

23GF298



STATE OF WISCONSIN

CIRCUIT COURT

WINNEBAGO COUNTY

WINNEBAGO COUNTY
LOCAL CIRCUIT COURT RULESORDER APPROVING
CIRCUIT COURT RULES

WHEREAS, the Courts having considered the Winnebago County Local Circuit Court Rules,

IT IS HEREBY RECOMMENDED, that the Chief Judge approve the Winnebago County Local Circuit Court Rules, effective October 30, 2023.

Dated this 17th day of October, 2023.

Hon. Teresa S. Basiliere
Circuit Court Branch 1
Hon. Bryan D. Keberlein
Circuit Court Branch 3
Hon. John A. Jorgensen
Circuit Court Branch 5
Hon. Scott C. Woldt
Circuit Court Branch 2
Hon. Michael Gibbs
Circuit Court Branch 4
Hon. Daniel J. Bissett
Circuit Court Branch 6

IT IS SO ORDERED:

Hon. Guy Dutcher
Chief Judge, Judicial District IV

10/25/2023
Date

WINNEBAGO COUNTY **CIRCUIT COURT RULES**

Effective: October 30, 2023

RULE ONE: CASE LOAD ASSIGNMENT SYSTEM

Each Circuit Court assumes intake responsibility for a 2 week rotation. Cases not assigned on an intake basis are assigned on an equal basis by blind draw. However the cases are assigned, they remain the responsibility of the assigned Judge. This rule specifies the respective responsibilities of the Circuit Judges, Court Commissioners, and Family Court Commissioners.

1.01 Circuit Court Commissioners:

Conduct initial appearances in traffic, ordinance, DNR, criminal traffic, and criminal matters, review search warrants and subpoena duces tecum, including bond hearings; conduct the preliminary hearing and arraignment in felony matters at the option of the intake judge; conduct plea hearings in misdemeanor matters and conduct sentencing hearings for those amended to ordinance violations; conduct plea hearings and sentencing in traffic, ordinance and DNR matters; conduct initial appearances, pre-trial hearings, and court trials in small claim actions; conduct detention hearings, initial appearances and plea hearings in juvenile matters; conduct probable cause hearings in mental commitment, alcohol commitment, emergency protective services and emergency protective placement matters for juveniles and adults; enter recommendations and approve stipulations in paternity matters; review temporary restraining orders/injunctions relating to individuals at risk, child abuse, harassment, and domestic abuse. Conduct hearings and enter orders relating to harassment and domestic abuse injunctions. Conduct all uncontested formal probate, termination of life estate, termination of joint tenancy, summary settlement, and summary assignment proceedings. Informal and formal cases should be closed in 12 months and special and summary administration should be closed in 6 months.

1.02 Family Court Commissioners:

Conduct hearings for temporary orders and modifications of such; conduct stipulated default divorce and default legal separation hearings; conduct post judgment hearings and enters orders relative to relocation of minor children; conduct hearings and make findings of contempt and purge condition orders; conduct hearings on modification of final judgments (other than property division); order mediation, appointment of Guardians ad Litem, psychological evaluation and custody studies; review temporary restraining orders/injunctions relating to individuals at risk, child abuse, harassment, and domestic abuse; supervise staff; conduct hearings and enter orders relating to UIFSA matters.

1.03 Case Assignment:**Definitions:**

Date of filing: The date on which the document initiating the action is filed.

Blind Draw: A random draw of the court branch on an equal basis.

Date of hearing requirement: The next available date within which each respective matter must be heard.

ASSIGNMENT OF SPECIFIC TYPES OF ACTIONS:**TYPE OF ACTION****ASSIGNMENT****A. Family Court Matters:**

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| 1. Divorce, Annulment and Legal Separation | Assigned by blind draw. |
| 2. Uniform Interstate Family Support Act (UIFSA) | Assigned by blind draw. |
| 3. Non-Support | Assigned by blind draw. |
| 4. Paternity | Assigned to Family Court Commissioner. Contested paternity matters, or pre-judgment denovo requests, assigned by blind draw. Assignment of judge based on Intake per date of judgment. |

B. Probate:

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| 1. Contested Probate Proceedings | Assigned by blind draw. |
| 2. Temporary Guardianship | Assigned to Court Commissioner. |
| 3. Guardianship | Assigned to Intake court. |
| 4. Mental and Alcohol Commitments | Assigned to Intake court. DeNovo of probable cause assigned to Intake court. |
| 5. Conservatorship | Assigned to Intake court. |
| 6. Trusts | Non-contested matters to Court Commissioner. Contested matters assigned by blind draw. |

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| 7. Protective Placements | Intake court per date of hearing requirement. Reviews and petitions to court issuing the original order. |
| 8. WATTS Reviews | Assigned to Court Commissioner. Contested matters assigned to court issuing the original order. |
| 9. Dormant Estates | Assigned to Court Commissioner. Assigned by blind draw upon referral from Court Commissioner. |

C. Juvenile Court Matters:

Intake court per date of hearing requirement. In 938.12 Stats. proceedings, a juvenile is entitled to one substitution of judge. All subsequent cases shall be assigned to the court receiving the substitution in the original case.

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| 1. Punitive Contempt | Intake court per date of hearing requirement. |
| 2. Adoptions and Termination of Parental Rights | Intake court – (case stays with court initially assigned even if hearing date requirement changes absent filing of substitution request). |
| 3. Commitments | Same as for adult cases.
(see Probate standards) |
| 4. Reverse Waiver | Assigned to the court which ordered the reverse waiver. |

D. Criminal, Ordinance and Traffic Matters

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| 1. Felonies | Court Commissioner: Initial appearance through Preliminary Hearing.
Circuit Court: Blind draw after Preliminary Hearing. |
| 2. Misdemeanors | Assigned to Intake court. |
| 3. Criminal Traffic | Assigned to Intake court. |
| 4. Contested Ordinance
Non-Criminal Traffic Violations | Assigned to Intake court per date of not guilty plea. DeNovo assigned by blind draw. |

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| 5. Motion to Reopen a Default | Assigned to Court that entered the default. |
| 6. Extradition | Assigned to Intake court. |
| 7. Bond hearings | Assigned to Court Commissioner. |
| 8. Bond Modification | To assigned Court or to Court Commissioner, if the assigned Court is unavailable. |
| 9. John Doe Investigation | Assigned to court in underlying action.
If none, assigned by blind draw. |

10. Defendants with Open Cases

- a. If a defendant has a pending felony or misdemeanor case, new criminal cases will be filed or transferred to the branch assigned to the oldest filed case. Out-of-county assigned judges are exempted by this rule.
- b. If a case is assigned inconsistent with this rule, that case may be administratively transferred to the appropriate branch.

E. Search Warrants: Assigned to Intake court.

**F. Occupational License:
(HTO and DOT Appeal)** To Intake court per date of petition. Petition for appeal from DOT denial must be accompanied with a copy of the WISDOT denial letter.

G. Extraordinary Writs: To assigned court. If none, to Intake court.

**H. Petitions from
Incarcerated Prisoners:**

1. When a request is made to proceed without prepayment of fees/costs, an "IP" case is set up and assigned as noted below. If granted, the case is opened as the appropriate filing type (i.e.: CV, FA, SC) and remains with the court that has the IP case.

When filing is submitted with the filing fee, the case is opened as the appropriate filing type (i.e. CV, FA, SC) and is assigned as noted below:

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| 2. Certiorari | Assigned to court in underlying action.
If none, assigned by blind draw. |
| 3. Habeas Corpus | Assigned to Intake court in underlying action.
If none, assigned to Intake court. |

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| 4. Civil Cases | Assigned by blind draw. |
| 5. Small Claims | Assigned to Court Commissioner. |
| 6. Family Cases | Assigned to Family Court Commissioner. |

I. Temporary Restraining Orders and Injunctions

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| 1. General Civil Cases | Assigned by blind draw. |
| 2. Child Abuse Cases | If a case is filed in first week of a court's intake, the court is assigned the case. If a case is filed during the second week of a court's intake, then the case is assigned to the next intake court. |
| 3. Domestic Abuse Cases | Assigned to Court Commissioner.
Denovo requests assigned by blind draw. |
| 4. Harassment Cases | Assigned to Court Commissioner.
Denovo requests assigned by blind draw. |
| 5. Vulnerable Adult Cases | If a case is filed in first week of a court's intake, the court is assigned the case. If a case is filed during the second week of a court's intake, then the case is assigned to the next intake court. |

**J. Civil Cases:
(Including Divorce)**

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| | Assigned by blind draw, except: |
| 1. 961.555 forfeiture actions | Assigned to Court who has the underlying criminal case. If none, assigned by blind draw. |
| 2. Earnings Garnishment | Assigned to Intake court. |
| 3. Carry Conceal Special Requests | Assigned to Intake court. |
| 4. Forced Nutrition and/or Hydration Proceedings | Assigned to Intake court. |

K. Small Claims:

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| 1. DeNovo and Jury Trials | Assigned by blind draw. |
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| 2. Contested evictions, replevin | Assigned to Intake the week following the denial; the Court hearing case may determine damages pled or refer to Court Commissioner; any claim for additional damages after eviction is completed to be heard by Court Commissioner. Upon receipt of request for denovo of evictions and replevins, assigned to Intake court. |
| 3. Garnishments | Assigned to Intake on next date scheduled for Evictions and Replevins. |
| 4. Contempt | Assigned to Court that entered judgment. If none, then assigned by blind draw. |
| L. Chapter 980 Petitions: | Assigned by blind draw. |
| M. Matters Not Specifically Covered: | Civil matters generally assigned by blind draw. Criminal, traffic and related matters generally assigned to Intake court. |
| N. Miscellaneous | |
| If contested, the following cases are assigned to Court Commissioner if amount is less than or equal to \$10,000.00, assigned to judge by blind draw if amount is greater than \$10,000.00: | |
| 1. Unemployment Compensation (UC) | |
| 2. Workers Compensation (WC) | |
| 3. Tax Warrant (TW) | |
| 4. Transcript of Judgment (TJ) | |
| 5. Construction Lien (CL) | |
| 6. Condominium Lien (CO) | |
| 7. Hospital Lien (HL) | |
| 8. Foreign Judgment (FJ) | |

RULE TWO: CASE LOAD ASSIGNMENT SYSTEM

This rule enumerates minimal dates, each branch must provide to the scheduling agencies for calendaring of intake functions. Time blocks must be provided well in advance (normally annually) and are then filled by the scheduling agencies as circumstances dictate. Matters not listed will be scheduled by the individual branches as needed.

2.01 Clerk of Courts – Criminal/Traffic Division:

The division will prepare an annual schedule based upon dates provided by the branches and distribute the same to the courts, court commissioners, prosecutors and police agencies.

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| A. Criminal Summons | Initial Appearances and Further Proceedings.
Two half days per Intake. One block per week. |
| B. Criminal Traffic | Initial Appearances and Further Proceedings.
Two half days per Intake. One block per week. |
| C. Ordinance and Traffic | <u>City of Oshkosh:</u>
Pre-Trial – one block of time during Intake.
Court Trial – one block of time after Intake.

<u>State, County, and DNR:</u>
Pre-Trial – one block of time during Intake.
Court Trial – one block of time after Intake.

<u>Other Municipalities or Transfer:</u>
To be scheduled with State charges –
NOTE: any ordinance or traffic matter shall be
scheduled concurrently with related criminal
or criminal traffic matters. |

2.02 Clerk of Courts – Small Claims Division:

Contested eviction and replevin matters shall be heard on Wednesdays at 1:30 p.m. during Intake in Circuit Court.

2.03 Registrar in Probate /Juvenile Clerk:

- A. The Court shall prepare an annual schedule and distribute to court commissioners, juvenile clerk, Corporation Counsel and District Attorney offices.

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| 1. Fact Findings (Court or Jury) | Sufficient dates to meet requisite time limits. |
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2. Dispositional Hearings Sufficient to meet time limits.

3. Waiver Hearings As needed.

B. Dates are provided to the Probate office through which individual hearings are scheduled.

1. Pro Se Guardianship and Thursdays - 10:00 to 11:00 a.m. during Intake.
Placement, Protective (Time may be adjusted for Drug Court)
Placement, Adoptions and
Termination of Parental Rights

2. Corporation Counsel initiated Thursdays - 9:00-10:00 a.m. during Intake.
Guardianship and (Time may be adjusted for Drug Court)
Protective Placement

3. Mental and Alcohol Tuesdays and Thursdays -
Commitments 1:30 p.m. and 2:00 p.m. during Intake.

C. Paternity:

Dates provided to appropriate agencies, as needed.

RULE THREE: FAMILY COURT RULE

3.01 General Rules:

- A. Family Court matters consist of all actions affecting the family as enumerated in 767.001 of the Wisconsin Statutes.
- B. Pro Se Actions - A person acting on his or her own behalf is held to the same standards and duties as an attorney admitted to the practice of law in the State of Wisconsin. They are expected to know what the law requires and how to accomplish their purposes in accordance with the applicable statutes and court rules. No court employee should instruct or inform any person proceeding on a pro se basis how to proceed or what to do.
- C. Confer and Consult - In all actions before the Court, the attorney(s) shall attempt to confer and consult with the opposing party or attorney prior to the scheduled hearing to attempt to resolve the matter or narrow the issues for the hearing.
- D. Drafting Orders - The moving party, unless otherwise ordered by the Court, shall, within 30 days, prepare and submit to the Court for signature an Order from the hearing.

- E. Appearances - Both parties shall appear in person and with their attorneys, if any, unless excused for good cause by the Family Court Commissioner, or unless granted the opportunity to appear remotely.
- F. Payments - All payments of child support or maintenance required to be made in family court matters shall be paid through the Wisconsin Support Collections Trust Fund unless otherwise ordered by the Court.

3.02 Initiation of Action:

- A. All matters filed in Family Court shall be captioned: "State of Wisconsin - Family Court – Winnebago County."
- B. An inmate of a correctional facility located in Winnebago County shall not be deemed a resident of Winnebago County for the purpose of such inmate establishing jurisdiction for the filing of an Action Affecting the Family in Winnebago County pursuant to Wisconsin Statutes, unless such inmate was a bona fide resident of Winnebago County prior to incarceration.

3.03 Matters Addressed by Family Court Commissioner:

- A. Types of Cases
 - 1. Pre-Judgment Proceedings in Divorce/Legal Separations (Temporary Orders)
 - a. Initial Orders to Show Cause and Motions for Temporary Orders shall be brought before the Family Court Commissioner.
 - b. If the Family Court Commissioner does not provide a written order at the time of the hearing for temporary orders, it is the responsibility of the party receiving child support to provide a copy of the written Temporary Order to the Child Support Agency, as well as the Interim Financial Summary.
 - 2. Default Divorce / Legal Separation / Status Conference
 - 3. Post-Judgment Proceedings
 - a. All Motions and/or Orders to Show Cause for modifications of and/or enforcement of a judgment as to custody, placement, child support, and maintenance, will first be heard by the Family Court Commissioner, unless the Family Court Commissioner determines that the matter is more appropriate for a hearing before a Circuit Court Judge.

- b. After hearing, all matters determined by the Family Court Commissioner to warrant a contempt finding and sanctions shall be referred to the Circuit Court Judge for hearing.

Scheduling of contempt/sanction hearings, other than those initiated by the Child Support Agency, shall be scheduled by the Circuit Court Judge's staff.

- c. All motions for review and/or contempt hearings, shall be scheduled before the Circuit Court Branch which rendered the judgment, unless that Judge consents to the matter being scheduled before another Circuit Court Judge.

- B. Obtaining Hearing dates - All motions shall be heard at a date and time set by the Court or its designee. It is the attorney's responsibility to schedule the motion with the Court and include the date, time, and location of the hearing on any necessary Motion or Order to Show Cause.

- C. Notice Required for Hearings before Family Court Commissioner

- 1. Wis. Stat. 801.15(4) applies to the filing of a Notice of Motion and Motion.
- 2. An Order to Show Cause and Affidavit shall be served no later than 48 hours prior to the time specified for the hearing.
- 3. An Order to Show Cause or Motion for Contempt requires personal service.

3.04 Scheduling of Final Divorce, Legal Separation, and Annulment Hearings:

- A. Case Assignment - All divorce, legal separation and annulment matters shall be assigned to the various Circuit Court Judges in accordance with a blind draw conducted at the time of filing in the Clerk of Courts Office in the same manner as any other civil matter.

Subject to substitution requests, the Judge so elected by blind draw shall be assigned to the case for purposes of final hearing and all post-judgment matters not concluded by the Family Court Commissioner.

- B. Notice of Hearing Generated by Clerk of Courts at Time of Filing - All actions for divorce and legal separation shall be scheduled for final hearing (Default Divorce/Legal Separation) approximately 150 days from the date of filing. The notice for the final hearing will indicate that a Marital Settlement Agreement must be filed with the Court, along with Financial Disclosure Statements for each party, no later than 10 days prior to the final hearing if the parties intend to resolve the matter as a final hearing, unless otherwise waived by the Court.

If the matter is not resolved, the Court will conduct a status conference to determine the remaining unresolved issues and schedule accordingly. The parties/attorneys may appear by phone for the Status Conference without prior approval of the Court.

C. Contested cases are those for which the issues are not substantially stipulated -

1. Request for Scheduling at the Default Divorce / Legal Separation hearing: If either party notifies the Family Court Commissioner at the default divorce / legal separation hearing that the matter is substantially unresolved, and further adjournments for negotiations or discovery are unlikely to resolve the matter, the Commissioner may forward the case to the assigned branch.

If the assigned branch is available at that time, the commissioner will forward the parties/attorneys to the assigned Branch to obtain all necessary dates associated with a contested hearing, including the final hearing date.

If the assigned branch is not available, the parties/attorneys will be required to contact the branch within 10 days to schedule accordingly. When a case is forwarded to the Branch for final hearing, the Commissioner will draft an Order for Scheduling outlining the anticipated issues.

2. Request for Scheduling prior to Default Divorce / Legal Separation hearing. The party requesting the date for a contested hearing shall file with the Family Court Commissioner a certificate stating that a) all unresolved issues have been discussed by the parties and counsel or that he/she is unable to engage in such discussions, b) that it is not presently possible to stipulate to all issues, and c) that all discovery has been completed.

- a. The Request for Scheduling drafted by counsel or the parties shall set forth with specificity the remaining unresolved/disputed issues and the moving party shall attach thereto copies of:

1. Appraisals or certificates of value on all property on which value has not been agreed, in writing, signed by the person(s) intended to be called as witnesses at trial, if necessary.
2. Updated Financial Disclosure Statement figures intended to be relied upon at trial, including the basis for any values not supported by appraisal of certificate of value.
3. A proposal for custody and physical placement, together with a list of witnesses intended to be called at trial.

- b. A copy of the certificate and attachments shall be served on opposing counsel or the other party if unrepresented. The values set forth shall, in the absence of manifest injustice, be conclusive at trial unless, within 20 days after service, opposing party files with the Court, with a copy to opposing party/attorney, information and documentation set forth above (a.1-3) on which they intend to rely at trial.
- c. All Scheduling Orders are issued by the assigned Branch.
- d. Contested matters should be scheduled for a pre-trial conference prior to a final hearing.

3.05 Pending Case: Final Stipulations:

- A. All Final Stipulations / Marital Settlement Agreements shall be submitted to the Family Court Commissioner for approval. The Final Stipulation / Marital Settlement Agreement shall be accompanied by completed Financial Disclosure Statements from both parties, if not previously on file.
- B. All agreements intended to be binding on the parties pursuant to *Evenson v. Evenson*, 228 Wis.2d 676, 598 N.W.2d 232 (Ct.App. 1999) and *Keller v. Keller*, 214 Wis.2d 32, 571 N.W.2d 182 (Ct.App. 1997) shall be submitted to the Family Court Commissioner for approval prior to submission to the presiding Circuit Court Judge for hearing pursuant to Statute.

3.06 Findings of Fact, Conclusions of Law, and Judgment:

A. Who Drafts –

The Findings of Fact, Conclusions of Law and Judgment shall be drafted by the moving party, the moving party's attorney, or the party/attorney as requested by the Court and shall include the last known address, the place of employment, and the earnings of each party, if known. When real estate is involved, the legal description is required.

B. Approval -

Before submission of the Findings of Fact, Conclusions of Law, and Judgment to the Judge, it shall be submitted to the opposing counsel, if any, and to the Family Court Commissioner for approval.

C. The party submitting the judgment must include the following:

1. In any matter in which child support is ordered, the judgment shall contain a provision requiring that if the payer of child support is unemployed, or subsequently becomes unemployed, the payer shall seek employment at a minimum of 20 places of employment actually hiring employees and shall file on the 1st day of each month an affidavit with the Winnebago County Child Support Agency verifying such employment search. The affidavit shall be on the form prescribed by the Winnebago County Child Support Agency.
2. In any matter in which legal custody and physical placement is addressed, the judgment shall contain the provisions regarding relocation of the child(ren) pursuant to Wis. Stat. 767.481.
3. In any matter in which legal custody and physical placement is addressed, the judgment shall contain the provisions in Wis. Stat. 948.31 prohibiting the interference with placement.
4. In any matter in which the court has ordered a party to pay child support, the judgment shall reflect the requirement under Wis.Stat. 767.54 to annually exchange financial information.
5. In any matter in which the court has ordered a party to pay child support or maintenance, the judgment shall contain the requirements under Wis. Stat. 767.58 as to notifying all parties and the Child Support Agency within 10 day as to any changes of employer, substantial change in income, or address.

D. Arrearages –

Unless otherwise ordered by the Court, all arrearages in temporary child support and/or maintenance ordered before the granting of the judgment shall be carried forward as an arrearage in the judgment. Unless the parties agree otherwise, or it is shown by credible evidence that the records of the Wisconsin Support Collections Trust Fund are not accurate, the amount of such arrearage shall be shown by such records.

E. Maintenance Provision to Retain Jurisdiction -

Unless otherwise provided by the Court, where no maintenance amount is fixed at the trial and jurisdiction is retained to fix maintenance in the future, a provision substantially as follows shall be included in the judgment:

"That the matter of maintenance is left for the further determination of the Court" and the reasons therefore stated.

F. Notice to the Child Support Agency -

When a party is receiving public assistance, has applied for public assistance, or has an arrearage in favor of the State of Wisconsin, the Petitioner, or Joint Petitioner A, shall in accordance with Wisconsin Statutes, submit a copy of the Financial Disclosure Statements, the Final Stipulation/Marital Settlement Agreement, if any, and the Findings of Fact, Conclusions of Law, and Judgment to the Child Support Agency.

3.07 Contested Custody and/or Placement Matters (Pre-Judgment or Post-Judgment):

A. Mediation

1. Partners in Parenting

Parties who are ordered into mediation for custody and/or placement shall be required to participate in the Partners in Parenting program offered by the Office of Family Court Services. In addition, parties who are not required to attend mediation may be ordered to attend the program if the Court deems it appropriate. Any party not ordered to attend the program by the Court may also request to be enrolled in the program by contacting the Manager of Family Court Services or the Family Court Commissioner. Parents who are parties to paternity actions may be required to participate in the Partners in Parenting program offered through the Office of Family Court Services.

2. Special Rules Concerning Family Court Services Mediation

All discovery pertaining to custody and physical placement issues shall be suspended while mediation is ongoing in any action affecting the family which involves a custody or physical placement dispute. Any party, upon proper Motion or Order to Show Cause before the Family Court Commissioner may request relief from the operation of this rule upon cause shown that it is in the interest of justice.

Once a Temporary Order has been issued pertaining to the legal custody or physical placement in an action affecting the family, and in which mediation is ongoing, any party wishing to make a Motion or Order to Show Cause to modify such order shall first give notice of intent to do so to the Manager of Family Court Services and to the Family Court Commissioner. Upon receipt of such notice, the Family Court Commissioner shall forthwith schedule and convene a Status Conference with the attorneys and/or parties. Such status conference may be held via remote appearance.

Any agreement regarding custody and placement reached in mediation shall be reduced to a written Order and submitted to the Family Court Commissioner for signature and will be adopted as an Order of the Court.

3. Mediation of Disputed Financial Issues

- a. Disputes during the pendency of an action affecting the family. The Court may order the parties to mediation if it finds, during the pendency of any action affecting the family, that it would be in the interest of justice to refer to mediation any disputed issues involving property and debt division, maintenance, child support, medical expense of minor children, variable expenses of minor children, or contribution to costs and fees.

Unless the parties agree to other neutrals, such mediation shall be conducted by the Winnebago Conflict Resolution Center. If so ordered, the parties shall contact the Winnebago Conflict Resolution Center or other neutral and cooperate in the mediation process. The providers shall advise the Court of the outcome of mediation.

- b. Disputes Post-Judgment. If either party notifies the Family Court Commissioner in writing of a dispute regarding the payment of medical, dental, optical, or pharmaceutical expenses for minor children pursuant to an existing court order, the Family Court Commissioner may order the parties into mediation regarding the dispute. The Family Court Commissioner may require completion of mediation before allowing a party to schedule a hearing regarding such dispute.
- c. Referrals from Family Court Services for Winnebago Conflict Resolution Center mediation. If the parties do not satisfy the requirements of 767.405(9) to address financial matters in mediation with Family Court Services, Family Court Services shall include a provision in any memo to the Court that the parties request mediation with the Winnebago Conflict Resolution Center.

B. Guardian Ad Litem

1. Appointment - A guardian ad litem for minor children shall be appointed in accordance with the statutes.
2. Payment of fees of guardian ad litem and expert witnesses used by guardian ad litem.

- a. Deposits - Upon appointment / reactivation of a guardian ad litem, each party shall be ordered to pay a deposit as ordered by the Court to secure payment for the services of the guardian ad litem and any expert witnesses utilized by the guardian ad litem.

Either party may request a waiver of the deposit by submitting such request with a Financial Disclosure Statement on the form provided by the Family Court Commissioner. Within its discretion, the Court may 1) require the deposit be paid, 2) waive the deposit, or 3) order the deposit be paid in installments.

- b. Payments subsequent to deposits. The Court shall include in any Order for custody and placement following the appointment / reactivation of a guardian ad litem, a provision requirement payment of guardian ad litem fees.
 1. If the parties are not indigent, the guardian ad litem may be paid based on his or her regular hourly rate, subject to the approval of the Court.
 2. The Court reserves the right to allocate responsibility for the total fees and disbursements owed to the guardian ad litem at the time of any hearing.
 3. Within its discretion, the Court may order each party's responsibility be paid in installments of no less than \$150.00 per month, unless agreed upon otherwise with the guardian ad litem. Failure of a party to pay any amount ordered by the Court could result in contempt proceedings before the Family Court Commissioner or the Circuit Court Judge.
 4. Upon a written request for wage assignment to the Court, the Family Court Commissioner will enter an order for wage assignment for payment of guardian ad litem fees. The parties shall cooperate with the Court as to their current addresses, employer's name, and employer's address.
 5. If the Court determines that the parties are indigent, the fees of the guardian ad litem shall be ordered to be paid at the Supreme Court rate applicable when the fees were incurred.

The Court may order either or both parties to reimburse the county, including specific payment plans or a separate judgment in favor of Winnebago County.

C. Custody and/or Placement Studies

The Court may, in its discretion, order that Family Court Services complete a custody study and/or placement study (hereinafter referred to as custody study for simplicity only) to investigate the best interests of the children factors as outlined in Wis. Stats as to custody and/or placement. A custody study is not mandatory in a contested custody/placement dispute.

Custody studies shall be completed within 90 days unless the Court, in its discretion grants a 30-day extension. Custody studies shall not be suspended for any purpose, including settlement negotiations, without approval of the Court. All requests for suspension/extension of a custody study shall be made through the Family Court Commissioner or Judge who ordered the study.

The Family Court Commissioner may authorize the release of a copy of a custody study only upon written request and only to an attorney for any party, the Guardian ad litem, and/or any unrepresented party, subject to the following conditions:

1. Said custody study shall not be reproduced in any fashion by the individual in receipt, except to provide to successor counsel or successor guardian ad litem upon any approved substitution of counsel or guardian ad litem. Further, counsel may photocopy the separate recommendations attachment, if a separate attachment is provided with the custody study from Family Court Services, to provide to their client.
2. Any such attorney, the guardian ad litem, or unrepresented party shall be advised that the contents of such custody study should not be disclosed to any person or persons other than a party to the case wherein the custody study has been made.
3. Advance payment is required in order to receive a copy of the custody study.
4. If any attorney, the guardian ad litem, or unrepresented party requires the author of the custody study to testify at any hearing scheduled to address custody, including the final hearing, the attorney, guardian ad litem, or unrepresented party will need to subpoena the author of the custody study from Family Court Services, no later than ten (10) working days before the hearing.

RULE FOUR: SMALL CLAIMS RULES

Small Claims Court matters shall be governed by §799 of the Wisconsin Statutes.

4.01 Duties of the Court Commissioner:

The Court Commissioner shall conduct small claims proceedings, including, but not limited to, pretrial conferences, examination of pleadings, identification of issues, preside at hearings, render decisions, and enter judgment.

4.02 Service of Summons and Complaint:**A. Money Actions**

1. By regular mail for defendants living in Winnebago County.
2. Personal service or substitute service per Statute §799.12 is required for out of county defendants.

B. Replevin Actions

1. Consistent with State Statute.

C. Eviction Actions

1. Consistent with State Statute.
2. Mail only service NOT allowed in eviction actions.

4.03 Initial Appearances: (Return Dates):

- A. Held before the Court Commissioner, at a time to be determined.
- B. In eviction and replevin actions, the plaintiffs and defendants are required to appear. The parties may appear remotely as established by the Court.
- C. In other actions, defendants are required to file a written answer. The parties do not appear in person.
- D. In contempt and supplemental hearings, the parties must appear in person.
- E. Mediation:
 1. If a dispute exists on the return date, both parties may be required to attend an orientation at the Winnebago Conflict Resolution Center, to consider mediation of the claim, prior to further court proceedings.

2. At the discretion of the Court Commissioner, the disputed matters shall be set either for hearing or mediation orientation. Failure to appear at the mediation orientation session, when required to do so, may result in the entry of a default judgment or a dismissal, with costs, and without prejudice.
3. If the parties decline to participate in mediation or cannot reach an agreement after attempting mediation, hearing on the merits shall be held before the Court Commissioner.

F. Evictions, Garnishments, Replevins:

1. If contest exists, the matter shall be scheduled for hearing before the Intake Circuit Judge on the next available date.

4.04 Address Changes:

It is the continuing duty of each party to notify the court in writing by providing a change of address form supplied by the Clerk of Courts office. The plaintiff is under the duty to notify the court of an address change anytime after suit is filed. The defendant is required to notify the court any time after actual notice of suit.

4.05 Cross Complaints and Counterclaims:

Must be filed prior to return date, unless otherwise authorized by the court. If the total amount requested exceeds the amount under Sec. 799.01(1), Wisconsin Statutes, the matter must be transferred to Circuit Court and the applicable fees paid.

4.06 Financial Disclosure:

The judgment debtor shall complete a Financial Disclosure of Assets Form and mail a properly executed copy of it to the Judgment Creditor within 15 days of entry of judgment, under penalty of contempt.

4.07 Decision of Court Commissioner-Effect:

- A. Default judgments shall be effective immediately.
- B. Decisions entered after hearing shall become judgments consistent with Wisconsin Statute sec. 799.207(2).

4.08 Demand for Trial De Novo:

- A. Demand must be filed with the court and mailed to other parties consistent with State Statutes sec. 799.207(3). Any applicable fees must be paid at time of filing the demand for trial De Novo with the clerk's office.

- B. Upon compliance with Section A, the matter will be assigned to the Circuit Court for trial de novo on all issues.
- C. The Court to which the case is assigned shall mail notice of next scheduled event to all parties.

RULE FIVE: RETURN OF BONDS

All bonds shall be returned to the person posting the bond 60 days after posting, unless:

- Charges have been filed by the District Attorney or Municipal Prosecutor, or
- An extension for cause, supported by a motion of the District Attorney or Municipal prosecutor, is ordered by the circuit court. Such extension shall be for no longer than 30 days.

RULE SIX: RESTITUTION MEDIATION

If, in a criminal or juvenile case, a person ordered to make restitution disputes either the amount or the nature of restitution sought by the victim, the affected persons may be referred to the Winnebago Conflict Resolution Center for mediation of disputed matters. Defendant/Juvenile shall have ten days from receipt of notice of the amount and nature of the restitution claimed, to file an objection with the court ordering restitution. Upon receipt of objection, the court shall either notice a hearing on such objections, or refer the parties to the Winnebago Conflict Resolution Center for mediation of disputed issues. If a referral to mediation is ordered, a Defendant or Juvenile disputing restitution shall contact the Winnebago Conflict Resolution Center within five days of receipt of notice or such order and failure to make such contact will result in restitution being ordered in the amount requested by the victims.

Defendants shall participate in mediation and may be represented by an attorney. Incarcerated persons shall participate by telephone.

Victims who agree to mediate such disputes may have an attorney, other advocate, or support person present.

If a victim does not wish to participate in mediation or if no agreement is reached through mediation, either party may request a hearing on the disputed issues before the presiding judge.

RULE SEVEN: FINE/FORFEITURE COLLECTION SYSTEM

7.01 Sentencing:

When sentencing to pay a fine or forfeiture, the court shall:

Apply available cash bonds to payment of restitution first, then payment of the judgment.

If not immediately paid in full:

- Set a due date not more than 60 days, or
- Refer the defendant to the Clerk of Courts office for a payment plan.

If payment is not made as ordered, a civil judgment may be entered. The Clerk of Courts will make attempts to collect by any legal means allowed by law.

7.02 Deferred Payment Plans:

Collection of fines and forfeitures is delegated to the Clerk of Court along with authority to work out deferred payment plans, including extensions of time to pay in accordance with the policies, standards and guidelines set forth in this rule.

7.03 Procedures:

Sentence is imposed by a Court Commissioner or Judge. If the court authorizes a payment plan, the defendant will be instructed to go to the Clerk of Courts immediately to apply.

Court personnel distribute payment information sheet to defendant along with copy of minutes. All payments shall be made to Clerk of Courts, who shall be responsible for entering such payments on the system. All requests for further time to pay or for payment plan shall be referred to Clerk of Courts.

Clerk of Courts will monitor payments and input changes to payment schedules to the court records, generate notices, warrants, enter civil judgments, or other documentation as necessary. Clerk of Courts will confirm non-payment before forwarding arrest warrants to the proper court official and then on to the Sheriff, or before forwarding to the Department of Revenue.

RULE EIGHT: MEDIATION

All provisions of Court Rules 4.03 E., 3.07(A)(2) and 3.07(A)(3) shall remain in full force and effect but shall be subject to the provisions of this rule where applicable.

8.01 Mediation of Restraining Orders under §813.12, §813.123, and §813.125:

- A. Upon review of a Petition for a Restraining Order, and at the time of hearing thereon, the court commissioner or judge may order the parties into mediation with the Winnebago Conflict Resolution Center (WCRC), if deemed appropriate.
 1. If the commissioner or judge deems mediation appropriate at the time of hearing, the hearing shall be continued and the temporary restraining order extended to a date certain not to exceed 30 days. One extension may be granted if requested by WCRC and a mediation date is set.

2. If the parties reach an agreement in mediation, the written agreement shall be sent to the commissioner or judge who may dismiss the action without prejudice.
3. If there is a violation of the mediated agreement, either party may request in writing that the action be reinstated. Upon receipt of the written request, the commissioner or judge shall review the request, and may on the court's own motion reopen the matter pursuant to §806.07.

If appropriate, the court may issue a temporary restraining order and shall set the matter for hearing within seven days on the issue of whether an Injunction should be issued pursuant to §813.

B. If, at the hearing on the Injunction, it appears that there are issues relating to child custody or placement, the commissioner or judge shall direct the parties to immediately contact the Office of Family Court Services for mediation. The hearing shall be continued and the temporary restraining order thereby extended to a date certain not to exceed 30 days.

1. Prior to the continued hearing date, the Office of Family Court Services shall direct a memo to the judge or commissioner indicating the result of the mediation.
2. If the parties have entered a written stipulation regarding the placement issues, the commissioner or judge may incorporate the stipulation into an order in any family court case involving the parties. The court may dismiss the harassment action without prejudice.
3. If the mediation with the Office of Family Court Services has not resolved the custody and placement issues by the date of the continued hearing, the commissioner or judge shall proceed with the Injunction hearing.
4. If there is a violation of the agreement reached in mediation relating to the contact between the parties necessary to accomplish the agreement, either party may request in writing to the judge or commissioner to reinstate any action which has been dismissed without prejudice. Upon receipt of the written request, the commissioner or judge may, on the court's own motion, reopen the matter pursuant to §806.07. The court may issue a temporary restraining order and shall set the matter for hearing within 7 days on the issue of whether an Injunction should be issued pursuant to §813.12 or §813.125, as applicable.

RULE NINE: FILING OF PAPERS BY FACSIMILE TRANSMISSION

For parties not required to submit documents using the electronic filing system, documents may be filed by facsimile transmission to the Clerk of Courts Office, or to the Circuit Court Branch in which the case is assigned if the document does not exceed 15 pages.

Transmission of documents over 15 pages must be approved by the assigned judge or court commissioner, on a case-by-case basis. Papers filed by facsimile transmission completed by 11:59 p.m. will be considered filed on that particular day pursuant to §801.16. Facsimile papers are considered filed upon receipt by the Clerk of Circuit Court and will be file stamped and entered as part of the official court record. No additional copies may be sent.

The Clerk of Circuit Court shall discard any duplicate papers subsequently received, unless the original facsimile document is unclear and then the original duplicate may be substituted and file stamped the date the facsimile was received.

RULE TEN: CIVIL RULES

10.01 Tickler Review Date:

All civil cases will be reviewed for proof of service and answer 120 days after filing, except in forfeiture actions pursuant to §961.555. In an action brought to cause the forfeiture of any property seized under §961.55, the Corporation Counsel shall contact the assigned Court within 15 days after receiving service of an answer and schedule a hearing date, within the time limit noted in §961.555(2)(b). In all civil cases, if the case file reveals that the case has not reached issue, a dismissal order or default proceeding may be initiated by the court.

10.02 Motions – General Filing Requirements:

It is the attorney's responsibility to schedule the motion with the court. A motion filed only with the clerk of court will not be scheduled until a specific request by phone or in writing is made of the court for a date and time. Motion, supporting documents and briefs shall be filed at least 20 days before the hearing date unless provided otherwise by these rules or order of the court. Any motion requiring an evidentiary hearing may be placed at the foot of the motion calendar or scheduled for some other time convenient to the court's calendar.

10.03 General Motions:

All motions shall state the supporting statute or statutes. A brief statement of facts and proposition of law relied upon with citation of the authorities in support of the relief requested may be required. Unless authorized by the court, briefs on all motions except Summary Judgment motions (See Rule 10.05) shall be no more than seven, double-spaced pages. All documents shall be served upon the opposing party and filed with the court at least 20 days before the hearing. The opposing party shall serve and file a written response with a citation of authorities at least 10 days before the hearing.

10.04 Telephone Motions:

Telephone motions or scheduling conferences can be arranged by calling the judge's judicial assistant. After approval by the court, a date and time will be set by the judicial assistant.

The party requesting the telephone motion or scheduling conference is responsible for notifying all parties, initiating the call, and connecting all parties to the call who wish to appear by telephone.

10.05 Motion for Summary Judgment:

Time for filing –

The parties may file motions for summary judgment within eight months of the filing of the summons and complaint or within the time set in the scheduling order. They shall be scheduled so as to satisfy the briefing schedule established by the court or by these rules.

Briefing Schedule –

The motion with all supporting documents shall be filed with the clerk of courts, and served upon opposing parties at least 60 days before trial date. The court shall enter a scheduling order setting forth times for opposing affidavits to be filed and for the briefs of both parties to be filed. A hearing date may be set if requested by any party. All briefs must be filed at least ten days before the hearing.

Form of Submission –

Unless authorized by the court, the briefs supporting and opposing the motion for summary judgment shall be limited to 15 double-spaced pages. Reply briefs shall be limited to seven double-spaced pages. All supporting affidavits and documents shall be attached as appendices to the motion or briefs. Reference to documents in the case file or depositions is not permitted. Pertinent parts of documents, depositions, interrogatories or admissions shall be reproduced and attached as part of the appendices. The specific parts sought to be utilized shall be italicized.

Noncompliance –

Noncompliance will be the basis for imposition of sanctions including dismissal, striking of papers, imposition of terms, and such other appropriate sanctions.

10.06 Discovery Motions:

Good Faith Effort to Resolve –

All motions to compel discovery pursuant to Chapter 804 Wis. Stats. must be accompanied by a statement in writing by the movant that after consultation with the opposing party and sincere attempts to resolve their differences the parties are unable to reach an accord. Such statement shall recite the date, place and name of all parties participating in such conference.

Limitations –

The court may upon its own initiative after reasonable notice, or pursuant to a motion, limit the number of depositions and interrogatories and may also limit the length of depositions. Written interrogatories are limited to 50 questions including subparts.

The frequency and extent of the use of the discovery methods otherwise permitted or limited by these rules may be further limited if the court determines that:

- A. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- B. The party seeking discovery has had ample opportunity to discovery in the action to obtain the information sought; or
- C. The burden or expense of the proposed discovery outweighs its benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, the importance of the proposed discovery in resolving the issues.

Briefs –

The person seeking discovery shall state specifically what information is sought and the reasons supporting the production. The person refusing to produce the information shall state why the information sought is not discoverable. Blanket contentions of work product are insufficient. Specific reasons must be stated for each denial of information.

10.07 Default Judgment:**Mortgage Foreclosures –**

A hearing with notice to defendant is required before entry of a default judgment in all mortgage foreclosures. Motions must be supported by affidavits.

Large Claim Civil Action –

Where a defendant has not filed a timely answer, a plaintiff may obtain a default judgment without a hearing upon the filing of appropriate supporting information as required by §806.02(2) and (3), Stats.

10.08 Mortgage Foreclosure:

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

That in all foreclosure actions, the plaintiff shall attach to the Summons and Complaint served on the defendant/homeowner the following forms and can be downloaded from the Winnebago County Clerk of Courts website at <http://www.co.winnebago.wi.us/clerk-courts/civil>, or will be available at the Winnebago County Clerk of Courts office:

- Notice of Availability of Mediation
- Application for Mediation

10.09 Writ of Assistance or Restitution of Tenants in Foreclosure Actions:

If residential rental property is the subject of a foreclosure action, the plaintiff shall, upon application for the Confirmation of the Sheriff's Sale and a Writ of Assistance or Restitution, provide to the court as follows:

- A. Proof that the tenant has waived, in writing, their rights under §799.41(1) to retain possession of the rental unit, if a request for an immediate Writ is requested; or
- B. Proof that the tenant's right to retain possession of the rental unit expired at the end of the month for which the tenant withheld rent, as authorized under §799.41(2), if a request is accordingly made; or
- C. Without the above proof, the request for a Writ of Assistance or Restitution for removal of a tenant whose tenancy is terminated as a result of a foreclosure judgment and sale shall not be made until the end of the 2nd month beginning after the month in which the sale of the property is confirmed.

10.10 Pretrial:

In all pretrial matters, attorneys must have the authority to negotiate in the absence of their clients or, if authority is not granted, immediate telephonic access to the clients shall be required. The judge may in any case require all parties to be present personally at the pretrial.

10.11 Scheduling:

Attorneys are required to have their calendars with them in court so that dates can be set in the courtroom when possible. In the event that an attorney does not have a calendar in court, a date will be set in accordance with the judge's calendar. Telephone scheduling can be arranged by calling the judge's judicial assistant. See Rule 10.04.

10.12 Continuance of Trial Date:

All stipulated requests for continuance of trial date shall require the consent of the named parties in writing or on the record and must be for good cause shown. Requests for continuance must be on motion and hearing and for good cause shown by the party or with the party's written consent. All requests for continuance are subject to the approval of the court.

RULE ELEVEN: JUVENILE COURT RULE

The Department shall submit court reports to the circuit court at least 48 hours prior to the disposition hearing, so that the report is available to the parties 48 hours prior to the dispositional hearing, as required by Wis. Stats. section 48.293(2).

RULE TWELVE: SUBMISSION OF ORDERS

The page of an order submitted for a court official's signature shall include the case name and number. Violation of this rule may result in the judicial officer not signing the order.

RULE THIRTEEN: AMENDING FELONY CASES

In accordance with *State v. Comstock*, before the court will approve an amendment by two penalty classification level of a felony charge, or an amendment to a misdemeanor, the district attorney shall file an approved Comstock notice 24 hours prior to the hearing which the amendment is to occur explaining the reasons for the amendment and the reasons the amendment is in the public's interest. (For example, amendments from a Class D Felony to a Class F Felony or lower requires a Comstock letter. An amendment from a Class D Felony to a Class E Felony does not require a letter.) Any exceptions to this rule may be approved by the individual court.

RULE FOURTEEN: CONSOLIDATION AND JOINDER OF CRIMINAL CASES

- A. If the case assignment rules do not apply because of conflicts, then the court having the oldest felony case takes other cases.
- B. If no felonies, the oldest misdemeanor takes other cases.
- C. The conditions for consolidation are as follows: All issues must be resolved. All parties or counsel shall sign the motion/stipulation to consolidate the case. If a stipulation is reached to consolidate a case to a court other than per the guidelines, an explanation for the deviation shall be clearly stated within the motion. It is recommended that consolidation stipulations be submitted at least 48 hours in advance of the next scheduled hearing. It is always within the discretion of the assigned judges to accept or decline the assignment.
- D. Bail jumping cases are to be transferred to underlying case. If there is no underlying case, the oldest case takes other cases.

- E. The Judge assigned to the oldest case makes the joinder decision. If joinder is granted, the Judge who made the decision is assigned the cases.
- F. The oldest case is determined by the lowest case number.

----- END OF RULES -----