Taylor County Local Court Rules

Effective date: January 1, 2020.

§1 Court Practice

Rule 101: A Philosophical Rule

Effective date: November 1, 1991, originally promulgated 9/14/87 in different format.

What should be the role of attorneys:

1. Discourage litigation. Persuade your neighbors to compromise whenever you can.
2. Point out to them how the nominal winner is often a real loser--in fees, expenses, and waste of time.
3. As a peacemaker, the lawyer has a superior opportunity of being a good [person]. There will be business enough.

--Abraham Lincoln

What should not be the role of attorneys:

1. To gum up the works.
2. To get people mad at each other.
3. To make business procedures much more expensive than they need to be.
4. To now and then deep-six what had seemed a perfectly workable arrangement.

--Mark H. McCormack
The Terrible Truth About Lawyers, 1987

Rule 102: Pretrial and Scheduling Conferences

Effective date: November 1, 1991, originally promulgated 6/10/80 in different format and with different provisions.

Except as to traffic matters under chapters 341-346, small claims matters under ch. 799, and divorces filed under Sec. 767.02, the clerk of court shall, upon filing of a civil action:

1. Complete a pretrial scheduling order by inserting a date and time for a pretrial conference in a standard order.
2. Affixing the completed pretrial scheduling order and pretrial data sheet to all authenticated copies of the pleadings to be served on the defendants.
3. Transmitting a copy of the completed pretrial scheduling order and pretrial data sheet to the plaintiff.

Counsel for the parties shall comply with the pretrial scheduling order and any other subsequent scheduling orders of the court.

Rule 103: Adjournments of Scheduled Proceedings

Effective date: November 1, 1991, originally promulgated 5/30/80 in different format.

When the court has scheduled a matter, that matter shall not be adjourned except under the provisions of this rule.

The court may reschedule matters without prior notice to the parties only when exigent circumstances require.

Attorneys or parties *pro se* may request adjournment or rescheduling of matters as follows:

1. By formal motion for good cause.

2. If the original date was scheduled by the court without prior consultation with counsel, an attorney or a party *pro se* may request the setting of a new date as follows:

    a. Requests must be made in writing within five days of the receipt of the notice, with copies to all other parties;

    b. The request must contain a statement setting forth the reason for the request;

    c. If the reason for the request is a conflict with other court matters, the caption of the conflicting case, the date on which the conflicting case was scheduled, and the name of the presiding judge of the conflicting case.

3. If the attorneys and parties stipulate to an adjournment, the court will consider the request on a case-by-case basis.

Failure to appear at scheduled court proceedings shall subject the parties and counsel to all sanctions allowed by law, including but not limited to costs, dismissal, the granting of relief requested, default judgment, and other sanctions.

Rule 104: Facsimile Transmission of Documents to the Court

Effective date: January 1, 2020, originally promulgated 8/1/1991, modified 3/22/99, 4/16/2001.

Except in the instances of electronic filing, facsimile documents transmitted directly to the courts shall be accepted for filing only at **715-748-2465** pursuant to the following provisions:

1. The document does not exceed fifteen (15) pages in length.

2. No filing fee is required.

3. No additional fee or charge must be paid by the circuit court for accepting or receiving the facsimile document.

4. Papers filed by facsimile transmissions are considered filed on the day they are received up until 11:59 pm. Facsimile transmissions received after 12:00 am are considered filed on the next business day.

5. 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. The transmitting party shall send no additional copies of the facsimile transmission. The Clerk of Circuit Court shall discard any duplicate papers subsequently received by the Clerk of Circuit Court, assigned judge, or court commissioner. Parties who have transmitted documents by facsimile to the court shall retain in their own files any "original" document that was used for the facsimile transmission. In the event the authenticity of the faxed document is challenged, the party who faxed the document to the court shall have the burden to show authenticity.

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:

1. Errors of failures in transmission that result in missing or illegible documents.

2. Periods when a circuit court facsimile machine is not operational for any reason.

A judge assigned to a particular matter may authorize in advance the filing of particular documents in that case that do not conform to these rules if good cause is shown and they are in conformance with SCR 801.16. Facsimiles exceeding 15 pages in length must certify that the assigned judge or court commissioner has approved the facsimile transmission.

Documents that are not to be filed but are to be used by the court for reference or other purpose may be transmitted by facsimile transmission at the discretion of the judge or clerk.

Rule 105: Transcript Preparation

Effective date: November 1, 1991, originally promulgated 4/29/86 in different format.

All transcript requests of the official reporter shall be made in writing. Requests made orally shall be confirmed in writing.

At the reporter's sole discretion, the reporter may require an advance of all or part of the estimated transcript cost before commencing the transcript or prior to delivery, except that no advance shall be required for transcripts to be paid by the county, state of Wisconsin, or state public defender's office.

If a party requests the reporter transcribe a portion of a proceeding that requires a search of the reporter's notes for the appropriate passages, the reporter may charge a reasonable search fee along with the regular transcript fees.

The reporter shall assign each transcript request to one of the following descending categories:

1. *Transcripts with specific statutory deadlines for completion.*
   Transcripts in this category include, but are not limited to, appeal transcripts, sentencings to state prison, preliminary hearings in felony cases, John Doe proceedings, and others.
2. *Transcripts without statutory deadlines but for which a need exists according to court calendar deadlines.*
   Transcripts in this category include, but are not limited to, testimony or court matters from prior proceedings in pending cases.
3. *Transcripts without statutory or court calendar deadlines.*
   Transcripts in this category include, but are not limited to, testimony, court findings of fact, court decisions or other proceedings in cases that are no longer pending, and other transcripts prepared at the convenience of the requester.

The court reporter shall complete transcripts under the following priority:

1. Transcripts from Category 1 in the order of the earliest deadline date.

2. Transcripts from Category 2 in the order of the earliest calendar deadline.

3. Transcripts from Category 3 in the order of the date of request.

The reporter shall not commence lower category transcript requests until all higher category requests are completed unless approved by the court.

§2 Civil Practice

Rule 201: Motion and Briefing Practice

Effective date: November 1, 1991, originally promulgated 6/10/80 in different format.

All pretrial motions shall be made in writing with proper notice to all parties. The moving party shall file the original motion, affidavits, and brief with the Clerk of Circuit Court. The moving party shall mail a copy of the motion and brief to the Circuit Judge presiding over the matter so that the Circuit Judge has notice that the motion was filed.

All pretrial motions shall contain the following:

1. *The date, time, and place for the hearing on the motion.* The moving party shall obtain a date and time for each motion from the office of the circuit judge.

2. *The rule, statute, and case law forming the basis for the motion.*

3. *The factual basis--stated with particularity--for the motion.* The motion must contain a statement of the facts underlying the motion. In all motions (including motions for summary judgment), all affidavits necessary for consideration of the motion must be filed with the motion.

4. *A supporting brief on the law regarding the motion.* The court may consider the moving party's failure to file a supporting brief as a waiver.

Unless ordered otherwise by the court by way of a Scheduling Order, parties opposing a motion may file a brief in opposition to the motion, along with affidavits in opposition, within fourteen (14) days of receipt of the motion. The moving party may file a reply brief within ten (10) days of receipt of the brief in opposition.

Pretrial motions that do not comply with this rule may be denied by the court.

The court may schedule a hearing or oral decision date on any motion. All motions (including motions for summary judgment), affidavits or evidence the parties wish the court to consider must be filed at least 72 hours before the hearing date to give the court the opportunity to review them. Affidavits or evidence submitted after that time will not be considered except upon order of the court.

The successful party on a motion shall prepare a written Order for the court's signature for filing.

§3 Criminal Practice

Rule 301: Felony Arraignment Procedures

Effective date: November 1, 1991, originally promulgated 8/l/81 in different format and with different provisions.

In all felony criminal matters, arraignment shall occur immediately at the conclusion of the preliminary hearing in which there has been a bind-over. The district attorney and the defense shall be prepared to proceed at that time.

In the event there is a bind-over on charges other than those found in the original complaint, the court shall set arraignment for the next available criminal appearance date.

The district attorney or defense attorney may, for good cause, request arraignment at a date later than the date or dates established by this rule.

The court may issue a pretrial order at the time of arraignment concerning motion and discovery practice, pretrial and status conferences, and trial date.

Rule 302: Victim-Witness Coordinator to be Responsible for Coordinated Victim Notifications

Effective date: August 1, 2019, originally promulgated 6/01/03, in different format and with different provisions.

Since the creation of the position of Victim-Witness Coordinator in Taylor County, it has been the policy of this court that all contacts with victims in criminal cases be coordinated through that office. This policy was created following consultations and meetings with the District Attorney, the Sheriff of Taylor County, the City of Medford Police Chief, and the police chiefs of Gilman and Rib Lake. The court determined that multiple contacts by various agencies with the same victims would be potentially confusing to the victim, duplicative and potentially contradictory in terms of information provided, and counterproductive to the purposes of the victim's rights laws.

In 2001 Wis. Act 109, the legislature created §302.114(6), Wisconsin Statutes, effective 2-1-03. This statute provides that when an inmate petitions the court for release to extended supervision "the clerk of the circuit court ... shall send a copy of the petition and, if a hearing is scheduled, a notice of hearing to the victim of the crime committed by the inmate...." (§302.114(6)(b), Wis. Stats.). This statute imposes additional duties upon the clerk to provide address cards to the victims (§304.114(6)(e), Wis. Stats. and, by implication, to maintain a registry of those cards for potential future uses.

The court is satisfied that notwithstanding the legislative creation of §302.114, Wis. Stats., it is still preferable that all contacts with victims be coordinated through the Victim-Witness Coordinator and that such a policy can be implemented without violating the spirit, intent, or letter of the law.

The duties of maintaining a card registry and contacting victims shall be resolved as follows:

1. The Victim-Witness Coordinator shall provide to the victim the address notification cards contemplated in §302.114(6), Wis. Stats., with an envelope to return the card to the Clerk of the Circuit Court;

2. The Victim-Witness Coordinator shall provide to the Clerk of the Circuit Court a copy of the cover letter from the Victim-Witness Coordinator to victim;

3. The Victim-Witness Coordinator shall maintain the card registry;

4. All court records or portions of records that relate to mailing addresses of victims are not subject to inspection or copying under §19.35(1), Wis. Stats.;

5. When a petition is filed under §302.114(5) or (9)(bm), Wis. Stats., the Clerk of Court shall provide the victim information and a copy of the petition to the Victim-Witness Coordinator for transmittal of a copy of the petition to the victim.

Although this rule makes specific reference to §302.114, Wis. Stats., it is the intent of this rule to confirm the general policy of Taylor County that all victim contacts are to be coordinated through the Victim-Witness Coordinator.

Rule 303: Court Authorization to Sheriff to Utilize a Community Service Program

Effective date: July 12, 2002.

Section 973.03(3), Wisconsin Statutes, provides that upon sentencing a defendant to imprisonment in the county jail, the court may provide that the defendant perform community service work under sections 973.03(3)(b) and (c), Wisconsin Statutes. This provision applies to defendants who have been granted Huber privileges except for the following:

1. Defendants sentenced for a Class A or B felony,
2. Defendants sentenced for a Class C felony listed in section 969.08(10)(b), Wisconsin Statutes, but not including any crime specified in section 943.10, Wisconsin Statutes.
3. Defendants sentenced for a Class C felony specified in section 948.05, Wisconsin Statutes.

The Sheriff of Taylor County wishes to implement a community service program under the provisions and subject to the restrictions of section 973.03(3), Wisconsin Statutes.

The court believes implementation of such a program is in the interest of justice. The program will be beneficial to the public interest as well as benefit individual inmates by providing them with appropriate work activities in exchange for good time off their sentence.

The court authorizes the Sheriff of Taylor County to implement this community service program and provide to the defendants participating in the program the good time benefits set forth in section 973.03(3)(a), Wisconsin Statutes. Defendants serving time in custody as a condition of probation may participate in the community

service program under such terms as authorized by and with the consent of the probationer and probation agent.

In creating this Rule, the court authorizes the sheriff to allow any defendant to participate in the program who meets the statutory criteria and who has been sentenced to the county jail with Huber privileges. Admissions to Huber by the court upon sentencing is sufficient authorization without further order of the court to participate in the community service program, subject only to the discretion of the Sheriff to determine eligibility.

This rule does not in any manner restrict the discretion of the Sheriff to determine whether a person should or should not be released on Huber or be allowed to participate in the community service program.

Statutory modifications to section 973.03(3), Wisconsin Statutes, including modifications to the list of crimes for which participation is allowed or denied, are automatically incorporated into this rule on the effective date of the legislation without further order of the court.

Rule 304: Speedy Trial Demand Filing Requirements

Effective date: October 1, 2005.

In all cases in which a written demand for a speedy trial under §971.10(1) or (2), Wis. Stats., is filed with the Clerk of Court for Taylor County, a copy of the written demand shall be delivered to the judicial assistant of the judge assigned to the case.

1. Delivery to the judicial assistant for the Circuit Judge of Taylor County may be made personally, by fax, or by mail. If mailed, the notice shall be posted contemporaneously with the filing whenever possible but not later than 24 hours after filing.

2. Delivery to the judicial assistant for a judge from outside Taylor County may be made by mail or by whatever policy that judge may direct.

3. If no judge has yet been assigned to the case, delivery shall be pursuant to LCR 2602(b) as soon as notice of assignment has been made.

In all cases in which a demand for a speedy trial under §971.10(1) or (2), Wis. Stats., is made on the record rather than in writing, the party making the demand shall immediately reduce the demand to writing for filing with the Clerk of Court. Notice of the demand shall be delivered to the judicial assistant of the judge assigned to the case pursuant to the provisions of LCR 2602.

Time lines shall be calculated from the date the written demand is filed or the date the demand is made on the record, whichever is earlier.

The purpose of this rule is to ensure that the individual most responsible for scheduling matters in the court is made aware that a demand for a speedy trial has been made.

§4: Family Law Practice

Rule 401: Procedure for Hearings on Temporary Orders in Family Court

Effective date: October 15, 1992.

Hearings on the issuance of temporary orders by the Family Court Commissioner or court in actions affecting the family are intended to be informal proceedings. Their purpose is to establish a *status quo* that will govern the affairs of the parties while the case is pending. The court believes that extended or overly-adversarial proceedings on temporary orders are detrimental to the long-term interests of the parties because they:

- Harden or "lock-in" the position of the parties
- Create unnecessary ill will and long-term animosity between participants their families, and acquaintances
- Cost great sums of money
- Encumber a great deal of valuable court time.

In matters involving child custody or placement, such proceedings are especially contrary to the best interests of the children because the adversarial process makes it less likely that the parents will be able to mediate issues concerning their children.

The initial proceeding before the Family Court Commissioner or court for a temporary order shall be used to:

1. Enter temporary orders on issues that are stipulated or agreed to by the parties.

   Either:

   a. Render a decision on contested issues based on offers of proof and/or argument, or if in the judgment of the Family Court Commissioner that this approach is unsatisfactory:
   b. Schedule a hearing to resolve issues that are contested.

If a hearing for a temporary order on contested issues is set by the Family Court Commissioner or court, that hearing shall be held not later than seven calendar days after the initial proceeding unless parties and their counsel, if any, agree to an extension.

At a hearing for a temporary order on the contested issues, the following evidentiary limits are established:

- Testimony is limited to the parties themselves
- Other evidentiary matters shall be presented through affidavit. All affidavits to be submitted shall be served on the opposing side not less than 2 business days before the contested hearing

- No depositions, interrogatories, or requests to admit/deny shall be allowed prior to the contested hearing

The Family Court Commissioner or court may establish a reasonable time limit to the length of such contested hearings. When a time limit is established, the time allotted is to be split equally between the parties. All direct and redirect, cross and re-cross examination, and argument shall be assessed as part of each party's time allotment.

Appeals to the Circuit Court from the decisions of the Family Court Commissioner shall be limited to the testimony of the parties and a review of the affidavits that were submitted at the contested temporary hearing. Upon a showing of good cause, the court may order additional evidence to be presented.

The Family Court Commissioner or court shall not on the basis of *ex parte* requests grant temporary physical custody of children, remove children from a home or order a party to leave the family home except under exigent circumstances. If necessary, the Family Court Commissioner or court shall refer the parties to the appropriate agencies, organizations or procedures for obtaining Domestic Abuse or Child Abuse restraining orders.

Rule 402: Mediation

Effective date: April 28, 2006, originally promulgated August 1, 1981 in different format, revised November 1, 1991 and August 1, 1994, March 1, 2001.

1. In any action affecting the family in which the issue of child custody, physical placement, or periods of physical placement is raised, the court shall refer the parties to mediation. The mediator shall conduct such mediation services as are appropriate and required by law and report the results of the mediation to the court.
2. No fee shall be charged to the parties for the first session. If the mediation continues beyond a first session, each party shall pay a fee for mediation services in the amount of $100.
3. No guardian ad litem shall be appointed in such a case until the mediation has been concluded.

Rule 403: Guardians ad litem

Effective date: January 1, 2020, originally promulgated August 1, 1981 in different format, revised November 1, 1991, August 1, 1994, March 1, 2001, April 28, 2006.

1. In any action affecting the family in which the issue of child custody, physical placement, or periods of physical placement is raised, the court shall appoint an attorney to act as guardian ad litem for the children. Each party shall be required to make to the Clerk of Court for Taylor County the following payments for the appointment and continued service of the guardian ad litem:
    a) $500 in advance of the guardian ad litem's appointment, plus a $15 fee for establishing and monitoring the payment plan;

b) $150 per month payable no later than the 15th day of each month, commencing with the next month, and each month thereafter until that party's share of the fees has been paid.

2. Individuals who are indigent may file a request for waiver and an affidavit of indigency.
3. The Clerk of Court shall hold all payments in trust until the conclusion of the proceeding, at which time each party will be credited with the amount that party has paid toward the share of guardian ad litem fees that party has been ordered to pay by the court. The clerk shall refund any excess amounts to the party.
4. A party's failure to pay any of the amounts required shall subject that party to potential sanctions for contempt of court.
5. Until both parties have either paid the $500 advance or the court has approved an affidavit of indigency:
   a) No guardian ad litem shall be appointed, and
   b) No final hearing or trial shall be scheduled by the court.
6. Attorneys serving as guardians ad litem shall be reimbursed at the rate established in Supreme Court Rule 81.02. In the event SCR 81.02 is modified after the effective date of this rule, the payment rate shall be modified accordingly without further order of the court.
7. An attorney serving as guardian ad litem shall submit to the Clerk of Court on a monthly basis, detailed statements of the services rendered during the preceding month, including the activity conducted and the amount of time involved. The attorney shall send copies of the monthly statement to each of the parties. The request shall include an order for payment to be signed by the court. The court shall order these statements to be paid by Taylor County during the pendency of the proceeding.
8. An attorney serving as guardian ad litem shall submit a report and recommendation to the court as specified by the court, and shall provide copies to the attorneys involved in the case. The guardian ad litem report and recommendation shall be filed and sealed by the clerk, as it contains confidential information. Any unrepresented parties may review said report and recommendation at the circuit court office upon request. A copy of the report and recommendation may only be provided to unrepresented parties upon order of the court.

Rule 404: Home studies

Effective date: July 1, 2017, originally promulgated August 1, 1981 in different format, revised November 1, 1991 and August 1, 1994, March 1, 2001, January 1, 2010, April 28, 2006.

In any action affecting the family in which a home study is requested, each party shall pay to the Clerk of Court the amount of $500 as a fee for the home study.

Individuals who are indigent may file a request for waiver and an affidavit of indigency.

A party's failure to pay the amount required shall subject that party to potential sanctions for contempt of court.

No home study shall be commenced until both parties have paid the fee. At least **ninety** days advance notice before trial date is required for a home study.

Home studies within Taylor County or counties reasonably proximate to Taylor County shall be conducted by the Coordinator of Family and Juvenile Services. In the event the Coordinator cannot conduct the home study, Taylor County Human Services shall conduct home studies within Taylor County and similar agencies in other counties shall conduct studies within those counties.

In order to insure the privacy interests of the parties and participants in a home study, the following restrictions on dissemination of the home study are ordered:

1. The original copy of the home study shall be filed with the court in a sealed envelope indicating that it shall only be opened by or at the direction of the court.
2. Each attorney for a party, including the guardian ad litem, if any, shall be provided with a single copy of the home study. Counsel may review the home study with his or her client or other individuals or professionals involved in the case.
3. No attorney or party shall make any additional copies of the home study or portions of the home study for themselves or any other person.
4. Parents who are not represented by counsel may make arrangements to review the home study in the office of the Family and Juvenile Court Coordinator during normal work hours.
5. Attorneys who receive copies of home studies shall be required to insure there is no dissemination of the home study beyond the authority of this rule during the pendency of or after the proceeding is concluded. One method by which counsel may conclusively satisfy that obligation for the period after the conclusion of the proceeding is to return their copy of the home study to the Coordinator of Family and Juvenile Services at the conclusion of the proceedings.

Rule 405: Psychological/Psychiatric examinations

Effective date: April 28, 2006, originally promulgated August 1, 1981 in different format, revised November 1, 1991 and August 1, 1994, March 1, 2001.

Any party requesting psychological or psychiatric examinations of the parties, children, or other individuals involved in an action affecting the family shall file a motion with the court.

The motion shall set forth the following:

1. The nature of the examination requested;
2. A statement as to the precise question the moving party is asking the psychologist or psychiatrist to answer in the matter;
3. A statement concerning the availability of insurance to cover the cost of the examination;
4. A recommendation with the name, address, and telephone number of the professional or provider to conduct the examination,
5. An estimate of the cost of such an examination; and,

6. A statement as to why this examination is necessary for the resolution of this case.

The court may conduct a hearing on the motion to determine whether such an examination is needed and, if ordered, make appropriate conditions for the conducting of the examination and the payment for the examination by the parties.

Rule 406: Responsibility for payment

In any matter in which a guardian ad litem has been appointed, the guardian ad litem's fees are to be shared equally by the parties unless otherwise ordered by the Court. Counsel shall insert this provision in any final order or judgment rendered whether specifically directed by the Court or not. Failure to insert such a provision does not obviate the effect of this rule on any party.

The cost of any services ordered under rules 402-405 may be ordered paid by any or all of the parties. If Taylor County pays for or advances payment for any services, the court may require the parties to reimburse the county and may enter judgment in favor of the county and against the party in the amount of the cost assigned to that party.

Rule 407: Parents Attendance at Parenting Education Program ("SMILE" Program)

Effective date: February 1, 1998.

Section 767.401, Wisconsin Statutes permits courts to order parents involved in a divorce action to attend a parenting education program as a condition of granting a divorce. Such a program is considered beneficial in providing parents the opportunity to learn of the effects of a divorce upon the children and how parents can best meet the special needs of their children during and following the divorce. The court believes it is appropriate to establish this type of program for such parents in Taylor County.

All parents involved in an action for divorce filed in Taylor County after the effective date of this act shall attend the Taylor County "Start Making It Liveable for Everyone" (SMILE) program as a condition of granting a divorce.

1. Failure of a parent to attend the program or pay any required program fee may result in:

    a) penalties for contempt of court

    b) postponement of any scheduled court date pending completion of the program; or

    c) dismissal of the divorce proceeding if the petitioner is the party failing to comply

2. The Coordinator: Family and Juvenile Services shall coordinate the

    a) Creation of the program and curriculum;

b) Recruitment of instructors;

c) Preparation of materials;

d) Notifying parents of and scheduling parents for the program;

e) Establishing an appropriate fee for the program;

f) Certifying attendance of parents at the program;

g) Obtaining evaluations of the program from parents and instructors;

h) Reporting the results of the programs to the Circuit Court; and,

i) Recommending modifications or improvements in the program to the Circuit Court.

Payments of all fees for the program shall be made to the Clerk of Court for Taylor County. Parents seeking exemption from the fee for reasons of poverty shall file an affidavit of indigency with the Clerk of Court for review by the Circuit Judge.

The Circuit Judge, Family Court Commissioner or Family Court Mediator may refer for voluntary participation in the SMILE program any parent(s) involved in an ongoing proceeding if it is believed that attendance would be beneficial to the parent(s) or their child(ren).

A parent who would not otherwise be required to attend this program or who has not been referred to the program under the previous paragraph may request voluntary attendance at the program. Such requests shall be accommodated on a space-available basis. A parent attending under the provisions of the previous paragraph this Rule, or this paragraph, shall pay the same fee required of parents required to attend under the previous paragraph of this Rule. Parents who may seek to attend under this provision include, but are not necessarily limited to:

1. Parents who were involved in a divorce action prior to the effective date of this Rule but whose case has not been resolved; and,

2. Parents who are now or were previously involved in a paternity action.

Rule 408: Standard Policy on Periods of Physical Placement in Family Court

Effective date: February 16, 1994.

Standard policies on certain issues can assist litigants and attorneys in attempting to resolve matters in an amicable and non-adversarial nature. In family court proceedings, it is especially important to attempt to reduce anger and hostility between parents when it comes to handling the continuing relationship between the parents and their children.

The attached standard policy on periods of physical placement reflects the current position of the court concerning a starting point for reasonable placement of a child with a noncustodial parent. It may be used by parties, counsel, mediators, guardians

ad litem, or others in attempting to reach an agreement on the issue of physical placement.

Prior versions of the court's policy on Periods of Physical Placement, or a predecessor Standard Policy on Visitation, that have been incorporated into Orders or Judgments of this court shall remain in full force and are not affected by this or any subsequent revision.

The Standard Policy on Periods of Physical Placement may be modified at such times in the future as it appears appropriate because of changes in the law, the philosophy of the court, or conditions in society.

§5 Juvenile Practice

Effective date: January 1, 2020; original 9/1/1993, previous revisions 2/17/1994, 7/1/1996, 1/10/97, 3/22/1999.

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

Rule 501: Definitions

1. Child: Refers to a person under the age of 18 involved in a chapter 48 CHIPS proceeding.

2. CHIPS: **CH**ild **I**n need of **P**rotection or **S**ervices; 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: **J**uvenile **I**n need of **P**rotection or **S**ervices; a ch. 938 proceeding concerning a juvenile who is within the

jurisdictional requirements of §938.13, Wisconsin Statutes. These generally involve uncontrollable juveniles, habitual truants, school dropouts, juveniles under age 10 who commit a delinquent act, juveniles not responsible because of mental disease or defect, or those 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.

Rule 502: 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.

3. All parties and attorneys are expected to attend a scheduled meeting 15 minutes prior to any hearing held under this section. The hearing shall be called a Required Helpful Informational Meeting (RHIM). The purpose of the meeting is to explain to the participants what is expected to happen at the hearing, update the participants on any developments, and use the time as an opportunity to familiarize the participants with each other and the legal systems at work. The meetings shall be friendly in nature with the general purpose of making the court proceedings less intimidating to the participants.

4. It is the expectation that all children and juveniles subject to this section

shall attend all hearings, unless the Guardian ad Litem shows cause as to why they should not attend.

Rule 503: "Custody Intake"

1. The duties of intake and disposition/supervision must be separate. The intake function shall be in the office of the Circuit Judge for Taylor County. The disposition/supervision function shall be in the Taylor County Human Services agency.

   Rationale: There exists a potential conflict of interest between the functions of intake and disposition. If the two are joined, the roles of each are blurred. Decisions as to one may adversely affect the decision-making process of the other.

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 workers shall be on-call workers.

   Rationale: It is fiscally impossible for a county the size of Taylor to have full-time back-up workers. Utilizing a list of on-call back-up workers is efficient and fiscally responsible.

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). Requiring backup workers to obtain training at their own expense would effectively eliminate the county's ability to obtain such 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 in the order provided by the court.

   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 in the order listed by the court so that there is uniformity in intake decisions.

6. A Juvenile Court Commissioner shall not be used for custody intake purposes unless no other full-time or backup worker is available.

Rationale: A Juvenile Court Commissioner is the only court official (other than the Circuit Judge) who can conduct Custody Hearings under §§48.21 or 938.21, Wisconsin Statutes. If a Juvenile Court Commissioner makes the initial custody decision, only another court commissioner with juvenile court powers or the Circuit Judge can conduct a custody hearing. If the Circuit Judge is not available, an out-of-county judge would be required.

7. The Circuit Judge shall be used for custody intake only if no other qualified individual is available.

Rationale: Taylor County is a single-judge county. If the judge is used for intake purposes, the statutes mandate that the judge cannot act further in that case. This would require out-of-county judges being required to handle all matters after intake. Given the time limitations on juvenile court proceedings, and the difficulty of calendaring out of county judges for "emergency" work in Taylor County, using the Circuit Judge for intake purposes on other than a "last-resort" basis would adversely affect the progress of juvenile court proceedings.

Rule 504: 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, articulable decision that a person should be held. The referral agency shall be required to complete the custody intake referral form before intake is notified.

Rationale: Intake should only be contacted after the referring agency has made a decision that the person should be held. The agency must be able to justify that decision in writing. Requiring the agency to complete the referral form 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 section 405 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. Home placement under home detention rules;
   c. Placement in the home of a relative;
   d. Placement in the home of a person not a relative;
   e. A licensed foster home;
   f. Shelter care, such as Marathon or Eau Claire County Shelter Care.

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 equal 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 (such as Marathon or Eau Claire County Shelter Care);
   - In delinquency matters, secure detention in:
     - Secure detention facility (such as Marathon or Lincoln Hills Secure Detention).
     - 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
   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. 2d 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. 2d 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)
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/juvenile 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 law enforcement/court involvement compared to present age
- Whether the activity indicates an escalation in severity or dangerousness
- 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