

# Marquette County Circuit Court Rules

*(Sixth Judicial District)*

All rules are effective at 12:01 am, January 1, 2015, unless otherwise specified.

- Part 1: Publication and Revision of Circuit Court Rules
- Part 2: Rules of Decorum
- Part 3: General Rules
- Part 4: Civil Practice
- Part 5: Criminal Law Practice
- Part 6: Small Claims Practice
- Part 7: Family Law Practice
- Part 8: Billing Practices
- Part 9: Filing Court Papers

## **Part 1: Publication and Revision of Circuit Court Rules**

**100** The Clerk of Court shall post the Local Rules for public review in the Marquette County Courthouse, and shall forward copies to the president and secretary of the Marquette County Bar Association, the court administrator for the Sixth Judicial District, the State Bar of Wisconsin, the State Law Library and the Office of the Director of State Courts at least fifteen days prior to formal adoption. The Clerk of Circuit Court shall make copies available to the public.

**101** Notice of proposed rules as described in Sec. 100 shall constitute sufficient public notice.

**102** Rules shall be adopted by written order of the Marquette County Circuit Court Judge, subject to approval of the Chief Judge of the Sixth Judicial District.

**103** Orders adopting rules shall specify an effective date.

**104** Once adopted, court rules shall be filed with the Clerk of Circuit Court, and the Clerk of Circuit Courts shall provide copies to the Judge, president and secretary of the Marquette County Bar Association, State Law Library, and State Bar Association.

## **Part 2: Rules of Decorum**

The Standards of Courtesy and Decorum in SCR Chapter 62 are hereby adopted in full.

**200** Court shall be formally opened each day in which court business is transacted by the Clerk of the Court.

201 As the Judge enters the courtroom, the Clerk of the Court shall require all present to rise and stand. When the Judge has reached the bench, the Judge shall open court. All shall be seated and the business of the court shall proceed.

202 In recessing, the Judge shall announce: "The court is now in recess."

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

204 Lawyers shall never lean upon the bench or appear to engage the Court in a manner that would lessen the dignity of the proceedings in the eyes of the jury and the public.

205 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.

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

207 During examination of jurors on *voir dire* (questioning of the prospective jury panel), the lawyer or party conducting the examination shall, insofar as practical, use collective questions, avoid repetition, and seek only material information.

208 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.

209 Lawyers, Court Reporters, Deputy Clerks, and Bailiffs shall, while in attendance upon the court, wear professional attire so as not to lessen the dignity of the court or of proceedings in the eyes of the jury and public.

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

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

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

213 In jury cases, which are disposed of upon a motion for nonsuit or directed verdict, the Judge in dismissing the jury should briefly explain the procedure and why a verdict was not necessary.

214 The Judge shall wear a robe while presiding on the bench, provided that judicial discretion may be exercised otherwise in proper situations.

## **Part 3: General Rules**

### **300 Telephone Proceedings**

The Rules of Civil and Criminal procedure that permit the use of telephone or electronic means of communication in certain specified proceedings are adopted in full. Parties are encouraged to utilize the procedures in the manner specified by Sec. 807.13 and Sec. 967.08 Wisconsin Statutes. Where practical, the Court and all interested parties shall be informed of a party's intent to utilize such procedures at least 48 hours before the scheduled proceeding. Parties using these procedures shall be responsible for ensuring that all interested parties are available at the time of the scheduled proceeding and for all communication costs.

### **301 Fax Rule**

Preamble. Limited filing of documents with the Clerk of Circuit Court pursuant to Sec. 801.16, Stats., through the use of the plain-paper facsimile machine is permitted under these local rules. Facsimile filing shall be kept to a minimum and utilized only when necessitated by time constraints or other special circumstances. It shall not be used as a substitute for the timely filing of original documents.

#### **301-A Limitation.**

Only documents that do not require a filing fee may be filed by facsimile transmission. Documents may be transmitted under the authority of this rule if no additional fee or charge must be paid to the Clerk of Circuit Court for accepting or receiving the facsimile document.

No documents or combination of documents exceeding 15 pages shall be filed by facsimile unless the assigned Judge or Court Commissioner (on a case-by-case basis) grants an exception, in writing or on the record in open court. If a facsimile transmission exceeds 15 pages the party or attorney shall certify that the assigned Judge or Court Commissioner has approved the facsimile transmission. See § 801.16(2)(c).

*NOTICE:* If papers are transmitted to a plain-paper facsimile machine of a non-court 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 only if all other conditions of this rule are met. See § 801.16(2)(d).

#### **301-B Facsimile Numbers/Time of Filing**

Documents filed under this rule may only be transmitted to the following numbers: Clerk of Circuit Court – 608-297-9107 for Family, Civil, Small Claims, Criminal or Traffic matters, or the Judge's Clerk for Probate, Juvenile, Guardianship, Adoption or Emergency Detention matters. Papers filed by facsimile transmission that is completed after 4:15 PM each business day, or on weekends, will not be filed until the next day on which such office is open. See § 801.16(2)(f).

### **301-C Party's Responsibility.**

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

### **301-D Original Documents Not to be Filed**

The party submitting a document by facsimile transmission shall NOT submit the original document for filing, but shall maintain the original document in the party's possession until conclusion of the case (including through expiration of the time for appeal and/or actual time of appeal). The Clerk of Circuit Court shall discard any duplicate papers subsequently received by the Clerk of Circuit Court, assigned Judge, or Court Commissioner. See § 801.16(2)(e).

### **302 Filing Documents**

All documents shall be filed with the Clerk of Court's office or Register in Probate/Judge's Assistant. If you need assistance with where to file, please call the Clerk of Court – 608-297-3005 or the Register-in-Probate – 608-297-3009.

### **303 Duties of Bailiff**

**303-A** It shall be the duty of the Bailiff to maintain order at all times as litigants, witnesses and the public assemble in the courtroom during the progress of the trial and during recesses of the court. This includes the duty to admit person to the courtroom and direct them to seats, and to refuse admittance to the courtroom in such trials where the courtroom is occupied to its full seating capacity.

**303-B** It shall be the duty of the Bailiff to take charge of and supervise the jury during the course of a trial, during court recesses and during times of jury deliberation, to assure that no unauthorized persons come into contact with members of the jury. If such an attempt is made, the Bailiff shall notify the Judge at once.

**303-C** The Bailiff shall assist jurors as necessary with personal problems if they arise, and shall inform the judge of any unusual problems of jurors which should be called to his or her attention.

**303-D** The Bailiff shall at no time discuss with the jurors any litigants, witnesses or attorneys, or any issued involved in the trial, nor make any effort to assist the jurors in their deliberations.

### **304 Media Coverage**

All electronic media and photographic coverage of any judicial proceedings shall be in accordance with SCR Chapter 61. The following guidelines shall be utilized for photographing court proceedings

(a) Jurors and prospective jurors shall not be photographed

(b): Motorized camera drives and flash or strobe lights shall not be used;

(c) TV cameras, microphones and cords shall not be placed so as to interfere with the usual traffic patterns within the courtroom nor placed remotely from the operator.

### **305 Scheduling**

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 a calendar in court, a date will be set in accordance with the Judge's calendar. Telephone scheduling can be arranged by calling the Judge's Judicial Assistant. See Rule 402.

## **Part 4: Civil Practice**

### **400 Joinder of issue**

All civil cases will be reviewed for proof of service and answer 140 days after filing. If at that time the case file does not reveal that the case has reached issue, the court may initiate a dismissal order or default proceeding. All parties effectuating service shall file Proof of Service within 20 days after service is accomplished on a party.

### **401 Motions - Scheduling Procedure**

All motions shall be heard at a date and hour set by the Judge's Judicial Assistant. The scheduling number is 608-297-3009. It is the party's responsibility to schedule the motion with the court prior to the filing of the motion-the hearing date shall be inserted in the motion documents prior to filing. A motion filed only with the Clerk of Court will not be scheduled until a specific request by phone or in writing is made of the court for a date and time. See also rules 305.

### **402 Motion Filing Procedure (non-summary judgment motions)**

Unless otherwise provided by these rules or order of the court:

- (a) The movant shall file with the Clerk of Court and serve upon all other parties the motion and all supporting documents at least 15 days before the hearing.
- (b) The opposing party shall file with the Clerk of Court and serve upon all other parties a written response with a citation of authorities at least 7 days before the hearing date.
- (c) The movant may file with the Clerk of Court and serve upon all other parties a written rebuttal with a citation of authorities at least 3 days before the hearing date.

### **403 Motions for Summary Judgment**

#### **403-A Timing/Briefing Schedule**

- (a) The parties may file motions for summary judgment. The movant's brief and affidavit(s) shall be filed with the motion. The response brief and affidavit(s) shall be filed within 30 days after the

filing of the motion and the rebuttal brief shall be filed within 15 days after the filing of the response brief.

(b) A hearing date may be set if requested by any party at any time prior to 10 days after the filing of the response brief. If any party does not request a hearing, the court will decide the motion on the basis of the submittals.

#### **404 Large Claim Civil Default Judgments**

Except as to mortgage foreclosures, no notice to defendant is required before entry of a default judgment in large claim civil actions where personal service was obtained upon the defendant.

In cases where personal service was not obtained upon the defendant (i.e., substitute or published service), notice of motion for default judgment and an affidavit of service of the notice upon the defendant shall be given to defendant by regular mail at defendant's last known address and filed with the court. The notice shall provide that in the event the defendant does not request a hearing from the court, in writing, on plaintiff's motion within 10 days of the date of the notice, default judgment shall be entered. Upon the expiration of the time to request a hearing, if no hearing has been requested the court shall sign the judgment. The court shall schedule any hearing requests as soon as practicable. In actions where damages are not liquidated, a hearing shall be conducted to determine the amount of the judgment. The Court may order a hearing to determine the amount of judgment in any case.

The Judge may in an individual case require further notice or proof regarding service, damages, or costs if appropriate.

#### **405 Foreclosure Proceedings**

All default judgments in foreclosure proceedings shall be scheduled for a hearing in open court, due notice of which shall have been given to all defendants at least 7 days before the hearing. If all parties consent or no defendant appears at the scheduled hearing, the Court may grant a default based on affidavits or testimony.

#### **406 Pretrial Procedures**

##### **406-A Pretrial Conference**

In all civil matters, the court shall schedule a pretrial conference prior to trial. In all pretrial conferences, 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. The Judge may in any case require all parties to be present personally at the pretrial. In civil jury cases, the Court will schedule a final pretrial conference approximately 20 days prior to trial.

##### **406-B**

Not less than 15 days prior to the final pretrial conference, the parties shall file and serve the following:

• Proposed instructions and verdict form. Note: the court will generally give the Pattern Wisconsin Civil Jury Instructions. Pattern instructions may be requested by number. Pattern instructions containing alternative paragraphs to be selected or blanks to be filled in must be submitted in final form. Special instructions submitted must contain citations to the applicable law.

• Motions in *limine* (motions pertaining directly to the trial). The motion shall include a brief statement of the facts necessary to an understanding of the motion and shall cite the proposition of law with a citation to the authorities (statutes or case citations) in support of the relief requested. Briefs on all motions shall be no more than four, double-spaced pages.

• Any trial brief a party is going to submit.

Not less than 5 days prior to the final pretrial conference, the parties may file and serve a response to the foregoing submittals.

At the Final Pretrial Conference the parties shall be prepared to discuss the following:

- Settlement
- Stipulations and evidentiary questions that may arise.
- Length of trial, *Voir Dire* (jury examination) issues, Jury Strikes and similar issues.
- Instructions and Special Verdict
- Other matters which may aid in trial of the action.

#### **407 Trial and Hearing Procedures**

##### **407-A Exhibits**

Each party shall bring sufficient copies of the party's exhibits so that copies are available for the witness, the Court and opposing party (ies).

##### **407-B Stipulations/Resolution of Cases**

The Court shall be informed of all agreed facts and issues in writing prior to trial.

The deadline for the parties to notify the court of their intent to enter an agreement resolving the case is ten calendar days (including Saturdays, Sundays and days on which the Clerk of Court's office is closed) before the date set for trial. The Court shall have the discretionary authority to assess jury costs under Sec. 814.51, Wis. Stats., for abuse of the settlement process.

##### **408 Continuance of Trial Date**

All stipulated requests for continuance of trial date shall require the consent of the attorneys and the named parties in writing or on the record and must be for good cause shown.

All other requests for continuance must be made by motion and for good cause shown by the party or with the party's written consent.

All requests for continuance are subject to the approval of the Court.

#### **409 Harassment Restraining Orders and Injunctions**

The Clerk of Courts shall ensure that the petitioner has signed the moving papers and that the signature is notarized. The Clerk of Courts shall ensure that all relevant paragraphs on the petition and other papers are complete.

The Judge or Court Commissioner shall review all petitions as to form and substance. If the petitioner seeks to have the filing fees waived due to indigency, the Judge shall determine the question of indigency.

### **Part -5: Criminal Law Practice**

#### **500 Continuances**

Requests for a continuance of trial date shall require the consent of the named parties, and must be for good cause shown.

If consent cannot be obtained for a continuance, then it must be on motion and hearing with good cause shown by the party. All requests for continuance are subject to the approval of the Court.

#### **501 Witnesses**

Attorneys will be expected to list their potential witnesses during voir dire for the benefit of the jury.

#### **502 Jury Instructions/Verdicts**

Proposed jury instructions and verdicts shall be filed with the court no later than three days before trial. The court will generally give the Wisconsin Criminal Jury Instructions (WCJI). WCJI instructions may be requested by number only. WCJI instructions containing alternative paragraphs to be selected or blanks to be filled in must be submitted in final form. Special instructions submitted must contain citations to the applicable law.

### **Part 6: Small Claims**

#### **600 Service of Summons**

The Court authorizes service by mail, as allowed under Wis. Stat. 799.12(2) and in eviction proceedings by certified mail as allowed under Wis. Stat. 799.12(3). Contempt proceedings must be personally served.

## 601 Pleadings

All pleadings shall be in writing. A defendant, or their attorney, may file and Answer, Counterclaim or Affirmative Defense with the Clerk of Court and opposing party at or before the return date, or, if appearing at the return date in person and orally claimed, within 10 calendar days of the return date. Failure to do so may result in a default judgment.

## 602 Personal Appearance

Parties do need not appear in person at the return date EXCEPT for evictions and contempt proceedings, which they MUST appear in person.

## Part 7: Family Law Practice

### 700 Custody and/or Placement Issues in Family or Paternity Cases: Parenting Class, Mediation and Guardian ad Litem

700.1 If custody or placement issues, in either a family or paternity case, are raised in the pleadings or at any subsequent time during the pendency of the action, the issue will not be tried unless:

- 1) the parties have attended and completed an approved parenting class;
- 2) The parties have been referred to and completed at least one approved mediation session;  
and
- 3) The parties have had a guardian ad litem appointed to represent the interests of the minor child(ren).

700.2 As to attendance at an approved parenting class, each parent is directed to contact the UW-Extension Marquette County Office at (608) 297-3141 (forms/info: <http://marquette.uwex.edu>) to enroll in and attend the next available "Children in the Middle" program. Only the individual parent will be allowed to attend the class (no guests). Full payment of tuition fees shall be made to the UW Extension office no less than one week prior to the date of the first session. Contact the UW Extension office for the fee schedule. The UW-Extension office shall file with the court, a certificate of attendance for each parent that completes the class as well as a report identifying any parent who has failed to contact their office within 30 days of receipt of notice of these rules. The Clerk of Court shall provide a copy of these rules to every party filing an action that covers custody or paternity. Parties may apply to the court for a waiver of this parenting class requirement if they demonstrate a severe hardship in completing same.

Upon the filing of an action, or a subsequent motion, raising the issue of custody or placement in a family or paternity case the court will issue an order for mediation. This order will direct each party to make a deposit with the Clerk of Court to cover the costs of mediation. If either party believes they are without the means and are under the income level set forth as the poverty guidelines for earnings as determined by section 812.34(3) Wis. Stats. (or any successor statute), they may request the court to waive or reduce the mediation fee deposit by filing an AFFIDAVIT OF INDIGENCY (available online at [www.wicourts.gov](http://www.wicourts.gov) - Form CV410, or from the Clerk of Court). This request for waiver/reduction must be filed within 10 days of receipt of the order for mediation. Upon receipt of the deposit or waiver order the clerk shall refer the matter of these issues to the Director of Family Court Counseling Services for action in accord with his/her duties. The issues of custody or placement shall not be scheduled for further court proceedings until the Director of Family Court

Counseling Services reports back the results of mediation. The parties are required to attend at least one mediation session under this directive.

**700.3** Upon completion of the mediation process the Director of Family Court Counseling Services will forward to the court an invoice for all mediation fees incurred. The court will determine the responsibility of each party toward repayment of these fees. Deposits will be applied as necessary and the parties shall repay any remaining outstanding balances owed. Waiver of the deposit does not eliminate responsibility to repay the mediation costs allocated by court order. Any deposited amount in excess of the required repayment amount for mediation fees shall be allocated to guardian ad litem fees or returned to the party who made the deposit.

**700.4** The court, in its sole discretion, shall appoint a guardian ad litem to serve to represent the best interests of the minor child(ren) in these actions. The deposits made for mediation that are not used for that purpose shall be held to offset fees incurred for the guardian ad litem. Unless appearance is waived, the guardian ad litem shall appear at the final hearing and shall provide a final statement of fees within 60 days. The court shall exercise its discretion to allocate responsibility for repayment of these fees between the parties. The allocation of these fees shall be made part of the final judgment or order of the proceeding.

## **Part 8: Billing Practices**

### **800 Billing Practices (Amended 12:01 AM, January 1, 2015)**

All court appointed attorneys are retained on an hourly basis plus reasonable costs and expenses, unless otherwise specifically noted in the appointment order. No later than sixty (60) days from the date of case closure, the attorney shall submit a detailed statement to the court and to all interested parties containing (at a minimum) the following information:

- The court case number and party name
- The date on which work was performed
- A detailed description of the work performed
- The amount of time spent on each item of work in increments of one-tenth hour (no appointed attorney shall have minimum billing increments greater than one-tenth of an hour).
- A summary of the total amount of time spent on the matter for that month
- An itemized listing of costs and expensed incurred on the matter and date incurred
- Total amount currently due and past due
- A statement of payments received and/or credits applied during the month
- Trust balance, if any
- Amount owed by each party (for example in GAL family law appointments)

## **Part 9: Filing Court Papers**

**900.1** All papers filed with the Clerk of Court shall be on 8.5 X 11 inch paper, except for Court Exhibits and Wills.

900.2 The Clerk of Court or Register in Probate shall return any paper not in conformity with § 200.1 to the person or party attempting to file it.

900.3 No person may attach more than 10 pages to any Petition for a Restraining Order.

APPROVED:

Dated: 12/19/14



Hon. Gregory Potter, Chief Judge  
6<sup>th</sup> Judicial District for State of WI