

**Local Rules Revision Project
Proposed Revisions of Family Division Rules
October 12, 2009 Draft**

5.1 Exceptions to General Rules

Rules 1.1 through 1.28 apply to proceedings in the Family Division except that Rule 1.12 requiring service of certain documents before filing does not apply to petitions under Wis. Stat. §§ 813.12, 813.122 and 813.125.

5.2 Use of Equivalent Forms

Parties are encouraged to use the Supreme Court forms and Milwaukee County Circuit forms specified by these rules, but may submit forms that are substantially the same in form and content. Supreme Court forms are available at <http://www.wicourts.gov/forms1/circuit.htm>. Milwaukee County Circuit Court Forms are contained in the Appendix to these Rules.

5.3 Case Processing Goals

Ninety percent (90%) of all divorce, ~~paternity and other matters~~ actions should be resolved within twelve (12) months of commencement. Ninety percent (90%) of all paternity actions should be resolved within one hundred and eighty (180) days of commencement. Ninety-five percent (95%) of all other family actions should be resolved within twelve (12) months of commencement.

5.4 Designation and Assignment of Cases

- A. All cases shall be designated "FA" except for
 - 1. Cases in which the court is asked to determine paternity, which shall be designated "PA," and
 - 2. Cases in which a party seeks a harassment injunction, which shall be designated "CV."
- B. All FA cases shall be assigned electronically by lot among the branches of the division.
- C. All Harassment injunction CV cases are assigned according to Rule 1.6 (daytime duty judge).

- D. Assignment of PA cases shall rotate from branch to branch within the division each month. All PA cases filed in a given month shall be assigned to a single branch.
- E. Cases may be reassigned as follows:
1. For purposes of this rule, a case is “pending” during any period of time during which any proceeding is scheduled to be heard before the court.
 2. After the ~~first hearing on~~ Family Court Commissioner hears a request for a temporary restraining order in any case in which relief is sought under Wis. Stat. Ch. 813, the case shall be reassigned to the same branch to which is assigned any pending FA or PA case involving the same parties.
 3. All pending PA cases shall be reassigned to the same branch to which is assigned any pending divorce case involving the same parties and in which at least one party has asserted a marital presumption.
 4. All pending FA and PA cases which have in common the same mother and father and in which a custody, placement or child support issue has been raised shall be reassigned to the branch to which the most recently filed case is assigned.
 5. All pending FA and PA cases which have in common the same payor and in which a child support issue has been raised shall be reassigned to the branch to which the most recently filed case is assigned.
- F. The Chief Judge or the Presiding Judge of the division may order the transfer of cases from branch to branch to facilitate the fair and efficient operation of the division.

5.5 Orders to Appear

If in any case the court questions the validity of service of the initial pleadings or if the circumstances warrant exceptional means to give notice to an adverse party, the court may order a party to appear in person for any proceeding and direct another party to serve an Order to Appear pursuant to Wis. Stat. § 801.11.

5.6 Appearances of Counsel

- A. No attorney shall appear in court on behalf of a party without filing a notice of appearance, except with permission of the court. The signature of an attorney for a petitioner upon the initial pleading shall be deemed a notice of appearance.
- B. Except as permitted in paragraphs C. and D., the court shall not permit an attorney to withdraw or another attorney to be substituted unless a stipulation between attorney and client is submitted for the court's approval, or upon motion with notice to the client. If a trial has been scheduled, any motion or stipulation seeking such approval shall state the date of the trial.
- C. If a party and the party's attorney have agreed pursuant to Supreme Court Rule 20:1.2(c) to limit the scope of the attorney's representation in any way which limits the appearances an attorney is expected to make on behalf of the client in court, then the notice of appearance shall ~~so state, in detail~~ the proceedings at which the court may expect the attorney to be present or other function for which the court may expect the attorney to be responsible.
- D. An attorney whose appearance is limited under paragraph C. may withdraw at the point in the proceedings contemplated by the limited appearance agreement by submitting a proposed order for withdrawal under Rule 1.21 (the five-day rule) and serving a copy of the proposed order upon the client and all parties.

5.7 Information Regarding Child Identity in Child Custody Pleadings

If a party to a child custody proceeding requests, pursuant to Wis. Stat. § 822.29(5), that required identifying information be sealed, the party shall prepare and submit Supreme Court Form GF-177, or provide equivalent information, together with proof of service pursuant to Rule 1.13. Any party may object to such a request by filing a written objection and requesting a hearing.

5.8 Extensions of Time to Serve Pleadings

Circuit court commissioners assigned to the Family Division may grant extensions of time to serve pursuant to Wis. Stat. §§ 767.215(4) and 767.815.

5.9 Number of Copies Required for Filing

Whenever these rules call for the filing of a document with the court, the party making the filing shall supply the signed original and 3 copies, unless otherwise specified in these rules or ordered or directed by the court.

5.10 References in these Rules to Divorce, Legal Separation and Annulment

Except as otherwise provided in state statutes governing annulment (Wis. Stat. § 767.313), all the rules of the family division that apply to actions for divorce apply equally to legal separation and annulment. All references to divorce should be construed to refer as well to legal separation and annulment. Neither the Family Court Commissioner nor court commissioners assigned to the family division are authorized to preside in actions for annulment.

5.11 Commencement of Actions for Divorce

- A. Upon filing the papers necessary to commence an action for divorce, the petitioner shall proceed immediately to the office of the Family Court Commissioner to obtain a deadline for administrative dismissal, and, where applicable, an order requiring attendance at parent education. The petitioner shall present to, or obtain from, the office of the Family Court Commissioner either (i) the Notice and Order - Administrative Dismissal Date (Form 12 in the Appendix of Forms) or (ii) the Notice and Order - Administrative Dismissal Date & Requirement to Attend Parent Education Program (Form 13 in the Appendix of Forms).
- B. Copies of the Notice and Order - Administrative Dismissal Date or Notice and Order - Administrative Dismissal Date & Requirement to Attend Parent Education Program, with deadlines inserted by the Office of the Family Court Commissioner, shall be attached to and served upon the respondent with the summons and petition.
- C. All divorce petitions and responsive pleadings, except in cases in which, at the time of the filing of the action, there are no minor children born to or adopted by either spouse during the marriage, shall be accompanied by a Supreme Court Form GF-150 Uniform Child Custody Jurisdiction and Enforcement Act Affidavit.

5.12 Temporary Orders

- A. All requests for temporary orders under Wis. Stat. § 767.225 shall be presented to the court in the form of a proposed order to show cause or a motion.
- B. The request shall be accompanied by an affidavit setting forth the grounds for a temporary order.

- C. All proceedings involving a request for a temporary order shall be scheduled for hearing before the Family Court Commissioner.
- D. The court will not hear a request for a temporary order until both parties have made the required financial disclosure to the court before or at the hearing on the motion. Failure to disclose the required financial information may subject a party to sanctions.
 - 1. Financial disclosure shall be made using Supreme Court Form FA-4139 or its substantial equivalent, and shall include proof of the party's income from any source during the 12 weeks preceding the filing, including, as applicable, wage statements issued by the party's employer(s), statements of government benefits received from any source, retirement benefits, pension payments, child support, maintenance, rent, dividends, interest, annuity payments and distributions from a trust.
 - 2. The moving party shall serve on the responding party a copy of Supreme Court Form FA-4139 or its substantial equivalent, together with instructions to the responding party to complete the form, provide proof of income as in the preceding subparagraph, and file both at the hearing on the request for a temporary order.
 - 3. The responding party shall complete Supreme Court Form FA-4139 or its substantial equivalent, provide proof of income and file the original and 2 copies of both at the hearing on the request for a temporary order.
- E. Both parties shall appear personally unless excused by the Family Court Commissioner.
- F. If the movant fails to appear, the court commissioner may deny the motion, impose costs, or order otherwise as necessary.
- G. If the responding party fails to appear and if the movant proves that the responding party was served with the motion, the court commissioner may grant the motion, issue a bench warrant for the arrest of the responding party, impose costs, or issue other appropriate orders.
- H. The parties may submit an agreed-upon temporary order for the court's approval using Supreme Court Form FA-4126 or FA-4127. The parties shall attach to the proposed order a completed Supreme Court Form FA-4139 financial disclosure for each party. Proof of income, such as wage statements, need not be attached.

5.13 Mediation of Custody and Placement Disputes

- A. At the earliest opportunity in all divorce and paternity cases in which custody or placement is disputed, the Family Court Commissioner shall inform the parties of the benefits of mediation and financial commitments which will be incurred by the parties should it become necessary for the court to appoint a guardian ad litem.
- B. The Family Court Mediation Service shall make available to all parties in such cases information concerning mediation.
- C. The Family Court Commissioner shall refer parties in such cases to the Family Court Mediation Service for an initial session to determine whether mediation is appropriate if:
 - 1. the parties agree to mediation;
 - 2. a party requests approval to move a child pursuant to Wis. Stat. § 767.481, and the request is disputed; or
 - 3. the judgment of divorce calls for mediation.

The Family Court Commissioner may make such a referral without a hearing.

- D. Referrals to the Family Court Mediation Service shall be made using the form Order Referring Parties to Mediation (Form 16 in the Appendix of Forms).
- E. The Family Court Commissioner may order the payment or deferral of any appropriate mediation fees.

5.14 Mandatory Completion of Parent Education

- A. Parties who have any children who have not yet reached the age of 18, children who are either born to or adopted by both parties before or during the marriage, shall complete a parent education program approved by the court. This requirement does not apply in paternity actions.
- B. Each party shall certify compliance with this requirement by filing in the office of the Family Court Commissioner a Report Concerning Completion of Parent Education Requirements (Form 8 in the Appendix of Forms). If either party fails or refuses to complete the program, the other party shall attend and certify his or her compliance. The court will not conduct any proceedings, except proceedings under Rule 5.____ (temporary orders), until at least one party certifies compliance.

- C. The Family Court Commissioner may excuse a party from compliance with this requirement for good cause. A party seeking to be excused shall make a request in writing to the Family Court Commissioner. The request shall state the complete case number, the names of both parties and a detailed reason why participation should not be required.
- D. The Family Court Commissioner shall, in consultation with the judges assigned to the Family Division, review and approve one or more programs that may be attended in compliance with this requirement.

5.15 Appointment of Guardian ad litem

- A. A Guardian ad litem may be appointed:
 - 1. by the court upon the recommendation of the Family Court Commissioner to the judge presiding in the branch to which the case is assigned after a hearing; such recommendation shall be submitted on the standard form Petition and Notice for Appointment of a Guardian ad Litem and Order Appointing Guardian ad Litem (Form 15 in the Appendix of Forms);
 - 2. upon a petition of a party to the judge presiding in the branch to which the case is assigned, submitted on the standard form Petition and Notice for Appointment of a Guardian ad Litem and Order Appointing Guardian ad Litem (Form 15 in the Appendix of Forms); ~~or~~
 - 3. by the judge presiding in the branch to which the case is assigned upon a signed stipulation of the parties; or
 - 4. by the court on its own motion.
- B. If the court grants the petition, it shall make the appointment according to Rule 5.____ (guardian ad litem registration, appointment, compensation. etc.)

5.16 Suspension of Proceedings to Effect Reconciliation

- A. An application for suspension of proceedings to effect reconciliation shall state whether either of the parties is subject to any order of the court barring contact with the other party, including a no-contact order issued in a criminal proceeding, a domestic abuse injunction or a harassment injunction.
- B. Stipulations for suspension of proceedings to effect reconciliation shall be presented for approval to the judge to whom the case is assigned.

- C. If the stipulation is approved, the parties shall file ~~a copy with the Family Court Commissioner and, if the State of Wisconsin is providing or has provided any benefits to either party, the parties shall serve a copy on the Department of Child Support Enforcement~~ three copies with the deputy clerk in the branch to which the case is assigned, who shall provide copies to the Family Court Commissioner and the Department of Child Support Enforcement.
- D. Upon the approval of the stipulation, the court shall schedule a date on or after which the court, without further notice to the parties, may dismiss the action if neither party has requested any further relief from the court.

5.17 Administrative Dismissal of Unprosecuted Cases

- A. A case shall be dismissed if, as of 120 days after the date a case is filed, or upon such other deadline ordered by the Family Court Commissioner, the case is not scheduled for a final hearing, pretrial conference or trial.
- B. Before dismissing a case for failure to prosecute the case, the court shall give notice.

5.18 Distinctions among Default, Stipulated and Contested Divorces

- A. Different procedures apply in “default” and “stipulated” divorces, which are also referred to as “uncontested” divorces, as opposed to “contested” divorces.
- B. “Default” divorces, in which the adverse party is served₁ by publication or otherwise, and does not appear or otherwise participate in any proceeding, are governed by Rule 5.____ (uncontested divorce proceedings).
- C. “Stipulated” divorces, in which parties agree in writing to resolve all disputes between them, are governed by Rule 5.____ (uncontested divorce proceedings).
- D. “Contested” divorces include all divorces, other than default or stipulated divorces in which both parties appear but disagree as to any issue which must be resolved by the court. Contested divorces are governed by Rule 5.____ (contested divorce proceedings).

5.19 Completion of Settlement Documents before Final Hearing

In order to ensure finality and to minimize the need for and scope of postjudgment proceedings and the burden of such proceedings on the parties and on the court, parties shall complete and file the applicable checklist and documents required by Rules 5.___ (uncontested divorce proceedings), 5.___ (contested divorce proceedings) or 5.___ (documents to be filed at the commencement of trial), except as these rules or the court otherwise permits, or else the court will not conduct a final hearing.

5.20 Uncontested Divorce Proceedings

- A. All uncontested divorce proceedings shall be heard by the Family Court Commissioner, except (i) cases in which the parties agree to divorce after the scheduling of a pretrial conference, which cases are subject to Rule 5.___ (contested divorce proceedings), and (ii) cases in which the judge agrees to preside over the proceedings, which cases are subject to paragraph G and Rule 1.___(authority of pair judges).
- B. All uncontested divorce proceedings shall be scheduled by the Family Court Commissioner for a final hearing before the Family Court Commissioner.
- C. Before a final hearing may be scheduled, the parties shall complete and file for approval by the office of the Family Court Commissioner the Final Hearing Checklist (Form ___ in the Appendix of Forms) and all of the items set forth in checklist, including the following:
 - 1. A Supreme Court form FA-4139 Financial Disclosure or its substantial equivalent for each party, signed by at least one party; a joint filing may be made for both parties, but both parties must sign the joint filing.
 - 2. A Supreme Court Form FA-4150 or FA-4151 Marital Settlement Agreement or its substantial equivalent addressing all ~~disputed~~ issues between the parties.
 - 3. If the marital settlement agreement provides for the payment of child support, family support or spousal maintenance, a proposed Supreme Court Form FA-612 Interim Financial Summary to Child Support Agency, or its substantial equivalent.
 - 4. The original, state-issued Certificate of Divorce or Annulment form prescribed by the State of Wisconsin Vital Records Section (the state-issued form is available in Courthouse Room 411) completed in black ink. No information on the form shall be erased or crossed out or

covered with correcting fluid or tape.

5. An Order to Appear (see Form ____ in the Appendix of Forms), completed except for the date, time and location of the final hearing, which information will be inserted by the office of the Family Court Commissioner upon approval of the submission.
 6. Report Concerning Completion of Parent Education Requirements (Form 8 in the Appendix of Forms), if not previously filed.
 7. Proof of service of the summons and petition and Supreme Court Form GF-175 Affidavit of Nonmilitary Service, if not previously filed.
 8. An original and 2 copies of a Supreme Court Form FA-4160 or FA-4161 Findings of Fact, Conclusions of Law & Judgment (“the judgment document”).
 - a. The parties need not, until the final hearing, complete those portions of the judgment document requiring the name of the judicial officer presiding at the hearing or the income for each party.
 - b. Unless stated specifically in the marital settlement agreement, the judgment document shall state with specificity
 - (i) any life insurance policies, by face amount, carrier, policy number and owner, to be included in the personal property division; and
 - (ii) the details of any retirement plan of any nature to be included in the personal property division, including the name of the plan, account number, value or estimated value of the plan and owner, together with a statement of how the plan is to be divided, expressed as a fixed amount or percentage.
 9. Two (2) 9" x 12" envelopes, one completely addressed to the petitioner and the other completely addressed to the respondent, with postage affixed (4 first class stamps on each).
 10. A cashier’s or certified check or money order payable to the Clerk of Circuit Court for the judgment filing fee (\$5.00), unless the office of the Family Court Commissioner grants permission to the parties to bring the funds in cash to the final hearing.
- D. If one or more parties is represented by an attorney, and if the complexity of the issues or the uncertainty of the proceeding so warrants, the court, upon

- request, may relieve a party of the requirements of paragraphs C.8 through C.10. If the court conducts the final hearing without a party submitting the items identified in paragraphs C.8 through C.10 in advance or at the time of the final hearing, they shall be submitted for the court's approval, and served on all parties to the action, including the Department of Child Support Enforcement, no later than 30 days after the hearing. If a party fails to submit the required papers within the time allowed by the court, the court may order the party to show cause why he or she should not be held in contempt. Any costs and disbursements, including the cost of service, may be assessed against the delinquent party and/or that person's attorney.
- E. The parties shall submit the required number of copies; the office of the Family Court Commissioner may reject requests for a final hearing if an insufficient number of copies are submitted.
 - F. All documents filed in compliance with this rule shall be served upon the adverse party by any of the means specified in Rule 1.____ (methods of service). A party who has been served by publication and has not appeared or participated in any proceeding may be served with such documents by mail at the address to which the publication summons was mailed.
 - G. The final hearing may be heard by the judge to whom the case is assigned if the parties (i) agree to divorce after the scheduling of a pretrial conference (see Rule 5.____) and (ii) have the permission of the judge to proceed before the judge. The judge shall decline to hear the final hearing if the submissions required by this rule are not complete.

5.21 Collaborative Divorce

- A. Unless otherwise ordered by the judge assigned to the case, all proceedings in divorce cases in which the parties have agreed to be bound by principles of collaborative divorce shall be heard by the Family Court Commissioner. Parties who so agree promptly shall request that the Family Court Commissioner assign a final hearing date no more than 7 months from the date of the filing of the action.
- B. If, at the time of the final hearing, any issue remains unresolved, the case shall be referred immediately to the assigned branch for further proceedings, which may include referring the case back to the Family Court Commissioner for a final hearing at a later date.
- C. If at any time proceedings are suspended to effect reconciliation pursuant to Wis. Stat. § 767.323, then, upon request, the Family Court Commissioner may issue a revised final hearing date taking into account the duration of the suspension.

5.22 Contested Divorce Proceedings

- A. Proceedings which formerly were contested but have since been resolved, leaving no dispute as to any issue which must be resolved by the court, are governed by Rule 5.____ (uncontested divorce proceedings). If all disputes are resolved before a scheduled proceeding (for example, a pretrial conference) the parties are encouraged to schedule a final hearing under Rule 5. ____ before the FCC, and then to contact the clerk in the branch to which the case is assigned to remove the previously-scheduled proceeding from the calendar. Previously-scheduled proceedings will remain on the court's calendar until a final hearing is scheduled on the FCC's calendar.
- B. Contested divorce proceedings proceed in one of two ways:
1. without a scheduling conference, as set forth in paragraph C; or
 2. with a scheduling conference or proposed scheduling order, as set forth in paragraph D.
 3. Whether or not the court convenes a scheduling conference or proposes a scheduling order, contested divorce proceedings are also governed by the provisions of paragraphs E. through G.
- C. If within a reasonable time after the case is filed and an administrative dismissal date is issued the parties do not request a scheduling conference and the court neither orders a scheduling conference nor proposes a scheduling order, then:
1. the parties shall attempt to resolve all disputes between them ~~on or~~ before the administrative dismissal date;
 2. if the parties are unable to resolve all disputes between them, then ~~on or~~ before the administrative dismissal date at least one of the parties shall contact the deputy clerk in the branch to which the case is assigned and obtain a date for a pretrial conference and an Order for Pretrial [Form ____ in the Appendix of Forms].
 3. The Order for Pretrial shall be served upon all parties by one of the means specified in Rule 1.____ (methods of service), together with a Pretrial Report pursuant to paragraph E. and all attachments to it. If the validity of service of the summons and petition is questionable, the court may order that the Order for Pretrial be served personally pursuant to Wis. Stat. § 801.11.

- D. Within a reasonable time after the case is filed, at the request of any party or on the court's own motion, the court may order the parties to attend a scheduling conference.
1. The purpose of the scheduling conference is to: (i) identify the positions of the parties, (ii) identify any disputed issues, (iii) issue a pretrial order in a form prescribed by the court requiring the parties to take such action as may be required to resolve the disputed issues, and (iv) set the matter for a pretrial conference before the branch to which the case is assigned.
 2. Before the scheduling conference, the parties shall submit a written description of the issues presented by the case on a form prescribed by the court.
 3. The scheduling order may require mediation pursuant to Rule 5____, an appraisal pursuant to Rule 5.____, alternative dispute resolution or any other proceeding necessary and reasonable to a just resolution of the disputed issues.
 4. The scheduling order may require the completion of a pretrial report containing all the items listed in paragraph E. and set a date for a pretrial hearing.
 5. If all disputes between the parties are resolved at the initial scheduling conference, the provisions on Rule 5.__(uncontested divorces) shall apply.
 6. If all disputes between the parties are resolved after the scheduling conference but before the pretrial conference, the provisions of Rule 5.__(uncontested divorces) shall apply and the parties are encouraged to contact the court to remove the pretrial conference from the court's calendar and to schedule a final hearing under Rule 5. __ before the FCC. The pretrial conference will remain on the court's calendar until a final hearing is scheduled on the FCC's calendar.
 8. In lieu of a scheduling conference, the court may propose a scheduling order to the parties and invite the parties to agree to the proposal. If the parties do not object, the court may issue the scheduling order without a scheduling conference. If either party objects, and if the objection cannot be resolved without a scheduling conference, the court shall conduct a scheduling conference.

- E. The Pretrial Report shall require, at a minimum, the completion and filing of:
1. a Supreme Court Form FA-4139 or its substantial equivalent, disclosing the party's finances, current as of the date of filing, which shall include proof of income as set forth in Rule 5.____.E.1. (temporary orders).
 2. either, at the court's discretion, a detailed statement of the issues that the parties are unable to resolve; or a Supreme Court Form FA-4152 or FA-4153 Proposed Marital Settlement Order or its substantial equivalent addressing all issues between the parties;
 3. a Report Concerning Completion of Parent Education Requirements (Form 8 in the Appendix of Forms), if not previously filed;
 4. a Supreme Court Form FA-4147 Proposed Parenting Plan, if not previously filed;
 5. proof of service of the summons and petition and Supreme Court Form GF-175, Affidavit of Nonmilitary Service, if not previously filed; and
 6. a proposed Pretrial Order (Form 12 in the Appendix of Forms).
- F. All parties and all attorneys participating in the case shall appear at the pretrial conference. The court may permit a party to appear by telephone according to the protocols authorized in Rule 3.27.A.
- G. Once the Pretrial Order is executed, and unless it is served on the parties at the pretrial conference, the party who presented the Pretrial Order shall serve it on all parties, by one of the means specified in Rule 1.____ (methods of service).

5.23 Discovery

Discovery is governed by Rules 3.19. through 3.22.

5.24 Appraisals

- A. Unless the parties request that the court appoint a real estate appraiser, the parties shall submit appraisals on or before the deadline ordered by the court or the court may rely upon the fair market value determined by the tax assessor.

- B. The parties shall divide equally and pay all expenses of a court-appointed appraiser, unless otherwise ordered by the court.
- C. An appraisal by a court-appointed appraiser may be received in evidence at trial without testimony of the appraiser. Other appraisals are not admissible unless the appraiser testifies, except upon the agreement of the parties or with the court's permission.
- D. A party may call a court-appointed appraiser as a witness at the party's expense and if the party serves notice in writing at least 30 days before the trial.
- E. A party may call an appraiser of his or her own choosing at his or her own expense, but shall disclose the name of the appraiser to the opposing party and serve a copy of the appraisal on or before the deadline set by the court in the pretrial order.

5.25 Documents to be Filed at the Commencement of Trial

- A. To insure an efficient closure of the proceedings upon the conclusion of a trial, all parties at trial shall file the following at or before the commencement of the trial:
 - 1. An updated Supreme Court Form FA-4139 Financial Disclosure Statement, or its substantial equivalent, current as of the date of trial;
 - 2. An original version (not a photocopy) Certificate of Divorce or Annulment form prescribed by the State of Wisconsin Vital Records Section completed in black ink; no information on the form shall be erased or crossed out or covered with correcting fluid or tape; and
 - 3. a Supreme Court Form FA-612 Interim Financial Summary to Child Support Agency, or its substantial equivalent, current as of the date of trial, if applicable.
- B. Parties shall comply with this requirement whether or not the requirement is stated in the Pretrial Order, unless excused by the court.

5.26 Preparation of Judgment Document in Contested Divorces

- A. The findings of fact, conclusions of law and judgment ("the judgment document") required by Wis. Stat. § 767.251 of the petitioner's attorney, or the petitioner if appearing without an attorney, unless otherwise ordered by

the court, shall be submitted on Supreme Court Form FA-4160 or FA-4161 (Findings of Fact, Conclusions of Law and Judgment) or its substantial equivalent, shall state all information required by statute and all information required by paragraph B, current as of the date of the trial, and shall be accompanied by a completed Form FA-4150 or FA-4151 Marital Settlement Agreement or Form FA-4152 or FA-4153 Proposed Marital Settlement Order or a substantial equivalent.

B. Unless stated specifically in the marital settlement agreement, the judgment document shall state:

1. if spousal maintenance is held open, that "Maintenance for the petitioner/respondent/joint petitioner wife/husband is held open" followed by a statement of the reasons why;
2. with specificity any life insurance policies, by face amount, carrier, policy number and owner, to be included in the personal property division;
3. with specificity the details of any retirement plan of any nature to be included in the personal property division, including the name of the plan, account number, value or estimated value of the plan and owner, together with a statement of how the plan is to be divided, expressed as a fixed amount or percentage; and
4. if custody or placement was contested, a statement of specific facts supporting the court's determination under Wis. Stat. § 767.41(5) of the best interests of the children.

C. Unless submitted previously, the party submitting the judgment documents also shall submit:

1. Three copies, in addition to the original documents.
2. Two 9" x 12" envelopes, one completely addressed to the petitioner and the other completely addressed to the respondent, with postage affixed (4 first class stamps on each).
3. A cashier's or certified check or money order payable to the Clerk of Circuit Court for the judgment filing fee (\$5.00).
4. An original version (not a photocopy) Certificate of Divorce or Annulment form prescribed by the State of Wisconsin Vital Records Section (see Form ____ in the Appendix of Forms) completed in black ink, unless filed previously; no information on the form shall be erased or crossed out or covered with correcting fluid or tape.

5. A Supreme Court Form FA-612 Interim Financial Summary to Child Support Agency, or its substantial equivalent, if applicable unless filed previously.
- D. If a party fails to submit the required judgment document within the time allowed by the court, the court may order the party to show cause why he or she should not be held in contempt. Any costs and disbursements, including the cost of service, may be assessed against the delinquent party and/or that person's attorney.
- E. The judgment document shall be served on all parties, including the guardian ad litem and the Department of Child Support Enforcement, before being submitted for the court's approval as follows:
1. upon any party represented by an attorney by any of the means specified in Rule 1.9 (methods of service), after which that party's attorney shall sign the proposed judgment document and return it to the party assigned to submit the judgment document to the court, or, no later than 10 days after service of the judgment document, file a written objection stating with particularity why the proposed judgment document does not conform to the findings made at trial; or
 2. upon any party not represented by an attorney by any of the means specified in Rule 1.9 (methods of service) and pursuant to Rule 1.____ (the five-day rule).

5.27 Postjudgment Proceedings in Divorce Cases

- A. The following postjudgment proceedings shall be heard by the judge to whom the case is assigned, and all papers relating to the proceedings shall be filed in the judge's branch:
1. All proceedings the judge agrees at the time of trial or final hearing to hear.
 2. All motions for contempt brought within 1 year of the date of the judgment document entered pursuant to Rule 5.____ or 5.____, except those filed by the Department of Child Support Enforcement, which shall be heard first by the Family Court Commissioner.
 3. All motions to reopen a judgment in a case arising under Wis. Stat. Ch. 767.
 4. All petitions arising under Wis. Stat. § 767.471. See Rule 5.____

(enforcement of physical placement orders).

5. All jurisdictional motions.
 6. All motions arising under Wis. Stat. § 767.481 (moving a child's residence outside the state), except
 - a. those motions permitted by Sec. ~~767.255~~ 767.225(1)(bm), including motions for temporary permission to move a child's residence while a motion under Sec. 767.481 is pending; and
 - b. those motions which are resolved by agreement between the parties.
 7. All requests for review of a decision of the Family Court Commissioner under Rule 5.____ (review of decisions of the Family Court Commissioner).
- B. All other postjudgment proceedings shall be heard first by the Family Court Commissioner.
- C. All stipulations proposing a modification of a judgment, except those made orally on the record before a judge, shall:
1. be presented to the Family Court Commissioner for approval;
 2. be submitted on Supreme Court Form FA-604 Stipulation and Order to Amend Judgment;
 3. state information sufficient to enable the Family Court Commissioner to make all determinations required by statute, including, in cases involving child support, family support or spousal maintenance, any pertinent financial data required by statute.
- D. Decisions of the Family Court Commissioner in postjudgment proceedings are final unless reviewed under Rule 5.____ (review of decisions of the Family Court Commissioner).
- E. In all postjudgment proceedings in which child custody or placement is disputed (including in proceedings seeking enforcement or modification of court orders):
1. all proceedings, except proceedings under Wis. Stat. § 767.471 to enforce a physical placement order (see Rule 5.____) and proceedings under Wis. Stat. § 767.481 to move a child's residence outside Wisconsin (see Rule 5.____, and exceptions), shall be heard initially by

the Family Court Commissioner, all pleadings shall be filed in the office of the Family Court Commissioner and the Family Court Commissioner's office shall schedule all proceedings;

2. the court shall order the parties to attend mediation pursuant to Wis. Stat. § 767.405 unless prohibited by statute;
 3. the Family Court Commissioner shall attempt to resolve the matter upon the first hearing of the matter and, if the parties agree to mediate, may order additional hearings before referring the matter to the judge to whom the case is assigned.
- F. If a court commissioner determines that a party may be held in contempt, the court commissioner shall issue written findings, propose specific sanctions and or purge obligations, and order further proceedings before the judge to whom the case is assigned. The court commissioner also shall advise the party of the right to obtain legal counsel and that failing to appear at the date and time ordered may result in an order of for arrest being issued by the court.

5.28 Exemption from Certain Filing Fees in Postjudgment Proceedings

No filing fee shall be charged to the Milwaukee County Department of Child Support Enforcement for filing judgment modification motions on behalf of a party receiving W-2, medical assistance, SSI or food stamps.

5.29 Enforcement of Physical Placement Orders under Wis. Stat. § 767.471

- A. All motions requesting enforcement of a physical placement order under Wis. Stat. § 767.471 shall be submitted on Supreme Court Form FA-609 or its substantial equivalent, together with a proposed order on Supreme Court Form FA-611 or its substantial equivalent.
- B. All such motions requesting enforcement of a physical placement order shall be scheduled before and heard by the judge to whom the case is assigned.
- C. Other motions or requests for relief made at the same time as a request for such enforcement of a physical placement order shall be scheduled before and heard by the Family Court Commissioner. The court may disregard such other motions and requests until they are scheduled properly.
- D. This rule does not apply to motions invoking the authority of Wis. Stat. ch. 822, the Uniform Child Custody Jurisdiction and Enforcement Act or any motion for contempt alleging a violation of an order for physical placement.

5.30 Child Custody/Placement Requests of Parties Other than Parents

Parties other than parents, including grandparents, who seek the custody or placement of a child, may commence proceedings on such a request by filing a petition and summons or by filing a motion in a pending family action involving the child(ren) and the parents. All such requests shall be heard by the Family Court Commissioner, subject to review under Rule 5.____.

5.31 Review of Decisions of the Family Court Commissioner

- A. Except as provided in Rule 5.38 (review of decisions of the Family Court Commissioner in Chapter 813 Actions), any order, ruling or decision of the Family Court Commissioner is subject to review by the judge to whom the case is assigned, at the request of any party to the action, including the guardian ad litem.
- B. A request for review shall be made by motion. The motion shall be filed in the branch to which the case is assigned no later than 15 business days after the date of the order, ruling or decision to be reviewed, or, if the order, ruling or decision is delivered to the parties by mail rather than in person, no later than 18 business days after the date of mailing of the order, ruling or decision.
- C. Before serving the motion, the party requesting review shall obtain a hearing date from the deputy clerk in the branch to which the case is assigned. The motion shall give notice of the date and time of the hearing on the motion and shall be served by any of the means specified in Rule 1.____ (methods of service). The motion shall be served on all parties, including, if applicable, the guardian ad litem and the Department of Child Support Enforcement. ~~If there is reason to doubt that the means of service selected by the moving party probably would result in actual service on the adverse party~~ the court has reason to doubt that an adverse party probably was served with motion, the court may order the party to serve the adverse party pursuant to Wis. Stat. § 801.11.
- D. The motion shall have attached to it a copy of the order, ruling or decision to be reviewed, and, to the extent the issue in dispute involves spousal maintenance, property division or child support, a current financial disclosure statement that complies with the requirements of Rule 5.____.D.1.
- E. To the extent the issue in dispute involves spousal maintenance, property division or child support, the party opposing the motion shall file, at or before the hearing on the motion, a current financial disclosure statement that

complies with the requirements of Rule 5.____.D.1.

5.32 Prejudgment Paternity Proceedings

- A. All paternity proceedings shall be scheduled before and heard by the Family Court Commissioner except those specified in this rule.
- B. The Family Court Commissioner may grant judgment of paternity upon a default or if the alleged father, in the presence of the Family Court Commissioner, signs an acknowledgment of paternity (see Form ____ in the Appendix of Forms). If the alleged father appears by telephone or videoconference, the Family Court Commissioner may grant judgment of paternity without a written acknowledgement if the alleged father acknowledges paternity on the record.
- C. If judgment of paternity is granted, the Family Court Commissioner may make appropriate orders regarding custody, physical placement, child support, payment of expenses and costs relating to the child's birth, court costs, genetic testing, change of the child's name and health insurance. Disputes over placement shall be heard initially by the Family Court Commissioner.
- D. If paternity or any other issue is contested by any party, including the guardian ad litem, the Family Court Commissioner shall hear the evidence and make a recommendation to the judge to whom the case is assigned, together with all appropriate prejudgment orders, and then transfer the case to the branch to which the case is assigned for scheduling of further proceedings.
- D. Petitions for the appointment of a guardian ad litem are governed by Rule 5.____, except upon a prejudgment request by the Department of Child Support Enforcement or if exigent circumstances justify an immediate appointment.
- E. Discovery is governed by Rules 3.19 through 3.22.

5.33 Postjudgment Paternity Proceedings

The procedures set forth in Rule 5.____ (postjudgment proceedings in divorce cases) shall also apply in postjudgment proceedings in paternity cases.

5.34 Extension of Child Support Upon Child Reaching Age 18 and Attending High School

A request to extend child support beyond the child's 18th birthday on the ground that the child is still attending high school shall be submitted to and determined by the Department of Child Support Enforcement.

5.35 Credit for Payments of Child Support Made Directly to the Payee

- A. A request that child support payments made directly by the payor to the payee be credited in the financial records of the Department of Child Support Enforcement shall be made in the first instance to the Department of Child Support Enforcement.
- B. If the Department of Child Support Enforcement denies a request made under paragraph A., the Family Court Commissioner may order such relief, pursuant to Wis. Stat. § 767.59 upon a completed Supreme Court Form FA-604 Stipulation and Order to Change Child Support demonstrating that such payment(s) have been made; or after a hearing upon a motion seeking such relief accompanied by an affidavit of the recipient of such payment(s) demonstrating that such payment(s) have been made.

5.36 Termination of Child Support Upon Death of Payor or Child

- A. The Family Court Commissioner may terminate child support upon submission of a death certificate of the payor.
- B. The Family Court Commissioner may terminate child support upon submission of a death certificate of the child, except if the payor supports more than one child under the same child support order, in which case child support may be modified as provided in Rule 5.____.B. or 5.____.C. (postjudgment proceedings in divorce cases).

5.37 Assignment of Petitions for Injunctions and Temporary Restraining Orders under Wis. Stat. Chapter 813

- A. Except as provided in these rules, all petitions for injunctions and temporary restraining orders under Wis. Stat. §§ 813.12, 813.122, and 813.125 initially shall be heard by the Family Court Commissioner. The assignment of subsequent hearings is governed by Rules 5.____.E.2. (designation and assignment of cases) and 5.____ (review of decisions of family court commissioners in Chapter 813 harassment and domestic abuse actions).

- B. If both parties to a petition for a child abuse injunction under Wis. Stat. § 813.122 are the same as the parties in a pending FA or PA case, the judge to whom such case is assigned shall preside over the injunction hearing. If the parties are not the same, a judge in the Children's Division shall preside over the injunction hearing.

5.38 Review of Decisions of the Family Court Commissioner in Chapter 813 Actions Concerning Harassment or Domestic Abuse

- A. Decisions of the Family Court Commissioner in actions arising under Wis. Stat. Chapter 813 concerning harassment or domestic abuse shall be reviewed as follows:
1. If the decision of the Family Court Commissioner of which review is sought consists of the denial of a temporary restraining order in a case arising under Wis. Stat. § 813.125 (harassment), or ~~a hearing on the denial of a request for a temporary restraining order or the denial of a hearing on a request for a domestic abuse an~~ injunction in a case arising under Wis. Stat. § 813.12 (domestic abuse), the decision shall be reviewed by the daytime duty judge. The request for review may be made in writing or in person and shall be filed with or made to the deputy court clerk assigned to the daytime duty judge. The request ~~may be made~~ shall be made as soon as possible but no later than 10 days after the date of the decision of which review is sought. If the daytime duty judge orders a an evidentiary hearing on a request for a temporary restraining order or injunction, the Family Court Commissioner shall preside over the hearing.
 2. If the decision of the Family Court Commissioner of which review is sought consists of the issuance or denial of a domestic abuse injunction, the decision shall be reviewed by the judge presiding in the branch to which the case is assigned. Such a motion shall be filed within the time limitations set forth in Rule 5.____.B. (review of decisions of the Family Court Commissioner). If cross-petitions are filed and the petitions are heard together by the Family Court Commissioner, and if neither party is a party to a pending FA case, then all requests for review of the decision of the Family Court Commissioner shall be consolidated and heard by the judge presiding in the branch to which the case with the lowest case number is assigned.
 3. A decision of the Family Court Commissioner denying approval of a fee waiver shall be reviewed, upon a timely motion, by the Chief Judge, except in cases in which the Family Court Commissioner

denies both approval of a fee waiver as well as a request for a temporary restraining order, in which case the decision shall be reviewed, upon a timely motion, by the daytime duty judge.

- B. While a decision of the Family Court Commissioner is being reviewed, the Family Court Commissioner may not vacate or modify any previously issued temporary restraining order or injunction.

5.39 Return of Firearms

A party seeking the return of a firearm upon the expiration of a domestic abuse or harassment injunction shall file with the Family Court Commissioner (i) a Supreme Court Form CV 433 Petition to Return Firearm and (ii) a receipt for the firearm issued by the authority to which it was surrendered.

5.40 Registration and Qualifications of Guardians ad Litem

- A. Attorneys appointed as guardian ad litem shall have training and experience deemed sufficient by the appointing judge. The court may select from a registry of qualified candidates maintained as follows:
 - 1. Attorneys may apply to the Family Court Commissioner for inclusion in the registry. Registration is good until July 31; applicants must re-apply annually. The application shall be made on [name of form], see Form 14 in the Appendix of Forms.
 - 2. An applicant shall certify that the applicant meets all certification requirements imposed by statute or Supreme Court rule and also that, in the 3 years immediately preceding the date of the application, the applicant has represented clients and/or served as a guardian ad litem in at least 25 family law or paternity cases involving issues of custody or placement. If the applicant cannot meet this qualification, the applicant may request a waiver of this qualification from the presiding judge of the division.
- B. All attorneys named in the registry occasionally shall take guardian ad litem appointments at county pay rates.

5.41 Reimbursement of Appointed Guardians ad Litem

If When an attorney appointed guardian ad litem by the court at the expense of Milwaukee County seeks reimbursement for such services, a written request shall

be submitted no later than 90 days after the court discharges the attorney. If the attorney seeks reimbursement after this deadline, the attorney shall bring a motion to be heard on the record demonstrating good cause for the delay in seeking reimbursement.

5.42 Privileged Counseling Communications

Communications among the parties and counselors in co-parenting and communications counseling programs are entitled to the privileges conferred on settlement negotiations by Wis. Stat. § 904.08 and on mediation by Wis. Stat. § 904.085.