

STATE OF WISCONSIN

CIRCUIT COURT

WINNEBAGO COUNTY


WINNEBAGO COUNTY
CIRCUIT COURT RULES

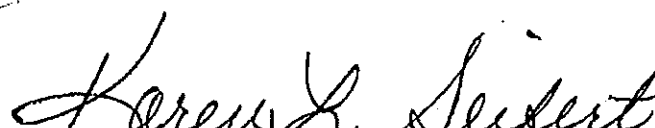
ORDER APPROVING
CIRCUIT COURT RULES

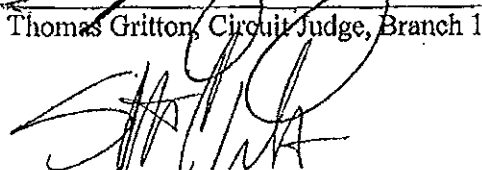
WHEREAS, the court having considered and adopted the Amendments to the Winnebago County Local Court Rules at the December 20, 2016, meeting of the Winnebago Judges;

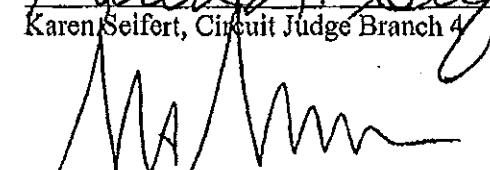
IT IS HEREBY ORDERED, that the Amendments to Winnebago County Local Court Rules are adopted and attached to this order, replacing the previous Winnebago County Local Court Rules, effective January 1, 2017.

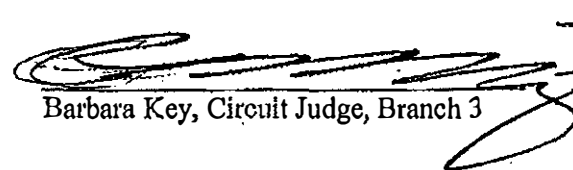
Dated this 20~~th~~ day of December, 2016.

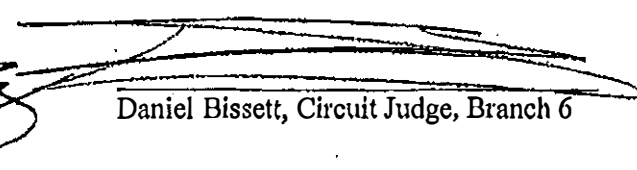

Thomas Gritton, Circuit Judge, Branch 1


Karen Seifert, Circuit Judge Branch 4


Scott Woldt, Circuit Judge, Branch 2


John Jorgensen, Circuit Judge, Branch 5


Barbara Key, Circuit Judge, Branch 3


Daniel Bissett, Circuit Judge, Branch 6

Approved this 21 day of Dec., 2016.


Hon. Robert J. Wirtz, Chief Judge

WINNEBAGO COUNTY
CIRCUIT COURT RULES
Effective 1-1-2017

Rule One: Case Load Assignment System

In compliance with mandates requiring Circuit Judges to perform all judicial duties, an "Intake" system is adopted. Each Circuit Court assumes intake responsibility, in rotation, for 2 weeks. Cases not assigned on an intake basis are assigned, generally, on an equal basis by blind draw. However cases are assigned, they remain the responsibility of the assigned Judge until completion, substitution, or disqualification. This rule specifies the respective responsibilities of the Circuit Judges, Court Commissioners, and Family Court Commissioners.

1.01 Court Commissioners:

Conduct initial appearances in traffic, ordinance, DNR, criminal traffic, and criminal matters, including bond hearings; In felony matters conduct the preliminary examination at the option of the intake judge; In misdemeanor worthless check matters conduct plea hearings and in those amended to ordinance violations conduct sentencing hearings, conduct plea hearings and sentencing in traffic, ordinance and DNR matters; conduct initial appearances, pre-trial conferences, and court trials in small claim actions; conduct detention hearings, initial appearances and plea hearings in juvenile matters; conduct preliminary hearings in regard to mental and alcohol commitments for juveniles and adults; conduct preliminary hearings, enter recommendations and approve stipulations in paternity matters. Conducts hearings and enters orders relating to harassment and domestic abuse injunctions.

The judge elected to Branch 6 of the Circuit Court shall be the supervising judge for the purposes of SCR 75 for court commissioners who are not primarily family court commissioners.

1.02 Family Court Commissioners:

Conducts hearings for temporary orders and modification of such; conducts default divorce hearings; conducts post judgment hearings and enters orders relative to removal of children from the state; recommendations as to finding of contempt, and modification of final judgments; orders mediation counseling, appointment of Guardians ad Litem, psychological evaluation and custody studies; enters temporary restraining orders, conducts hearings and enters restraining orders relating to domestic abuse; supervises staff; conducts hearings and enter orders relating to UIFSA matters.

The judge elected to Branch 6 of the Circuit Court shall be the supervising judge for the purposes of SCR75 for court commissioners who are primarily designated as family court commissioners.

1.03 Probate Commissioner:

Conducts all uncontested formal probate, termination of life estate, termination of joint tenancy, summary settlement, and summary assignment proceedings.

1.04 Circuit Judges – Case Assignment:

A. Definitions:

- 1) ***Date of filing:*** The date on which the document initiating the action is filed.
- 2) ***Blind Draw:*** A draw without knowledge of the court branch number being selected, on an equal basis.
- 3) ***Date of hearing requirement:*** The next available date within which each respective matter must be heard; this will vary depending upon the type of case.

B. Assignment of specific types of actions:

TYPE OF ACTION

ASSIGNMENT

1) Family Court Matters

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| a) Divorce, Annulment and Legal Separation | Blind Draw |
| b) UIFSA | Intake Judge per date of hearing requirement; may be heard by Family Court Commissioner. |
| c) Non-Support | Blind Draw |
| d) Paternity | Approval of stipulated judgments of paternity, stipulations and orders by the court commissioner. Contested paternity to the circuit court. Assignment of judge based on intake per date of judgment. Pre-judgment DeNovo request to intake based on date of request. |

2) Probate Matters:

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|----------------------------------|---|
| a) Contested Probate Proceedings | Blind Draw |
| b) Temporary Guardianship | Court Commissioner |
| c) Guardianship | Intake per date of hearing requirement; later sales of real estate, terminations, approvals or appointment of successor guardians go back |

to Branch issuing original order. Ch 48 guardianships shall be filed in the CHIPS court.

- d) Mental and Alcohol Commitments Intake per date of hearing requirement (including extensions and reexaminations).
 - e) Conservatorship Non-contested matters to Intake Judge; contested matters on blind draw.
 - f) Trusts Non-contested matters to court commissioner; contested matters on blind draw.
 - g) Protective Placements Intake per date of hearing requirement; reviews and petitions to Branch issuing original order.
 - h) WATTS Reviews Review hearings to Court Commissioner; contested matters to Branch issuing the original order.
 - i) Dormant Estates Order to Show Cause initial hearings to Court Commissioner. Blind Draw upon referral from Court Commissioner.
- 3) Juvenile Court Matters :
- a) Punitive Contempt Intake per date of hearing requirement.
 - b) Adoptions and Termination of Parental Rights Intake per date of hearing requirement. (Case stays with court initially assigned even if hearing date requirement changes absent filing of substitution request).

c) Commitments	Same as for adults. (See probate standards)
d) Reverse Waiver	A reverse waiver shall be referred to the court exercising the original adult jurisdiction which entered the order for reverse waiver.
4) Criminal, Ordinance, and Traffic Matters:	Cases with Bond hearing, the week before intake and the 1 st week of intake are assigned to the Intake Judge. If non-appearance warrant is issued, intake court based on when the defendant is in custody.
a) Felonies	Initial appearance through preliminary examination to the Commissioner; upon bind-over, assigned to court on random basis.
b) Misdemeanors	Intake per date of first appearance. Worthless check cases to court commissioner for plea, and for those amended to ordinance violation, sentencing. Those not amended to ordinance violation, refer to intake per date of referral.
c) Criminal Traffic	Assigned to Intake Court.
d) Contested Ordinance Non-Criminal Traffic Violations	To intake court per initial appearance date.
e) Motion to Reopen	To intake court.
f) Extradition	Intake per date of initial appearance.
g) Bond Hearings	Court Commissioner.
h) Bond Revisions Petitioners	Assigned court, or Intake if unavailable, per date of petition.
6) Non-Payment Warrants	Initially to Court Commissioner; to Judge imposing fine of forfeiture; to Intake per Date of hearing request regarding forfeiture imposed by Commissioner.
7) Search Warrants	Intake Judge.

8) Occupational License: HTO & DOT APPEAL	To intake court per date of petition; or to next available judge. Petition for appeal from DOT denial must be accompanied with a copy of the WISDOT denial letter.
9) Extraordinary Writs in Criminal Matters	To presiding Judge, if any; then to Intake Judge by date of filing.
9) Petitions from Incarcerated Prisoners	Set up as "IP" and send by blind draw. If a request is made to proceed without payment of fees, that decision shall be made by the assigned official. If granted the case becomes a CV and is assigned to the Judge who has the IP case.
a) Certiorari and John Doe	Judge in underlying action; if none, blind draw.
b) Habeas Corpus	Judge in underlying action: if none, Intake Judge.
c) Civil Cases	Blind Draw.
d) Small Claims	Court Commissioner.
10) Temporary Restraining Orders and Injunctions:	
a) General Civil Cases	Blind Draw.
b) Child Abuse	To next intake court for approval and hearing.
c) Domestic Abuse	Court Commissioner; appeals and trial de novo by blind draw.
d) Harassment	Court Commissioner; appeals and trial de novo by blind draw.
e) Vulnerable Adult	To next intake court for approval and hearing.
11) Civil Cases (including divorce)	Blind Draw, except:
a) 961.555 Forfeiture Actions	Shall be assigned to the Branch responsible if there is an underlying criminal case.
b) Earnings Garnishment	§812.38 motions and petitions to next date scheduled by intake for evictions and replevin.
c) Carry Conceal special requests	Intake.

12) Small Claims:

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| a) De Novo & Jury Trials | Blind Draw. |
| b) Contested evictions, replevin | Intake the week following the denial; Judge 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. De novo of evictions and replevins to intake court. |
| c) Garnishments | To intake on next date scheduled for evictions and replevins. |
| d) Contempt | Judge who entered judgment, if none, blind draw. |

13) Chapter 980 Petitions

Blind draw; reviews assigned to Branch which heard original petition.

14) Matters not specifically covered:

Civil generally on blind draw; criminal, traffic and related matters general to intake court based upon date of filing or date of hearing requirements.

Rule Two: Intake Calendaring

This rule enumerates minimal dates, which 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
1) 2 – ½ days per intake or one block per week | Initial Appearance and further proceedings. |
| B) Criminal Traffic
1) 2 – ½ days per intake or one block per week | Initial Appearance and further proceedings. |
| C) Ordinance and traffic | Court Trials. |

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|-------------------------------------|--|
| 1) City of Oshkosh | Pre-Trial 1 block during Intake.
Court Trial 1 block after Intake. |
| 2) State, County and DNR | Pre-Trial 1 block during Intake.
Court Trial 1 block after Intake. |
| 3) Other municipalities or transfer | Scheduled with State charges (NOTE: any ordinance or traffic matters shall be scheduled concurrently with related criminal or criminal traffic matters. |
| D) Preliminary Examinations | Sufficient blocks of time to allow hearing within time limits. |

2.02 Clerk of Courts – Juvenile Division

The Court shall prepare an annual schedule and distribute to court commissioners, clerk of courts – juvenile division, corporation counsel and district attorney’s offices.

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| A) Fact Findings (Court or Jury) | Sufficient dates to meet requisite time limits. |
| B) Dispositional hearings | Sufficient to meet time limits. |
| C) Waiver hearing | As needed. |

2.03 Clerk of Courts – Small Claims Division:

Eviction and replevin matters will be heard Wednesdays at 2:00 P.M. during intake.

2.04 Probate

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

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| A) Pro Se Guardianship and Protective Placement, Adoptions and Termination of Parental Rights | Thursday 10:00-11:00 A.M. during intake. |
| B) Corporation Counsel initiated Guardianship and Protective placement | Thursday 9:00-10:00 A.M. during intake. |
| C) Mental and Alcohol Commitments | Tuesdays and Thursdays at 1:30 P.M. during intake. |

2.05 Paternity:

Dates provided to appropriate agencies as needed.

Rule Three: Family Court Rules

Family Court matters consist of all actions affecting the family as enumerated in §767.001 of the Wisconsin Statutes. All Family court matters shall be assigned to the circuit courts by blind draw. The circuit judges hear and determine any family court matters that cannot be disposed

of by the Family Court Commissioner. As a matter of policy, mediation shall be utilized to attempt to resolve all disputed financial and child custody and placement issues. Child custody and placement issues shall be mediated by the Office of Family Court Services. Financial issues shall be mediated by the Winnebago Conflict Resolution Center, and if the requirements of §767.405(9) are met, may be mediated by the office of Family Court Services.

3.01 Initiation of Action:

- A. All matters filed in Family Court shall be captioned: "State of Wisconsin-Family Court-Winnebago County".
- B. The information regarding services offered by the Family Court Commissioner and Director of Family Court Services pursuant to §767.105 shall be sent to both parties by the Family Court Commissioner.
- C. An inmate of the Oshkosh Correctional Institution, Wisconsin Resource Center, Winnebago Mental Health Institute or any other state 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 §767.01(1) and 767.301 Stats., unless such inmate was a bona fide resident of Winnebago County prior to incarceration.

3.02 Ex-Parte Order to Vacate Residence:

- A. A family member as defined by §813.12(1b) may bring an action requesting an injunction and temporary restraining order pursuant to §813.12. Pursuant to said statute, the Family Court Commissioner or Circuit Court Judge may issue a temporary restraining order and subsequent injunction pursuant to said section.

3.03 Proceedings before Family Court Commissioner:

- A. Pre-Judgment Proceedings (Temporary Hearings)
 - 1. Initial Orders to Show Cause and motions for temporary orders as authorized in §767.225 Wis. Stats., shall be brought before the Family Court Commissioner.
 - 2. Any motion to review an order or decision of the Family Court Commissioner shall be governed by §757.69(8) Stats. (See 3.18 below for "De Novo" procedures)
 - 3. No such motion shall be heard and no action shall be set for trial until the summons, petition, affidavit, and order to show cause, if any, have been filed.
 - 4. As to orders in all hearings, including temporary orders, the moving party shall prepare and submit to the Family Court Commissioner for signature, an order, within 30 days of said hearing, unless prepared by the FCC.
- B. Notice for Hearing before the Family Court Commissioner.

1. Pursuant to §801.15(4), a written motion and notice of hearing thereof shall be served no later than 5 days before the time specified for the hearing.
 2. An affidavit and order to show cause shall be served no later than 48 hours prior to the time specified for the hearing.
 3. Upon receipt of a hearing date for an Order to Show Cause or other motion, by the Family Court, by phone, the moving party or counsel must file the pleadings or affidavit and Order to Show Cause with the Family Court no later than 5 days prior to that hearing date obtained from the Family Court.
 4. Saturdays, Sundays, and legal holidays shall be excluded in the above computations.
- C. Upon all hearings scheduled before the Family Court Commissioner, both parties shall appear in person and with their attorneys, if any, unless excused for good cause by the Family Court Commissioner.
- D. If the Family Court Commissioner does not provide a written order at the time of the hearing for temporary order, 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 Order for Support form.

3.04 Scheduling of Family Court Matters:

- A. 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 the filing in the Clerk of Court's Office in the same manner as any other civil matter. Subject to substitution requests, the Judge so selected by blind draw shall be assigned the case for purposes of final hearing and all post-judgment matters not concluded by the Family Court Commissioner.
- B. All actions for divorce shall be scheduled for final hearing within 150 days of filing. All divorce matters will be assigned a default divorce date (DD) at the time of filing. All annulment and legal separation matters will be assigned a status conference date. The notice for the DD will indicate that the Marital Settlement Agreement must be filed with the Court no later than 10 days prior to the DD hearing if the parties intend to resolve the matter as a default proceeding, 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, and if possible, the commissioner will contact the assigned branch to obtain all necessary dates associated with a contested hearing including a final hearing date. If the assigned branch is unavailable, the parties will be required to contact the assigned branch within 48 hours to schedule accordingly. Counsel is not required to appear if they provide to the Court a request for scheduling prior to the DD date. If the matter is not settled, the party or counsel may appear by phone with pre-approval of the Court.
- C. Stipulated cases: If the case is completely stipulated as to all issues, it shall be resolved as a default divorce at the time of the assigned DD unless otherwise scheduled with the Family Court or assigned Circuit Court Branch. If the case is

substantially, but not completely stipulated, the matter shall be scheduled with the presiding circuit court. If the presiding Judge determines that the issues are not substantially stipulated, the attorneys or parties will be instructed to file a Request for Scheduling pursuant to (D) below.

- D. Contested cases are those for which the issues are not substantially stipulated.
1. Request for Scheduling prior to DD: The party requesting the date for contested hearing shall file with the Family Court Commissioner a certificate stating that all unresolved issues have been discussed by the parties and counsel or that s/he is unable to engage in such discussions, and that it is not presently possible to stipulate as to all issues, and that all his discovery has been completed. The Family Court Commissioner shall review the Request for Scheduling and refer the matter to the Judge who is assigned to the Case for purposes of scheduling a pre-trial and final hearing.
 2. Request for Scheduling at DD: If either party notifies the Family Court Commissioner at the DD that the matter is substantially unresolved, and further adjournments for negotiations or discovery are unlikely to resolve the matter, the Court will enter an Order for Scheduling including all issues that the parties agree are unresolved. If possible, the commissioner will contact the assigned branch to obtain all necessary dates required by that branch and provide the notice of hearing to the parties in court; otherwise the parties or counsel will have 48 hours from the DD hearing to contact the circuit court to schedule accordingly. The Family Court will forward that request to the assigned circuit court. The parties shall be directed to submit the necessary documents as indicated in (3) below, by separate order from the circuit court branch assigned to the matter.
 3. The Request for Scheduling, drafted by counsel or the parties, shall set forth with specificity the remaining unresolved issues and moving party shall attach thereto copies of:
 - a) 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.
 - b) 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.
 - c) A proposal for custody, visitation and physical placement, if such are in dispute, together with a list of witnesses intended to be called at trial.
 4. 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 moving party, or his counsel,

if any, information and documentation as set forth in 3) a, b, and c above, on which they intend to rely at trial.

5. The scheduling order by the Family Court Commissioner may set the time limits for completion of discovery, submission of appraisals, and other reports which may be necessary.
- E. Contested matters shall be scheduled for a pre-trial conference prior to final hearing.
- F. Post Judgment Matters:
1. In all pending and post judgment actions in which custody, physical placement or visitation are disputed issues, the Court or Family Court Commissioner shall order the parties into mediation. Upon receipt of such order, the Director of Family Court Services shall assign the matter to a mediator(s). Mediation shall continue until or unless the mediator certifies to the Court or Family Court Commissioner that mediation is no longer appropriate.
 2. If mediation is determined to be no longer appropriate, the Court or Family Court Commissioner may order an appropriate study. The study may be undertaken by the mediator(s) assigned to the case if consent by the parties is given pursuant to §905.085(4)(a). If the consent is not given, the study will be assigned or arranged by the Director of Family Court Services.

3.05 Notice to the Child Support Agency:

When any party is receiving Public Assistance, has applied for Public Assistance, or has received Public Assistance during the pendency of the action or an arrearage exists in favor of the State of Wisconsin, the moving party shall give notice to the Winnebago County Child Support Agency in accordance with §767.217 Stats., submit a copy of the Financial Disclosure Statement, the Final Stipulation, if any, and the Findings of Fact, Conclusions of Law and Judgment of Divorce.

3.06 Order for Appearance of Litigants:

Pursuant to Section 767.235(2), Wis. Stats., unless non-residence in the State is shown by competent evidence, service is by publication, or the Court shall for other good cause otherwise order, both parties in actions affecting the family shall be required to appear upon the trial. An Order of the Court or Family Court Commissioner to the effect shall accordingly be procured by the moving party, and shall be served upon the non-moving party before the trial. In the case of a joint petition, the order is not required.

3.07 Arrearage:

Unless otherwise provided by the Court, all arrearages in temporary child support and maintenance or family support 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 Collection Trust Fund are not accurate, the amount of such arrearage shall be as shown by such records.

3.08 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 reason therefore stated.

3.09 Custody and/or Visitation Studies:

The Court may, in its discretion, order that Family Court Services complete a custody study to investigate: the conditions of the child's home, each party's performance of parental duties and responsibilities relating to the child, and any other matter relevant to the best interest of the child. A custody study is not mandatory in a contested custody/placement dispute. The Court may, in its discretion, order a "limited placement study" that focuses on a minor aspect of the placement schedule or a narrow issue as to placement, in general. A "limited placement study" is not mandatory in a contested custody/placement dispute.

Custody studies shall be completed within 90 days unless the Court, in his/her 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.

Any attorney for any party, the Guardian ad Litem and any unrepresented party may obtain a copy of any custody and/or visitation study in any case involving said Guardian ad Litem, attorney for any party or such party, by submitting a written request for a copy of said report to the Family Court Commissioner. The Family Court Commissioner may then authorize a release of said copy to any such attorney, Guardian ad Litem or unrepresented party but such release of said report shall be subject to the following conditions:

- A. Said report shall not be reproduced in any fashion by said attorney, Guardian ad Litem, or unrepresented party, except to provide to successor counsel or successor Guardian Ad Litem upon an 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 his/her client.
- B. Any such attorney, Guardian ad Litem, or unrepresented party shall be advised that the contents of such report should not be disclosed to any person or persons other than a party to the case wherein the custody or visitation study has been made.

- C. If either party should fail to pay any fee assessed by the Director of Family Court Services pursuant to §814.615, or any fee for mediation services, the Director shall notify the Family Court Commissioner in writing.
 - 1. The Family Court Commissioner in his/her discretion may deny a request for a copy of the study until the requesting party pays the fee.
 - 2. In pending divorce matters, the notice from the Director will be attached to the Request for Scheduling when forwarded by the Family Court Commissioner to the presiding Judge who will specify the manner of payment at the pretrial.
 - 3. In post judgment matters, the manner of payment shall be specified by the presiding Judge or Family Court Commissioner at the time of the hearing on the matter. If the matter is to be heard by the presiding circuit court, the notice from the Director will be forwarded by the Family Court Commissioner to the presiding Judge.

- D. 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 the custody study, including the final hearing, the attorney, Guardian Ad Litem or unrepresented party will need to subpoena the author of the custody study from the office of Family Court Services, no later than ten (10) working days of the hearing.

3.10 Financial Disclosure Statement:

- A. Pursuant to §767.127, a financial disclosure statement shall be filed by each party within 90 days after the service of summons or the filing of a joint petition or at such time as ordered by the Court or Family Court Commissioner. Information contained on such form shall be updated on the record to the date of hearing.
- B. When any party is receiving Public Assistance or has applied for Public Assistance, at the time of the service of the summons or filing of the joint petition, a copy of said financial disclosure statement shall be filed with the Winnebago County Child Support Agency within 90 days after the service of summons or filing of joint petition.
- C. If any party, subsequent to the service of the summons or filing of a joint petition, receives or applies for Public Assistance, each party shall file with the Winnebago County Child Support Agency a financial disclosure statement, within 30 days of the determination of said Public Assistance eligibility.

- D. Upon failure by either party to timely file a complete financial disclosure statement as required, the Court shall accept a statement of the other party, if timely filed, as conclusive in the absence of manifest injustice.

3.11 Final Stipulation:

- A. All proposed final stipulations/marital settlement agreements shall first be submitted to the Family Court Commissioner for approval and forwarding to the presiding court. The final stipulation/marital settlement agreement shall be accompanied by complete financial disclosure statements from both parties.
- 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.
 - 1. The agreement shall be signed by both parties and their attorneys, if represented, and shall be accompanied by complete financial disclosure statements from both parties.
 - 2. If the agreement is approved by the Family Court Commissioner, it will be forwarded to the presiding Circuit Court Judge for signature and entry.

3.12 Findings of Fact, Conclusions of Law and Judgment:

- A. The Findings of Fact, Conclusions of Law and Judgment shall be drafted by the moving party or his attorney 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. Before submission of the Findings of Fact, Conclusions of Law and Judgment, to the court, they shall be submitted to the opposing counsel, if any, and to the Family Court Commissioner, for approval.
- C. In the event the Findings, Conclusions, and Judgment are not filed within thirty days as required by §767.251, the Family Court Commissioner shall notify the attorney for the moving party, that the Family Court Commissioner will not schedule any of said attorney's family court matters on the calendar until such Findings, Conclusions and Judgment are filed or good cause shown why such documents have not been filed.
- D. In order for the judgment to meet with the requirements of the statute, 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 first 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 removal of the child(ren) within or outside of the state, pursuant to sec. 767.481.
3. In any matter in which legal custody and physical placement is addressed, the judgment shall contain the provisions in sec. 948.31 prohibiting the interference with placement by a parent or other.
4. In any matter in which the court has ordered a party to pay child support or family support, the judgment shall reflect the requirements under sec. 767.54 to annually exchange financial information.
5. In any matter in which the court has ordered a party to pay child support, family support or maintenance, the judgment shall contain the requirements under sec. 767.58 as to notifying the child support agency within ten days as to any changes of employer, substantial change in income or change in address.

3.13 Filing Papers:

All documents filed with the Clerk of Courts shall comply with §801.18 (electronic filing). All documents relating to Family Court matters shall be filed in the office of the Clerk of Courts at least ten days prior to the hearing date, subject to rule 3.03 (B)(3), above. All documents relating to Family Court matters shall also be filed with the Winnebago County Child Support Agency, if that agency is a party in interest.

3.14 Payments:

All payments of child support, maintenance or family support required to be made in Family Court matters, shall be paid through Wisconsin Support Collection Trust Fund.

3.15 Guardian ad Litem:

- A. Appointment: A Guardian ad Litem for minor children shall be appointed in accordance with §767.407.
- B. Payment of fees of Guardian ad Litem and expert witnesses used by the Guardian ad Litem:
 1. Upon the entry of an order for mediation of any disputed custody or placement matter, the Guardian ad Litem shall be deemed to be discharged unless otherwise ordered by the court or unless reactivated if mediation reaches impasse.
 2. If mediation impasse has been certified by Family Court Services and a Guardian ad Litem is appointed or reactivated, 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 within ten days of receiving the order for payment request the Family Court Commissioner to allow payment in installments and shall submit such request with a financial disclosure statement on the form provided by the Family Court Commissioner. Within its discretion, the Court or Family Court Commissioner may order the amount to be paid in installments of no less than \$150 per month. If the parties are indigent, the court may order reimbursement of the Guardian Ad Litem fees at the county rate of reimbursement absent any interest or late fees. Failure of a party to pay any amount ordered by the court will result in contempt proceedings before the Family Court Commissioner which may be initiated on the Court's own motion. Any part of amounts paid by the parties or the county not used by the Guardian ad Litem for fees and disbursements shall be returned to the parties or the county. If the Guardian ad Litem expends the entire amount ordered, he or she may move the court for further orders regarding payments. The court reserves the right to allocate responsibility for the total fees and disbursements of the Guardian ad Litem at the time of final hearing.

3. If the Court or Family Court Commissioner determines the parties are indigent, and has ordered the county to pay amounts to the Clerk of Courts for deposit into the trust account, the fees of the Guardian ad Litem shall be ordered paid at the approved county reimbursement rate, the Supreme Court rate, of \$70.00 per hour. The court may order either or both parties to reimburse the county by payments within the discretion of the court, or may order a separate judgment in favor of Winnebago County against either or both parties pursuant to §767.407(6). 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. The Court will order that the balance of the Guardian Ad Litem's fees be paid at not less than \$150.00 per month, unless otherwise agreed to by the party and the Guardian Ad Litem. If the party is late or delinquent as to any payment, the Guardian Ad Litem may either request, in writing, that the Court order a wage assignment for payment of his/her fees or that the Court schedule the matter for an Order to Show Cause as to contempt for non-payment of fees. Upon a written request for wage assignment to the Court, the Family Court Commissioner will enter an order for wage assignment. The parties are ordered to cooperate with the Court as to their current address, the employer's name, employer's address and the party's full social security number.

3.16 Post-Judgment Matters:

- A. All motions and/or Orders to Show Cause for modifications of and/or enforcement of a judgment 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. A “Findings of Fact and Decision of the Family Court Commissioner” shall be prepared by the prevailing party or as otherwise ordered by the Court and submitted to the Family Court Commissioner for signature within 14 days of the date of the post-judgment hearing before the Family Court Commissioner.
- C. Any motion to review an order or decision of the Family Court Commissioner shall be governed by §757.69(8) Stats. (See 3.17 below for “De Novo” procedures)
- D. 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 Court.
- E. 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.
- F. Post Judgment Custody and Physical Placement Issues:
 - 1. Pursuant to §767.405(5)(c) Stats., any person who is having problems with visitation, physical placement or custody matters may notify the Family Court Commissioner of such fact.
 - 2. Upon such notification, the Family Court Commissioner will direct the complainant to provide an affidavit setting forth the basis for relief. Upon receipt of such an affidavit, the Family Court Commissioner shall enter an order which shall direct both parties to meet with Family Court Services in an attempt to resolve said visitation, physical placement, or custody issue.
 - 3. If visitation, physical placement, or custody issues cannot be resolved in this manner or if the parties do not wish to utilize this procedure, either party may schedule a hearing, by motion or order to show cause, before the Family Court Commissioner, by filing the appropriate documents with Family Court along with the applicable filing fee, unless specifically waived by the Court.
 - 4. Upon said hearing, the Family Court Commissioner may order a visitation or physical placement investigation and/or visitation physical placement counseling by Family Court Services and may order the appointment of Guardian ad Litem for any minor child.

5. Any decision of the Family Court Commissioner from such hearing shall be subject to the right of either party to move the assigned Circuit Judge for review of such decision pursuant to §3.16(C) above.

3.17 De Novo Hearings:

The following procedures shall apply as to any and all family court orders, whether the matter has not yet proceeded to judgment or follows a final judgment:

- A. Any party who was present at the hearing has the right to have the assigned judge hold a new hearing by filing a written request, with the required number of copies, with the Family Court Office, with a copy sent immediately to the opposing party, within ten days of filing of the written decision but no later than 15 days from the oral ruling.
- B. Notices requesting a hearing de novo will not stay the order of the Family Court Commissioner unless the judge specifically grants a stay of the order pending the de novo review.
- C. The Family Court Commissioner shall not hear any motions to modify a final order or a temporary order if the matter is pending a de novo review or if the divorce trial has been held and the court has taken the matter under advisement. The order in existence will remain in effect until the court renders its decision.
- D. It is the parties' responsibility, upon filing the de novo request with the Family Court, to obtain further orders and scheduling from the judge assigned to the matter.

3.18 Pro-Se Actions:

- A. A person acting on his or her own behalf as an attorney 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.
- B. No court employee should instruct or inform any person proceeding on a pro-se basis, how to proceed or what to do. State Statutes prohibits the Clerk of Courts office from giving of legal advice.
- C. Upon request, the Family Court Commissioner shall provide the information provided for in §767.105(2).
- D. Information and forms necessary to complete the filing and completion of a divorce pro se in Winnebago County may be found at the following website:
<https://prosefamily.wicourts.gov/pages/index.html>

3.19 Special Rules Concerning Mediation:

All discovery pertaining to custody and physical placement issues shall be suspended while mediation is on-going 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 of physical placement in any action affecting the family, and in which mediation is on-going, 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 Director of Family Court Services and to the Family Court Commissioner. Upon receipt of said 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 telephonically with or without the consent of the attorneys and/or parties.

Any agreement regarding custody and/or 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 the Order of the Court. If counsel or unrepresented parties fail to provide a written Order for the court's signature following successful mediation, unless a written objection is filed with the Court within thirty (30) days of the mediation agreement, the Court will sign an Order incorporating the terms of the mediation agreement as the Order of the Court.

3.20 Parent Education Program:

Parties who are ordered into custody mediation shall be required to participate in the Parent Education Program offered by the Office of Family Court Services for Winnebago County. In addition, parties who are not required to attend custody mediation may be ordered to attend the Parent Education Program by the Court if the court deems it appropriate. Any party not ordered to attend the Parent Education Program by the court may also request to be enrolled in the program by contacting the Director of Family Court Services or the Family Court Commissioner.

All parents who are parties to paternity actions shall be required to participate in the Paternity Parent Education Program offered through the New Parent Program in conjunction with the Office of Family Court Services.

3.21 Mediation of Disputed Financial Issues:

- A. If the Judge or Family Court Commissioner finds, during the pendency of any action affecting the family, that it would be in the interest of justice to refer disputed issues involving property and debt division, maintenance, child support, medical expenses

of minor children or contribution to costs and fees to mediation, the court may order the parties to participate in mediation. 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 the mediation.

- B. 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. If a disputed custody or placement issue has been ordered or referred into mediation with the Office of Family Court Services pursuant to §767.405, such mediation may include the issues of property division, child support or maintenance if the requisites of §767.405(9) are met; to wit: 1.) the property division, maintenance or child support issue is directly related to the legal custody or physical placement issue and 2.) The parties agree in writing to consider the property division, maintenance or child support issue.
- D. Any agreement prepared by the office of Family Court Services shall include a provision requiring the parties to contact the Winnebago Conflict Resolution Center if they have any disputed financial issues not directly related to child custody or placement.

Rule Four: Small Claims Rules

Small Claims Court matters shall consist of and be governed by §799 of the Wis. Stat.

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, WI.
- 2. Person service or substitute service per WI Stat. §799.12 is required for out of county defendants.

B. Replevin Actions

- 1. Consistent with WI State Statute.

C. Eviction Actions

- 1. Consistent with WI 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. Plaintiffs are required to appear in eviction and replevin actions, unless otherwise approved by the court. Plaintiffs are not required to appear in money and rent and damage actions.
- C. Defendants are required to appear in eviction and replevin actions. In other actions, defendants may appear in person or file a written answer.
- D. Mediation:
 - 1. If a dispute exists on the return date, both parties may be required to attend an orientation at the Winnebago County 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 refuse to participate in mediation or cannot reach an agreement after attempting mediation, hearing on the merits shall be held before the Court Commissioner.
- E. Evictions, Garnishments, Replevins:

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 of any address change. 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:

- A. Must be filed prior to return date, unless otherwise authorized by the court.
- B. 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 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 11 business days after rendition if verbal, and 16 calendar days after mailing if written.

4.08 Demand for Trial De Novo:

- A. Demand must be filed with the court and mailed to other parties within 10 business days of a verbal decision or 15 calendar days of a written decision. The petitioning party must file proof of mailing or delivery of copies to the other parties and attorney (if any) with the court. Any applicable fees must be paid at time of filing the demand for trial De Novo with the clerks 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 Branch to which the case is assigned shall mail notice of next scheduled event to all parties.

Rule Five: Administrative Responsibility for Various Courts

While Circuit Court Judges are responsible for all functions of the judicial system, it is necessary, from a management point of view, to delegate primary administrative supervision for various court functions to specific branches. This rule specifies such assignments to define the chain of responsibility. Such responsibilities are assigned as follows:

- ❑ Branch 1 –Video Teleconferencing
- ❑ Branch 2 – Civil Courts, Safe Streets
- ❑ Branch 3 – Probate (including the Register in Probate) and the Jury System
- ❑ Branch 4 – Juvenile (including Intake Workers and Restitution Coordinator) and Court Security
- ❑ Branch 5 – Criminal and Traffic Courts
- ❑ Branch 6 – Small Claims Court, Family Court (including Court Commissioners and Family Court Services)

Rule Six: Return of Bonds

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

- A. Charges have been filed by the District Attorney or Municipal Prosecutor, or
- B. 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 Seven: 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.

- A. 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.
- B. 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.
- C. Defendants shall participate in mediation and may be represented by an attorney. Incarcerated persons shall participate by telephone.
- D. Victims who agree to mediate such disputes may have an attorney, other advocate, or support person present.
- E. 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 Eight: Fine/Forfeiture Collection System

8.01 Sentencing:

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

- A. Apply available cash bonds to payment of restitution first, then payment of the judgment,
- B. If not immediately paid in full:
 - 1. Set a time not more than 60 days, or
 - 2. Refer the defendant to the Clerk of Courts office for a payment plan.
- C. If payment is not made as ordered, a civil judgment may be entered or:
 - 1. Suspension of driving privileges until paid, not to exceed one years for forfeitures, unless; in the discretion of the court commissioner or Judge, a penalty of jail is more appropriate, or
 - 2. The number of days in jail determined by using the base amount of the fine or forfeiture as the numerator and \$25 as the denominator.

8.02 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.

A. Standards and Guidelines

1. Defendants are to be released from jail anytime the fine or forfeiture is paid in full.
2. There is no proration of a fine or forfeiture for time served and no proration of jail penalty term for partial payment.
3. Once a full penalty for non-payment has been served the courts have no further involvement with the matter and all further collection activities are within the discretion of the Clerk of Courts, which is referred to collection agency.
4. Extensions of time to pay may be granted in the discretion of the Clerk of Courts based on factual information provided by the person making such a request which is verified to the satisfaction of that department.
5. Payment plans will be made at the discretion of the Clerk of Courts. A \$15.00 fee will be required and monthly payment amounts will be determined based on employment status and ability to pay.
6. Multiple fines may be added to an existing payment plan, if the court authorizes. Additional fines will increase the monthly payment at 10% of the amount due.
7. Payment plans shall include defendant's acknowledgement that any amounts not paid will be referred to a Collection Agency, and collected by Tax Intercept, entered in the Judgment & Lien Docket at the Clerk of Courts office and may be collected by execution, garnishment or tax intercept.
8. The use of credit cards for payment is authorized and the use of voluntary wage assignments and direct deposit agreements encouraged.
9. A person requesting a payment plan who is already incarcerated for failure to pay, must post 25% of the amount due to be released from jail.
10. A person claiming indigency and/or inability to work has the burden of properly presenting a petition to the sentencing official. If allowed by that court officer the person may meet the financial obligation through community service work. The amount of hours to be performed shall be calculated by using the basic fine or forfeiture amount as the numerator and the then Wisconsin minimum wage as the denominator.

11. Any person aggrieved of a determination made by Clerk of Courts in regard to this rule may, by proper petition, seek review by the sentencing court official.

B. Procedures

1. 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. If the defendant fails to set up a payment plan prior to due date, defendant shall not be eligible without court approval.
2. Court personnel distribute payment information sheet to defendant along with copy of minutes.
3. All payments shall be made to Clerk of Courts, who shall be responsible for entering such payments on the system.
4. All requests for further time to pay or for payment plan shall be referred to Clerk of Courts.
5. Clerk of Courts will monitor payments and input changes to payment schedules to the court records, generate notices, warrants or other documentation as necessary and confirm non-payment before forwarding arrest warrants to the proper Court Official and then on to the Sheriff.

Rule Nine: Mediation

All provisions of Court Rules 4.03 D., 3.19 and 3.21 shall remain in full force and effect but shall be subject to the provisions of this rule where applicable.

9.01 Mediation of Harassment Actions under §813.125:

- A. Upon review of a Petition for a Harassment Injunction pursuant to §813.125, and at the time of hearing thereon, the court commissioner or judge may order the parties into mediation with the Winnebago Conflict Resolution Center 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
 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 §813.125.

- 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 §813.125.

Rule Ten: 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 the 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 Eleven: Civil Rules:

11.01 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 District Attorney 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.

11.02 Motions – General Filing Requirements:

All motions shall be heard at a date and hour set by the judge or the judge’s judicial assistant. 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.

11.03 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 11.05) 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.

11.04 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.

11.05 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.

11.06 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.

11.07 Default Judgment:

Mortgage Foreclosures:

A hearing with notice to defendant is required before entry of a default judgment in all mortgage foreclosures. Hearings may be held by affidavit.

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.

11.08 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 **printed on yellow paper** and can be downloaded from the Winnebago County Clerk of Courts website at <http://www.co.winnebago.wi.us/clerk-courts> , or will be available at the Winnebago County Clerk of Courts office:

- a) Notice of Availability of Mediation
- b) Application for Mediation

11.09 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 §846.35(2)(a) 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 §846.35(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.

11.10 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.

11.11 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 11.04.

11.12 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 Twelve: 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 Thirteen: 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 Fourteen: Comstock

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.