

# **LOCAL COURT RULES TO THE 40<sup>TH</sup> JUDICIAL CIRCUIT**

(2019 rev. 06-01-2019)

## **RULES OF PRACTICE OF THE 40<sup>TH</sup> JUDICIAL CIRCUIT OF MISSOURI**

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## ADMINISTRATION

### Rule 1 DIVISIONS OF COURT

There shall be divisions of court as follows:

McDonald County:

Division One:	Circuit
Division Two:	Associate & Probate
Division Three	Municipal

Newton County:

Division One:	Civil
Division Two:	Criminal
Division Three:	Probate and Juvenile
Division Four:	Municipal

### Rule 2 HOURS AND TERMS OF COURT

#### 2.1 HOURS OF COURT

All sessions of court shall begin at 9:00 a.m. unless noted below. The following hours are established for the Clerks Office:

McDonald County: 8:00 a.m. to 4:30 p.m.

Newton County: 8:00 a.m. to 4:30 p.m.

The Court is deemed always open. The Court is open five days a week, Monday through Friday for the purpose of filing papers.

The Court will observe all State Legal Holidays.

#### 2.2 TERMS OF COURT

Terms of Court are hereby abolished by these rules. The Circuit Court of this circuit shall be considered as being in continual session and it shall not be necessary for a term or special term of such court to be convened or held for such court or the judges thereof to conduct the business of the court with respect to any case or matter before the court.

### 2.3 LAW DAYS

Law Days for Circuit Division shall be held as follows unless otherwise directed by the Court:

- a) Criminal—In Newton County on the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Monday of the month at 9:00 a.m. In McDonald County on the 3<sup>rd</sup> Tuesday of the month at 9:00 a.m.
- b) Civil—In Newton County on the first Wednesday, following the first Monday of the month at 9:00 a.m. In McDonald County on the 1<sup>st</sup> Tuesday of the month at 9:00 a.m.

Other divisions do not hold law days. Matters scheduled for law days will be docketed as provided for in Rule 2.4.

### 2.4 PARTICULAR MATTERS ON PARTICULAR DAYS

Arraignments will be scheduled by the Associate Judge and as scheduled by the Presiding Judge or his secretary. Defaults in civil matters will be taken up as scheduled by the Presiding Judge or his secretary and may be heard by Associate Judge. Motions in criminal matters and in civil matters shall be heard at such times as can be heard, if ready, in the order listed by the Clerk. The docket will be called and docket entries made on those motions not requiring a hearing. Motions requiring a hearing will be heard in the order listed on the docket prepared by the Clerk.



Rule 3                      PLEADINGS

### 3.1 CAPTION

The following caption is required:

IN THE CIRCUIT COURT OF (MCDONALD/NEWTON) COUNTY, MISSOURI  
DIVISION

(NAME) \_\_\_\_\_,  
PLAINTIFF

VS CASE NUMBER \_\_\_\_\_

(NAME) \_\_\_\_\_,  
DEFENDANT

CAUSE (Show nature of action)

(Signed—Attorney of record, or party)  
(Bar #)  
(Address)  
(Telephone & fax number)  
(Email address)

### 3.2 STYLE

All pleadings and motions intended for filing in any case shall be legibly written on one side of the paper only, either typewritten or printed, double spaced, letter size paper with a top and left hand margin of at least one inch; shall be signed by the party or his attorney offering the same for filing together with the address and telephone number of the attorney in the case; shall be captioned with the style and number of the case, the character of the pleadings and motions and, if consisting of more than one sheet, shall be securely bound at the top and with page numbers at the bottom. Paragraphs of pleading shall be numbered consecutively. An attorney offering a paper for filing may sign it on behalf of a law firm or attorney when duly authorized to do so; but he must also subscribe his own signature on said paper.

Where service of summons or other pleading is requested a copy of the pleading for each party to be served shall be filed and shall include the address for each party to be served. This section of rule will not apply when court has established electronic filing.

### Rule 3.3 PAPER SIZE

All pleadings and other papers, except exhibits, offered for filing in all divisions of this Court and all forms used in all divisions of this Court, shall be on paper of a size not larger than 8 ½ by 11 inches.

#### Rule 4 FILING OF CASES

The Circuit has adopted a consolidated filing system. All cases filed in either Newton or McDonald Counties shall be filed in the Office of the Circuit Clerk of the Court of the respective county in the appropriate division. The Circuit Clerk shall then place the matter on the docket of the judge assigned to the case by the Presiding Circuit Judge.

##### 4.1 MUNICIPAL CASES

When a municipality has made provisions for its municipal ordinance violation cases to be heard before a municipal judge such cases shall be filed in the Office of the Clerk of the Municipal Division which has been provided by the municipality. When a municipality has not made provision for its municipal violation cases to be heard before a municipal judge, such cases shall be filed in the Office of the Circuit Clerk. If a municipality maintains a traffic violations bureau, the case need not be so filed if disposition of the case is made in the traffic violations bureau in accordance with the procedures provided by law or court rule for the operation of traffic violations bureau.

#### 4.7 FACSIMILE AND DIGITAL FILING AND SERVICE

##### 1) FACSIMILE FILING AUTHORIZED

- a) Any pleading or other document excluding an original filing, may be filed in any division of this Court having, maintaining or designating a facsimile machine for the receipt of such transmission, by transmission of the same to such facsimile machine.
- b) Any pleading or document filed by facsimile transmission shall have the same effect as the filing of the original document, even though it may be required to be verified, acknowledged or sworn to by some other method.
- c) The pleading or document shall be deemed filed on the date and at the time actually received at the place of filing.
- d) Risk of loss in transmission, receipt or illegibility is upon the person or party transmitting and filing by electronic means.
- e) If the document is not received, or if it is illegible, it is deemed not filed.
- f) The person filing a pleading or other document by facsimile shall retain the original and make it available upon order of the Court.

##### 2) COURT ORDERS TRANSMITTED BY FACSIMILE

- a) Court orders, judgments or decrees, including warrants and search warrants, may be transmitted to the Clerks of the various divisions or others by electronic transmission, and until receipt of the originally signed document as herein provided, they shall have the same effect and be acted upon by all persons as if they were the original executed by the Court.
- b) The next business day following entry of an order which has been filed under this rule, the Court shall cause the original of the same to be transmitted to the Clerk of the division so as to be received by the electronic transmission.

3) COSTS FOR RECEIPT OR TRANSMISSION BY FACSIMILE

- a) The maintenance of a facsimile device by the Clerk's office and rules allowing filing by facsimile transmission benefit primarily the person desiring to file by this method of transmission. It causes the Clerks or other court system additional expense to acquire and maintain a device and phone line to receive these transmissions, and often to transfer the transmission to archival quality paper.
- b) A reasonable fee may be collected on a per page basis to provide this service

4) BUSINESS DAY DEFINED

A business day is any day, not a Saturday, Sunday or holiday recognized as such by the Missouri Supreme Court through the Office of State Court Administrator.

5) EFFECT OF FACSIMILE OR DIGITAL SIGNATURE

A facsimile or digital signature shall have the same effect as an original signature.

6) ELECTRONIC FILING

Once electronic filing established, facsimile filings shall only be accepted by pro se litigants.

Rule 5 FEES AND COSTS

5.1 FILING FEE AND COSTS DEPOSIT

In all cases filed in this Circuit there shall be a deposit with the appropriate clerk, for which the clerk shall give a receipt, the following sums:

CIRCUIT DIVISION:

Circuit Civil

\$95.00

Domestic Relations & Paternity	\$97.00
Adoptions	\$147.00

ASSOCIATE DIVISION:

All original civil cases	\$45.00
Small Claims	\$32.00
Trial de Novo application	\$45.00

Cost of service to be paid in advance to Sheriff or process server.

Certificate of true copy	\$2.00
Authentication	\$4.00
Copies per page	\$ .25
Copy of court proceeding on CD	\$20.00
Clerk search time	\$5.00
Transmission of electronic document per document	\$1.00

Above fees may be modified by Administrative Order

5.2 WITNESS FEE

Witness fees shall not be allowed unless claim therefore shall be made to the Clerk. The attorney causing any witness to be subpoenaed shall be responsible for seeing that proper claim is made.

Rule 6 ASSIGNMENT OF JUDGES, CASES AND TRANSFER OF CASES

6.1 ASSIGNMENT TO ASSOCIATE CIRCUIT JUDGES

6.1.1. By Local Court Rules or Order

The following cases may be heard by the Associate Judges and may or may not be on the record under procedure applicable under 478 and 517, RSMo.

- 1) Civil actions where the sum demanded, exclusive of interest and costs, does not exceed \$25,000.00;
- 2) All cases of misdemeanor or infraction, except as otherwise provided by law;
- 3) Felony cases prior to the filing of the information;
- 4) Municipal ordinance violation cases of a municipality for which a municipal judge is not provided;

- 5) All cases arising under Chapter 213, 272, 302, 303, 388, 429, 430, 444, 482, 521, 533, 534, 535 or 577 RSMo;
- 6) Small Claims cases filed under Chapter 482, RSMo;
- 7) Such other cases or classes of cases as may otherwise be specifically provided by law for Associate Circuit Judges to hear and determine.  
The Associate Judges of this circuit may hear and determine the following cases on the record under procedures applicable before Circuit Judges:
  - a) All cases as may be assigned by the Presiding Judge;
  - b) Any default or uncontested matter without special assignment, with consent of the Associate Judge;
  - c) Adversary proceedings in the Probate Division;

Adult abuse cases filed under Chapter 455 RSMo may be presented to the Circuit Judge or to any associate judge for requested issuance of an Ex Parte Order of Protection. Hearing on the Full Order of Protection may be heard before an associate judge.

The McDonald County Associate Judge is hereby assigned all Class C and D felonies filed in McDonald County after waiver of preliminary hearing. The McDonald County Associate Judge is also assigned all municipal cases transferred from any municipality in McDonald County.

When a Municipal Court Judge in Newton County is disqualified, the Division II Associate Circuit Judge is assigned to hear the case. The Judge shall determine the location of the trial at a place within the County of Newton.

#### 6.1.2 SPECIAL ASSIGNMENT

Request for change of judge submitted timely and otherwise in compliance with the rules of procedure will be considered by the initial judge and if granted, will be reassigned as follows, unless a direct assignment is made by the Presiding Judge.

##### Initial Assignment

Judge Perigo, McDonald County  
Judge LePage, McDonald County  
Judge Perigo, Newton County  
Judge Stremel, Newton County  
Judge Selby, Newton County

##### Reassignment

Judge LePage (through OSCA)  
Judge Perigo  
Judge Selby (through OSCA)  
Judge Selby  
Judge Stremel

#### 6.1.3 AVAILABILITY OF JUDGE FOR ADMITTING PERSONS TO BAIL

To assure the availability at all times and hours of a Circuit Judge or Associate Circuit Judge for the purpose of admitting persons to bail, judges of this circuit will be available on weekends in both Newton and McDonald Counties per the schedule developed and maintained by the Presiding Judge's secretary and made available to Newton and McDonald County Sheriff's Department, Prosecuting Attorneys, Central Dispatch and Office of Circuit Clerk.

The judge having weekend assignment will advise the Sheriff's office of each county in the circuit of a telephone number where he can be reached.

A weekend assignment shall begin at 3:00 p.m. on the last business day of the week and proceed until 3:00 p.m. the following Friday.

In the event a judge is unable to serve on the weekend scheduled, he shall be responsible for arranging for their own substitute judge.

#### Rule 7 WITHDRAWALS OF PAPERS FROM CLERK'S

##### 7.1 WHEN

No official files of the Circuit Court or any division thereof shall be removed from the Office of the Circuit Clerk or the office of any division clerk except in the custody of employees of the Circuit Court or their deputies or the judge assigned to the case.

#### Rule 8 PUBLICATION OF DOCKETS

##### 8.1 TRIAL DOCKET

No trial docket will be published. The Office of the Circuit Clerk will be responsible for giving written notice of trial settings for cases originally filed in their division. Once electronic filing is established see rule 103.9

##### 8.2 DISMISSAL DOCKET (See Rule 37)

#### Rule 9 COURTROOMS (see Rule 21.8)

##### 9.1 ASSIGNMENT OF COURTROOM

Request of judges for use of main courtroom in Newton County should be directed to the secretary to the presiding judge for scheduling. Request of judges for use of courtroom in McDonald County should be directed to the Office of the Circuit Clerk.

## 9.2 USE OF COUNSEL TABLE

While addressing the Court, counsel may sit at the counsel table or, optionally, stand at a respectful distance from the Court and witness. Counsel shall not approach the bench or witness on the stand without permission of the Court.

## 9.3 COURTROOM DECORUM AND DRESS

(See Rule 21.3)

- a) The Sheriff or his deputy and the clerk or deputy clerk, shall be in the courtroom at all times when court is in session, unless excused by the court.
- b) The bailiff shall formally open each session of the court and shall quietly and politely abate any noise or display which distracts from the business of the court. Bailiff is authorized to search any person, briefcase, purse or other items. Persons not abiding by this rule shall not be admitted into the courtroom.

## 9.4 USE OF CAMERAS AND PHOTOGRAPHIC EQUIPMENT

(See court operating rule 16)

## Rule 10 COURT REPORTERS AND COMPENSATION FOR SAME

Preparation of any transcript on appeal by an official court reporter shall not begin until the person ordering such transcript makes a cash deposit with the reporter of such amount as the reporter reasonably estimates such transcript will cost. In the event any cash deposit exceeds the costs of the transcript ordered, the excess shall be refunded to the person who ordered the transcript upon its completion. In the event the deposit is insufficient to pay for a transcript, the remaining unpaid portion of the costs shall be due upon the delivery of the transcript to the person who ordered it prepared. Payment will be made to the reporter who prepared it.

Preparations of a typewritten transcript of a record preserved by electronic recording device shall not begin until the clerk is paid a sum sufficient to cover the estimated cost of this work. The electronic tapes/CD shall be forwarded by the Clerk of the appropriate division to the Office of State Courts Administrator for transcribing; the estimated costs will be based on rates authorized for transcripts prepared by an official court reporter. The attorney for the appellant shall be responsible for assembly of the appeal transcript.

## Rule 11 RECORDING OF JUDICIAL PROCEEDINGS

All persons except those authorized by the Court to preserve the record shall refrain from broadcasting, televising, recording or taking photographs in the courtroom while court is in session.

Rule 12      MONIES PAID INTO COURT

12.1      BOND IN CIVIL CASES  
(See Rule 100.5.1)      (no local rule)

Rule 13      COMMUNICATIONS WITH COURT

13.1      ORAL COMMUNICATIONS WITH THE COURT

Prior to any oral communication with the court by an attorney as to any pending case, the attorney should make an effort to contact opposing counsel. Immediately following such oral communication, the conversation with the court shall be summarized in writing and a copy of such summary furnished to opposing counsel with a copy to the Clerk of the Court for filing in the case file.

13.2      WRITTEN COMMUNICATIONS WITH THE COURT

A copy of any written communications to the Court shall be furnished to opposing counsel

Rule 14      TIME STANDARDS

This Circuit shall comply with the case processing time standards set for in Administrative Rule 17.

GENERAL RULES

Rule 21      ATTORNEYS

21.1      WITHDRAWAL OF ATTORNEYS

Attorneys shall withdraw from a case only by leave of Court, after filing a copy of the communication showing the client has notice of the withdrawal and of the date of trial setting if any.

21.2      AGREEMENT OF ATTORNEYS



No private or prior stipulation or agreement between parties or attorneys in a pending cause will be recognized unless made in writing and filed with the clerk or made orally in open court.

21.3 ADVICE TO CLIENT AND WITNESSES OF COURTROOM PROCEDURES

The attorney is to advise his client and witnesses as to the formality of the court, including proper dress and seek their cooperation therewith, thereby avoiding embarrassment.

The attorney is to advise his client not to discuss any phase of the case with the court.

When the Rule of Exclusion is invoked, each attorney is charged with the duty of seeing that the witnesses comply with the rule. If any witness violates the rule, whether willfully or otherwise, such witness shall not be permitted to testify, except by consent of opposing counsel or unless the court, in its own discretion, rules that justice requires such testimony be received, under all circumstances to be considered. (See Rule 9)

All cellular devices will not be permitted to be used without permission of the Court.

Counsel should not hold conference with clients or witnesses in the courtroom while the court is hearing other matters and should assist the court in maintaining order and proper decorum.

Rule 24 EXHIBITS

The attorney is responsible for all exhibits before, during and after trial. Exhibits should be marked for identification prior to trial. The attorney shall present the court with an exhibit list identifying all exhibits prior to trial. Plaintiff/petition shall use numbers on exhibit and defendant/respondent shall use letters.

## PRE-TRIAL MATTERS

### Rule 32 DISCOVERY

#### 32.1 INTERROGATORIES

##### 32.1.1 FORM OF INTERROGATORIES: FORM AND PROCEDURE IN CIVIL AND DOMESTIC ACTIONS

1. Any party propounding interrogatories in civil or domestic relations actions shall leave an appropriate space for the answer to each interrogatory.
2. The original and two copies of the interrogatories shall be served upon adverse counsel (or adverse party if not represented). Interrogatories are not to be filed with the Court except as provided by paragraph 4 hereof. The interrogating party shall show on the interrogatories the Certificate of Mailing and shall file with the Court at the time they are mailed a separate Certificate of Mailing of the Interrogatories which shall include the following:
  - a) the party to whom mailed
  - b) the date of mailing
  - c) designation of pleading as first interrogatories, second interrogatories, etc
  - d) the signature of attorney or party mailing the interrogatories
3. The answers and objections to the interrogatories shall be typewritten in the spaces provided. In the event an answer or objection is too lengthy to be placed in the space provided, it shall be attached as an appendix and clearly identified.
4. The adverse party shall prepare the affidavit to be signed by the appropriate party and attach it as a last page of the interrogatories and then file the completed original containing the answers with the Clerk, mailing a copy to the interrogating party.
5. No party shall serve on any other party more than twenty (20) interrogatories in the aggregate in a domestic relations case without leave of Court or consent of opposing counsel. No party shall serve on any other party more than thirty-five (35) interrogatories in the aggregate in all other civil cases without leave of court or consent of opposing counsel. In all civil cases, including domestic relations cases, subparagraphs of any interrogatories shall relate directly to the subject matter of the interrogatory and shall not exceed four in number. Any party desiring to serve additional interrogatories shall file a written motion setting forth the proposed additional interrogatories and the reasons establishing good

cause for the additional interrogatories. Any number of additional interrogatories may be filed and served if attached thereto is the written consent of counsel for the party to which the interrogatories are directed.

#### 32.2.1 CRIMINAL DISCOVERY

When either the State or the defendant is making response to discovery said response shall be made directly to the party requesting discovery. A copy shall not be filed in the Court file. When the response is made, a certificate shall be prepared by the party making the response describing generally what is being furnished, the date furnished and the signature of counsel.

#### 32.3 DOMESTIC RELATIONS—DISCOVERY

##### SUMMARIES OF MARITAL AND NON-MARITAL PROPERTY AND LIABILITIES REQUIRED

Attached hereto as Appendix A is DR Form 1 “Summary of Marital and Non-Marital Property and Liabilities.” DR Form 1 is approved for use in Dissolution of Marriage and Legal Separation cases. DR Form 1 need not be used where there is a Separation Agreement signed by both parties. DR Form 1 shall be completed, signed, filed with the Clerk of this Court and a copy furnished to the opposite party before a trial setting will be made. The opposite party shall complete the DR Form 1 setting forth requested information as to each item on the same line where information was furnished from the other party. The completed DR 1 Form shall be filed with the Clerk of this Court at least ten days prior to trial date. Failure of a party to complete DR Form 1 shall preclude the defaulting party from presenting evidence of values or whether the property is marital or non-marital, in the discretion of the Court.

#### Rule 33 PRE-TRIAL MOTIONS

##### 33.1 BRIEFS IN SUPPORT OF MOTIONS, WHEN REQUIRED

All motions shall be in writing. Either party thereafter upon five (5) days notice may call up said motion for hearing. After submission, the Court may require such memoranda or briefs as the Court may deem advisable. Time to file written memorandum may be extended by the Court for good cause shown.

##### 33.1 MOTIONS IN LIMINE

All motions shall be in writing and accompanied by citations of authority.

Rule 34      CONTINUANCES

An application for continuance shall be made by a written motion unless the adverse party consents that the application for continuance may be made orally. For good cause shown, the court may continue a civil action to a fixed day, or to a day for trial to be set thereafter. Every continuance granted on the application of a party may be at the cost of such party, if so ordered by the court. All applications for continuances shall conform to Supreme Court Rule 65. No general continuance will be granted in any case. NO CONTINUANCE WILL AUTOMATICALLY BE GRANTED BY AGREEMENT OR STIPULATION. (Filing of a motion for continuance does not result in the case automatically being continued.)

Rule 36      SETTING CASES FOR TRIAL

36.1      REQUEST FOR TRIAL

When counsel believe a case is ready for trial, counsel shall notify the judge of the division wherein the case is pending of the desire to secure a trial setting, serving a copy of such notification on opposing counsel and all unrepresented parties. Such request for setting shall include the case number, type of case, estimate of time required for trial (include time for presentation of evidence by all parties), statement as to whether or not a jury will be necessary, and a list of available dates.

Rule 37      DISMISSALS

37.1      DISMISSAL DOCKET

Cases in which the claimants have taken no action to prosecute their claims for a period of three months may be placed on a dismissal docket. Dismissal dockets will be prepared by the secretary to the Presiding Judge or the Circuit Clerk. The dismissal docket shall be sent to the attorney of record or to the party if not represented (to last known address). The dismissal docket shall be sent approximately two weeks in advance of the date on which the dismissal docket will be called.

If the claimant's attorney does not contact the judge of the appropriate division on or before the call of the dismissal docket and request the removal of their case from the dismissal docket, the cases on the dismissal docket will be dismissed for failure to prosecute.

## **Rule 38—Mediation**

### **Rule 38.10 Mediation of Child Custody and Visitation Disputes**

1. In an effort to encourage the resolution of custody and visitation issues by the parents and other custodians whenever possible, the Court does by this rule establish the requirement that parties to custody and visitation issues use mediation as a tool in resolving these issues. This rule may be complied with in two ways:
  - a. The parties may jointly and voluntarily select any mediator qualified under Rule 88.05 and thereafter undertake mediation.
  - b. If the parties cannot jointly and voluntarily select a mediator and voluntarily participate in mediation, the Court shall select a mediator from the court mediator panel and order the parties to participate.
2. All matters covered by chapter 452 and non-prosecutor initiated paternity actions brought pursuant to chapter 210 involving issues of custody and visitation are subject to this rule and Supreme Court Rule 88.02 - 88.08. The court, in these cases, may at any time order the parties to participate in mediation pursuant to this rule.
3. All adult parties to any proceeding governed by this rule in which there is a dispute as to custody and visitation shall participate in a minimum of two (2) hours of mediation, unless waived by court order upon a showing of good cause.
4. A case subject to the mediation requirement may not be set for trial until Form 15 has been filed and the requirements of this rule have been satisfied.

#### **Voluntary Mediation**

5. The mediator selected by the parties for voluntary mediation shall, at a minimum, have those qualifications set forth in Missouri Supreme Court Rule 88.05.

6. To assist in the selection of a mediator chosen by the parties, the Court Clerk will maintain a list of persons qualified under Rule 88.05 who wish to act as mediators of child custody or visitation disputes under this rule. This list shall constitute the court-maintained list of mediators referred to in Rule 88.05b. The court-maintained list shall indicate the name, office address, mailing address, telephone number, e-mail address, qualifications and current hourly rates of each mediator listed. The list shall be updated as the Presiding Judge deems appropriate.

### **Form 15**

7. Forty-five (45) days from the date of original service of summons or the filing of an entry of appearance or after a finding of paternity, a party shall file Form 15 indicating whether: (a) there are no issues of custody and visitation, or (b) the parties have voluntarily participated in mediation as required by this rule, or, (c) the parties are unable to voluntarily participate in mediation and require the appointment of a mediator to comply with this rule.

### **Court-Ordered Mediation**

8. In the event that, upon the filing of Form 15, the parties have not voluntarily engaged in two (2) hours of mediation with a Rule 88.05 qualified mediator, the court shall appoint a mediator from the court mediator panel

9. Upon receipt of an order appointing a panel mediator to conduct mediation, the parties may file, within five (5) business days, notification of voluntary compliance setting forth their intent to voluntarily mediate with a Rule 88.05 qualified mediator within 30 days of the date of the notification. Receipt of such notification will serve to set aside the appointment of a court panel mediator and the order to mediate. A party may, for good cause shown, file a motion to extend the time to waive mediation, select their own mediator or extend the time for compliance with this rule.

10. Any party may move the court to disqualify a court panel mediator for cause. Mediators have a duty to disclose any fact bearing on their qualifications, including any fact which would be grounds for disqualification of a mediator.

11. If a mediator is disqualified from mediating a case, an order shall be entered setting forth the name of a new mediator from the court mediator panel. Nothing in this provision shall limit the discretion of a mediator to refuse any assignment.

12. The court believes that confidentiality is the essence of mediation and integral to the process. The mediator, the parties and their counsel shall at all times act in accordance with Missouri Supreme Court Rule 88.08.

13. The mediator has a duty to be impartial and to advise all parties of any circumstances bearing on bias, prejudice or impartiality, including any past or present relationships with either party or persons related to them.

14. The court panel mediator shall emphasize to the parties that any mediation beyond the initial two-hour session shall only proceed by the mutual agreement of both parties and the mediator. After the completion of 2 hours of mediation, the mediator or either party can request at any time, without prejudice, that mediation cease.

15. Subject to the parameters set forth in Missouri Supreme Court Rule 88.06 through 88.08, the mediator shall at all times be in control of the mediation and the procedures to be followed in mediation. With the consent of both parties and in the discretion of the mediator, counsel for each party may attend the mediation conference and actively participate in the mediation process. Counsels for each party shall at any time be permitted to privately communicate with their client concerning the mediation process.

16. If either party fails to appear for any court ordered mediation session without reasonable notice, the court may, on motion, or by request of the mediator, award attorney's fees and/or costs or mediator fees and/or costs or impose any other appropriate sanction provided by law.

17. In all actions designated on the contested track, such mediation must be completed no later than the date of the case management conference.

18. In all actions designated on the uncontested track in which the parties agree to participate in mediation, such mediation must be completed no later than the date of the uncontested hearing.

**Rule 38.11 Mediation in Dissolution of Marriage or Legal Separation cases involving the Division of Property and/or Debt**

1. In every dissolution of marriage or legal separation proceeding involving the division of property and/or debt, prior to the filing of a motion for trial setting, the parties shall participate in not less than two hours of mediation. The rule may be complied with in two ways.
  - a. The parties may jointly and voluntarily select any mediator qualified under Rule 88.05 and thereafter undertake mediation.
  - b. If the parties cannot jointly and voluntarily select a mediator and voluntarily participate in mediation, the Court shall select a mediator from the court mediator panel and order the parties to participate.
2. On its own motion, or upon motion filed by a party and for good cause shown, the Court may waive mediation.
3. Each party shall provide to the mediator a copy of his/her current "Statement of Marital and Non-Marital Property, Income and Expense statement seven (7) days prior to the date scheduled for mediation.



In the Circuit Court of the Fortieth Judicial Circuit

\_\_\_\_\_ At Newton County \_\_\_\_\_ At McDonald County

In Re the Matter of

\_\_\_\_\_  
Petitioner

And

Case No:

\_\_\_\_\_  
Respondent

**FORM 15**  
**PETITIONER/RESPONDENT'S RESPONSE TO Rule 38.10**  
**NOTIFICATION OF CHILD CUSTODY AND RELATED PARENTING ISSUES**

Form 15 must be completed by **each** party and filed no later than 45 days from the date of service, when a dissolution, motion to modify involves children or a court order establishing paternity has occurred.

Check all that apply:

- ☐ 1. The parties have completed two hours of Rule 38.10 mediation
- ☐ 2. The parties have no disputes regarding parenting issues regarding the children.
- ☐ 3. The required mediation pursuant to Rule 38.10 has been waived by order of the court.

*IF YOU HAVE SELECTED 1, 2, OR 3 ABOVE, YOU NEED ONLY SIGN THE AFFIDAVIT BELOW AND FILE FORM 15. IF YOU CANNOT SELECT 1, 2, OR 3 ABOVE, PLEASE CONTINUE*

- ☐ 1. The parties have a dispute regarding parenting issues and have not been to a mediator qualified under Missouri Supreme Court Rule 88.05.
- ☐ 2. There has been or there is a current Restraining Order or Protection from Abuse Order involving the parties or the child.

Affidavit:

I certify that the above Response to Rule 38.10 Notification of Child Custody and Related Parenting Issues is complete, true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
Affiant—Petitioner/Respondent

Subscribed and sworn to before me the undersigned Notary Public, on

\_\_\_\_\_

My commission expires:

\_\_\_\_\_  
NOTARY PUBLIC

## SETTLEMENT AND DEFAULT

### Rule 41 SETTLEMENT

#### 41.1 NOTICE OF SETTLEMENT

The court and the clerk shall be notified promptly if a case is settled after it has been set for trial. If no notice of settlement is received within 48 hours of a jury trial setting date, the costs, including the cost of the jury panel, may be assessed against the parties.

### Rule 42 DEFAULT (See Rules 2.4, 33 & 5)

## TRIALS

### Rule 51 COURT-TRIAL CASES

#### 51.1 DEFAULT AND UNCONTESTED MATTERS

(See Rules 2.4, 42 & 54.2)

In any case filed under the provisions of 452.300 through 452.550 RSMo in which service of summons is not obtained upon the respondent, the Court will not issue a judgment or decree unless:

- a) a verified entry of appearance of respondent is filed;
- b) an entry of appearance on behalf of respondent filed by an attorney has been on file in the Circuit Clerk's office for more than thirty (30) days.

#### 51.2 PREPARATION OF FINDINGS OF FACT AND CONCLUSION OF LAW

In all court-trial cases in which findings of fact and conclusions of law are required or properly requested, the parties, through their attorneys, shall submit proposed findings of fact and conclusions of law within a reasonable time as directed by the Court.

#### 51.3 SUBPOENAS

Request for subpoena will be issued by the Circuit Clerk and sent by the clerk to the person making such request. Service of the subpoena and the expense therefore, shall be the responsibility of the person requesting subpoena.

Rule 52      SELECTION OF JURY

52.1      JURY QUESTIONNAIRES

The jury questionnaire shall be delivered along with directions to fill it out and return it to the Clerk's office within ten (10) days. Jury questionnaires shall be available the day before any jury trial by contacting the Circuit Clerk.

Rule 53      JURY TRIALS

53.1      INSTRUCTIONS

The Judge may request the submission of proposed instructions in advance of trial.

53.2      CLOSING ARGUMENTS

An attorney will be given a reasonable time for argument and the Court will decide the period of time allowed. Plaintiff may divide his time between opening and closing argument, but not more than one-half of his time may be spent in closing. Time may be extended at the discretion of the Court. Arguments by multiple parties are made in the order named in the pleading unless otherwise agreed to by the parties or directed by the Court. Plaintiff may decline to make an opening argument and by so doing, waives closing argument. Defendant may, nevertheless, make his argument.

Rule 54      JUDGMENT ENTRY

54.1      CONTESTED CASES

Unless otherwise ordered, the attorney for the plaintiff/petitioner shall prepare and submit the form of judgment entry to the Court for its approval.

54.2      DEFAULT OR UNCONTESTED CASES

In default or uncontested cases, counsel shall on the day of rendition, present the judgment or decree to the Court for its approval, to be entered in the cause. The Court shall then authorize the clerk to enter judgment as provided therein or as modified by the Court. If a modification is made affecting the substantial rights of the parties, the parties shall be notified forthwith. (See Rules 42 & 51.1)

Rule 55      AMERICANS WITH DISABILITIES ACT

55.1      NOTIFICATION

Any party planning to call a witness who will require special accommodation due to disability as defined in the Americans with Disabilities Act, and any party or attorney or other individual who requires special accommodation in order to participate in the court proceedings, shall provide written notice of the accommodation needed to the Court within five days of receipt of notice of the hearing.

RULES RELATING TO PARTICULAR ACTIONS

Rule 61      ADOPTION

61.1      FILING REQUIREMENTS

Prior to issuance of the decree of adoption, counsel for the petitioners shall file a Certificate of Adoption (Vital Statistics Report) on a form to be provided by the Clerk, as required by Section 193.360 RSMo 1978.

61.2      HOME STUDY

Unless waived pursuant to Section 453.070, RSMo 1978, upon the filing of a petition for adoption, the Court shall designate the agency, organization or institution, juvenile court officer or other suitable person, who shall initiate an investigation of the suitability of the child for adoption and the suitability of petitioners as parents for said child. The Clerk shall notify the appropriate agency or person designated to conduct such investigation and file a written report thereof.

Rule 67      CRIMINAL CASES

67.1      PRE-TRIAL RELEASE

67.1.1      MOTIONS TO SET BOND AND FOR BOND REDUCTION

Motions to set bond and for bond reduction shall be made in writing addressed to the Judge of the division in which the case is pending. Such motions shall be filed with the division clerk where the case is pending.

67.1.2      QUALIFICATIONS OF BONDSMEN

This court will follow Supreme Court Rule 33.

67.1.3 SURRENDER OF DEFENDANT BY COMPENSATED SURETY COMPANY

No individual surety or an attorney in fact or agent for a surety company shall surrender any person released upon bond without the authorization of the judge in which the criminal matter is pending, and before whom the criminal defendant is to appear next. The Sheriffs of Newton and McDonald counties are hereby ordered not to accept any defendant in a criminal case who an individual surety or surety company attempts to surrender without authorization from said judge.

67.1.4 RELEASE OF INFORMATION TO BONDSMEN IN A CLOSED FILE

After any file has been closed, a person posting bond or other form of surety may be advised of the status of the claim or charge for which the bond or surety was filed.

67.2 ARRAIGNMENTS

Criminal arraignments will commence at 9:00 a.m. on Criminal Law Day unless otherwise set by the Court.

67.2.1 DESIGNATION OF TRIAL JUDGE

In felony cases, where arraignment proceedings are before the Presiding Judge, the Presiding Judge shall be the trial judge without further designation under Supreme Court Rules 32.07(c). If an Associate Judge has been assigned to a felony case, before or after arraignment, the Associate Judge assigned to the case shall be the trial judge for the case unless disqualified. The Presiding Judge may reassign the case to himself for the purpose of accepting a guilty plea when the Associate Judge to whom the case is assigned is absent from the county or is otherwise unavailable to accept the plea.

67.2.2 DATES

If the plea is not guilty, the Court will fix the trial date. Trial setting for those confined in jail will take precedence over trial setting for those on bond.

67.3 GUILTY PLEA

67.3.1 WHERE ENTERED

Pleas of guilty may be entered only in the division of the court where the case is originally assigned or in the division where the case is assigned for trial. However, the initial filing of a felony case in the associate division does not allow the defendant to plead guilty in that division.

#### 67.3.2 PETITION TO ENTER A PLEA OF GUILTY

In all felony cases wherein the defendant desires to plead guilty, the defendant and his attorney shall prepare a plea of guilty on a form adopted by the court. The plea of guilty form shall be ready to be executed by the defendant and witnessed by his attorney in open court. Copies of plea of guilty forms may be secured from the Clerk's office or Prosecuting Attorney.

#### 67.4 CLERKS PROCEDURE UPON FILING OF PRO SE MOTION UNDER RULE 24.035 OR RULE 29.15

- a) For all pro se motions for post-conviction relief filed under Rule 24.035, the Clerk shall enter the following order upon the docket of the case:

The Court appoints the Central Appellate Division of the State Public Defender to represent Movant in this 24.035 action, and the amended motion is due sixty days from either the date of this order or the date the guilty plea and sentencing transcript is filed in the Circuit Court, whichever is later. Clerk to notify.

- b) For Motions under 29.15. For all pro se motions for post-conviction relief filed under Rule 29.15, where sentence was pronounced on or after January 1, 1996, the Clerk shall enter the following order upon the docket of the case:

The Court appoints the Central Appellate Division for the State Public Defender to represent Movant in this 29.15 action. Counsel is granted sixty days from the date of this order and the issuance of the appellate mandate in which to file the amended motion. Clerk to notify.

### Rule 68 DISSOLUTION OF MARRIAGE

#### 68.1 FILING REQUIREMENTS

At the time of filing the petition, the attorney for the petitioner shall file a Certificate of Dissolution of Marriage (Vital Statistics Report) on a form to be provided by the Clerk as required by Section 193.205, RSMo 1978.

68.2 SEPARATION AGREEMENT

In all cases where written separation agreements are made under the provisions of Section 452.325, RSMo 1978, a copy of such executed agreement shall be submitted to the Court prior to submission, or as otherwise directed by the Court. If economic circumstances of the parties are not included in the separation agreement, evidence thereon shall be presented to the Court at trial.

68.3 FORMS OF DECREES

68.3.1 DECREEES AFFECTING REAL ESTATE

All decrees of dissolution of marriage or legal separation affecting title to real estate shall be prepared by parties and upon entry thereof a copy of the decree shall be delivered by counsel to the Circuit Clerk.

68.3.2 MAINTENCE AND CHILD SUPPORT PAYMENTS

Unless otherwise ordered by the court, all maintenance and child support payment shall be made to the Family Support Payment Center, PO Box 109002, Jefferson City, MO 65110-9002.

68.4 FILING OF FINANCIAL STATEMENTS

See rule 32.6

68.5 MODIFICATION OF DECREE

(See Rule 68.4)



#### 68.6 TEMPORARY CUSTODY AND VISITATION

Upon the filing of a verified petition, absent an enforceable court order to the contrary, the parent with actual custody of any minor unemancipated child(ren) of the marriage shall have temporary legal custody as currently provided by law. Such temporary custody shall be subject to the reasonable visitation rights of the other parent however, which visitation shall include the following minimum periods for children two (2) years of age and above:

One weekday evening each week from 6:00 p.m. to 8:00 p.m.; alternate weekends from 6:00 p.m. Friday to 6:00 p.m. Sunday; the visitation parent's birthday and the birthday of each child, from 9:00 a.m. (or the time the child's school is out) until 8:00 p.m.; Thanksgiving, July 4<sup>th</sup>, Labor Day and from the beginning of the child(ren)'s school vacation from Christmas until 9:00 a.m. on Christmas Day in even numbered years; Memorial Day, East and from 9:00 a.m. on Christmas Day until the end of the child(ren)'s school vacation in odd numbered years.

For children below the age of two (2) years, visitation shall be as set forth above, but shall not include any overnight visitation, and the daytime hours shall be from 9:00 a.m. to 6:00 p.m.

These minimum reasonable temporary visitation rights may not be altered, modified or amended except by mutual agreement of the parents or by specific court order. The parent obtaining physical custody of the child(ren) shall provide transportation. The parents are obligated to exchange information with one another concerning the health, education and welfare of the child(ren). Access to records and information pertaining to the minor child(ren) including, but not limited to medical, dental and school records, shall not be denied to the non-custodial or visiting parent.

#### 68.11 ENTRY OF JUDGMENT UPON AFFIDAVIT—REQUIREMENTS

1) Final orders entered –when. Final orders in a proceeding for dissolution of marriage or legal separation, motions to modify, actions for declaration of paternity and change of name may be entered upon the affidavit of either or both parties when:

a) The Respondent in an action for dissolution of marriage, legal separation or declaration of paternity or change of name has been served in a manner provided by the Missouri Rules of Civil Procedure and is in default; and in all actions for change of name where there is no named Respondent; or

- b) There are no minor children of the mother and father and the mother is not pregnant, or one of the parties is represented by counsel and the parties have entered into a written agreement determining custody and child support; and
  - c) The adverse party has been served in a manner provided by the Missouri Rules of Civil Procedure or has formally filed a verified entry of appearance or responsive pleadings; and
  - d) There is no genuine issue as to any material fact; and
  - e) There is no marital property to be divided or the parties have entered into a written agreement for the division of their marital property.
- 2) Affidavit-Filing. If one party desires to submit the matter for entry of final orders upon an affidavit, the submitting party shall file an affidavit setting forth sworn testimony showing the court's jurisdiction as factual averments sufficient to support the relief requested in the proceeding together with a copy of the proposed decree or order, a copy of any written agreement proposed for adoption by the court, a completed Form 14, and any other supporting evidence. The filing of such affidavit shall not be deemed to shorten any statutory waiting period required for entry of a decree of dissolution or decree of legal separation.
- 3) Hearing Required-When. The court shall not be bound to enter a decree or order upon the affidavit of either or both parties, but the court may, upon its own motion, require that formal hearing be held to determine any or all issues presented by the pleadings.

Rule 72      PROBATE

72.1 PRO SE LITIGANTS

No full decedent estate will be administered without an attorney of record (precluded by the unauthorized practice of law rules). Any other pro se litigants shall conform to all probate Local and Supreme Court Rules.

72.2 SETTLEMENTS AND ANNUAL REPORTS

The failure to file settlements or annual reports as required will result in a Show Cause Order. Failure to appear for show cause hearing may result in Letters being revoked.

POST TRIAL

Rule 81      EXECUTION

Executions shall not be issued by the clerk except upon written application therefore verified by the oath of the judgment-creditor or his attorney. The written application shall contain the following:

- a) Style and number of case in which judgment was obtained;
- b) Date judgment entered or last revived;
- c) The amount of the original judgment, the amount of the accrued interest on the original judgment and the amount of the judgment and interest still unsatisfied;
- d) The full name and current address, if known, of the judgment-debtor;
- e) A full description of the property to be executed on;
- f) The return date on the execution (30, 60 or 90 days);
- g) Any special instructions to be provided the sheriff performing the execution.

Rule 82      GARNISHMENT

82.1 TERMINATION OF CONTINUOUS WAGE GARNISHMENT

In addition to as otherwise provided by law, a continuous wage garnishment shall be terminated by the Clerk if the garnishor fails to file a statement of judgment balance as provided to Supreme Court Rule 90.19 (b), within 10 days of notification from the Clerk.

INTERNAL ORGANIZATION

Rule 100

100.1    PRESIDING JUDGE

100.1.1 ELECTION

This being a single judge circuit, the Circuit Judge is automatically the Presiding Judge.

100.1.2      DUTIES OF PRESIDING JUDGE

The Presiding Judge is the general administrative authority of the Court. The Presiding Judge has the authority to assign cases to judges and judges to division but he is not to assign (1) a municipal judge to hear any case other than to initially hear municipal ordinance violation cases; (2) a judge

to try a felony case when he has conducted the preliminary hearing; (3) a case to a judge contrary to Supreme Court Rule or local circuit court rules; (4) a case to a probate judge if case is not within Section 472.020, RSMo 1978, unless the probate judge consents and he was a probate judge on January 1, 1979.

The meetings of the court en banc may be called by the Presiding Judge or by two judges giving written notice. If any judge so requests, the meeting will be on the record. The Presiding Judge has one vote and majority vote rules. The Presiding Judge may call a special term of court. The Presiding Judge may appoint a secretary and any additional personnel to aid in the judicial business of the circuit.

## 100.2        LIBRARY FUND

Of the amount deposited for costs at the time of filing cases in this Circuit, \$10.00 shall constitute the county law library fee.

The Circuit Clerk of each county of the 40<sup>th</sup> Judicial Circuit is hereby designated as treasurer of the law library fund of such county. The treasurer shall expend only such sums from the law library fund as shall be ordered by a majority of the circuit court judges of each respective county.

## ELECTRONIC FILING

### 103.01        ELECTRONIC FILING

Rule 103 and Court Operating Rule 27 govern all matters subject to electronic filing.

### 103.02        REGISTRATION

Registration for electronic filing shall be made as required by Court Operating Rule 27.

### 103.03        FILES OF THE COURT

- a) When a court accepts an electronic filing documents for filing, the electronic document is the official court record.
- b) If a court digitizes, records, scans or otherwise reproduces a document that is filed in paper into an electronic record, document or image, the electronic record, document or image is the official court record. The court may then destroy the paper document unless that document is required to be preserved by law or court order.

103.04 FORMAT OF ELECTRONICALLY FILED DOCUMENTS

- a) An electronic document shall be filed in the PDF format as defined in Court Operating Rule 27 and shall be formatted in accordance with the applicable rules governing formatting of paper documents, including page and word limits. Color coding of electronic documents is not required.
- b) Electronic documents that are part of the official court record shall be self-contained and shall not contain hyperlinks.
- c) For the convenience of the court, in addition to any electronic document filed as the official court record, a party or amicus curiae may submit to the court a copy of an electronic document on a read-only disc (CD-R or DVD-R). A copy of such disc also shall be provided to all other counsel and all self-represented parties. The electronic document shall be submitted in text searchable PDF that must be identical in content and format as the electronic document filed as the official court record, except that the document may also include hyperlinks to the complete text and any authorities cited therein and to any document or other material contained in the record on appeal. In order for the hyperlinks to function properly, the record (or the cited portions of the record) and authorities must be included on the same disc as the electronic document. An adhesive label shall be affixed to each disc legibly identifying:
  - 1) The caption of the case;
  - 2) The party filing the disk;
  - 3) The disc number (e.g. "Disc 1 of 2").The filing party shall certify that the disc has been scanned for viruses and that it is virus-free.
- d) An electronic document requiring a signature shall be signed by an original signature, stamped signature or an electronic graphic representation of a signature, or in the following manner: /s/ John or Jan Person

103.05 ELECTRONIC FILING WITH THE COURT

- a) Any filing shall be made with the clerk of the court through the electronic filing system. Attachments, including exhibits, that are part of any filing shall be filed electronically at the same time.
- b) An attachment or exhibit that exceeds the technical standards for the electronic filing system or is unable to be electronically filed must be filed with the court on approved media as defined in Court Operating Rule 27. When an attachment or exhibit is filed on approved media, a notice of exhibit attachment shall be filed through the electronic filing system.

#### 103.06 ELECTRONIC FILING DEADLINES

- a) Electronic filing is permitted at all times when the electronic filing system is available. If the electronic filing system is unavailable at the time the user attempts to file a document, the registered user shall make reasonable efforts to file the document as soon as the unavailability ends.
- b) If a registered user believes the unavailability of the electronic filing system prevented a timely filing to the party's prejudice, the registered user may submit a motion to the court within ten days of the user's first unsuccessful attempt to file the document. The motion shall state the date and time of the first unsuccessful attempt to file the document electronically and why the delay was prejudicial.
- c) If the court determines that the unavailability of the electronic filing system prevented the court from receiving the filing, the court shall deem the document filed on the day that the user initially attempted to file the document.
- d) The filing deadline for any document filed electronically is 11:59:59 p.m. central time.
- e) A document is submitted for filing when the electronic filing system receives the document and sends a confirmation receipt to the filer. The electronic filing system will issue a confirmation receipt that includes the date and time.
- f) If the clerk accepts a document for filing, the date and time of filing entered in the case management system shall be the date and time the electronic filing system received the document. The electronic filing system will affix the date and time of filing on the document.

#### 103.07 VERIFIED DOCUMENTS AND AFFIDAVITS

A document required by law to be verified, to be signed under penalty of perjury, or to be signed by a notary public may be filed as an electronic document if the affiant, declarant or notary public has signed a paper document. Until the entire case is finally disposed, the registered user shall be the custodian of the paper document.

#### 103.08 SERVICE

Service shall be made to registered user through the electronic filing system and to all others as provided in Rule 43.01©. Service by the electronic filing system is complete upon transmission except that, for the purposes of calculating the time for filing a response, a transmission made on a Saturday, Sunday or legal holiday, or after 5:00 p.m., shall be

considered complete on the next day that is not a Saturday, Sunday or legal holiday.

103.09      NOTICE OF ENTRY OF ORDERS AND JUDGMENTS

Any notice to the parties required by Rule 74.03 shall be made to the registered users through the electronic filing system and to all others as provided in Rule 43.01.

103.10      ISSUANCE OF SUMMONS

If the electronic filing system is used to file a document that must be served with a summons, the clerk shall transmit the summons electronically to the registered user.