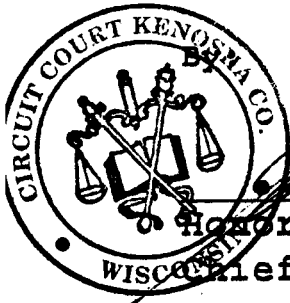



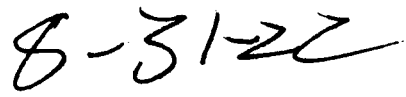
# WALWORTH COUNTY

## CIRCUIT COURT RULES

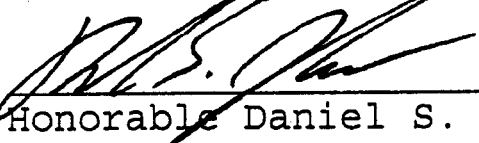
Per 753.35(1) Wisconsin Statute, the Walworth County  
Circuit Court Rules are approved:




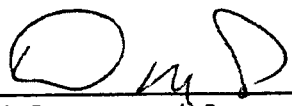
  
\_\_\_\_\_  
Honorable Jason Rossell  
Chief Judge, District 2

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Honorable Phillip A. Koss, Br. I

  
\_\_\_\_\_  
Honorable Daniel S. Johnson, Br. II

  
\_\_\_\_\_  
Honorable Kristine E. Drettwan, Br. III

  
\_\_\_\_\_  
Honorable David Reddy, Br. IV

Kristina Secord, Clerk of Circuit Court

Revision Date 06/2022

**ADOPTION/AMENDMENT OF COURT RULES**

- A. These court rules shall be known as "Walworth County Circuit Court Rules".
- B. These rules are intended to supersede all existing local court rules, written or oral. They are intended to supplement state statutes and Supreme Court Rules, and if in conflict therewith, shall be deemed void. These rules are not intended to be work rules.
- C. These rules take effect on date of publication unless otherwise stated in court orders. They will be published and made available to the bar and public, and shall be binding and enforceable on contempt proceedings.
- D. Amendment to these rules shall be made by consensus of all then sitting Walworth County judges.

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18. Cell Phone Rule

## GENERAL RULES

1. Effective August 1, 2022, all new cases shall be randomly assigned to and equally apportioned among the branches of the Walworth County Circuit Court. All cases existing prior to August 1, 2022, shall be randomly assigned to and equally apportioned among the branches, except for those cases that are specially assigned to a [branch/judge] and for those cases reserved by the [branch/judge]. Assignment upon disqualification or substitution of judge shall be random.

Effective August 1, 2022, each branch of the Walworth County Circuit Courts is assigned Intake Court responsibilities on a weekly rotating basis. The schedule for Intake Court shall be established by agreement of the majority of the Walworth county Circuit Judges with the advice of the Clerk of Circuit Court and Register in Probate.

Notwithstanding the above case assignment and intake system, any available Walworth County Circuit Court judge may assist and [preside on behalf of] another branch of court (1) in the absence or unavailability of the assigned judge; (2) in the event of calendar congestion; (3) as part of the judge's intake week responsibilities; and (4) at any other time as deemed appropriate by the Circuit Court Judges.

The Circuit Court judges and the Clerk of Circuit Court shall establish agreed upon internal rules for the progression of cases from filing and intake through case closure and post judgment. Each judge, however, is responsible for managing their respective calendar.

## **2. CASE PROCESSING GOALS**

The Walworth County Circuit Courts adopt the State of Wisconsin guidelines for the processing of all cases:

<u>CASE TYPE</u>	<u>GOAL FOR PERCENT DISPOSED WITHIN DAYS</u>
Felony	85% within 180 days, 95% within 360 days
Misdemeanor	90% within 180 days
Criminal Traffic	90% within 180 days
Contested Traffic	95% within 180 days
Contested Forfeiture	95% within 180 days
CV-PI/PD	90% within 540 days
CV-Contract & RE	95% within 360 days
CV-Other CV	95% within 180 days
FA-Divorce	90% within 360 days
Paternity	90% within 180 days
All Other Family	95% within 360 days
Contested Small Claims	95% within 180 days
Estates (PR & IN)	75% within 420 days, 90% within 540

	days
Juvenile Delinquency	95% within 90 days
CHIPS	85% within 90 days
TPR Voluntary	95% within 120 days
Involuntary & UnIdentified	95% within 180 days
Contested JO	95% within 180 days

### **3. JURISDICTION OF CIRCUIT COURT BRANCHES**

Pursuant to Wis. Stat. § 753.03, all branches of the Walworth County Circuit Court are expressly assigned general jurisdiction over all case types, including without limitation, jurisdiction over civil and criminal actions and proceedings, probate court, and under Wis. Stat. chs. 48 and 938.

### **4. COURT COMMISSIONERS**

#### Appointment

Each judge may appoint no more than two (2) supplemental court commissioners who shall serve at the pleasure of the judge who assigned them and the appointments will continue until terminated by either the current judge or the new judge.

#### Powers

On authority delegated by the judges, which may be by a standard order and with the approval of the Chief Judge of the 2nd Judicial Adm. District, a court commissioner appointed under § 757.68 may exercise all powers authorized by § 757.69, as amended.

#### Compensation

Supplemental court commissioners shall be paid at a rate determined by the Courts, taking into consideration applicable Supreme Court Rules.

#### Conflict of Interest

Attorneys serving as supplemental court commissioners shall not be barred from practicing law in front of the judge who assigned them. However, attorneys so assigned shall forthwith inform, in writing/on the record, their client and the opposing attorney of their role as a commissioner. If there are any objections, the court may enter its disqualification and a new judge shall be assigned.

#### Judicial Court Commissioner

The Judicial Court Commissioner shall be appointed by a majority of the Walworth County Judges, with the approval of the Chief Judge of the District. The Judicial Court Commissioner will be certified annually.

#### Family Court Commissioner

The Family Court Commissioner shall be appointed by a majority of Walworth

County Judges, with the approval of the Chief Judge of the District. The Family Court Commissioner will be certified annually.

Director of Family Counseling

The Director of Family Counseling shall be appointed annually by a majority of the Walworth County Judges.

**5. DECORUM** - Applies not only to the Courts but also to Family Court Commissioner and Court Commissioners.

A. Court may be formally opened each day upon which court business is transacted, either by the bailiff or clerk, unless the judge directs otherwise.

B. As the judge enters the courtroom, the bailiff or clerk may require all present to rise and stand. When the judge has ascended the bench, the bailiff or clerk may say: "Please be seated" or, in jury trial "Hear Ye! Hear Ye! The Circuit Court for the County of Walworth, Branch \_\_\_ is now open, silence is commanded." There upon all shall be seated and the business ensues.

C. In recessing, the judge may announce: "The court is now in recess. Trial will resume at \_\_\_\_\_ o'clock."

D. The national flag shall be displayed close to the bench on a stand to the right of the judge.

E. Lawyers shall not lean upon the bench nor engage the court in a manner depreciative of the dignity of the proceedings as viewed by the jury and public.

F. Unless otherwise permitted by the court, lawyers shall examine witnesses from a standing or seated position at counsel table except when handling exhibits. If a lectern is provided by the court, examination may be either from said position at counsel table or from the lectern. A lawyer shall not crowd a witness in examination.

G. Lawyers should not, in addressing the jury, crowd the jury box.

H. Lawyers, during trial, shall not exhibit familiarity with witnesses, jurors, or opposing counsel, and generally, use of first names shall be avoided. In jury arguments, no jurors shall be addressed individually or by name.

I. All lawyers and court officers shall wear appropriate attire while in attendance upon the court.



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

K. The administration of oaths to witnesses should be an impressive ceremony and not a mere formality.

L. In jury actions, which are disposed of without a jury verdict, the judge, in dismissing the jury, should briefly explain the procedure and why a verdict was unnecessary in a manner not to prejudice future service as jurors.

M. The judge shall wear a robe while presiding on the bench. Judicial discretion may be exercised otherwise in proper situations.

N. Attorneys shall be punctual for scheduled court appearances.

O. The Walworth County Bar Association Lawyers' Standard of Conduct is approved and adopted (see back cover).

#### **6. FILING (Non-mandatory e-filing case types)**

A. Papers accepted for filing shall have printing on one side only, 8 1/2" x 11" paper, and a case #.

B. Backers are prohibited.

C. Pleadings commencing an action must include Case Classification/Case Code, attorney's state bar number, mailing address & telephone number. Any other documents, after commencement of action, to include attorney's state bar number, mailing address and telephone number.

#### **7. GUARDIANS AD LITEM**

Walworth County Court Officials appoint Guardians ad litem on a case-by-case basis. They shall conduct their work in a manner specified by state law, Supreme Court Rules, and local court rules, (and contract as applicable). They must meet any GAL certification standards set out by the state and comply with any Continuing Legal Education Requirements.

#### **8. DECISIONS OF CIRCUIT COURT COMMISSIONER UNDER §757.69(8) and 767.17 Wis. Stats.**

Any party who was present at the hearing may file a motion for review of the Circuit Court Commissioner's decision under Sec. 757.69(8) and 767.17, Stats. The findings and orders entered by a court commissioner upon stipulation or default are not subject to De Novo review. De Novo appeals must be filed no

later than 20 days from the date the decision was made orally in open court on the record, or the date the written decision was filed with the clerk of court, whichever occurs first.

Notices requesting a hearing de novo will not stay the order unless the judge specifically grants a stay of the order. Should a party request a hearing de novo, the court will not proceed with any enforcement actions requested by the same party before that hearing e.g. the court will not grant a bench warrant and a commitment order requested by the petitioner, if the petitioner requests a bench warrant based upon the failure of the respondent to comply with the order upon which the petitioner has requested a de novo hearing. However, if in the court's discretion, fairness requires an enforcement hearing; the court will set a combined de novo and order to show cause as promptly as possible.

The court commissioner shall not hear any motions to modify an order or temporary order if the matter is pending a de novo hearing or if the 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.

#### **9. SETTLEMENT**

Stipulations and orders for dismissal shall be filed within 30 days of the notice of settlement, or the action will be set for dismissal and notice given.

#### **10. MOTION PRACTICE**

##### **A.) Non-Mandatory e-filing case types:**

Notice of Motion/Notice of Hearing and motion papers shall be filed with the proper calendar clerk before the date for hearing is scheduled unless otherwise ordered by the court.

When filing a notice of motion in Walworth County, motions are to be filed in blank for the date and time and are to include one copy of the notice of motion and a self-addressed stamped envelope. Once received and filed, the calendar clerk will call to schedule a date and time convenient for the attorney/party filing the motion. The calendar clerk will then conform the copy of the notice of motion and mail it back to the attorney/party in the envelope provided. The conformed copy may then be used to notice others of the hearing date and time.

##### **B.) Mandatory e-filing case types:**

Motion papers shall be e-filed without a Notice of Motion or Notice of Hearing. Once filed, the calendar clerk will call to schedule a date and time convenient for the attorney/party filing the motion. The

attorney/party will then e-file the completed Notice of Motion with the court date and time.

**11. ADJOURNMENTS**

A party who has a conflict with a court date must contact the other party with their position on the request before requesting an adjournment from the Court. If the other party agrees to the adjournment, the Court must still approve the request. If the other party objects to the request, a motion must be filed. Any such motion shall contain certification relating to contacting the other party regarding their position on the adjournment request.

**12. UNIFIED BUDGET**

There shall be one unified budget for all of the courts for Walworth County under Clerk of Courts Administration.

There shall be a clerk designated to each judge who will clerk all matters heard by the judge.

The Clerk of Circuit Court shall be the department head of all branches of Circuit Court as to personnel, budget and related matters.

**13. VICTIMS/WITNESSES**

The Walworth County judges and staff recognize that all parties and participants, including victims and witnesses, have rights in controversies pending before the courts. The judges shall be vigilant to protect the rights of all parties and participants in the legal process.

**14. FACSIMILE and EMAILS**

A. Facsimile documents transmitted directly to the courts shall be accepted for filing only if:

1. The case is a non-mandatory e-filing case type.
2. The circuit court has a facsimile machine capable of reproducing documents that meet Supreme Court Rule 72.01 concerning retention of filed documents. Only plain paper facsimile machines currently comply with this requirement.
3. The circuit court has a facsimile machine physically located within the offices of the circuit court and the Register in Probate.
4. No filing fee is required. In the case of a petition for a

temporary restraining order that alleges stalking, intentional harm or threat, the filing fee may be waived after review by the Judge/Circuit Court Commissioner. When submitting these types of documents for filing by fax, the completed Request for Waiver of Fees should be included. All documents will then be reviewed by the Judge/Circuit Court Commissioner who will determine whether 1) the filing fee should be waived; 2) the clerk should accept the fax for filing; and 3) the temporary order is granted or denied.

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

6. The facsimile transmission is no longer than 15 pages. There is a fee of \$2 for each additional page unless there is court approval.

7. If the facsimile transmission exceeds 15 pages, the party or attorney shall certify that the assigned Judge/Circuit Court Commissioner has approved the facsimile transmission in advance.

8. Email attachments should not be more than 15 pages.

B. Facsimile documents and emails transmitted to a non-court agency, party, or company for the receipt, transmittal and delivery to the clerk of circuit court, shall be accepted for filing only if:

Same 8 conditions from "A" above apply here.

C. The party transmitting the facsimile document is solely responsible for ensuring the timely and complete receipt.

D. The circuit court, judge or clerk is not responsible for:

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

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

E. A judge assigned to a particular matter may authorize in advance the filing of particular documents in that case that do not conform to these rules if good cause is shown and they are in conformance with § 801.16, Wis. Stats.

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

- G. Documents are considered filed when received except that documents received by facsimile transmission after regular business hours of the clerk of circuit court's office are considered filed the next business day. § 801.16 (2)(f), Wi. Stats.
- H. Facsimile papers are considered filed upon receipt by the clerk of circuit court and are the official record of the court and may not be substituted. No additional copies may be sent. If additional copies are sent, the court will impose a \$1.25 per page sanction for violating the court rule by the offending party.

#### **15. COURT MEDIA RELATIONS**

The courts acknowledge the right of the press to free access to court proceedings as limited by statute and Court Rules (see SCR 61.01 et seq). In the case of proceedings/files closed to the public, access shall be limited to that provided by statute. In such cases, the court may require media representatives to produce credentials and to sign a form acknowledging responsibility for use of information gained from closed files/proceedings as provided by statute.

#### **16. JURY SERVICE**

For the purpose of jury service, the Clerk of Courts or designee may excuse/exclude jurors from service in accordance with Section 756.001(5)

**FAILURE TO RETURN QUESTIONNAIRE.** If an individual fails to respond after being sent two (2) jury questionnaires, the individual will be summoned before the court on an Order to Show Cause to show why that individual should not be found in contempt and sanctioned up to \$500 per violation, pursuant to Sec. 756.30, Wis. Stats. Continued failure to respond may result in a warrant for the individual's arrest to be brought before the court.

**FAILURE TO REPORT FOR JURY SERVICE.** If a juror fails to report for jury service, the clerk will send a letter informing the juror of their failure to report for service. If this letter is ignored by the juror, a second letter will be sent giving a deadline date to respond. If this is also ignored, the juror will be summoned before the court on an Order to Show Cause as to why that juror should not be found in contempt and sanctioned up to \$500 per violation, pursuant to Sec. 756.30, Wis. Stats. Continued failure to respond may result in a warrant for the individual's arrest to be brought before the court.

#### **17. WEAPONS IN THE JUDICIAL CENTER**

No person may bring into the Judicial Center a dangerous weapon defined as

a gun, edged weapon, sharp object, oc spray, mace, electronic weapon, glass bottle, tool or any object deemed inappropriate for its intended or possible use as a weapon, except for law enforcement officers who are present as a witness, or in some official law enforcement capacity such as security. If the officer is a party to the action, is present in support of a party, or off duty, the officer may not be armed. The Sheriff's Office shall conduct screening of all civilians. If an individual refuses to go through the screening process, access to the judicial center will be denied.

#### **18. CELL PHONES IN THE JUDICIAL CENTER**

Cell phones with cameras or other recording devices are permitted within the Judicial Center, but they cannot be used to photograph, record or broadcast from within the Judicial Center without prior court approval. Use of a cell phone or other recording device to photograph, record or broadcast from within the Judicial Center without prior court approval may subject the user to confiscation of the device, and contempt of court. Court Security shall stop individuals from recording court proceedings. They may also confiscate the recording device until further instruction is provided by the Court.

CIVIL

1. Scheduling
2. Pretrial & Motion Proceedings
  - A. Civil Motions
  - B. Evidentiary Motions
  - C. Default Mortgage Foreclosure  
And Confirmation of Sheriff Sale
  - D. Motion for Default Judgment
  - E. Standard Summary Judgment Procedure
  - F. Dismissal/Default/Settlement Calendar
3. Return of Verdict
4. Orders, Findings of Fact, Conclusions of Law  
& Judgment
5. Administrative Reviews/Certiorari

## CIVIL

### 1. SCHEDULING

Scheduling questionnaires will be sent out or the clerk will schedule a scheduling conference approximately 120 days after the action is filed.

### 2. PRETRIAL AND MOTION PROCEEDINGS

A. Civil Motions. Unless otherwise ordered by the court, all civil motions, including motion for summary judgment, shall be accompanied by supporting papers and a memorandum of authority upon filing. A responding party shall have served and filed with the court a memorandum of authority and all supporting papers, at least five (5) business days, as defined by 801.15(1)(b) Stats., prior to scheduled hearing; if not so served or on file, the court shall have absolute discretion to not consider same. If respondent fails to do so, it shall be presumed that respondent has waived this right and the court shall accept no further supporting documents or briefs. A decision shall be based upon the record as timely filed and oral arguments, if permitted.

B. Evidentiary Motions. When permitted by law and upon application to the court, the court may order that an evidentiary hearing be held on a motion or petition. Notice to the opposing parties shall clearly indicate that evidence will be presented at the hearing, the nature of the evidence and the witnesses to be called. Without such order and notice, the hearing on any motion shall be limited to the record, affidavits and papers served or made available pursuant to § 802.01 Wi. Stats.

C. Default Mortgage Foreclosure and Confirmation of Sheriff Sale. Motions for default on mortgage foreclosures and for confirmation of sheriff's sales in Walworth County are done by Notice of Motion and Motion with supporting affidavit(s).

Default foreclosures will be heard if appropriate paperwork including affidavits have been filed with the Court pursuant to statute and proofs of notice to all parties have been filed as required by statute.

If no timely written objection has been filed at least five (5) business days before the assigned date, the Court will decide the motion based on the affidavits. But if a timely written objection is filed, the Court will either hear and decide it at the scheduled hearing or will send notice assigning a new hearing date.

Confirmation of sheriff's sales will be heard if appropriate paperwork has been filed with the Court pursuant to statute and proofs of notice to all



parties have been filed as required by statute.

The sale must be at least 75% of the fair market value according to the Walworth County Tax Parcel Information, unless an affidavit showing special circumstances justifying a lesser bid accompanies the moving papers.

If the above has been satisfied and no timely written objection has been filed at least five (5) business days before the assigned date, the Court will decide the motion based on the affidavits. If a timely written objection is filed, the Court will either hear and decide it at the scheduled hearing or will send notice assigning a new hearing date.

\* Movants' attorneys need not be personally present unless advised by the Court otherwise. However, attorneys are not to call in to the Court at the time of the hearing unless instructed to do so by the Court. An attorney familiar with the case must be available by phone should the Court need to call during the scheduled hearing time and that attorney must notify the Court's clerk in advance of the hearing with the name and telephone number of the contact attorney.

\*Writs of Assistance and Assignments of Bid must each be accompanied by a \$5.00 fee.

D. Motion for Default Judgment.

In addition to the requirements of Wis. Stats., § 806.02(3)(a), the court may require that notice be served on defendant(s). See \*Midwest Developers v. Goma Corp., 121 Wis. 2d. 632, 651 (1984).

E. Standard Summary Judgment Procedure (replaces F below)

1. Parties shall refer to Wis. Stat. § 802.08(2).

2. Briefs in support of or in opposition to such motions shall not exceed 25 pages in length and reply briefs shall not exceed 10 pages in length, exclusive of affidavits and exhibits. Briefs in excess of the permitted length may be disregarded by the Court. The Court may modify these limitations upon a showing of good cause.

3. Briefs in support shall state plainly and succinctly the material undisputed facts which support judgment, together with specific references to the record. Failure to comply with this rule may result in granting of the motion.

4. Briefs in opposition shall plainly and succinctly state, together with specific references to the record, which facts stated in the brief in support, if any, are disputed. Failure to comply with this rule may result in granting of the motion.

5. Parties must specify what relief they are seeking.

6. The court may modify these deadlines upon a showing of good cause, or by a court order, including the Scheduling Order.

F. Dismissal/Default/Settlement Calendar. Service of process. All civil cases will be reviewed for service and answer 90 days after filing. If at that time it is found that a case has not reached issue, a dismissal order or default proceeding shall be initiated by the court.

Stipulation and Order for Dismissal shall be filed within 30 days of the notice of settlement, or the action will be set for dismissal and notice given.

### **3. RETURN OF VERDICT**

If an attorney desires to be present upon a return of verdict or upon a request for further instructions, a telephone number must be left with the court where counsel can be reached.

### **4. ORDERS, FINDINGS OF FACT, CONCLUSIONS OF LAW & JUDGMENT**

Unless otherwise ordered by the court, within 30 days of a court decision or jury verdict, the prevailing party shall file the appropriate order; findings of fact, conclusions of law and judgment. A copy of same shall be served on all other parties.

Written objection to proposed order; findings of fact, conclusions of law and/or judgment shall be filed and served within five (5) business days of service or be deemed waived.

A clerk shall not sign a judgment unless:

Findings of fact, conclusions of law and/or order for judgment have been signed by the judge.

A fee of \$5 has been tendered, pursuant to § 814.61(5)(b)

### **5. ADMINISTRATIVE REVIEWS/CERTIORARI**

In all cases where the complaint/petition seeks administrative review/certiorari, the complaint/petition shall be accompanied by an order/writ requiring the custodian of the record being reviewed to submit a certified copy of such record as required by law. Such record shall be numerically paginated and contain a copy of the applicable statutes/ordinances.

**CRIMINAL**

1. General
2. Bail
3. Pretrial/Status Date
4. Guilty/No Contest Plea
5. Indigency
6. Evidentiary Motions
7. Pre-sentence Investigation Report or  
Background Information Form (BIF)
8. Restitution Hearing
9. Sentence Credit
10. Post-Conviction Rights
11. Jury Trial

## CRIMINAL

### 1. GENERAL

Defendant shall appear at all scheduled proceedings in their case(s). This includes proceedings at which appearance of the defendant is not required by statute. Exceptions of this rule, in misdemeanor cases, shall be by specific order of the judge only and shall not apply to restitution hearings.

### 2. BAIL

Bail modification motion must be in written form, with the date of the hearing obtained from the calendar clerk. The motion to modify must be served on the district attorney and any other interested party and filed with the court 24 hours prior to the scheduled hearing unless the provision of this rule is waived by the parties or the judge approves the hearing upon good cause shown.

If surety is to be considered for bond, the surety holder must furnish proof of ownership, title and equity, together with proof of any outstanding mortgages or liens prior to the surety being considered. If the surety is accepted, a lien will be recorded in the Register of Deeds office and will not be released until the case has been completed. No application for removal of the lien will be heard without the surety producing the defendant at the hearing.

### 3. PRE-TRIAL/STATUS DATE

All cases set for trial shall have a pre-trial conference or status date. If your case is scheduled for status date, the defendant and his/her attorney must appear in person.

### 4. GUILTY/NO CONTEST PLEA

Guilty/No Contest Plea Questionnaire is to be completed and filed with the court upon a plea of guilty or no contest.

Defense counsel must provide clerk with terms of plea agreement 24 hours before the plea hearing on the court approved form.

### 5. INDIGENCY

Whenever the public defender refuses to represent or finds that defendant is not indigent, an indigency review shall be based on written motion filed with the court and scheduled by the clerk.

### 6. EVIDENTIARY MOTIONS

Evidentiary motions must comply with the term "with particularity" § 971.30 WI. Stats. A statement of facts, which may be on information or belief and a citation to authorities, must be included in the moving papers of the party bringing on the motion.

Motions addressing the admissibility of evidence such as motions suppressing identification, confessions, voluntariness and searches are critical and time consuming. It is suggested that they should be calendared, heard and decided well before the trial.

#### **7. PRE-SENTENCE INVESTIGATION/BACKGROUND INFORMATION FORM (BIF)**

At least two weeks prior to a scheduled sentencing, the Department of Probation and Parole shall file its report with the Clerk of Circuit Court. The Clerk of Circuit court shall provide a copy to the district attorney and defendant or his/her attorney. The district attorney and the defendant's attorney may keep their copy. An unrepresented defendant may view the report but may not keep a copy. Anyone receiving or viewing the report shall keep the information in the report confidential. The district attorney, defendant and attorney for defendant shall have reviewed the report in full prior to the sentencing.

The BIF (background information form) is to be completed and applies to misdemeanor cases that the District Attorney and/or defendant would have ordinarily requested a pre-sentence investigation report on, however, due to a change in the law are unable to request a pre-sentence investigation. The form can be obtained at the Clerk of Courts office.

#### **8. RESTITUTION HEARING**

Challenges to restitution are subject to the written uniform procedure, which is available in the office of the Clerk of Circuit Court. See Exhibit B.

#### **9. SENTENCE CREDIT**

Sentence credit for time served shall be determined by the time of sentencing by the district attorney and the defense counsel subject to approval of court. Specific dates and the total number of days shall be stated on the record. Upon request and at the discretion of the court, the order establishing the amount of sentence credit ordered may be delayed up to 14 days from the date of sentencing, but no longer. Defense counsel is not relieved from responsibility in a case until sentence credit is determined.

#### **10. POST-CONVICTION RIGHTS**

After sentencing, in every criminal case, a Post-Conviction Rights form shall be submitted, signed by the defendant and his/her attorney when applicable.

## **11. JURY TRIAL**

### **48-HOUR RULE:**

The attorneys are required to confirm the status of any trial with the calendar clerk 48 hours prior to trial. The rule also applies to pro se parties.

## FAMILY/DIVORCE

1. General Rules
2. Initial Hearings
3. Temporary order hearings
4. Scheduling Conferences
5. Pre-trial Conferences
6. Service upon the State
7. Pre and Post Judgment Motions
8. Preparation of Findings and Orders
9. Ex Parte Orders

## FAMILY/DIVORCE

### 1. General Rules

#### A. Duties of Family Court Commissioner:

##### 1. Generally:

- a. Pre-judgment actions affecting the family, including: initial status hearings, temporary order hearings, scheduling conferences, and uncontested final hearings such as default divorce hearings;
- b. Motions to modify in actions affecting the family, including post-judgment evidentiary hearings;
- c. Domestic abuse injunction hearings.

2. All hearings before the FCC shall be electronically recorded. Contact the FCC clerk for procedures and fees to obtain a transcript.

#### B. Matters to be scheduled before the Circuit Court Judge:

1. Contested trial matters;
2. Orders to Show Cause for Contempt;
3. Petitions to Enforce Prior Court Orders.

- C. All parties filing actions affecting the family, involving the custody and/or placement of minor children, shall be ordered to Parenting After Separation classes, pursuant to Sec. 767.401, Stats.

- D. Mediation shall be ordered by the court, pursuant to Sec. 767.405, Stats., in family actions involving custody and/or placement of minor children, unless good cause or undue hardship is shown. Mediated agreements signed by the parties and subscribed by attorneys (for parties who have attorneys) shall become a final order of the court upon approval and signature of the Judge, even if other issues remain unresolved.

- E. Financial Mediation may be ordered by the court if the parties are not able to reach an agreement regarding financial issues. Attorneys must attend financial mediation with their clients. Financial mediation requires an advance fee, unless other provisions are approved by the court. Parties attending mediation shall submit a position paper to the mediator in advance.

- F. A Guardian ad Litem (GAL) for the minor children shall be appointed by the court pursuant to Sec. 767.407, Stats. Generally, the court will order the parties into mediation before appointing a GAL.



Whenever a GAL is appointed, an advance fee must be tendered, as well as \$50 per month thereafter, unless waived by the court or other provisions are approved by the court.

The GAL shall, at a minimum:

1. Contact the attorneys/parties pro se soon after appointment. Contact the child(ren) soon after appointment, where age appropriate.
2. Contact the Department of Human Services child protective agency soon after appointment, as applicable.
3. Interview the parties and children (where age appropriate.)
4. Attend all hearings.
5. Items #1-4 shall generally be concluded prior to the date/time of the hearing.
6. Shall comply with all GAL Continuing Legal Education requirements. Must meet any GAL certification standards set out by the state and comply with any Continuing Legal Education Requirements.

The Guardian ad Litem is an advocate for the best interests of the child(ren) in court proceedings and functions in the same manner as attorneys for parties to the action. As such, a GAL is not subject to being called as witnesses in evidentiary hearings or trials.

- G. Custody Studies may be ordered by the court pursuant to Sec.767.405(14). Generally, the court will order the parties into mediation before ordering a custody study. The court will order a study be conducted; an advance fee must be tendered for the study, unless waived by the court or other provisions are approved by the court. If the parties wish to retain another evaluator for the primary study, they shall do so at their own cost and shall promptly notify the court.

All Custody Studies shall be filed with the court and kept "Confidential." Attorneys shall be provided a copy which may be shared with their client, but no third parties, and attorneys must maintain their allotted copy of the study in their file and are strictly prohibited from copying or releasing a copy of the study to their clients or to any third parties without an express order from the court permitting such a release. **ATTORNEYS VIOLATING THIS RULE SHALL NOT BE AFFORDED A COPY IN THE FUTURE.**

Parties shall not disclose the contents of the custody study with the child(ren). Parties shall not receive a copy of the report, but may review it at the Clerk of Court's office. Parties shall not copy the study and are strictly prohibited from allowing anyone else to view the study.

- H. Phone procedures: to request to appear by telephone, a party must make the request in writing, and must advise the court of the position of the opposing party.
- I. For the court to consider a continuance of a hearing, a party must make the request in writing, and must advise the court of the position of the opposing party. Hearings will be continued only with approval of the court and may require a motion.

## **2. Initial Hearings**

- A. Upon the filing of a divorce or legal separation when both parties are unrepresented, an initial hearing will be scheduled as promptly as possible. This hearing may be utilized to:
  - 1. Provide direction to pro se litigants;
  - 2. Generate temporary orders (if all parties waive requirements of Sec. 767.225(2), Stats.);
  - 3. Order services such as mediation;
  - 4. Set further hearings such as a scheduling or pre-trial conference, or a default divorce.
- B. If financial issues such as child support, property, or maintenance are involved, parties must be prepared to file a financial disclosure statement at this hearing.

## **3. Temporary Order Hearings**

Pursuant to Sec. 767.225, Stats.

- A. For pre-divorce matters, and for all motions involving child support and maintenance or other financial issues, parties must be prepared to provide financial information.
- B. Hearings will be conducted upon offers of proof made at the hearings. No testimony will be taken.
- C. If parties wish to remove a temporary order hearing from the court's calendar, they must file their stipulation prior to the hearing, appear in court to recite the agreement for the record, or agree that if they do not file a stipulation, they must file a new motion for temporary order.
- D. All financial arrearages of the temporary order shall be carried forward in the final judgment unless otherwise agreed to in writing by the parties

#### **4. Scheduling Conferences**

- A. These shall generally be held before the FCC for pre-judgment matters where the parties have not stipulated to all issues and require trial for resolution.
- B. Generally, these conferences should be held no later than 150 days after the filing of a joint petition for divorce, service of petition and summons in a divorce, or service of motion for other family matters.
- C. The court will prepare a scheduling order with the parties. This order shall set pre-trial and trial dates before the Judge, briefly list stipulations and remaining issues, ensure exchange of all information to be used at trial, and establish deadlines.

#### **5. Pretrial Conferences**

Held before the assigned Circuit Court Judge, the purpose of the pretrial conference is to ensure that the matter is ready to proceed to trial. Strict compliance with the Scheduling Order is expected and noncompliance may result in sanctions.

#### **6. Service upon the State**

Where service upon the state is required by Sec. 767.217, Stats., such service shall be made to the Walworth County Child Support Enforcement Agency, Walworth County Judicial Center, P.O. Box 1001, Elkhorn, WI 53121. Proof of service shall be filed with the court.

#### **7. Pre and Post Judgment Motions**

All motions for modification hearings shall be heard by the FCC, with these exceptions: matters already scheduled for trial before the judge, contempt, and enforcement motions.

All post-judgment petitions, motions, or orders to show cause filed after the last final order seeking to modify any of the following: placement, custody, maintenance or child support, shall be served in accordance with Wisconsin Statutes Section 801.11 or as otherwise directed by the Court.

#### **8. Preparation of Findings and Orders**

The findings and orders of the court will be drafted by the prevailing party unless otherwise directed by the court. Upon signing and filing of Orders by the court, e-filing parties will

automatically receive their copies; non-e-filing parties shall be served a copy by the preparing party. Upon signing and filing of Findings of Fact, Conclusions of Law and Judgment of Divorce by the court, e-filing parties will automatically receive their copies; non-e-filing parties must provide additional copies at the time of initial filing and the Clerk of Court shall return the signed copies to the parties via US Mail.

## **9. Ex Parte Orders**

- a. All requests for ex parte orders, whether prejudgment or post-judgment shall be submitted to the Family Court Commissioner, or if the Family Court Commissioner is unavailable, to the assigned Circuit Court Judge.
- b. Motions for ex parte orders must be accompanied by:
  - i. One or more affidavits of parties or lay witnesses alleging facts of which the affiant has personal knowledge and which, if true, constitute an emergency or other urgent circumstance justifying the issuance of the proposed order; or:
  - ii. One or more affidavits of competent expert witnesses based on facts of record or alleged in proper affidavits, constituting an emergency or other urgent circumstance justifying the issuance of the proposed order.
- c. All requests for an ex parte order shall contain a return date before the Family Court Commissioner or assigned Circuit Court Judge within seven (7) days of filing and shall contain language which (a) extends the ex parte order only until the date and time of the hearing and (b) specifically permits modification or revision by the Family Court Commissioner or Circuit Court Judge.
- d. If service is not obtained by the date of the hearing, a separate application for a new ex parte order must be obtained from the Family Court Commissioner or assigned Circuit Court Judge.
- e. It is the responsibility of the person or attorney who has obtained the ex parte order to notify all counsel of record, including any guardian ad litem, and pro se parties of the ex parte order and the date and the time of the hearing. The party obtaining an ex parte order shall provide copies of the pleadings and ex parte order to all counsel of record, including any guardian ad litem, and pro se parties at least 48 hours prior to the scheduled hearing.

**JUVENILE**

1. Walworth County Juvenile Court Intake Policy Guidelines, S.48.06(1)(a)2 and 938.06(2)(a)2
2. Adoption/Termination of Parental Rights
3. CHIPS/JIPS/Delinquencies
4. Child Abuse and Juvenile Harassment Injunctions