

Polk County Circuit Court Rules

(Tenth Judicial District)

[Part 1: Tenth Judicial District Rules](#)

[Part 2: Polk County Court Practice](#)

[Part 3: Polk County Civil Practice](#)

[Part 4: Polk County Criminal Practice](#)

[Part 5: Family Law](#)

[Part 6: Foreclosures](#)

[Part 7: Juvenile](#)

[Part 8: Probate](#)

[Part 9: Small Claims](#)

[Part 10: Traffic and Forfeitures](#)

PART 1: TENTH JUDICIAL DISTRICT RULES

101 DISTRICT RULE ADOPTION AND PROMULGATION

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

PART 2: POLK COUNTY COURT PRACTICE

201 CLOSED COURTROOM

201.01 REQUEST TO CLOSE TO MEDIA

Unless good cause has been shown to the judge, a party moving that any judicial proceeding required by law to be open to the public should be closed to the news media, the individual must notify the court and the media coordinator in writing at least 72 hours prior to the time set to hear the motion.

The burden shall be on the moving party to show cause why the proceeding should not be public as required by statute.

202 CONFIDENTIAL RECORDS

202.01 GENERALLY

In general, when an individual requests access to a court record that includes confidential information, the clerk of court's office or the registrar in probate/juvenile court clerk will ask for identification to verify that the individual is a party to the action. If so, and if a party is allowed access to the confidential records in his or her file, access to the entire file will be granted. If the party is not allowed access to some or all of the confidential records in the file, the confidential records the party is not allowed to see will be removed from the file before the party is allowed access.

When an attorney seeks access to a file containing confidential records, the confidential records will be removed from the file unless the attorney is an attorney of record in that particular case.

Anyone other than an attorney of record or party to the action will be allowed access only to the non-confidential portions of a case file.

202.02 CUSTODY INVESTIGATIONS

Attorneys of record and the GAL if applicable, may be provided a copy of a custody study, but may not copy it nor disclose the source of confidential information without written court order

Parties to the action may view a custody study without a written order. However, a party may not copy or disclose such information, except to their counsel.

202.03 EXPUNGED CRIMINAL RECORDS

Any case in which a criminal record has been expunged shall be closed to access to anyone without a court order authorizing access to the file. The clerk of courts shall take appropriate steps to ensure confidentiality of all expunged criminal records.

202.04 FINANCIAL RECORDS IN DIVORCE ACTIONS

Only parties to the action and attorneys of record will be allowed to view and copy financial declarations and other confidential financial information in divorce actions.

202.05 MEDICAL AND HOSPITAL RECORDS

Medical and hospital records remain confidential when filed with the court until such time as they are introduced into evidence at a trial. Until then, only parties to the action and attorneys of record may view medical and hospital records.

202.06 PATERNITY RECORDS

Pursuant to Wis. Stats. § 767.53, all paternity records, before adjudication, are to remain confidential except to the parties to the proceeding or their authorized representatives, attorneys of record, and adult children who were the subject of the proceeding.

202.07 PRESENTENCE INVESTIGATIONS (PSI)

Pursuant to Wis. Stats. § 972.15(4m), presentence investigations are confidential. The district attorney and the defendant's attorney are entitled to have and keep a copy of the presentence investigation report. If the defendant is not represented by counsel, the defendant is entitled to view the presentence investigation report but may not keep a copy. A district attorney or defendant's attorney who receives a copy of the report shall keep it confidential. A defendant who views the contents of a presentence investigation report shall keep the information in the report confidential. If sentencing results in a prison term, a copy of the PSI and judgment of conviction shall be provided to the sheriff for delivery, along with the prisoner, to the department of corrections or other point of intake designated by the department of corrections.

202.08 PSYCHOLOGICAL RECORDS

In Chapter 51 proceedings, all psychological records are confidential except to the individual's attorney, the guardian ad litem and the attorney who is prosecuting the action for Polk County.

In divorce proceedings, all psychological records are confidential except to the attorneys of record and the parties to the action.

202.09 OTHER SITUATIONS

In situations not covered by written policy or clear statutory policy, the clerk of court and registrar in probate/juvenile court clerk shall exercise discretion in deciding who has access to confidential records.

The circuit court remains the authority to authorize disclosure of other wise confidential information as well as the authority, where permitted by law, to classify files or parts of files as confidential.

203 CONTINUANCES

203.01 REQUESTS FOR CONTINUANCES

In order for the court to grant a continuance, the law requires that a formal motion be made to the court with notice to the opposing party. However, it has been the practice of Polk County Circuit Courts that where there is no objection to the continuance and the court approves the request, no formal hearing is required. An ex parte request for a continuance must meet certain standards:

A request for a continuance must be made in writing, where time permits, and must state the specific reason(s) why a continuance is being sought. A mere statement that a witness is unavailable is not sufficient for the court to conclude there is good cause for a continuance.

A request for continuance must state the position of the opposing counsel or opposing party. The court must be made aware of any objection to granting the continuance, and any time conditions the opposing party or counsel may have.

When time does not permit contact with the opposing party, the request for continuance must state the good cause basis for not having contacted the opposing party or counsel. The court will exercise its discretion in ruling on such a request for continuance.

The requesting party must not state or imply to the opposing party that the court will automatically grant a continuance simply because both parties agree to it. The court will assume the responsibility to immediately notify both parties of its decision. The form of that communication will be dictated by the amount of time between the decision and the time set for the hearing or trial. In most instances, the court's decision will be communicated by telephone to the parties with an immediate follow-up written notice as to the new date for the continuance.

204 JUDICIAL ASSIGNMENTS

204.01 INTAKE JUDGE

Each branch of circuit court shall serve two weeks out of every four as the intake judge.

The intake judge shall retain jurisdiction over all matters through final disposition of the matter except as provided by statute, Supreme Court Rule, or local rule.

204.02 CIVIL MATTERS

All civil cases, filed in Polk County, shall be randomly assigned by the clerk of circuit court so that each branch receives an equal number of cases.

In small claims, if a judge disqualifies himself, the case may be assigned to the other branch of circuit court. In other matters, if a judge disqualifies himself or is disqualified, the clerk of court shall prepare and file the appropriate document for change of judge.

204.03 CRIMINAL MATTERS

Upon the filing of a summons and complaint, the clerk of court shall assign a judge and an initial appearance date. Upon filing of a warrant and complaint, the clerk of court shall assign the judge on intake to the case. Excepted from this procedure are initial appearances for persons in custody who shall have their case assigned to the intake judge.

204.04 JUVENILE MATTERS

Upon the filing of a new petition, the juvenile clerk shall research the CCAP system to ascertain if there are any prior cases for the juvenile and/or if there are cases for their siblings and/or family members. If there are, the new case will be assigned to the judge that has been handling the majority of the previous cases for the juvenile siblings and for family. If there are not any previous cases, then the new case will be randomly assigned so that each branch receives an equal number of cases. The exceptions are TPC and JI filings. JI filings are heard by the intake judge at the time of filing. TPC hearings are heard by the intake judge, but after the TPC hearing, the case reverts back to the judge handling the juvenile's case files.

204.05 OTHER MATTERS

The judges may, from time to time, reassign a case in order to expedite its disposition, accomplish the more efficient administration of justice, or to keep families of cases together. The rotation of intake judge assignment may occasionally be altered because of judicial illness, vacations, educational seminars and conferences, or other judicial absences.

205 SELECTION OF JURORS

205.01 POTENTIAL JURORS

The clerk of circuit court shall use the Department of Transportation list when selecting names of potential jurors.

205.02 LENGTH OF JURY DUTY

Jurors shall serve for a period not exceeding 31 days, unless a trial in progress takes them past the 31-day period, in which case they shall finish that trial.

Jurors who serve 5 days shall be excused from further service unless a trial in progress takes them past the 5-day period, in which case they shall finish that trial.

205.03 ADDITIONAL JURORS

The clerk of court shall have the power to select additional jurors if the list provided by the Department of Transportation provides insufficient numbers.

205.04 EXCUSING JURORS

The clerk of circuit court shall have the discretion to excuse jurors who meet the statutory requirements. One or more of the circuit judges may be consulted, if necessary, regarding whether or not a juror should be excused. Juror requests to be excused shall be in writing except in the case of family, medical, or other emergency.

205.05 SIX-PERSON JURY TRIALS

In cases where a timely demand for a six-person jury has been made in a case subject to the provisions of §345.43 Wis. Stats., the following method shall be utilized to select the jury.

1. The clerk of court will prepare a random list of at least 25 jurors from the prospective juror list. This will be provided to the judges no later than 35 days prior to the beginning of the calendar month for which the jurors will serve.
2. A copy of the random list will be mailed by the judge to each of the parties (or their attorney if represented) no less than 20 days prior to the scheduled trial date.
3. No less than 5 days and no more than 15 days prior to the scheduled trial date each party shall file with the clerk of court a list of the 5 names which that party wishes to strike from the names remaining on the random list (after excused absences).
4. In the event either or both parties fail to timely file their list of strikes with the clerk of court, the clerk of court shall strike the highest juror ID numbers of the remaining names on the list until 15 names remain on the list.
5. In the event that there is any duplicity between the strikes declared by each party, the clerk of court shall strike additional names based on the highest remaining juror ID numbers of the remaining names on the list until 15 names remain on the list.
6. Once the remaining names on the random juror list have been determined, those jurors will be notified of their need to report for jury duty.
7. In the event that there are more than 6 jurors of the remaining jurors who report for jury service and who are not excused for cause, the first 6 jurors on the random list of reporting jurors will be utilized for purposes of trial.

206 VOIR DIRE

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

208 RELEASE OF JUDGMENT INFORMATION

208.01 RELEASE POLICY

Judgment records will be open to public inspection during normal court business hours.

209 ATTORNEY WITHDRAWAL OR SUBSTITUTION

209.01 GENERALLY

A formal motion must be filed prior to any further proceedings in the particular case.

209.02 WITHDRAWAL OR SUBSTITUTION HEARING

The court may schedule a hearing if it deems necessary. If a hearing is scheduled, both the attorney and the client on whose behalf the withdrawal or substitution is being made must be present.

If not present, the court will assume that opposing counsel does not object, although the court will not automatically grant the motion unless good cause is shown.

[Back to top](#)

PART 3: POLK COUNTY CIVIL PRACTICE

301 RIGHT TO JURY TRIAL ON ACTIONS NOT UNDER STATUTE.

For all non-UTC (Uniform Traffic Citation) violations, Wis. Stat. § 345.43(1) is incorporated herein for defendant(s)/respondent(s) that wish to enter a plea of not guilty. The written jury demand and fee must be paid within 10 days of said plea.

Prior to a trial (bench or jury) being scheduled, the defendant must meet either in person or by telephone (if residing out of state) with the prosecutor to attempt settlement. If the case cannot be resolved, a trial will be scheduled and notices provided by the judicial assistants.

302 SERVICE AND ANSWER

All cases will be reviewed for service and answer within 90 days after filing. If at that time the case has not reached issue, a dismissal order shall be entered, or default proceeding shall be initiated by the plaintiff.

303 MOTIONS

Unless otherwise specifically ordered, any motions for summary judgment or for dismissal shall be filed with the clerk of court's office, together with any brief or other supporting documents. The moving party shall also file proposed findings of fact, conclusions of law and judgment with the summary judgment motion.

If movant does not desire to file a brief or other documents, a statement waiving his/her rights to file such a brief or other documents shall be filed.

The respondent must file a response brief and supporting documents within 30 days, or waive in writing the right to do so. If no brief or waiver is filed within the statutory time limit, it shall be presumed that respondent has waived this right. The moving party then has 15 days to file a reply.

PART 4 POLK COUNTY CRIMINAL PRACTICE

401 DEFENDANT'S PRESENCE REQUIRED

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

402 WARRANTS

402.01 WARRANTLESS ARRESTS

Whenever a warrantless arrest occurs, the person arrested is entitled to a probable cause determination within 48 hours of the arrest as required by County of Riverside vs. McLaughlin, 500 U. X. 44(1991). Accordingly:

1. Whenever a warrantless arrest occurs, the arresting officer shall complete the form entitled "Probable Cause Affidavit and Judicial Determination."
2. The completed form shall be kept at the Polk County Jail, and be made available for immediate use by a judge or court commissioner in evaluating probable cause for that particular arrest.
3. Upon notice by the Polk County Jail, a judge or court commissioner shall review the form either personally or telephonically, and find that probable cause either is or is not stated upon the form
 - a. If no probable cause is found, the arrested person(s) shall be released immediately upon signing a bond that indicates the date and time for a court appearance.
 - b. If probable cause is found, the arrested person(s) may be held for further proceedings and may post bond.
4. If no probable cause affidavit is filed with the Polk County Jail within 48 hours of the arrest, the defendant shall be released upon signing of an appropriate bond.

402.02 ACTIVATED WARRANTS DISMISSED

Where defendant has made appearance on an activated warrant, that warrant shall be quashed unless specific mention of instructions are given on the record. All returns on warrants shall be heard by the intake judge regardless of who signed the warrant.

In criminal matters where there is a court disposition on the record, and any active warrant exists pursuant to that matter, that warrant shall be considered quashed, unless specifically stated otherwise on the record.

403 BONDS

403.01 NO CONTACT PROVISIONS

Whenever a bail/bond form is prepared and executed by law enforcement officers in Polk County pursuant to the Wisconsin Judicial Conference and under circumstances where the alleged violation involves domestic abuse or violence, the bond shall include a statutory "72-hour no-contact provision," prohibiting the defendant from contacting the alleged victim or victims.

This "72-hour no-contact provision" may be waived by the victim. However, the provision may also be continued beyond the 72-hour time period. When a "no-contact

provision is a condition of bond, it cannot be waived until the alleged victim attends and successfully completes the cycle of Domestic Violence Awareness Program through CRA (Community Referral Agency, Inc.) and appears in front of the intake judge with documentation from the district attorney's office as to whether the district attorney supports or opposes the lifting of the no-contact provision.

Persons who have been taken into custody and who are eligible for release from the Polk County Jail by posting a cash bond prior to an in-court appearance (pursuant to the terms of the "Uniform Misdemeanor Bail Schedule") must also sign a form entitled "Bond and Conditions of Bond," thereby making them subject to non-monetary conditions of bond before an in-court appearance. When completing said form, pursuant to the "standing court order with regard to completion and execution of bond forms for persons taken into custody and released prior to an in-court appearance" dated April 28, 2006 and signed by both Polk County Circuit Court Judges, the person completing the form will be acting at the direction of the court, and the conditions of the bond will be considered to be "court-ordered conditions of bond."

Any person who has had bond conditions set without an in-court appearance may appear before the intake judge to request a review/modification of any condition(s) of bond.

404 INITIAL APPEARANCES

404.01 MISDEMEANORS

Once the initial appearance is conducted, each case shall be scheduled for a DA settlement conference in the district attorney's office to be held on Friday afternoons. Parties will obtain an in-person final pretrial hearing date at the time of their initial appearance. These will be held Friday mornings.

404.02 FELONIES

Felonies will be scheduled for a DA settlement conference in the same manner as misdemeanors, but not before the preliminary hearing. Final in-person pretrial conferences will be scheduled at the arraignment and generally will be scheduled Friday mornings.

405 MOTION PRACTICE

All motions shall be in writing stating with particularity the relief or remedy sought and the grounds in support thereof. Reasonable exceptions may be granted by the court at the courts' discretion. Motion hearings shall not be scheduled prior to filing, but in all cases should be filed prior to the final in-person status conference.

Attorneys/parties shall file motions in limine, suggested voir dire, requested jury instructions and verdict form by a date set by the trial court which shall be shortly after the deadline for negotiations and/or final pretrial.

406 DISCOVERY

All parties shall exchange discovery, if demanded, as soon as practical after the plea in all criminal cases. The initial appearance is the first court appearance where a criminal complaint is filed with the court. In misdemeanor cases, the arraignment is conducted at

the initial appearance unless continued. In felonies the arraignment is not conducted until after an information is filed following preliminary hearing or waiver thereof.

If a party is not satisfied with discovery, such party may file a motion to compel discovery or motion seeking sanctions with the presiding court.

It is expected that all parties comply with the discovery provisions contained in Wis. Stats. § 971.23.

407 COMMITMENT ORDERS

When a commitment order is executed in a county having a county seat more than 50 miles from Polk County and the amount owed is less than \$200, the Polk County Sheriff's Department may inform the arresting agency or other sheriff's department that Polk County will not pick up the person arrested. If the defendant is not picked up, the sheriff's department shall request the assisting jurisdiction to do the following:

1. Secure a current address and telephone number from the detainee and provide it to Polk County.
2. Allow the detainee to sign a signature bond with a requirement that the individual appear in the appropriate branch of circuit court, or the next available intake calendar for that branch, at 1:00 p.m. The Polk County Sheriff's Department shall provide the necessary date, place and time, etc., to the assisting jurisdiction.
3. Provide a fax copy or the original bond form to the sheriff's department for immediate filing with the Polk County Clerk of Court.

408 PRE-SENTENCE INVESTIGATION (P.S.I)

Following the order by the Court for a P.S.I, the Clerk will notify the probation & parole department of date of pre-sentence order, defendant's name and defendant's attorney, and date of scheduled sentencing.

409 PROBATION

Upon sentencing and order for probation, the defendant shall complete the statistical form. The defendant shall then be directed to immediately report to the probation and parole office for processing.

The clerk will notify the probation department of date and term of probation order, court imposed terms and conditions of probation, defendant's name and defendant's attorney's name.

[Back to top](#)

PART 5 FAMILY LAW

501 MEDIATION

501.01 MEDIATION EXPENSES- FAMILY

The Polk County Circuit Court is responsible for the actual costs of the initial mediation session, but not for subsequent mediation sessions. The parties shall equally split the cost of subsequent mediation.

If a party fails to appear for the initial mediation session, that party may be required to pay the entire cost of the rescheduled session.

501.02 MEDIATION – PROCEDURE

Copies of the mediation order will be sent to the attorneys and the mediation center. The parties will receive copies of the mediation order if they are pro se. The order will designate the mediator, the time period within which the parties are to make an appointment or the mediation session, and a time period within which the mandatory, no charge session is to be held. It must also include the name, address, and telephone number of the mediator/mediator provider.

After the first session is completed, the mediator shall report to the court and to the attorneys the results of that session.

501.03 CHANGE OF MEDIATOR REQUESTED

If someone alleges there is good cause why a different mediator is needed in a particular matter, the good cause determination must be made by the judge assigned to that case. Such a determination will rarely require a formal hearing. The attorneys involved are advised to contact the judge for further direction.

502 PROCEEDINGS

The family court commissioner, in addition to hearing temporary hearings, may also hear other cases permitted by statute. A court reporter will be used when required by statute.

503 PARENT EDUCATION CLASSES REQUIRED

Within 60 days after filing an action for dissolution of marriage with minor children, petitioner and respondent are required by the Polk County Circuit Court to attend a parenting education program approved by the court. The proceeding shall not be scheduled for final hearing until the parties have attended and participated in the parent education classes.

504 CUSTODY STUDY AND PSYCHOLOGICAL EVALUATION EXPENSES

Whenever a custody study and/or psychological evaluation(s) are ordered in family law proceedings, each parent shall pay one-half of their cost in advance to the clerk of circuit court at least 30 days prior to the study and/or evaluation(s). Said amounts will be determined by the court.

In appropriate cases, the court may reduce, waive, order installment payment, and/or order one parent to pay the entire amount of the expenses.

505 PLACEMENT DISPUTES

The parents of the children involved in any placement dispute are required to participate in mediation before a guardian ad litem is appointed, unless this requirement is waived by the court.

506 STIPULATED DIVORCES

506.01 STIPULATED DIVORCE FILING

Any party serving an opposing party with a summons and petition must file their proof of service forthwith. Upon receipt of the proof of service, the judicial assistant will set the matter for a stipulated divorce approximately 120 days out, as the calendar allows.

506.02 PRETRIAL/SCHEDULING CONFERENCE

If all issues are not resolved and/or required paperwork is not correctly filed, the scheduled time will be used for an in-person pretrial/scheduling conference.

If the parties do not believe they will have a stipulation on all issues when the date is set on the court's calendar, they must still appear at the pretrial to indicate to the court which matters are settled and which matters are still in dispute. The court will then set a trial date and/or a scheduling order regarding discovery.

507 STIPULATED DIVORCE APPEARANCES

Unless nonresidence in the state is shown by competent evidence, service is by publication, or the court for other good cause orders otherwise, both parties in actions affecting the family shall appear upon the final hearing or trial. An order of the court to that effect shall be procured by the moving party and shall be served upon the nonmoving party before the hearing or trial. No order is required in the case of a joint petition.

508 GUARDIAN AD LITEM

508.01 RATE OF PAY

Guardian ad Litem (G.A.L.) shall be paid at the rate of \$70 per hour unless the parties agree to pay the guardian ad litem's normal hourly rate. The court specifically finds that the statutory rate of reimbursement (e.g. State Public Defender) would unduly burden or substantially interfere with the judiciary's ability to appoint counsel. This finding is based upon a comprehensive survey of area attorneys.

508.03 WAIVER OF FEES AND RETAINERS

In appropriate circumstances, the court may waive the deposit/retainer in whole or part. The court may also relieve a party from the obligation to contribute to the payment of guardian ad litem fees. Individuals who believe they are indigent and/or that payment would cause extreme hardship, may file a request for waiver, accompanied by a sworn financial declaration or an affidavit of indigency.

1. If the court finds one party indigent, the other party may be ordered to pay the full deposit/retainer
2. If the court finds both parties indigent, the county may be required to pay the G.A.L. fees at the conclusion of the case. The parties may be required to reimburse the county by way of periodic payments/payment plan.

3. The court may require a party to reimburse the county for all or part of the G.A.L. fees. When the court has determined each party's ability to pay, the clerk of court will send a notice to the parties for collection purposes.

508.04 APPROVAL OF FEES

Guardians ad litem shall submit interim statements of fees to the court on at least a quarterly basis. G.A.L. fees shall be approved by the court prior to payment.

Parties responsible for payment, in addition to the deposit/retainer, will be notified of court approval of G.A.L. fees and costs.

After approval of the final G.A.L. fees, the court will order final payment to the G.A.L. Any excess amounts paid by either party shall be refunded to the parties.

An order approving the G.A.L. fees shall be included in the divorce judgment, unless inappropriate, whereby a separate order approving the fees will be issued.

The clerk of circuit court shall hold all payments in trust until receiving a court order for payment.

508.05 PAYMENT OF FEES

An order approving fees shall require each party to pay an equal amount unless a different ratio is set by the court.

508.06 NON-PAYMENT OF FEES

If parties have not paid the full amount of fees ordered within the judicially determined time frame, a money judgment in favor of Polk County will be entered against the non-paying party or parties. Collection proceedings may be used by the county to collect on the judgment.

508.07 CONTACT WITH CHILDREN

When a G.A.L. represents the children in a divorce or paternity proceeding, no attorney for either parent may meet with the children without the G.A.L.'s consent or a court order. See *In Matter of disciplinary Proceedings Against Kinast*, 192 Wis. 2d 36, 530 N.W.2d 387(1995).

508.08 DURATION OF APPOINTMENT

The appointment of a G.A.L. ends with the entry of the court's final order unless the court orders otherwise.

508.09 ASSISTANCE IN APPOINTMENT OF ADVERSARY COUNSEL

If in the course of investigation by a G.A.L., appointment of adversary counsel is necessary due to circumstances or by statutory mandate, the G.A.L. shall seek appointment of counsel by the state public defender when appropriate, or the court.

If the G.A.L. is unable to accomplish this duty, they shall notify the juvenile court clerk, who shall insure appointment of counsel in a timely manner, if directed by the court.

[Back to top](#)

PART 6 FORECLOSURES

601 PERSONAL SERVICE

601.01 PERSONAL SERVICE OBTAINED

No notice to defendant is required prior to entry of a default judgment in large claim civil actions where personal service was obtained upon the defendant and they have failed to answer.

601.02 PERSONAL SERVICE NOT OBTAINED

In cases where no personal service is obtained upon the defendant, notice of motion for default judgment shall be given to defendant by regular mail at defendant's last-known address.

The notice shall state that in the event the defendant does not provide a written request for a hearing or plaintiff's motion to the court within 15 days of that date of the notice, default judgment shall be entered.

602 HEARING REQUESTS

Hearing requests shall be heard by the court as soon as practical. Upon the expiration of the time to request a hearing, plaintiff may apply to the court for default judgment. An affidavit of the aforementioned notice to defendant must be included.

603 ROLE OF HEARING

No default judgment of mortgage 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 who have answered at least 10 days prior to the hearing.

604 FURTHER NOTICE

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

605 FORECLOSURE PROCEDURE

When it reasonably appears to plaintiff's attorney that no parties intend to attend the default judgment hearing, the plaintiff may submit proof by affidavit. However, plaintiff's attorney may (with prior approval) initiate a call to the court at the time set for the default hearing and attend the default hearing via telephone.

If other attorneys have answered or formally appeared and plaintiff's attorney determines they intend to participate in the hearing via phone, it is the plaintiff's attorney's obligation to initiate that conference call.

If court is in session and cannot take the call, plaintiff's attorney must advise the judge's assistant to advise the judge of the call. The judge will return the call as soon as recess can be taken, and plaintiff's attorney must be standing by to receive the court's call.

606 CONFIRMATION HEARINGS

Plaintiff's attorney can submit proof via affidavit and attend the confirmation hearing via telephone (with prior approval) if it is reasonably believed that no one will appear to contest.

If someone does appear to contest, the hearing will be continued to a date when plaintiff's attorney can appear with witnesses and evidence.

607 SUBMISSION OF PROOF

Parties proceed at their own risk when they submit proof at default judgment hearings and confirmation hearings by affidavit. Any insufficiency in said proofs will necessarily cause a delay to reschedule the matter and at the discretion of the court, require the actual appearance of the plaintiff's attorney.

608 DAMAGE HEARINGS

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 damages in any case.

[Back to top](#)

PART 7 JUVENILE

County local rules on juvenile court intake are consistent with the American Safe Families Act. See Juvenile Court Rules – Appendix A.

701 ACCESS

701.01 REQUESTS FOR ACCESS – GENERAL POLICY

The court will consider all legitimate requests for access to its records or records of the county department, law enforcement, and social welfare agencies under Wis. Stats. Chapters 938 and 48. In determining whether to grant such a request, the court will attempt to balance the interests of all affected parties. The presumption of law, however, is not to disclose, and the burden for overcoming this presumption rests with the person seeking access to the records.

701.02 FORM OF REQUESTS FOR ACCESS

Any person, besides the victim of a child's act who has filed or intends to file a civil action, seeking access to records which are not privileged and are within the court's authority to disclose, and who is not otherwise authorized to receive records or information under these policies or who is denied access, shall submit a request to the juvenile clerk which includes the following information:

1. The name, address and telephone number of the requesting party
 - a. If the requesting party is seeking access on behalf of another party, the name, address and telephone number of that party shall be included.
2. The information or record being sought and the basis for the requesting party's belief that such information or record does exist.

3. The degree of urgency attending the request.
4. The purpose for which the information or record is needed, and the relevance of the information or record to the requesting or receiving party's stated purposes.
5. The potential outcomes of the action or actions the requesting or receiving party intends to take which involves the use of the information or record.
6. The requesting party's efforts to lawfully obtain the information or record from other sources.
7. The hardship to the requesting or receiving party's cause if the information or record is not disclosed.

*Further assistance may be available through the Crime Victim Assistance Program housed in the Polk County District Attorney's Office.

701.03 DEFICIENT REQUESTS FOR ACCESS

Any request for access, which does not contain the information required by rule 701.02, will be returned to the requesting party for completion and may be resubmitted. Additionally, the court has the discretion to request additional information of the requesting or receiving party at any time.

701.04 REQUESTS FOR ACCESS BY VICTIMS OF JUVENILE'S ACT OR ACTS.

1. Victims of juvenile delinquency seeking information and records for the purpose of pursuing a civil action against the juvenile and/or his/her parents are to use the procedure detailed in Wisconsin Statutes Ch. 938 & § 895.035. The request for access is to be made to the judge of the juvenile court. The court will advise the required parties of such requests.
2. Victims of juvenile delinquency seeking information and records for a purpose other than pursuing a civil action, shall make their request to the juvenile court clerk, pursuant to 701.02.

701.05 PROCEDURE UPON RECEIVING REQUEST

1. Requests which indicate a legitimate need for immediate attention will receive first priority. All requests will be considered in a timely manner as the court calendar and resources allow.
2. The Court will contact the subject of the record and the authority holding the record to determine whether there exists any objection to disclosing the requested information or record. If objection exists, the court may hold a hearing to resolve the objection.
3. The court will make a decision on the request within a reasonable period of time. In making this decision, the court will balance the interests of the party seeking access with the interests of the juvenile subject in maintaining the record's confidentiality, and may hold a hearing on the issue.

4. Criteria which may be used in deciding whether to disclose the record include, but are not limited to, the following:

a. The nature of the requesting or receiving party's purpose is to protect the safety of others or to further promote the rehabilitation or safety of the child.

b. The degree to which disclosure would promote the administration of justice.

c. The effect that non-disclosure would have on the requesting or receiving party's cause if access through the court is the exclusive remedy available.

d. The status of the legal proceedings or disposition relating to the offense.

e. Degree to which disclosure would be harmful to the juvenile.

701.06 REQUEST TO ATTEND COURT PROCEEDINGS

Any person, including representatives of the school attended by the child, other than the parties, their counsel, witnesses, victims and persons requested by a party who have been approved by the court, may request the court to allow them to attend any proceeding. Such a request shall be made to the court prior to the commencement of the proceeding and shall state the person's interest and purpose in attending. Any person approved by the court shall not divulge any information which would identify the child or family involved in the proceeding.

701.07 CONTINUING CONFIDENTIALITY

Any person receiving a record or information as a result of attending a proceeding under these rules shall not further disclose the record or any information without the approval of the court. Violation of this provision may subject the person to the court's contempt authority under § 785 Wis. Stats.

[Back to top](#)

PART 8 PROBATE

(See Appendix B)

PART 9 SMALL CLAIMS

901 PARTY IDENTIFICATION

901.01 IDENTITY OF PARTIES

All parties must be identified as either a person, a corporation, or a partnership. If a corporation or person is doing business under something other than their legal name, that name shall be included in the pleadings. The true legal identity must be established sometime before judgment is taken.

901.02 PARTIES NOT PROPERLY IDENTIFIED

If the parties are not properly identified, the pleadings must be amended at the first appearance date or the error must be made known to the court or the small claims court commissioner at the time of trial

902 ADDRESSES

902.01 CHANGE OF ADDRESS

If either party has a change of address during the pendency of their case, they must notify the clerk of court and the other party of parties immediately.

902.02 USE OF WORK ADDRESS

Plaintiff may not use defendant's work address on the summons and complaint. The court will not mail paperwork to work addresses.

903 PLAINTIFF'S APPEARANCE BY AGENT

Full-time employees of the plaintiff may appear on plaintiff's behalf. Property managers cannot appear on behalf of the plaintiff property owner(s) unless they work exclusively and full-time for the property owner(s). If either party is a corporate entity, they must appear by counsel, unless authorized by the court.

904 MEDIATION REQUIREMENT

Mediation is mandatory for all Polk County contested small claims cases. In eviction matters, the "when to appeal" date and time, shall be the time scheduled for the mediation session. In all other small claims matters, the plaintiff does not appear on the "when to appear" date on the summons and complaint. If the defendant files an answer disputing the claim on or before the "when to appear" date, the petitioner will receive a copy of that answer. The clerk will schedule a mediation session and both parties will be notified of the date and time.

Each party is to bring \$25 in cash to pay directly to the mediator. If a party believes they are exempt because of low income, they must complete a "petition for waiver of filing and service fees – affidavit of indigency and order at the clerk of courts office and bring the completed form with them to mediation. The mediator will make the determination if a party is exempt from paying the fee.

Telephone appearance is permissible only if a letter requesting such is received by the clerk of court prior to the scheduled mediation date. The \$25 mediation fee made payable to "Mediator" must be enclosed or your request will be denied. If both parties request to appear by telephone, the plaintiff will be responsible for setting up the conference call.

If the plaintiff does not appear for mediation, the case will be dismissed. If the defendant does not appear, a default judgment may be entered.

905 EVICTIONS

905.01 SERVICE

Personal service is required.

905.02 APPEARANCE

905.03 COMPLAINT

A copy of the lease and the notice to vacate must also be submitted with the summons and complaint

905.04 HEARING

At an eviction hearing, a judgment of eviction may be granted including costs. If the plaintiff has requested a money judgment in the complaint, and that amount has increased, the plaintiff will be given 60 days to file an amended complaint. Service for the amended complaint may be by First class mail. If an amended complaint is not filed within 30 days from eviction date, the plaintiff must file a new action to obtain money judgment.

906 REPLEVINS

906.01 SERVICE

Replevin actions require personal service.

906.02 APPEARANCE

Appearances are mandatory for both the plaintiff and the defendant.

906.03 NO CONTEST

If no one appears to contest the granting of the replevin judgment, the plaintiff's attorney may submit affidavits and/or affirm the facts set forth in the pleadings in lieu of presenting witnesses for testimony. However, if plaintiff's attorney intends to proceed on affidavits and/or affirmation of pleadings, he/she proceeds at their own risk, and any insufficiency of the proof may result in a continuance of the hearing or dismissal of the action.

907 CLAIMS UNDER THE DOLLAR LIMIT (MONEY JUDGMENT)

907.01 SERVICE

Service may be made by mail by leaving the original and necessary copies of the summons with the clerk of court, together with the fee prescribed by statute. Service of the summons is considered completed when it is mailed, unless the envelope enclosing the summons has been returned unopened to the clerk prior to the return date. All mailing of summonses shall be done in envelopes upon which the clerk's return address appears, with a request to return to that address. Service by mail to obtain a personal judgment shall be limited to Polk County.

907.02 PLAINTIFF'S APPEARANCE

The plaintiff's appearance at the initial return date is not mandatory. If the defendant does not appear or answer, a judgment may be entered in favor of the plaintiff.

If the case settles prior to the return date or the parties wish to adjourn the matter, the parties must inform the clerk of court's office before 9:30 a.m., on the return date. The initial request to dismiss or adjourn may be made by phone; however, the parties must follow up with a written notice.

If the defendant is contesting the claim, the matter will be scheduled for mediation at a later date. All contested cases are required to go through mediation. If the case is not settled through mediation, a court trial will be scheduled before the court commissioner.

907.03 DEFENDANT'S APPEARANCE

The defendant's appearance at the initial return date is not mandatory. If the defendant is contesting the claim, he/she must file a written answer on or before the date and time shown on the summons and complaint. The original answer must be filed with the clerk of court and a copy must be mailed to the plaintiff.

If the defendant does not contest the claim, the plaintiff is entitled to a judgment. Arrangements to pay the claim must be made directly with the plaintiff

908 WRITTEN ANSWERS

Written answers must clearly state that the claim is being contested and provide the reasons why it is being contested.

A copy of the written answer must be sent to the plaintiff.

909 SETTLEMENTS

Parties are urged to discuss settlement prior to the trial date. If a settlement agreement is reached, written notification signed by all parties must be provided to the clerk of court. Costs may be assessed to the parties for failure to provide such notice to the court.

910 REQUESTS FOR ADJOURNMENT

All requests for adjournment of court trials must be in writing and be received by the clerk of court's office at least 5 working days prior to the trial date. If this is not done, the trial will be held as scheduled.

All requests for adjournment must include the specific reasons why a continuance is being requested and also state the position of the opposing party regarding the requested continuance.

The court will not automatically grant a continuance simply because both parties agree to it, nor will the court deny the continuance simply because the opposing party objects to it. Rather, the court will consider the reason for the request along with the positions of both parties in making its decision.

911 TRIAL PROCEDURE

Contested eviction and replevin proceedings not resolved through mediation are held before a circuit judge.

912 EVIDENCE AND WITNESSES

Both parties must bring any evidence and witnesses to the trial that may help in proving their side of the case. If a witness will not appear voluntarily, they may be subpoenaed.

For more information on preparing your case and trial procedure, refer to the “Guide to Small Claims” available from the clerk of court.

913 NOTICE

Notice of court trials will be provided by the judicial assistant of the judge assigned this case.

If a judgment is entered, all parties will receive a “Notice of Entry of Judgment.”

914 JUDGMENT

914.01 DOCKETING THE JUDGMENT

The judgment’s resulting creditor must pay a \$5.00 fee to the clerk of court to have the judgment docketed.

914.02 FINANCIAL DISCLOSURE STATEMENT

1. A “Financial Disclosure Statement” will be mailed by the clerk of court to the debtor along with the “Notice of Entry of Judgment.” The debtor must either pay the judgment in full, or complete the “Financial disclosure Statement” within 15 days of the judgment.

2. Failure to provide this information will result in the creditor bringing a contempt action against the debtor under Wis. Stats. Chapter 785.

914.03 GARNISHMENT

The creditor may commence a garnishment on the debtor’s earnings and/or bank account.

914.04 DEFAULT JUDGMENTS

1. All small claims rules equally apply when a default judgment is entered.

915 APPEAL

916 ATTORNEYS AND FEES

1. Parties are not required at any time to appear with an attorney, but have the right to retain an attorney at their own expense to assist them in the preparation and presentation of their case.

2. Statutory attorney fees are allowed on the return date whenever an attorney signs the summons. However, if the attorney fails to appear for trial, attorney fees will not be allowed.

[Back to top](#)

PART 10 TRAFFIC AND FORFEITURES

1001 ARRESTS FOR VIOLATIONS OF FORFEITURES AND MISDEMEANOR OFFENSES

1001.01 All persons arrested for a violation of a state or municipal forfeiture shall be released from custody without a cash bond if they:

1. Have a valid Wisconsin driver's license or can show sufficient evidence of ties to the community, or
2. The arresting officer is otherwise satisfied that the accused will make future court appearances.

1001.02 All persons detained for forfeiture, misdemeanor or misdemeanor traffic offenses shall be released upon compliance with the uniform state deposit schedule, unless otherwise directed by the court.

1002 CONTESTED TRAFFIC CITATIONS

1002.01 Whenever a traffic citation is contested, the court or staff in the prosecutor's office shall set a time and date for a non-court pretrial with the appropriate prosecutor and provide notices to the parties. One of the following should occur following the pretrial:

1. Citation stipulated to as written and administratively processed.
2. Citation amended and administratively processed.
3. Citation dismissed.
4. Memo with citation from prosecutor stating specific reason(s) for adjournment.
5. If contested, a court date for a bench trial will be set by the judicial assistant.

Any citation not closed/disposed or scheduled for further proceedings, within 90 days of the initial appearance shall be dismissed, unless a continuance has been granted by the court upon good cause shown.

1002.02 LASER SPEED MEASUREMENT

The Polk County Circuit Courts take judicial notice of the underlying scientific reliability of the use of LASER or LIDAR for the measurement of the speed of motor vehicles. The Polk County Courts therefore recognize the LASER/LIDAR speed measurement devices use a scientifically sound method for measuring the speed of motor vehicles and shall accept such evidence without a party being required to prove the underlying scientific reliability of such speed measurement devices.

A party offering evidence of LASER/LIDAR speed measurement must show the following:

1. That the device is a PRO LASER I, II or III, or is on the International Association of Chiefs of Police (IACP) Consumer Products List (CPL) of approved LASER/LIDAR speed measurement devices. This can be done by a printout from the internet website of the IACP.

2. That the device was in proper working order as evidenced by testing a reasonable time before and after the use of the device and result being offered in evidence.
3. That the person operating the device was qualified to operate the device. That the device was properly operated when used to obtain the result offered in evidence.

1002.03 TRAFFIC AND CRIMINAL TRAFFIC CASES INVOLVING HGN (HORIZONTAL GAZE NYSTAGMUS) TESTING

Admissibility of evidence relating to HGN testing is subject to the decision by the Polk County Circuit Court in *State vs. Morrison* (03 CT 117) and the holding in *State vs. Zivcic*, 229 Wis.2d 119 (1999).

1003 TIME TO PAY POLICY

1003.01 TIME TO PAY

In accordance with Polk County's "time to pay" policy, the defendant will be given 60 days in which to comply with a prescribed monthly schedule agreement. Failure to comply will result in statutory remedies being applied.

1003.02 TIME TO PAY POLICY EXCEPTIONS

Requests for extensions to the "time to pay" are dealt with as follows:

1. If monthly payments have been coming in, extensions will be automatically granted.
2. If no monthly payments have been made during the 60 days and no written request for an extension has been received, suspension or alternative sanctions will be imposed.
3. If no payments are made and a written request for extension has been received, one extension will be given and a return letter will be sent expressing that suspension or other sanctions may occur unless further payments are received.
4. If a letter requesting a second or subsequent extension is received with no payments made, the file will be forwarded to the judge for a decision.

1004 REFUSAL HEARINGS

Written Request for a refusal hearing from one who has refused to take a chemical test must be made within ten days of delivery of the "notice of intent to revoke" to the defendant pursuant to Wisconsin Statute § 343.305(9).

1005 REVOCATION FOR REFUSAL

The revocation period for refusal to take the chemical test will commence 30 days after the "notice of intent to revoke" is issued.

1006 JUVENILE APPEARANCE

1006.01 MANDATORY APPEARANCE BY JUVENILE REQUIRED

Mandatory appearances by the juvenile and parent will be required only in the following alleged violations:

1. Alcohol or drug-related offenses.
2. Speeding 20 miles per hour or more over the speed limit.
3. Reckless driving or racing.
4. Other violations where the issuing officer feels the court should address the juvenile directly.

1006.02 MANDATORY APPEARANCE BY JUVENILE NOT REQUIRED

If a mandatory appearance is not required of a juvenile, the law enforcement agency must contact one or both of the parents, and a record of those contacts should be kept by the agency.

1007 ORDINANCES

Each municipality within Polk County shall provide and maintain a current copy of their ordinances with the clerk of court and both branches of circuit court.