

**Local Rules Revision Project  
Rule Revisions Proposed for Executive Committee Final Approval**

**January 26, 2009 Draft**

***Rules Applicable to the Civil Division (effective March 1, 2009)***

**3.1 Case Processing Goals**

- A. Large Claims: Ninety percent (90%) of all cases ~~should be resolved within twelve (12) months of commencement; ninety-eight percent (98%) within eighteen (18) months; and the remainder within twenty-four (24) months of such filing~~ classified as personal injury/property damage should be resolved within 540 days. Eighty percent (80%) of all cases classified as contracts/real estate or other civil cases should be resolved within 360 days.
- B. Small Claims: Except as otherwise provided by statute, ~~all~~ eighty percent (80%) of all contested small claims cases should be resolved within ninety (90) days of the return date or, when trial de novo is requested, within ninety (90) days of the request.

**3.2 Assignment of Cases**

Subject to Rule 1.3 (plenary authority of Chief Judge), all civil actions shall be assigned electronically by lot among the large claims branches, except that small claims, replevin and eviction actions shall be assigned to the small claims calendar.

**3.3 Consolidation of Cases**

- A. Cases pending in a single branch that satisfy the prerequisites of Wis. Stat. § 803.04 may be consolidated by the court on its own motion.
- B. Subject to Rule 1.3 (plenary power of Chief Judge over case assignment), cases pending in more than one branch that satisfy the prerequisites of Wis. Stat. § 803.04 may be consolidated in the branch to which the case with the lowest case number is assigned:
1. upon the motion of that branch with the written consent of the other branch or branches, ~~subject to approval of the Chief Judge;~~
  2. upon stipulation of all parties and the written consent of each branch, ~~subject to approval of the Chief Judge; or~~
  3. if contested, upon a motion filed in the case with the lowest case number; the only

relief the court may grant is consolidation in the branch to which the case with the lowest case number is assigned.

- C. Upon consolidation, all further proceedings shall take place in the branch in which the cases have been consolidated regardless of when any of the cases is resolved.

### **3.4 Dismissal Calendar**

In cases which are not being diligently prosecuted, including without limitation (1) cases in which no party has been served with process within the applicable period and (2) cases in which no timely answer has been filed and no motion for default judgment has been filed within a reasonable time, the court shall give notice that the case will be dismissed unless cause is shown why dismissal is not appropriate. If good cause is not shown, the case shall be dismissed without further notice.

### **3.5 Daytime Duty Judge**

- A. For one week on a rotating basis, each judge assigned to the family and civil divisions shall serve as daytime duty judge. The duty judge schedule may be obtained from the Calendar Clerk's office or the Chief Judge's Office.
- B. The following proceedings are assigned to the duty judge:
  - 1. Petitions for writs of *habeas corpus*;
  - 2. *De novo* appeals from proceedings before court commissioners concerning injunctions and restraining orders under Wis. Stat. Chapter 813;
  - 3. Small claims cases, if the judge assigned to the small claims branch is unavailable;
  - 4. Petitions for change to vital records;
  - 5. ~~Disputes~~ Matters concerning the issuance of marriage licenses; and
  - 6. Proof of age applications under Wis. Stat. § 889.28.
- C. The daytime duty judge shall preside in proceedings in which immediate judicial review is necessary and the branch to which the case is assigned is not available, including the small claims branch, nor is a pair judge available. In the absence of the duty judge, the next available judge, in the order listed on the duty judge schedule, shall preside.
- D. Upon substitution or recusal of the duty judge, the proceedings shall be transferred to the next available judge on the duty judge schedule.

### **3.6 Filing Papers**

- A. In addition to the general rules governing format and filing stated in Rules 1.10 through 1.13, the following rules govern filings made in the civil division:
- B. The summons and complaint and all papers filed contemporaneously with them, and all papers the filing of which requires the payment of a fee, shall be filed in Room 104. All other papers shall be filed with the deputy court clerk of the branch to which the case is assigned, unless the courtroom is closed, in which case the papers may be filed with the Calendar Clerk's office.
- C. The first page of the summons and complaint shall state the case classification type and code number, as designated by the Director of State Courts (available at <http://wicourts.gov/about/filing/circuitcodes.htm>); subsequent filings need not.
- D. Notice of appeal shall be filed with the Civil Appeals Division in Room G-8. The appropriate fees should be included with the notice of appeal.
- E. Unless the court grants permission in writing and in advance, the clerk shall not accept for filing any affidavit, including exhibits, which exceeds 250 pages in length, except affidavits in actions contesting insurance coverage to which the attached exhibits consist only of insurance policy documents.

### **3.7 Filing of Garnishment Actions**

- A. Each action for garnishment on property other than earnings shall be commenced as a separate action and be assigned a separate case number. Regarding actions for garnishment on earnings, however, each notice issued to the same garnishee shall bear the number of the case in which the judgment was entered.
- B. The Clerk's office may issue earnings Garnishment forms upon payment of the appropriate fee and prior to the filing of the earnings garnishment notice provided that the earnings garnishment notice is filed with the Clerk's office no later than 5 business days after the date the garnishee is served.

### **3.8 Scheduling Conferences and Scheduling Orders**

- A. Within a reasonable time after the case is filed, the court shall conduct a scheduling conference pursuant to Wis. Stat. § 802.10(3).
- B. Before the scheduling conference, the parties shall submit a written description of the factual background and issues presented by the case on a form prescribed by the court.
- C. The court may issue a scheduling order in a standard form prescribed by the chief judge.

- D. Before issuing a scheduling order governing deadlines for the filing of dispositive motions, the court shall ask the parties whether they agree to be bound by the local rules governing briefing deadlines under Rule 3.15.

### **3.9 Payment of Jury Fee**

Unless the court orders otherwise, the jury fee shall be paid within 30 days after the court issues the scheduling order pursuant to Rule 3.8. Payment of the jury fee by any party preserves the right to a jury for all parties, consisting of the number of jurors for which the fee has been paid. If no party pays the jury fee, the right to a jury is waived by all parties.

### **3.10 Hearing Dates**

Subject to the provisions of Rule 1.19 (obtaining hearing dates), motion hearings shall be scheduled on Monday mornings, except as otherwise provided by law or scheduled at the discretion of the court.

### **3.11 Non-Dispositive Motions**

- A. Except for motions to dismiss, for judgment on the pleadings and for summary judgment or partial summary judgment (see Rules 3.14 and 3.15) and motions for temporary restraining orders (see Rule 3.13), all motions and supporting papers shall be filed not less than 15 days before the hearing date.
- B. All papers filed in opposition to such motions shall be filed no later than 7 calendar days (including Saturdays, Sundays and holidays) before the hearing date.
- C. No reply briefs shall be considered without the permission of the court.
- D. The court may modify these deadlines upon a showing of good cause.
- E. Briefs in support or in opposition to such motions shall not exceed 10 pages in length, except that briefs filed in support or opposition to a motion for class certification shall not exceed 25 pages. 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.

### **3.12 Venue Motions**

Rulings upon motions for change of venue under Wis. Stat. §§ 801.51 or 801.52 shall employ Supreme Court Form GF-120 "Order for Change of Venue."

### **3.13 Motions for Temporary Injunctions and Restraining Orders**

- A. Any *ex parte* motion for temporary injunction or restraining order shall be accompanied by the certification required by Rule 1.19 and a written, signed certification that:
  - 1. a good faith effort was made before filing the motion to contact the party against whom relief is sought (or counsel for the party, if known) to inform the party of the time and place of the anticipated hearing; or
  - 2. good cause exists for excusing the party from the requirement in paragraph A.1.
- B. Before issuing an *ex parte* temporary injunction or restraining order, the court shall attempt to contact by telephone the party against whom relief is sought (or counsel for the party, if known), unless the court finds good cause for not doing so.
- C. This rule does not apply to petitions filed under Wis. Stat. §§ 813.12, 813.122, 813.123 and 813.125.
- D. Briefs in support or in opposition to motions for temporary injunctions or restraining orders shall not exceed 10 pages in length. 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.

### **3.14 Motions to Dismiss or for Judgment on the Pleadings**

- A. Motions to dismiss or for judgment on the pleadings shall be filed not less than 40 days before the hearing date, except as provided in paragraph D.
- B. Briefs or other papers in response to such motions shall be filed not less than 25 days before the hearing date.
- C. Reply briefs or other papers in support of such motions shall be filed not less than 15 days before the hearing date.
- D. In actions which allege the failure to pay a debt and in which the answer does not deny the debt, a motion for judgment on the pleadings shall be filed not less than 15 days before the hearing date. All papers filed in opposition to such a motion shall be filed no later than 7 calendar days (including Saturdays, Sundays and holidays) before the hearing date.
- E. The court may modify these deadlines upon a showing of good cause.
- F. Briefs in support or in opposition to such motions shall not exceed 20 pages in length and reply briefs shall not exceed 10 pages in length, exclusive of 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.

### **3.15 Summary Judgment Motions**

- A. The Civil Division Scheduling Order shall designate whether the parties agree to comply with the briefing deadlines set forth in this rule in place of the briefing deadlines set forth in Wis. Stat. § 802.08(2).
- B. Motions for summary judgment shall be filed not less than 40 days before the hearing date.
- C. Briefs or other papers in response to such motions shall be filed not less than ~~25~~ 20 days before the hearing date.
- D. Reply briefs or other papers in support of such motions shall be filed not less than 15 days before the hearing date.
- E. The court may modify these deadlines upon a showing of good cause.
- F. 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.
- G. 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 denial of the motion.
- H. 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.

### **3.16 Default Judgments**

- A. A party entitled to judgment by default due to the failure of an adverse party to answer the complaint may submit a motion for default judgment under Rule 1.20 (the five-day rule).
- B. If the action in which judgment is sought is subject to service of a summons pursuant to Wis. Stat. § 801.11, proof of service shall be made as follows:
  - 1. If the party against whom judgment is sought is a natural person and is served personally within the State of Wisconsin, the motion shall be supported by a Form

CV 1 Affidavit of Personal Service, or its substantial equivalent, printed on green paper.

2. If the party against whom judgment is sought is a natural person and is served by substitute service within the State of Wisconsin, the motion shall be supported by a Form CV 2 Affidavit of Substitute Service, or its substantial equivalent, printed on blue paper.
  3. If the party against whom judgment is sought is a corporation or limited liability company and is served personally within the State of Wisconsin, the motion shall be supported by a Form CV 3 Affidavit of Personal Service on Corporation or Limited Liability Company, or its substantial equivalent, printed on green paper.
  4. ~~Any form issued by~~ This rule does not apply to proof of service furnished by a county sheriff's department located in Wisconsin-is acceptable proof of service or to service that is effected outside Wisconsin.
  - ~~5. Proof of service that takes place outside Wisconsin need not take the same form as required by this rule, but the same standards that govern service of process within Wisconsin shall apply.~~
  5. If the party against whom judgment is sought is served by publication, within or outside Wisconsin, the motion shall be supported by a Form CV 4 Affidavit of Reasonable Diligence, or its substantial equivalent, printed on yellow paper, and proof of publication and mailing of the publication summons.
  6. The court will accept an original affidavit printed on paper whose color does not conform with these rules if the affidavit is accompanied by a photocopy of the affidavit on the paper of the required color.
- C. In tort actions subject to Wis. Stat. § 802.02(1m), the motion for default judgment shall itemize the damages and shall be supported by documentary evidence of the damages sought. If the damages cannot be documented (e.g., pain and suffering damages), the party seeking judgment shall request a hearing.

### **3.19 Briefing of *Habeas* Petitions and *Certiorari* Petitions in Criminal Matters**

Briefs in support or opposition to petitions for *habeas corpus* or *certiorari* in cases arising from or related to criminal convictions shall not exceed 20 double-spaced pages in length and shall comply with Rule 1.9 (format). Reply briefs shall not exceed 10 pages. Motions and briefs exceeding these page limits shall be disregarded. The court may modify these limitations upon a showing of good cause.

### **3.20 Citation to Non-Wisconsin Legal Authorities**

Unless the court orders otherwise, if a brief contains a citation to an authority other than the Wisconsin Statutes or a decision of the Wisconsin Supreme Court or the Wisconsin Court of Appeals, a copy of the authority shall be appended to the brief. Copies of such authorities shall not be made part of the record on appeal.

### **3.19 Form of Discovery Responses**

Responses to interrogatories, requests for production of documents and requests to admit, including responses consisting solely of objections, shall restate the interrogatory or request to which the response or objection refers.

### **3.20 Limitations on Interrogatories**

- A. Except as provided in paragraph B., no party may serve more than a total of 35 interrogatories in any one case.
  - 1. Each sub-part of an interrogatory shall be counted as 1 interrogatory.
  - 2. Parties represented by the same attorney or law firm shall be regarded as 1 party.
  - 3. Interrogatories inquiring about the names and location of parties, expert witnesses, and other persons having knowledge of discoverable information, or about the existence, location, or custodian of documents or physical evidence shall not be counted toward the limit.
- B. Parties may agree to permit additional interrogatories to be served. Upon compliance with Rule 3.22 (meeting and conferring before bringing a discovery motion), a party may request permission from the court to serve additional interrogatories.

### **3.21 Timely Completion of Discovery**

Except for good cause, the court shall not compel a party to respond to an interrogatory, document request or request to admit that is served less than 30 days before a discovery deadline set forth in the scheduling order.

### **3.22 Meeting and Conferring before Filing Discovery Motions**

- A. Before a party may move to compel discovery, or for permission to serve interrogatories in excess of the limitation stated in Rule 3.20 (limitations on interrogatories), the party

shall confer in person or by telephone with the party against whom relief is sought and make a sincere attempt to resolve the issue.

- B. No motion to compel or for permission to serve interrogatories in excess of the limitation stated in Rule 3.20 will be heard unless the motion demonstrates compliance with this rule, including a statement of the date and place of the conference and the names of all parties participating therein.

### **3.23 Trial Depositions**

A deposition taken for the purpose of preserving testimony for use at trial pursuant to Wis. Stat. § 804.07(1)(c) may be taken after the deadline for completion of discovery set forth in the scheduling order, but not later than 10 days before the commencement of trial. Such depositions may be taken at any time upon stipulation of the parties or upon leave of the court.

### **3.24 Filing of Learned Treatises**

A party giving notice of the intended use of a learned treatise under Wis. Stat. § 908.03(18) shall append a copy of the document to the notice served on other parties but shall not append a copy to the notice filed with the court. A copy of the document offered in evidence shall be filed only if the document is offered in evidence during trial or if the party's right to offer the document is contested before trial.

### **3.25 Argument and Examination of Witnesses by Multiple Attorneys**

Only one attorney for a party may argue motions or objections or examine a witness, unless permitted by the court.

### **3.26 Presence of Counsel and Parties during Deliberations and upon Return of Jury Verdict**

If the court permits counsel, or any party not represented by counsel, to leave the courtroom during deliberations and specifies a time within which the parties or counsel must return to the courtroom upon receipt of a verdict, a question from the jury or a request for further instructions, such counsel or party shall leave with the deputy court clerk the telephone number where he or she can be reached. A failure to return within the prescribed time period may be deemed a waiver of the party's right to be present.

### **3.27 Appearances by Telephone in Non-Evidentiary Proceedings**

- A. The court, in its discretion, may conduct non-evidentiary proceedings by telephone. The

court may assign responsibility to one party for arranging the conference call, notifying all parties, and the costs of the call. The court may permit some parties to appear in person.

- B. In proceedings involving scheduling in cases in which a party is represented by an attorney whose office is located outside Milwaukee County, and unless the court deems the matter too complex or unmanageable for teleconferencing, the court may permit all parties to appear by telephone, provided that the attorney whose office is located outside Milwaukee County arranges the call, notifies all parties, and bears the cost of the call.

### **3.28 Appearances by Telephone and Videoconference in Evidentiary Proceedings**

The court shall permit oral testimony to be communicated to the court by telephone or videoconference if (a) a request is made at least 1 day before the scheduled testimony (exclusive of weekends and holidays); (b) the court finds that the equipment available to the court will enable the court to make a sufficient record; and (c)(1) all parties agree or (c)(2) the court grants the request after considering the objection of any party unwilling to agree.

### **3.29 Petitions for Approval of Minor Settlements**

- A. A petition for approval of a minor settlement shall concisely state the age of the minor, the nature and extent of the injury giving rise to the claim and whether the injury is permanent, the cause of the injury and the circumstances in which the injury was suffered, and the proposed distribution of the settlement funds.
- B. The court shall presume that sums distributed for the payment of attorney fees will not exceed 25% of the settlement but may approve a larger portion if extraordinary circumstances so justify.
- C. Unless the court orders otherwise, the minor, his or her attorney, and at least one of the parents or guardians shall attend in person the hearing on the petition.
- D. Proceeds of a minor settlement to be deposited or invested for the benefit of the minor shall be paid into a restricted account that will not permit any withdrawal from the account until the minor's 18<sup>th</sup> birthday or upon further order of the court. The court shall not approve a settlement that proposes to deposit the settlement funds into a bank account that does not bear interest.
- E. No guardian ad litem may be relieved of responsibility on any case until he or she files with the court written confirmation that the funds have been deposited or invested as provided in the court's order.