and 938. This rule is intended to set forth the philosophical role of the circuit court in matters concerning chapters 48 and 938 and to establish procedures that are discretionary with the court.

Rationale: The statutes are the law. They must be followed. Policies and procedures are intended to fill the gaps in the law and set forth the philosophical and procedural requirements for handling matters involving chs. 48 and 938.

2. The court will not routinely waive time limits.

Rationale: It was the intent of the legislature to expedite court proceedings. This intent is based, in part, on the philosophy that delays:

In Delinquency and JIPS matters, remove the "cause and effect" relationship between juvenile behavior and court-ordered "consequences" in delinquency matters, and In CHIPS matters, place the child and parents in a limbo status concerning the various needs, rights, and responsibilities of the parties.

### **"Custody Intake":**

1. The intake function and the disposition/supervision function shall be in the Marinette County Human Services Department.

2. Custody intake shall be done by professionally-trained intake workers.

Rationale: The statutes mandate training for all intake workers. The powers of the intake worker are similar to those of a judge.

3. Backup custody intake shall be on-call workers.

4. Backup custody intake workers shall be trained at county expense.

Rationale: Intake workers are required to have a certain number of hours of training (currently 30 hours for intake workers).

5. Referrals for custody intake shall first be made to the full-time intake worker. If the full-time intake worker is not available, the backup workers shall be contacted.

Rationale: Custody intake should first be conducted by the person who is most experienced and generally familiar with the statutes, juveniles, and court processes: the full-time intake worker. If that worker is not available, referrals should be made to the backup workers.

### **Custody Intake "decision guidelines":**

1. All custody intake referrals shall be made through law enforcement or human services personnel.

Rationale: The decision to refer a person to custody intake is best made by professionals familiar with the law and resources available to the county.

2. Intake shall not be contacted until the referring agency has made a reasonable, articulated decision that a person could be held. The referral agency shall be required to complete the Temporary Physical Custody Request.

Rationale: Intake should only be contacted after the referring agency has made a decision that the person could be held. The agency must be able to justify that decision in writing. Requiring the agency to complete the Temporary Physical Custody Request before intake is called forces the referral person to justify the request for a hold.

3. Intake shall first determine whether the court has jurisdiction over the person.

A. In delinquency matters, the referring agency shall attempt to establish if the person is subject to original adult court jurisdiction or the juvenile court. If the person is subject to original adult court jurisdiction, the procedures specified in of this rule and chs. 967 to 979, Wisconsin Statutes, shall apply.

B. In the event an immediate determination cannot be made whether the juvenile is subject to original adult court or juvenile court jurisdiction, any person age 16 or under shall be presumed to be subject to juvenile court jurisdiction until juvenile intake or the court is satisfied otherwise. The juvenile intake worker shall decline to make a custody determination in a case if the intake worker knows of his or her own knowledge that the person is not subject to juvenile court jurisdiction.

C. If the person is not subject to original adult court jurisdiction, intake shall determine what jurisdictional basis exists for the requested hold under chs. 48 or 938.

4. If there is jurisdiction, intake shall then consider whether and where the person should be held in custody.

A. Chapter 48 presumptions:

1. A child shall be removed from the home if the best interests of that child so dictate.

Rationale: In construing chapter 48, the paramount consideration is the "best interests of the child."

2. If the best interests of the child require removal, lower levels of restriction must always be considered and rejected before considering a higher level of restriction. Intake shall consider placement in the following ascending order of restriction (only if statutory criteria are met).

- a. Home placement with conditions;
- b. Placement in the home of a relative;
- c. Placement in the home of a person not a relative;
- d. A licensed foster home;
- e. Shelter care, such as Crossroads Shelter Care Facility.

B. Chapter 938 delinquency/JIPS presumptions:

1. A juvenile shall be removed from the home and placed in custody if doing so is necessary to protect citizens from juvenile crime.



Rationale: In construing chapter 938, protecting citizens from crime is one of eight purposes of the juvenile code.

2. If removal from the home is not necessary to protect citizens from juvenile crime, intake shall consider whether any of the following conditions on home placement are warranted:

Home placement with conditions;

Home placement under home detention rules.

3. If protection of the public requires removal, lower levels of restriction must always be considered and rejected before considering a higher level of restriction, except in the case of those crimes statutorily presumptive of secure detention. Intake shall consider placement in the following ascending order of restriction (only if statutory criteria are met):

- Placement in the home of a relative;
- Placement in the home of a person not a relative;
- A licensed foster home;
- Shelter care (Crossroads Shelter Care Facility);
- In delinquency matters, secure detention in: Oconto County Detention Center.
- Secure detention facility (Oconto County or other juvenile secure detention as available).
- The juvenile portion of an adult jail meeting the requirement of DOC 346.

Rationale: Increasing levels of custody should be considered commensurate with the level of custody needed for the protection of the public. Secure custody should be imposed only when the secure setting is necessary and the statutory criteria have been met.

4. If the juvenile is charged with, or it appears reasonable to believe the juvenile will be charged with, a crime which establishes a presumption of secure custody under §938.208(1), that juvenile shall always be placed in secure custody unless the intake worker is satisfied that such custody is not necessary to protect the public. For illustrative purposes only, the presumptive secure custody crimes as of the date of promulgation of this rule are:

- a. 1st degree intentional homicide, 940.01\*
- b. 1st degree reckless homicide, 940.02\*
- c. Felony murder, 940.03\*
- d. 2nd degree intentional homicide, 940.05\*

\*N.B. If committed by a juvenile between ages of 10 & 15, original adult court jurisdiction exists and they are not subject to Juvenile custody Intake. (See 06)

e. Class C, D & E felony Battery, 940.19 (2) to (6)

f. Mayhem, 940.21

g. 1st degree sexual assault, 940.225(1)

h. Kidnapping, 940.31

I. Discharging firearm from automobile or in parking lot under certain conditions, 941.20(3)

j. Arson to building, 943.02(1)

- k. Car jacking while possessing a dangerous weapon, 943.23(1g)
- l. Car jacking while possessing a dangerous weapon and causing great bodily harm, 943.23(1m)
- m. Car jacking while possessing a dangerous weapon and causing death, 943.23(1r)
- n. Armed robbery, 943.32(2)
- o. 2nd or subsequent offense of Harassment with threat of death/great bodily harm, 947.013(1t)
- p. Harassment with threat of death/great bodily harm based on information obtained electronically, 947.013(1v)
- q. 2nd or subsequent offense of harassment based on information obtained electronically, 947.013(1x)
- r. 1st or 2nd degree sexual assault of child, or repeated acts of sexual assault to same child, 948.02(1) or (2), 948.025.
- s. Physical abuse of child, 948.03
- t. Use of handgun, short-barreled rifle/shotgun while committing a felony under ch. 940
- u. Possession of a short-barreled rifle/shotgun, 941.28
- v. Going armed with a handgun in violation of 948.60

Future legislative changes that either add to or subtract from this list shall be considered incorporated into this rule without further revision of this rule.

5. If the intake worker believes secure custody is not necessary in a presumptive secure custody situation, the intake worker shall consider less restrictive placements as listed in paragraph 3 of this section of this rule in a descending order of restriction, rather than an ascending order of restriction.

6. The referral agencies' recommendation concerning either the necessity of a hold or the proper placement is not binding on the intake decision and should be considered only with caution.

Rationale: Intake must make a reasoned, independent decision on both the holding of a child and the proper placement. Referral agencies have different constituencies and interests from intake. Intake's responsibility is to the court, not the referral agency.

7. Intake staff shall consider the following criteria when appropriate in making a custody decision and the appropriate level of placement:

a. In delinquency situations whether the present offense is a presumptive secure custodial placement crime listed in §938.208(1)(a) (b), or (c), Wisconsin Statutes.

b. In delinquency matters which are not presumptive secure custodial placement crimes, the severity of present alleged offense:

- Whether the present offense involves bodily injury or property damage
- The degree of injury to the victim
- Any special vulnerability of victim (elderly, very young, handicapped, etc.)
- Whether a weapon was used and type of weapon
- Extent of premeditation on the part of juvenile
- Whether act represents "random, senseless act of violence"
- The number of co-actors involved

- The attitude of the juvenile toward offense
- Whether offense included any "gang" involvement
- Other circumstances relevant to the offense

c. In delinquency matters, the prior CHIPS, JIPS, and/or delinquency record of juvenile:

- Number, nature and consequences of prior court adjudications
- Age of initial enforcement/court involvement compared to present age
- Whether the activity indicates an increasing lack of respect for or inclination to adhere to rules
- Other factors concerning the prior record of the juvenile

d. Risk of Flight:

- Is the person presently a runaway from a court-ordered placement
- Has this person previously run away from a court-ordered placement
- Attitude of the person toward remaining in custody
- Record of obeying home curfews and rules
- Ability of caregiver to control the person
- School attendance record
- Likelihood of the person to be successful at running from placement based on:
  - Age
  - Apparent maturity
  - Availability of other associates that would assist running away
  - "Gang" relationships that would foster runaway status
  - Level of consequences child/juvenile now faces for immediate behavior
  - Other facts that appear relevant to level of risk of flight

e. Current legal status:

- Is person currently subject to a dispositional order
- Are other court actions involving the person currently pending
- What is person's present level of custody
- Are there prior adjudications of a similar nature
- Have other dispositional alternatives been tried in past
- Other factors relating to the person's present legal status

f. Protection needs:

- Is person subject to abuse or neglect in home
- Have there been verbal threats against this person
- Has this person exhibited potential harm to self by recent behavior or threats
- Is the present caregiver able to adequately protect this person
- Is this person vulnerable to revenge acts by others, including co-actors, victims, or others
- Other factors relating to the need to protect the person

8. Deadline for petitions if no custody hearing is requested (938.21(2)(a) and (3)(a))

a. If a child/juvenile has been taken into custody and placed in nonsecure placement outside the home, but no request for a hearing on the custody has been made, the custody shall automatically terminate and the person released unless a written petition has been filed within 48 hours of the date of the custody.

Rationale: See 938.21(2)(a) & (3)(a).

b. This rule does not apply to defendants age 14 or under charged with an original adult court jurisdiction matter who are being held in secure custody.

Rationale: Defendants in an original adult court jurisdiction matter who are being held in secure custody are under the procedures of the adult court, not the juvenile court. There are no "referrals" to intake for such matters. The defendant is held until bail/bond conditions have been met.

## **Original Adult Court Criminal Defendants -- Secure Custody:**

1. Defendants age 15 or over:

A defendant involved in an adult court jurisdiction matter who is age 15 or over at the time a custody decision is being made shall be held in the county jail.

Rationale: A defendant age 14 or under can only be held in secure custody in a juvenile secure detention facility. Since the legislature specifically limited such placements to defendants 14 or under, defendants 15 or over are subject to all adult court procedures, including custody in the county jail pending meeting bail/bond conditions or further court proceedings.

2. Defendants age 14 or under:

a. Initial arrest: If law enforcement arrests a defendant age 14 or under for an adult court jurisdiction matter and law enforcement intends to hold the defendant in custody pending a bail/bond hearing, the defendant may be held in a juvenile secure detention facility or juvenile section of the Marinette County Jail, as provided in Wis. Stats. Sec. 938.209.

- Juvenile intake shall be contacted to determine the secure custody placement location and complete the temporary physical custody request. Juvenile intake shall not have the authority to overrule the law enforcement decision to hold the defendant in secure custody.
- A defendant arrested without a warrant and held under this rule is entitled to a probable-cause determination within 48 hours of the arrest.
- A defendant arrested and held under this rule is entitled to a bail/bond hearing under ch. 969.
- A defendant arrested and held under this rule is not entitled to a juvenile court custody hearing under §938.20.

Rationale: A defendant in an original adult court jurisdiction matter is subject to all of the procedures in chs. 967 to 979 except that any secure custody placement must be in a juvenile detention facility. In all other adult court matters law

enforcement makes a decision to hold or release the defendant. The same should be true in the case of defendants who are involved in an original adult court proceeding. Juvenile intake serves only as the conduit for placing such a defendant in a secure detention facility and should not have the authority to overrule the law enforcement decision. Such defendants are also entitled to the adult court procedures of a Riverside/McLaughlin hearing, bail/bond hearing, etc. But since these defendants are not in juvenile court, they are not entitled to juvenile court §938.20 custody hearings.

b. Failure to post bond: If a defendant age 14 or under charged with an adult court jurisdiction matter appears for a bail/bond hearing before a judge or court commissioner and is unable to meet the conditions of bail/bond in order to be released, the defendant must be held in a juvenile secure detention facility. The juvenile shall be immediately released from such detention upon meeting the conditions of bail/bond.

Rationale: Although a defendant is held in secure custody in a juvenile facility, the hold is only because the defendant has not met the conditions of bail/bond established by the court. When the bond conditions have been met--such as payment of a cash bond--the defendant should be released the same as a defendant age 15 or over would be released.

3. In the event an immediate determination cannot be made whether the juvenile is subject to original adult court or juvenile court jurisdiction, any person age 16 or under shall be presumed to be subject to juvenile court jurisdiction until juvenile intake or the court is satisfied otherwise. The juvenile intake worker shall decline to make a custody determination in a case if the intake worker knows of his or her own knowledge that the person is not subject to juvenile court jurisdiction.

4. Any defendant who meets all of the following criteria shall immediately be transferred to the county jail upon his or her 15th birthday;

- The person is subject to original adult court jurisdiction, and,
- The person had been placed in juvenile secure custody because the person was age 14 or under at the time the custody decision was made.
- No further court order is needed to effectuate such a transfer. Law enforcement shall be responsible for transporting the juvenile from the secure custodial placement to the county jail.

### **Custody Hearings and Petitions:**

1. Custody hearings, under §48.21 shall be conducted within 48 hours after the end of the day that the decision to hold was made. Custody hearings, under §938.21 shall be conducted within 24 hours after the end of the day that the decision to hold was made, excluding weekends and holidays.

Rationale: Section 48.21 requires a custody hearing to be held within 48 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays and legal holidays. Section 938.21 requires a custody hearing to be held within 24

hours after the end of the day that the decision to hold the juvenile was made, excluding Saturdays, Sundays and legal holidays.

2. If court scheduling or congestion makes it impossible to conduct a custody hearing within the time period, the custody hearing shall be conducted as soon as is reasonably practical. No juvenile shall be automatically released from custody if a custody hearing is not held in a timely fashion if the reason for the inability to hold the custody hearing is because of court congestion or scheduling difficulties under §938.15(1)(dm).

3. If a petition under either ch. 48 or ch. 938 has not been filed by the time of the custody hearing and the statutory grounds exist for an extension of time to file a petition, a petition must be filed within:

a. Ch. 938 matters: 48 hours from the time of the hearing.

b. Ch. 48 matters: 72 hours from the time of the hearing, excluding Saturday, Sundays, and legal holidays

### **"Court Intake":**

1. All intake referrals under §§48.24(1) or 938.24(1), Wisconsin Statutes, are to be submitted in writing on the appropriate forms, either the Court Referral--Juvenile, Law Enforcement form or the Court Referral--Juvenile, Non-law Enforcement form.

Rationale: All referrals must contain specific information. Using a statewide approved form provides a consistent format for presenting and reviewing each referral.

2. All intake referrals under §§48.24(1) or 938.24(1), Wisconsin Statutes, shall be conducted by the full-time intake worker.

Rationale: Consistency in the handling of the referral process is necessary to assure that children are handled similarly. Coordinating all intake inquiries in the full-time intake worker assures such consistency. Because the time limits for conducting an intake inquiry are sufficiently flexible, the full-time intake worker can accommodate all intake referrals in spite of temporary absences, vacations, or other duties.

3. All parties making a referral may make a recommendation for disposition, but that recommendation is not binding on the intake worker.

Rationale: Often the party making the referral has special insight into the facts or needs of each case which should be communicated to the intake worker who must make the ultimate recommendation. Recommendations, however, are merely recommendations.

4. Intake inquiry under §§48.24(1) or 938.24(1), Wisconsin Statutes, are not required if all of the following have occurred:

- A. A custody intake decision was made pursuant to §§48.19 or 938.19, Wisconsin Statutes;
- B. A hearing on the custody has been held pursuant to §§48.21 or 938.21, Wisconsin Statutes;
- C. The person has been continued in custody (secure or nonsecure); and
- D. A petition was filed with the court at or prior to the custody hearing or the court has authorized an extension of time to file a petition.

Rationale: The purpose of the intake inquiry is to allow the juvenile intake worker to review the facts, meet with the child and parents, and make a decision whether the matter should be referred for a Petition to be filed, whether the matter should be resolved through an Informal Disposition or Deferred Prosecution Agreement, or whether the matter should be dismissed. Chapters 48 and 938 require that a petition be filed at, or prior to, a custody hearing or allows a 48-hour extension of time to file such a petition. Because of the expedited nature of the process when a child is taken into custody, the purpose of an intake inquiry has been accomplished. It is impossible to reconcile the statutory guidelines for an intake inquiry with the statutory guidelines for processing a petition. It was the apparent intent of the legislature to circumvent the intake inquiry procedure when the intrusive step of a child being taken into custody has occurred.

- 5. Intake referrals under §§48.24(1) or 938.24(1), are not required if the juvenile has been transferred to juvenile court by an adult court pursuant to a "reverse waiver" under §§970.032(2) or 971.31(13).

Rationale: The juvenile has already been in adult court under an original adult court jurisdiction crime because of the serious nature of the crime committed or the juvenile's past record. The district attorney will already have prepared charging documents to make a determination of whether a delinquency petition should be filed and the charge(s) to be included in the petition.

- 6. Except as set forth elsewhere in this rule, the intake worker shall always consider the possibility of an informal disposition agreement under ch. 48 or a deferred prosecution agreement under ch. 938 when doing so would not unduly depreciate the seriousness of the matter referred in the eyes of the juvenile, parents, victims, and the public.

Rationale: Diversion of children from the formal court system is one of the goals of both chapter 48 and 938. An Informal Disposition Agreement (IDA) or Deferred Prosecution Agreement (DPA) may allow the intake worker to structure a plan with the agreement of the child/juvenile and parents that will accomplish all of the goals of chapter 48 and 938. However, an IDA or DPA can be counter-productive if its effect is to reduce the child's or parents' responsibility, or the IDA/DPA would depreciate the seriousness of the offense, or such an action would be viewed as doing so by other interested persons.

7. The intake worker shall consider the following factors in screening intake referrals:

- A. Seriousness of the allegations
- B. Intent
- C. Severity of personal injury
- D. Severity of property damage
- E. Prior allegations of similar activity
- F. Attitude of the public
- G. Attitude of the victim
- H. Previous contacts with law enforcement, social services, or juvenile intake
- I. Age and maturity
- J. Attitude of the person and/or parents
- K. Degree of apparent incorrigibility/uncontrollability
- L. School attendance and behavior patterns
- M. Involvement in gang-related activity
- N. Other social factors
- O. Resources available to the family and community to provide adequate care
- P. Criteria in §938.18(5), Wisconsin Statutes, concerning waiver to adult court
- Q. Any other facts or circumstances available to the intake worker that impact on the referral decision consistent with the welfare and safety of the person and the protection of the public, including those factors provided in Rule 05, concerning custody decision-making.

Rationale: The intake decision should not be hamstrung by artificial barriers to the free flow of information. Just as the circuit judge may consider all "relevant" factors in making a disposition, without regard to the rules of evidence, the intake worker should also be able to use all information available to make a decision on the future of that particular referral.

8. The intake worker shall not enter into a deferred prosecution agreement in a ch. 938 matter in the following situations unless the district attorney has referred the matter back to the intake worker with such a recommendation.

Rationale: The legislature, on behalf of the society it represents, has categorized crimes in terms of seriousness by creating a classification system. It is the duty of the executive branch, acting through the elected district attorney, to determine the extent to which these crimes should be prosecuted. For those crimes society considers most serious, the intake worker--a nonelected member of the judicial branch--should not make Informal Disposition recommendations in those cases which would appear to unduly depreciate the seriousness of the allegations. Certain criminal activity is so serious that an informal disposition should only be considered when the district attorney has made that choice as the proper prosecutorial decision. The intake worker should conduct an intake conference and may recommend to the district attorney a juvenile court deferred prosecution agreement or an adult criminal court deferred prosecution agreement. If the district attorney has reviewed the matter and concludes that a juvenile court deferred prosecution agreement is appropriate, the district attorney will refer the matter back to intake for such a procedure. If the district attorney believes an



adult criminal court deferred prosecution agreement is appropriate, the district attorney will prepare the paperwork in adult court.

A. If the intake worker is satisfied there is probable cause to believe the juvenile committed a Class A or B Felony.

Rationale: Although intake will seldom see a juvenile who is charged with a Class A or B Felony (most of these are original adult court jurisdiction matters), there are occasions when it might occur. These matters are so serious that an IDA or DPA is never a practical consideration.

B. If the intake worker is satisfied there is probable cause to believe the child committed a felony and has been previously adjudicated delinquent.

Rationale: A prior adjudication for delinquency followed by a new felony referral for delinquency is sufficiently serious to require that the initial decision on filing a formal petition should always be made by the district attorney.

C. The juvenile and at least one of the parents does not appear at an intake conference.

Rationale: For a deferred prosecution agreement to work, the parties must reach an agreement. Juveniles or parents who do not attend the intake conference exhibit a noncooperative attitude that would make an informal disposition unworkable.

D. The juvenile or the family deny the allegations of the referral.

Rationale: The deferred prosecution agreement is not used as a bargaining tool or hammer to avoid litigation. For a DPA to work, the parties must show a willingness to admit that there is a problem and to work voluntarily to resolve it.

E. When the child has been the subject of an informal disposition agreement concerning delinquency under ch. 48 or a deferred prosecution agreement under ch. 938 entered into within the last two years.

Rationale: A juvenile who has been the recent subject of an informal disposition agreement is not appropriately considered for informal disposition again.

9. The juvenile intake worker may consider recommending an informal disposition agreement or deferred prosecution agreement in the following circumstances:

A. When an informal disposition would not violate rule 7 above.

B. In delinquency/JIPS matters when:

1. The juvenile admits the allegations.
2. The juvenile exhibits remorse for the acts.
3. The juvenile's parents appear cooperative with the court.
4. The juvenile has not previously been formally adjudicated delinquent.

C. In CHIPS matters when:

1. The custodial parent(s) agree that the child is in need of protection and services.
2. The child has not previously been adjudicated CHIPS.
3. The child is not the victim of sexual or physical abuse resulting in actual injury inflicted by an adult person currently residing in the child's home.

Rationale: One of the statutory goals is to divert children out of the court system. An informal disposition agreement should be the first consideration in all cases that are not automatically excluded from such disposition by these rules. Only when an informal disposition is considered inappropriate should the intake worker discard the possibility of an informal disposition.

10. The intake worker may dispense with holding an intake conference in those cases in which the intake worker is satisfied that the best interests of the child or the interests of society require an immediate decision. In such cases, the intake worker may notify the child and parents of their rights under chs. 48 and 938 in writing.

Rationale: In some cases, a referral and recommendation are apparent on the basis of the referral documents. CHIPS cases involving danger or risk to the child, or Delinquency matters involving serious crimes, may require a greater immediacy of action than the usual intake process would allow. The intake worker should be free to make the decision whether an intake conference would be beneficial to the intake decision or would merely be postponing necessary action.

11. When a matter has been presented to the intake worker by the Juvenile Court Clerk under section 17 of this local court rule, the intake worker may:

A. Refer the matter to the appropriate agency for investigation and review. That agency shall then make a determination whether an intake referral should be made, or,

B. Conduct an intake inquiry based on the petition presented to the juvenile court clerk for filing.

Rationale: Section 48.25, Wisconsin Statutes, permits the filing of a petition under §§48.13 or 48.14 by counsel or guardian ad litem for a parent, relative, guardian or child. Presumably a parent, relative, guardian or child could also file such a petition pro se. Section 16 of these local court rules prohibits the Juvenile Court Clerk from accepting for filing such a petition unless an intake inquiry has been conducted. When the Juvenile Court Clerk makes such a referral to intake, the intake worker must have the ability to refer the matter to law enforcement or human services for investigation and determination whether a petition should be filed. Alternatively, the intake worker may determine that an intake inquiry should be conducted based on the materials submitted by the petitioning party.

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### **Notice to Victims of Children's Acts:**

The victim-witness coordinator in the district attorney's office shall be responsible for notifying each known victim who sustained personal injury or property damage of:

1. The policies and procedures of the court concerning their rights. The district attorney may establish policies and procedures for the victim-witness coordinator.
2. Notices of scheduled proceedings in delinquency matters.

### **Notices of Rights, Obligations, and Possible Disclosures to Child/Juvenile and Parent(s):**

1. If a custody hearing is held;

A. At the commencement of the custody hearing, the court shall advise the child/juvenile and parent(s) of their rights, obligations and possible disclosures. The court may do so by providing the child/juvenile and parent(s) who attend with the printed form JD-1716. Notice is considered properly given whether or not the recipients sign the signature block on the form.

B. If a parent does not attend the custody hearing, the juvenile court clerk shall send a copy of the written form JD-1716 to the nonattending parent if the address is known immediately at the conclusion of the hearing.

C. If signed, the signed copy of JD-1716 shall be filed in the court file. If the child/juvenile or parent(s) did not sign, the juvenile court clerk shall file a copy of the form with a notation as to the person(s) and date(s) on which the notice was provided.

2. At an intake inquiry:

A. At the commencement of the intake inquiry, the juvenile intake worker shall advise the child/juvenile and parents of their rights, obligations and possible disclosures. The juvenile intake worker may do so by providing the child/juvenile and parent(s) who attend with the printed form JD-1716. Notice is considered properly given whether or not the recipients sign the signature block on the form.

B. If signed, the signed copy of JD-1716 shall be filed in juvenile intake worker's file. If the child/juvenile or parent(s) did not sign, the juvenile intake worker shall file a copy of the form with a notation as to the person(s) and date(s) on which the notice was provided.

Rationale: Chapters 48 and 938 require the child/juvenile and parents be given various notices at different stages of the court proceedings. The Wisconsin Records Management committee has created a printed form (JD-1716) intended to accomplish the various notice requirements.

## **Plea Negotiations:**

1. The court will not accept any plea negotiations that are entered into after the date set by the court for motions in the case, or if no motions are filed, within five working days of the fact-finding hearing.

Rationale: Last minute resolutions of cases are extremely disruptive to the court calendar. Time on the court calendar will have been set aside for this case to the exclusion of other cases. Witnesses and jurors who have been subpoenaed may have made alternative arrangements for their personal affairs. In order to avoid this disruption, the parties to a case must make all necessary efforts to resolve the matter as much before the fact-finding hearing as possible.

2. After a plea negotiation deadline has passed, the only resolutions the court will accept to pending delinquency, JIPS, or CHIPS matters is an admission to the petition by all parties, a dismissal of the entire petition by the petitioner, or a fact-finding trial on the original petition.

3. If a plea negotiation involves a Consent Decree, the consent decree must be reduced to writing, completely signed by all parties, and presented to the court prior to the deadline for plea negotiations.

Rationale: Since fact-finding hearings are typically scheduled for a date close to the statutory deadline, waiting until the last minute to complete the consent decree is especially disruptive to the court calendar.

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## **Dispositional Activities:**

1. Court reports when required shall be completed and filed with the court not less than 72 hours before the scheduled dispositional hearing. The agency completing the court report shall transmit copies of the report to the attorneys involved in the matter. In the case of parents who are not represented by counsel, a copy of the report shall be transmitted directly to them by the agency.

Rationale: The court report may be the single most important document prepared on behalf of a child/juvenile/attorney and family to have the opportunity to consider the report and any recommendations made in the report, it is imperative that they have access to the report before the dispositional hearing. Receiving and reviewing the report on the day or even at the time of the hearing does not allow a reasonable amount of time to consider the report.

2. Marinette County Human Services shall be the agency primarily responsible for implementing court dispositional orders involving supervision.

Rationale: In order to effect the separation between intake and adjudication (which are court functions) and dispositional supervision (which should not be a

court function), it is appropriate that the local Human Services agency be the agency primarily responsible for implementing court orders.

3. Dispositions involving persons who are not residents of Marinette County shall be coordinated through the Marinette County Human Services agency.

Rationale: In order for the court to ensure that its orders are enforced, the court must have jurisdiction over the agency that is implementing the order. Requiring the local Human Services agency to coordinate the services provides the court with the leverage needed to ensure compliance.

4. If a matter has been transferred from another county to this county for a dispositional hearing, the dispositional hearing shall be set within 30 days of the receipt of the transfer documents from the other county.

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### **Extensions of Dispositional Orders:**

1. The agency primarily responsible for implementation of a dispositional order shall notify the court at least 45 days prior to the termination of an order as to whether the agency will seek to extend the dispositional order or allow it to terminate. The district attorney's office shall ensure that copies of the communication to the court (whether Petition or letter) shall be sent to all parties entitled to notice.

Rationale: Notwithstanding relaxation of some time limits in ch. 938 matters, the court loses jurisdiction in either a ch. 48 or 938 case if the extension hearing isn't held before the order terminates. At least 45 days notice of an intent to seek an extension is necessary in order to schedule and conduct a hearing. Requiring the agency to give notice at least 45 days in advance as to whether it will or will not seek an extension will insure that all cases are considered and eliminate the possibility of any one case slipping "through the cracks."

2. The agency may revise its decision after giving such notice if it determines that the original decision was incorrect based on a reconsideration or new factors.

Rationale: Sometimes the agency may reconsider its decision based on new factors or merely a re-review of the situation. The agency must be given the opportunity to change its mind.

3. The court shall schedule an extension hearing in all cases where a request for an extension is filed. If the extension request is filed during the 30 day period immediately prior to the termination of the order, the court shall attempt to schedule the case before the termination date. If the court cannot schedule the matter before the termination date,

the court will grant the request for a temporary 30 day extension under §§48.365(6) or 938.365(6), Wisconsin Statutes.

Rationale: As part of the court's philosophy that juvenile proceedings must be expedited, it is appropriate to attempt to schedule extension hearings within the original time period set for termination of an order. Only if the hearing cannot be set within that time period should the court consider a temporary extension.

4. All extensions of a dispositional order shall take effect at the termination date of the dispositional order being extended regardless of the date of the hearing on the extension, except that in the case of a disposition that has been temporarily extended for up to 30 days under §48.365(6), Wisconsin Statutes, any extension shall take effect at the termination of the extended date.

Rationale: It is appropriate that there be uniformity in determining when an extended disposition is to take effect. Since chs. 48 and 983 do not specifically address this issue, dispositional orders in the past have sometimes used the hearing date as the date from which the extension is calculated rather than the date the dispositional order was to expire. Since an extension is merely a continuation of the old order, it is logical that the extended period is simply added to the existing order. It is illogical to consider the extension to be a new order which can overlap the old dispositional order.

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Requests by Victims or the Insurance Companies of Victims for Disclosure of Juvenile Identify and Police Records:

1. All requests by victims or the insurance companies of victims for disclosure of the juvenile's identity and police records shall be referred to the law enforcement agency responsible for the investigation.
2. The insurance company of a victim shall be entitled to know the amount of restitution a court has ordered paid on behalf of the victim if a request to the victim/witness coordinator is made pursuant to §938.396(2)(fm).

### **Requests to Review Court Files Involving Juveniles:**

1. All requests for review of court records involving a juvenile shall be in writing.
2. The juvenile court clerk shall make available upon request the appropriate forms (such as JD-1738) for requesting such information.
3. If a request is made by a juvenile, parent, guardian or legal custodian under §§938.396(2)(ag) or (am), before release of any information requested the juvenile court clerk shall review the file and make an initial determination whether release of that information might result in imminent danger to anyone. If the juvenile court clerk believes such a result might occur, the juvenile court clerk shall either:

A. Refer the matter to the judge assigned to that case for a determination as to whether a hearing shall be held on the release, or,

B. Prepare a version of the information requested with the potentially dangerous information blocked out. The requester may bring a motion to the court if the requester believes the information should not have been blocked.

4. Requests pursuant to §938.396(2m)(a): If a request is for access to juvenile court records made by any person under §938.396(2m)(a) for juveniles alleged to have committed an offense enumerated in §938.34(4h)(a) (Serious Juvenile Offender crimes), the juvenile court clerk shall before releasing the file for inspection:

A. Determine if the juvenile is alleged to have committed a crime specified in §938.34(4h)(a), and, if so,

B. Remove from the file all reports under §938.295 (physical, mental, psychological, or developmental examination reports) or §938.33 (court dispositional reports) or other records that deal with sensitive personal information of the juvenile and the juvenile's family. If the juvenile court clerk has questions concerning the appropriateness of releasing any information, the matter shall be referred to the judge assigned to that case for a determination.

5. Requests pursuant to §938.396(2m)(b): If a request is for access to juvenile court records of a juvenile alleged to be delinquent for committing a felony after a prior delinquency adjudication, the juvenile clerk shall:

A. First, make all of the following determinations:

- That the juvenile is currently charged with a felony,
- That the juvenile was adjudicated delinquent for any crime at any time before the commencement of the felony proceeding,
- That the previous adjudication remains on record and has not been reversed.

B. Second, if all of the above have been found to exist, the juvenile clerk before releasing the file for inspection shall remove from the file all reports under §938.295 (physical, mental, psychological, or developmental examination reports) or §938.33 (court dispositional reports) or other records that deal with sensitive personal information of the juvenile and the juvenile's family. If the juvenile court clerk has questions concerning the appropriateness of releasing any information, the matter shall be referred to the judge assigned to that case for a determination.

6. No copies of any court records shall be made or provided to any person requesting access to the records of a juvenile.

7. All requests for access to court records shall be responded to, in writing, within 48 hours of the request.

8. Intake files retained by the juvenile intake worker are not considered court files.

## **Expunction of the Record of a Delinquency Adjudication:**

1. All petitions for expunction of a juvenile adjudication shall be scheduled for a hearing.

2. If the court grants the petition for expunction of the juvenile adjudication, the juvenile clerk shall:

A. Follow standard CCAP procedures for removal of the adjudication from the computerized record;

B. Seal inside the court file all documents referring to the adjudication, including, but not limited to:

- the dispositional order,
- the dispositional court report,
- all motions and orders concerning extensions, revision, or changes of placement,
- all petitions and orders for sanctions,
- all minute sheets referring to the adjudication or other post-adjudication proceedings,
- transcripts of court proceedings referring to the adjudication or other post-adjudication proceedings,
- the petition and order for expunction.

C. The exterior of the sealed material shall simply state "Sealed: not to be opened except upon express order of the court." No reference shall be made that the contents are "expunged" materials.

3. If a proper request is made for information concerning the juvenile's adjudication, court personnel shall merely state that there is no record of a delinquency adjudication, although the remainder of the court file is open to inspection if it otherwise meets the criteria for opening records under §938.396.

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#### Delinquency Proceedings Commenced by a Reverse Waiver:

1. All delinquency proceedings following a reverse waiver from an adult court with original jurisdiction shall be commenced by filing a Petition for Determination of Status - delinquency.

2. No intake inquiry is necessary for such proceedings.

3. Custody placements of juveniles who have been reverse waived shall be as follows:

- Any juvenile who was being held in an adult jail for failure to post bond shall be immediately transferred to a juvenile secure custody facility.
- Any juvenile (age 14 or under) who was being held in juvenile secure detention shall remain in that placement.
- Any juvenile who had been released on bond under conditions shall be deemed held in nonsecure placement under the same bond conditions until a custody



hearing is held pursuant to §938.21.

4. The following may request a custody hearing under §938.21 to review or revise this custody:

- Any person otherwise authorized to request custody under ch. 938,
- The juvenile, juvenile's parent, legal guardian, or custodian.

### **Duties of the Juvenile Court Clerk in Handling CHIPS Petitions Filed by the Counsel or Guardian ad Litem for a Parent, Relative, Guardian, or Child, or Directly by such a Person Acting Without an Attorney:**

1. The Juvenile Court clerk shall not accept for filing any petition under §§48.13 or 48.14, Wisconsin Statutes, presented by the counsel or guardian ad litem for a parent, relative, guardian or child, or directly by such a person acting without an attorney, unless that petition has been first referred to juvenile intake for an intake inquiry under §48.24, Wisconsin Statutes.

Rationale: Section 48.24, Wisconsin Statutes, requires that information indicating that a child should be referred to the court shall first be referred to the intake worker. However, §48.25, Wisconsin Statutes, authorizes the counsel or guardian ad litem for a parent, relative, guardian or child to file a petition. In most cases, such petitions will not have been referred first to juvenile intake for an inquiry whether the court should be involved. It is important that intake be provided the opportunity to make inquiry first to ensure that there is a proper basis for the filing of a petition.

2. Upon receipt of any such petition the Juvenile Court clerk shall refer the matter to the juvenile intake worker for an intake inquiry.

3. Any petition filed contrary to this rule may be dismissed without prejudice pending the intake inquiry.

Rationale: Once a petition has been filed, the time limits for conducting a plea hearing and other proceedings take effect. Those time limits are inconsistent with the periods allowed juvenile intake to complete an intake inquiry. It is the court's policy to require an intake inquiry for matters brought directly to the court by counsel or guardian ad litem for a parent, relative, guardian, or child, or by such a person directly without an attorney. Therefore, to avoid the redundancy of having a court proceeding and an intake inquiry proceeding at the same time, with conflicting time limitations, the court can only control such petitions by dismissing without prejudice those that don't go through intake.

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## **Reimbursement/Payment for Attorney Fees, Placement Costs, and/or Services:**

### 1. Attorneys appointed by the county or state to represent a child juvenile

A. Unless the court has directed otherwise, at the conclusion of any proceeding under ch. 48 or 938 in which the juvenile was represented by an attorney appointed by the county or the state, the juvenile court clerk shall complete JD-1762 and mail it to the parent(s).

B. The standard repayment schedule shall be:

- If there are two parent(s) residing together, not less than \$150 per month
- If there is only a single parent or the two parents are residing separately, not less than \$100 per month from each.

C. All payments on reimbursement for attorney fees shall be made to the Clerk of Juvenile Court and are enforceable under ch. 985, Wisconsin Statutes, for contempt of court.

### 2. Attorneys appointed by the court for parents in CHIPS matters

A. If the court has ordered an attorney be appointed at county expense on behalf of a parent of a child involved in a CHIPS proceeding, the court shall order the parent(s) to reimburse the county for all or part of the cost of such attorney fees.

B. The court may order reimbursement to begin as of the date of the appointment. The standard repayment schedule shall be:

- If there are two parent(s) residing together, not less than \$150 per month.
- If there is only a single parent or two parents are residing separately, not less than \$100 per month from each.

C. Reimbursement under this section shall be paid to the Clerk of Juvenile Court and are enforceable under ch. 985, Wisconsin Statutes, for contempt of court.

### 3. Costs of custody/placement

A. If the child/juvenile is placed outside the home and the court orders the parent(s) to reimburse the county or state for the costs of such placement, the court shall either:

- Establish the amount of reimbursement on the record in court at the time the placement order is made, or
- Refer the matter to Marinette County Child Support Office for a determination of the amount the parent(s) are able to pay. Marinette County Human Services shall establish a payment schedule for reimbursement.

B. All payments on reimbursement for costs of custody/placement shall be made to Marinette County Human Services.

### 4. Costs of services

A. If the court has ordered services to be provided on behalf of a child/juvenile and has ordered the parent(s) to reimburse the county or state for such services, the court shall either:

- Establish the amount of reimbursement on the record in court at the time the placement order is made, or
- Refer the matter to Marinette County Human Services for a determination of the amount the parent(s) are able to pay. Marinette County Human Services shall establish a payment schedule for reimbursement.

B. All payments on reimbursement for services shall be made to Marinette County Human Services.

5. When the parent(s) has/have been ordered to reimburse the county or state for custody/placement or services, the court may require the parent(s) to complete a financial disclosure of assets.

6. A parent may seek review of any of the orders for reimbursement by petitioning the court for a review.

January, 1998, Draft.