

**RULES OF THE  
CIRCUIT COURT  
OF THE  
FORTY-FIFTH  
JUDICIAL CIRCUIT  
STATE OF MISSOURI**

# ORDER

The Rules of this Court shall apply to all proceedings in the Circuit courts of Lincoln and Pike Counties, whether before Circuit Judges or Associate Circuit Judges, unless otherwise specified by individual rule.

These rules are adopted by Order of the Circuit Court en banc on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, and shall be effective upon signing. **These rules supersede all prior local rules.**

It is further ordered that a copy of these rules be forwarded to Thomas F. Simon, Clerk of the Supreme Court; to Jon Miners, Editor, West Group; and to the Circuit Clerks of the Forty-fifth Judicial Circuit, for distribution to the attorneys.

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Dan Dildine  
Circuit Judge, Division I  
(636) 528.6300

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Amy J. Kinker  
Associate Circuit Judge, Division II  
(636) 528.6300

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Ben Burkemper  
Associate Circuit Judge, Division III  
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David H. Ash  
Associate Circuit Judge, Division IV  
(573) 324.5582

# **CIRCUIT COURT**

## **FORTY – FIFTH JUDICIAL CIRCUIT**

### **DIVISION I**

Judge Dan Dildine

### **DIVISION II**

Judge Amy J. Kinker

### **DIVISION III**

Judge Ben Burkemper

### **DIVISION IV**

Judge David H. Ash

**Lincoln County Court Clerk V/ Office Supervisor  
Program Specialist/Lincoln Probate Clerk  
Pike County Chief Deputy Clerk**

Connie Clary  
Sharon Eisenbath  
Brenda Haddock

DAN DILDINE  
**Presiding Judge**

GRACE SINCLAIR  
**Lincoln County Circuit Clerk**

JERRI HARRELSON  
**Pike County Circuit Clerk**

KATHY HALL  
**Presiding Judge Secretary**

DENISE DERIENZO  
**Alternative Dispute Resolution Program Specialist**

## ADMINISTRATION

### RULE 1 DIVISION OF COURT

The Forty-Fifth Judicial Circuit shall for the purposes of these rules be composed of Divisions I, II, III and IV, and there shall be the following divisions within the Circuit Court: Circuit Judge Division, Family Court Division, Probate Divisions, Associate Circuit Judge Divisions, Juvenile Divisions, Drug Court, Municipal Divisions, and such other divisions as may be established by local court rule.

A. The divisions of the circuit court which are presided over by a circuit judge shall be known as "Circuit Judge, Division No. I".

B. The divisions of the circuit court which are presided over by associate circuit judges shall be known as "Associate Circuit Judge, Division No. II", "Associate Circuit Judge, Division No. III", or "Associate Circuit Judge, Division No. IV".

C. The associate circuit judge serving the Associate Circuit Judge Division No. II of Lincoln County and other judges, while hearing probate cases in Lincoln County, shall also be judges of the probate division of Lincoln County.

D. The associate circuit judge serving in Associate Circuit Judge Division No. IV of Pike County and other judges, while hearing probate cases in Pike County, shall also be judges of the probate division of Pike County.

E. There shall be Municipal Divisions of the Circuit Court in Lincoln and Pike Counties.

1. If any municipality in either Lincoln or Pike counties elects to retain its Municipal Judge, the Municipal Judge shall hear and determine municipal ordinance violations in a Municipal Division of the Circuit Court located in the municipality so electing to retain its Municipal Judge.
2. If any municipality in either Lincoln County or Pike County elects not to retain its Municipal Judge, municipal ordinance violations shall be heard and determined by an Associate Circuit Judge.

F. Small Claims cases shall be heard by Associate Circuit Judges in the Small Claims Court of the Circuit Courts of Lincoln and Pike Counties.

### RULE 2 HOURS AND TERMS OF COURT

#### 2.1 HOURS OF COURT

**Unless otherwise stated**, all divisions of this Court presided over by a Circuit Court Judge, or an Associate Court Judge, shall open at 9:00 a.m., and/or 1:30 p.m., of each day of Court.

Special appointments and settings for any other time shall be made with the Judge of the division involved.

[Adopted eff. Jan. 5, 2001. Amended eff. Jan. 16, 2004; Nov. 28, 2007.]

## **2.2 TERMS OF COURT**

### **A. PIKE COUNTY**

The terms of Court shall commence on the Second Monday in January, April, July, and October.

### **B. LINCOLN COUNTY**

The terms of the Court shall commence on the First Monday in January, April, July, and October.

[Adopted eff. Jan. 5, 2001.]

## **2.3 LAW DAYS**

A. All motions or other matters preliminary to trial in Division I may be heard on any Law Day or Supplemental Law Day upon five days notice by personal service, or eight days notice if by mail, or facsimile, to adverse parties or by consent of the parties, or as specially scheduled.

B. Default: Cases in default, pending in Division I, may be prosecuted to final judgment in Division I on any Law Day or Supplemental Law Day, or as specially scheduled.

C. Counsel serving said notice or desiring action by the Court on said motion, preliminary matter or default shall notify the clerk of the court not later than the last working day before any Law Day or Supplemental Law Day that said cause is to be heard.

D. Oral argument on motions or other matters preliminary to trial shall be no longer than ten (10) minutes for each party, with moving party permitted to divide total time with not more than five (5) minutes for rebuttal. On application by either party, the Court may grant additional time.

E. No motion, default or other preliminary matters requiring more than twenty (20) minutes for presentation shall be heard on any Law Day or Supplemental Law Day unless waived by the Court. On any Law Day or Supplemental Law Day, or by contacting the Presiding Judge or the Secretary to the Presiding Judge, such matters may be given a special setting.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Nov. 28, 2007.]

## **2.4 PARTICULAR MATTERS ON PARTICULAR DAYS**

Cases heard in Division I on Law Day and Supplemental Law Day shall be heard, generally, in the following order:

- A. Civil cases and written arraignments for Defendants, not in custody, shall be heard first.
- B. Paternity suits and other matters, requiring a closed court room, shall be heard at the conclusion of the Civil and Criminal Dockets, or shortly prior to the noon recess, whichever comes first.
- C. In Lincoln County, cases of Defendants in custody, are usually heard at the end of the docket.
- D. In Lincoln County, adoptions shall be specially set by contacting the Presiding Judge or the Presiding Judge's Secretary, at (636) 528-7147. In Pike County, adoptions shall be specially set by contacting the Presiding Judge or the Pike County Circuit Clerk's office. They are commonly heard between 8:15 a.m. and 8:45 a.m. on Law Days.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Nov. 28, 2007.]

## **RULE 3 PLEADINGS**

### **3.1 CAPTION**

Pleadings which are filed within this Circuit shall be captioned in the following manner, and any pleadings not so captioned may be returned by the Clerk to the party attempting to file the same.

#### **A. CIRCUIT JUDGE CASES:**

IN THE CIRCUIT COURT OF (LINCOLN/PIKE) COUNTY, MISSOURI  
Circuit Judge Division No. I

#### **B. FAMILY COURT CASES (Dissolution, Motions to Modify)**

IN THE CIRCUIT COURT OF (LINCOLN/PIKE) COUNTY, MISSOURI  
Family Court Division

#### **C. ASSOCIATE CIRCUIT JUDGE CASES**

IN THE CIRCUIT COURT OF (LINCOLN/PIKE) COUNTY, MISSOURI  
Associate Circuit Judge Division

**D. PROBATE CASES:**

IN THE CIRCUIT COURT OF (LINCOLN/PIKE) COUNTY, MISSOURI  
Probate Division

In The Estate of John Doe, )  
Deceased. ) Case No. \_\_\_\_\_

OR

In The Matter of John Doe, )  
Respondent. ) Case No. \_\_\_\_\_

OR

In the Matter of John Doe, )  
Minor. ) Case No. \_\_\_\_\_

**E. JUVENILE CASES:**

IN THE CIRCUIT COURT OF (LINCOLN/PIKE) COUNTY, MISSOURI  
Juvenile Division \_\_\_\_

In the Interest of John Doe, )  
) Case No. \_\_\_\_\_

**F. MUNICIPAL CASES:**

IN THE CIRCUIT COURT OF (LINCOLN/PIKE) COUNTY, MISSOURI  
(Name of City) Municipal Division

City of \_\_\_\_\_, )  
Plaintiff, )  
)  
vs. ) Case No. \_\_\_\_\_  
)  
John Doe, )  
Defendant. )

**G. In all actions, there shall** include a title of the action which shall be in the following form:

(a) "Petition for \_\_\_\_\_" (here insert a short and concise statement (e.g. Petition for Quiet Title to Real Estate, Petition for Money Owing on Promissory Note, Petition for Damages, Based on Negligence) (not simply "Damages" or Negligence") of the type of

action being filed). Any petition not so titled **shall** be returned by the Clerk to the party attempting to file the same.

(b) Along with each petition, the appropriate “Party Information Sheet” **shall** be completed and filed. Forms can be obtained from the Circuit Clerk’s office.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Nov. 28, 2007.]

### **3.2 STYLE**

No local rule.

### **3.3 PLEADINGS AND PAPERS – SIZE**

A. All pleadings and other papers, except exhibits offered for filing in any court within the Forty-fifth Judicial Circuit, and all forms used in any such court, including opinions, shall be on white paper of a size of 8 ½ x 11 inches. An exhibit may be on paper larger than 8 ½ x 11 inches. Briefs shall be prepared as provided in Supreme Court Rules 81.17 and 84.06.

B. Pleadings, Motions, Suggestions, Briefs and other papers and documents, except exhibits, filed or submitted to the Court shall be plainly, clearly and legibly typed or printed and double-spaced (except on lined forms with indicated spacing) and shall otherwise comply with Supreme Court rules and rules of this circuit.

C. Any pleading containing more than one page shall have pages numbered in sequence. Page numbers to be placed at bottom of pages. Each pleading shall be stapled separately. Exhibits to a pleading shall be clearly marked and stapled to the said pleading.

D. Copies of court forms are available from the respective clerk’s offices. Some of the forms are available by e-mail.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Oct. 14, 2008; March 10, 2009.]

### **3.4 FACSIMILE FILING**

#### **3.4.1 FILING BY FACSIMILE DEVICE**

A. Whenever only one copy of a motion, pleading or other document is required to be filed, and that document is ten (10) pages or fewer in length, and no filing fee or cost deposit is required for the filing, the document may be filed with the Court by facsimile transmission pursuant to Supreme Court Rule 43. Electronic filings received at the Court before 4:00 p.m. of a regular workday are deemed filed as of that day. Filings received after 4:00 p.m. are deemed filed on the next regular Court workday. Time of the receipt shall be

determined by the Clerk's fax machine or computer. If a document filing is not received by the clerk or if it is illegible, it is deemed not filed. Risk of loss in transmission, receipt or illegibility is upon the party transmitting and filing by electronic transmission.

Transmission shall be to such number as is provided by the Circuit Clerk's office. Facsimile transmission for all cases in Lincoln County, including Associate Circuit Judge Divisions, shall be to the Circuit Clerk's office. In Pike County, facsimile filings shall be with the appropriate Division, either civil or criminal.

B. The person filing a pleading or other document by facsimile device **shall retain the original and make it available upon order of the Court.** Do not file by facsimile and original, the same document.

Waiver of these rules may only be granted by the Court.

### **3.4.2 SERVICE BY FACSIMILE DEVICE**

A. Any order, judgment, warrant or other document issued by the Court may be transmitted by facsimile device.

B. The Judge's signature on the transmitted document shall have the same effect as an original signature.

C. Documents signed by the Clerk requiring a seal, shall be deemed to have the same effect as the original, which shall be retained by the Clerk.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Nov. 28, 2007.]

## **RULE 4 FILING OF CASES**

All pleadings in Lincoln Court are filed in the Circuit Clerk's office as the clerks of Lincoln County are consolidated. All pleadings in Pike County shall be filed in the Circuit Clerks office or the Associate Division, whichever is applicable to the filing.

[Amended eff. Jan. 16, 2004.]

**4.0** All pleadings in Lincoln County and Pike County are filed in the Circuit Clerk's office as the clerks of each county are consolidated.

[Adopted eff. Nov. 28, 2007.]

### **4.1 CRIMINAL CASES**

A. All criminal informations shall, in addition to the information required by Supreme Court Rule 23, contain the appropriate Missouri Charge Code as contained in the

Missouri Charge Code Manual maintained by the Office of State Courts Administrator and the Missouri Department of Public Safety, Missouri State Highway Patrol, Criminal Records and Identification Division. In Pike County, civil and probate filings may be filed in the Circuit Clerks office, 2<sup>nd</sup> floor. Criminal and juvenile filings may be filed in the Circuit Clerk's office, 3<sup>rd</sup> floor.

B. In Pike County, Conservation and Water Safety Division matters as well as Uniform Traffic Tickets may be filed directly by the appropriate authority, in the Circuit Clerk's office, 3<sup>rd</sup> floor, or may be filed with the Fine Collection Center and transferred to the clerk's office upon request of either party.

C. In any action commenced by the filing of the pleading with the Circuit Clerk, the said Clerk shall, after performing the various required duties described in paragraph (A) above, forward the file of said action, along with the pertinent records thereof, to the appropriate Division Clerk.

1. Upon receipt of said file and the records of such assigned action, the Division Clerk shall be charged with the responsibility of issuing process and storing of the written records of the case until it is finally determined by the Judge of that division.

a. Upon the disqualification of an Associate Circuit Division Judge, all records of the case in the possession of the Division Clerk of the disqualified Judge, shall be retained for hearing by a Judge specially assigned. The Division Clerk shall perform all required duties with respect to the storage, maintenance and record keeping of such matter until same is finally determined.

2. Upon final determination by the Judge of such division, the Division Clerk shall retain the file in accordance with court operating rule #8 and other statutes regarding record retention.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Nov. 28, 2007.]

## **4.2 CIVIL CASES**

A. The commencement of all actions shall be upon the filing of the original pleading with the Circuit Clerk. Upon receipt of the original pleading and the required filing fees, the said Clerk shall mark said document "filed", set forth thereon the date of such filing, assign to said document an appropriate number, and shall index Circuit Division actions in the computer.

B. In any action in which the original jurisdiction is or has been solely in the Circuit Judge Division, the said Circuit Clerk shall perform all duties described in paragraph A above with respect to the filing of the original petition, shall receive all subsequent pleadings in

the case and maintain the records of the case such as to properly reflect the Court's proceedings.

1. The said Clerk shall keep and maintain the current files of actions above described pending before the Circuit Judge Division.
2. When such action is finally determined, the said Clerk shall remove the file of such case from the file cabinet containing the current files of matters pending before the Circuit Judge Division and shall place or properly record such file in a separate cabinet or other container designated for the permanent storage of such records of the Court.

C. In any action commenced by the filing of the original pleading with the Circuit Clerk and denominated as an Associate Circuit Judge Division case of the Circuit court, the said Circuit Clerk shall, after performing the various required duties described in paragraph A above, shall transfer the initiating document along with the filing fee to the appropriate Division Clerk, who shall index said action in the computer.

1. Upon receipt of the initiating document and filing fee, if applicable, the Division Clerk shall be charged with the responsibility of preparing a file folder bearing such number so assigned and prepare such other documents necessary for the recording of the transactions and the indexing of said action, issuing process and making and storing of the written records of the case until it is finally determined by the Judge of that Division.
  - a. Upon the disqualification of an Associate Division Judge, all records of the case in the possession of the Division Clerk of the disqualified Judge, shall be retained for hearing by a Judge specially assigned. The Division Clerk shall perform all required duties with respect to the storage, maintenance and record keeping of such matter until the same is finally determined.
2. Upon final determination by the Judge of such division, the Division Clerk shall retain the file in accordance with court operating rule #8 and other statutes regarding record retention.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

### **4.3 PROBATE CASES**

A. In Lincoln County and Pike County, all original pleadings including wills and initial application for letters shall be filed with the Circuit Clerk, in the appropriate county, and assigned to the Probate Division.

B. The Probate Division Clerk shall be charged with all responsibilities of issuing process and making and storing of the records of the case.

**4.3.1** All proceedings involving probate or estate administration, proceedings for the administration of testamentary or inter-vivos trust, mental health proceedings, guardianship and conservatorship proceedings, shall be filed in the Probate Division.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Nov. 28, 2007; Oct. 14, 2008.]

#### **4.4 JUVENILE CASES**

No local rule.

#### **4.5 SMALL CLAIMS CASES**

A. All Small Claims court cases shall be filed with the Circuit Clerk.

B. The Clerk of the appropriate Division shall make, keep and properly reflect the Court's proceedings of such actions maintained in such division.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Nov. 28, 2007.]

#### **4.6 MUNICIPAL CASES**

All Municipal Ordinance violations shall be filed with the Circuit Clerk.

[Adopted eff. Jan. 5, 2001. Amended eff. Jan. 16, 2004; Nov. 28, 2007.]

### **RULE 5 FEES AND COSTS**

#### **5.1 FILING FEE AND COST DEPOSIT**

A. In all cases, except actions sent to any county in this circuit on change of venue, or a probate case, except as specified herein, or civil or criminal suits filed by the Court or State or any city, the following costs deposits shall be required at the time of filing suit:

1. In cases filed in Associate Circuit Judge Division of the Circuit Court, the sum of \$48.00. A separate check, payable to the Sheriff, shall be provided for service fees. Check with Sheriff regarding amount.
2. In Small Claims the filing fee shall be the sum of \$20.00, plus costs of service.
3. In any suit where service by publication is necessary, the party requiring publication shall arrange for publication directly with the appropriate newspaper.

4. In all other cases, including dissolution, motions for contempt and other circuit civil and domestic relations cases, the sum of \$180.00.
5. In any suit where the services of an attorney as Guardian ad Litem or as an attorney for a person who might be in military service is contemplated, \$150.00 in addition to all other initial cost deposits is required. Further deposit may be required by order of the Court.
6. In any suit where a Trial de Novo is requested from an Associate Circuit Judge Division, or Municipal Division, to a Circuit Judge Division, \$45.00, in addition to all other cost deposits required, shall be deposited by the person requesting the Trial de Novo.
7. In any suit to be certified from an Associate Circuit Judge Division to a Circuit Judge Division, \$50.00, in addition to all other cost deposits required, shall be deposited by the party causing the certification as determined by the Associate Circuit Judge.
8. In adoptions, the sum of \$400.00.
9. Probate Division
  - a. Proceedings to admit will (no letters), \$68.00.
  - b. Administration of decedent estate without will, \$148.00 plus any certified copy fees.
  - c. Administration of decedent estate with will, \$183.00 plus any certified copy fees.
  - d. Chapter 145 proceeding (estate taxes), \$68.00.
  - e. Proceedings for small estate affidavit without will, \$68.00; with will, \$103.00.
  - f. Proceedings to determine heirship, \$68.00 plus prepayment of certified mail fees. In Pike County, a publication cost deposit is also required.
  - g. Application for Refusal to Creditor, \$68.00.
  - h. Application for Refusal to Spouse, \$68.00.
  - i. Application of Interested Party for Administration, \$425.00 (includes deposit for publication).
  - j. Deposit of Will during lifetime, \$3.00.

- k. Cost of certified copies in probate proceedings shall accrue at \$1.00 per copied page and \$1.50 per certificate.
- l. In addition, reasonable fees may be charged for postage and photocopies.
- m. Petition for Guardianship and/or Conservatorship (adult), Pike County, \$258.00.
- n. Petition for Guardianship and/or Conservatorship (minor), Pike County, \$243.00.
- o. Petition to dispense with Conservatorship of Minor (Estate less than \$10,000.00), \$68.00

(p through s apply to Lincoln County only)

- p. Petition for Guardianship and/or Conservatorship of Adult, \$300.00.
- q. Petition for Guardianship and/or Conservatorship of minor 14 or over, \$93.00.
- r. Petition for Guardianship and/or Conservatorship of minor under 14, \$300.00.
- s. Petition to dispense with Conservatorship of Minor (Estate less than \$10,000.00), \$68.00.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Nov. 28, 2007; Oct. 14, 2008; Mar. 10, 2009.]

## **5.2 COSTS**

The Circuit Clerk shall be responsible for the collection of all costs after initial filing fee except:

- A. Fees in a case pending in a Probate Division;
- B. Fees in a case pending in a Municipal Division;
- C. Fees in Associate Circuit Judge Divisions shall be the responsibility of that Division Clerk.
- D. Basic Civil Legal Services Fund surcharge shall be collected by the clerk on the filing of any civil or criminal action or proceeding, including an appeal, except that no fee shall be imposed pursuant to this section on any case that is filed charging traffic violations except drug and alcohol-related offenses. The

surcharge is not applicable to small claims cases. The fee schedule is as follows:

1. Supreme Court and Court of Appeals \$20.00;
2. Circuit Court \$10.00;
3. Associate Circuit Civil \$ 8.00.

This surcharge shall be in addition to all other deposits now or hereafter required by law or court rule, but is included in the deposits required under Rule 5 of these rules.

- E. In addition to any other assessment authorized by law, a fee of twenty-five (\$25.00) dollars is assessed on each person who pays a court ordered judgment, penalty, fine, sanction, or court costs on a time payment basis, including, restitution and juvenile monetary assessments. A time payment basis shall be any judgment, penalty, fine, sanction, or court cost not paid, in full, within thirty days of the date of the court imposed the judgment, penalty fine, sanction, or court cost. Imposition of the time payment fee shall be in addition to any other enforcement provisions authorized by law.

Ten (\$10.00) dollars of the time payment fee collected pursuant to this section shall be payable to the clerk of the court of the county from which such fee was collected, or to such person as is designated by local circuit court rule as treasurer of said fund, and said fund shall be applied and expended under the direction and order of the court en banc of such county to be utilized by the court to improve, maintain, and enhance the ability to collect and manage moneys assessed or received by the courts, to improve case processing, enhance court security, preservation of the record, or to improve the administration of justice. Eight (\$8.00) dollars of the time payment fee shall be deposited in the statewide court automation fund pursuant to section 476.055, RSMo. Seven (\$7.00) dollars of the time payment fee shall be paid to the director of revenue, to be deposited to the general revenue fund.

- F. The Circuit Clerk may charge reasonable fees for postage and copies in accordance with Court Rule 21.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Sept. 23, 2003; Jan. 16, 2004.]

### **5.3 WITNESS FEES**

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.

[Adopted eff. Jan. 5, 2001.]

#### **5.4 WAIVER OF FEES**

No local rule.

#### **5.5 MOTION FOR SECURITY**

A. Further security for costs may be required upon motion of defendant, the Court, or any other officer of the Court. Upon the hearing of a motion for security of costs, or to sue as a poor person, the burden of proof establishing the grounds therefor shall be upon the party filing such motion, except when such motion is filed by the Court.

B. In lieu of filing a motion for security of costs, the court reporter may require a deposit for estimated cost of transcript on appeal.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

### **RULE 6 ASSIGNMENT OF JUDGES, CASES, AND TRANSFER OF CASES**

#### **6.1 ASSIGNMENT TO ASSOCIATE CIRCUIT JUDGES**

Criminal cases and civil cases of limited jurisdiction shall be immediately docketed for hearing before an Associate Circuit Judge of the county wherein the case is filed.

##### **6.1.1(a) BY LOCAL COURT RULES OR ORDER**

All actions brought pursuant to Chapter 455 RSMo. known as Adult Abuse and Child Protection Orders, Pendente Lite motions, and Family Access motions brought pursuant to Chapter 452 RSMo. shall be assigned to the Associate Circuit Judge(s) of the County wherein the case is filed.

[Adopted eff. Jan. 5, 2001. Amended Aug. 26, 2009 eff. Sept. 1, 2009.]

##### **6.1.1(b) ASSIGNMENT TO JUDGMENT, CASES, AND TRANSFER OF CASES**

Upon the filing of any felony information with the Clerk of the Circuit Court within the 45<sup>th</sup> Judicial Circuit wherein a preliminary hearing has been waived by the defendant, the judge before whom said preliminary hearing was waived, may, upon written consent of defendant, defendant's counsel and counsel for the state, proceed to dispose of the case upon plea of guilty on the record under applicable circuit court procedures. No formal assignment by the presiding judge shall be required to accept such plea, but thereupon said case is assigned for all purposes, including, but not limited to post-conviction proceedings and probation revocation.

Preliminary hearings which are not waived, where all consents are not obtained or where the guilty plea is not entered and accepted on the day of the waiver of the preliminary

hearing, shall be returnable to the circuit court for arraignment the next following law day under procedures currently applicable.

**6.1.2 SPECIAL ASSIGNMENT**

No local rule.

[Adopted eff. Jan 5, 2001. amended March 7, 2003, eff. March 11, 2003.]

**6.2 ASSIGNMENT TO CIRCUIT JUDGE**

No local rule.

**6.3 CERTIFICATION TO CIRCUIT DIVISION**

No local rule.

**6.4 TRIAL de NOVO**

No local rule.

**6.5 DISQUALIFICATION OF JUDGE**

No local rule.

**6.6 ABSENCE OF JUDGE**

No local rule.

**6.7 ABSENCE OF PRESIDING JUDGE**

No local rule.

**RULE 7 WITHDRAWALS OF PAPERS FROM CLERK'S OFFICE**

**7.1 WHEN ALLOWED**

No official files of the Circuit Court of any division thereof shall leave the Office of the Circuit Clerk or the Office of any Division Clerk except in the custody of employees of the Circuit Court.

[Adopted eff. Jan. 5, 2001.]

**7.2 DUPLICATING POLICY**

Request for duplicate copies of court recorded testimony taken using sound recording equipment should be directed to the Circuit Clerk.

Copies of a court hearing taken using digital sound recording will be duplicated by the circuit clerk's office after a receipt of a fees of \$25.00 per CD. Copies of a court hearing taken using analog sound recording equipment will be duplicated from the tape by the Office of State Courts Administrator after the filing of a deposit with the circuit clerk's office and will be charged at a rate set by the Office of State Courts Administrator.

[Adopted eff. Nov. 28, 2007.]

## **RULE 8 PUBLICATION OF DOCKETS**

### **8.1 TRIAL DOCKET**

No local rule.

### **8.2 DISMISSAL DOCKET**

A. A Dismissal Docket may be prepared consisting of criminal and civil cases pending in the Circuit Court Division in which limited or no activity has been noted. These cases are subject to dismissal without prejudice for want of prosecution, and are subject to re-filing within one (1) year under Section 516.230 VAMS, where applicable. The Clerk, or Presiding Judge Secretary, shall notify, in writing, last known counsel of record of such action and parties shall be notified in writing at their last known address only if they have no attorney then of record.

B. In Division I, Counsel of record or parties desiring the case be retained on the active docket shall file a Motion to Retain on the Active Docket, give notice to opposing counsel or parties, and appear for hearing on Law Day, Supplemental Law Day, or such other date as properly scheduled. If retained on Active Docket, said cause shall be scheduled for trial, or other activity.

C. Cases which have been dismissed shall be reinstated only upon written motion showing good cause.

D. For 517 cases – no local rule.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001.]

## **RULE 9      COURTROOMS**

### **9.1            ASSIGNMENT OF COURTROOM**

Assignment of courtrooms shall be scheduled by the Presiding Judge's secretary.

[Adopted eff. Nov. 28, 2007.]

### **9.2            PLACE OF HEARING**

No local rule.

### **9.3            USE OF COUNSEL TABLE**

Counsel tables in the Courtroom are reserved for the use of counsel and parties to the action being immediately presented to the Court. Plaintiff/Petitioner shall use table closer to jury box. Defendant/Respondent shall use table furthest from jury box.

[Adopted eff. Jan. 5, 2001. Amended eff. Jan. 16, 2004.]

### **9.4            COURTROOM DECORUM AND DRESS**

A.            The Sheriff or his deputy and the Clerk or deputy shall be in the Courtroom at all times when the Court is in session unless excused by the Court.

B.            The bailiff (or if excused, the clerk) shall formally open each session of court, assist the Court as needed, and shall quietly and politely abate any noise or display which detracts from the business of the Court.

C.            One attorney shall be primarily responsible for the conduct of the proceeding and shall examine witnesses for each party filing separate pleadings. Such counsel shall be changed only by leave of Court, which shall be freely given.

D.            All persons entering the courtroom while court is in session shall be appropriately dressed. Inappropriate attire includes tank tops, sleeveless shirts, crop shirts, shorts, lounge pants and sweatpants.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Nov. 28, 2007.]

### **9.5            WHO IS PERMITTED WITHIN BAR**

During the trial of any case, or the presentation of any matter to the court, only attorneys, court staff, jurors duly summoned for the case, parties of record and witnesses (as called) are permitted within the bar of the several courtrooms of this circuit, unless permission of the Judge be obtained in advance.

[Adopted eff. Nov. 28, 2007.]

## **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 cost 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. Preparation of a typewritten transcript of a record preserved by electronic recording shall not begin until the Clerk is paid a sum sufficient to cover the estimated costs of this work. The estimated charge may vary depending upon how the typewritten copy is to be prepared. It is the responsibility of the appellant to pay the amount owed upon being presented with a bill by the Clerk of the appropriate division.

[Adopted eff. Jan. 5, 2001. Amended eff. Jan. 16, 2004.]

## **RULE 11 RECORDING OF JUDICIAL PROCEEDINGS**

All persons shall refrain from any broadcasting, televising, recording or taking photographs in the courtrooms of any Courthouse and the Lincoln County Justice Center or in the corridors or stairways adjacent thereto during sessions of Court or recesses between sessions, except Court personnel authorized to preserve the record. Associate Circuit Judge Divisions may upon request authorize recording of proceedings in preliminary hearings when no other record is being made.

[Adopted eff. Jan. 5, 2001. Amended eff. Jan. 16, 2004.]

## **RULE 12 MONEYS PAID INTO COURT**

### **12.1 BOND IN CRIMINAL CASES**

When a cash bond is posted, the receipt shall be made in the name of the defendant. Any money deposited shall be considered by the court as belonging to the defendant.

If the defendant is found guilty, all assessments against the defendant, including, but not limited to **court costs, fines, room and board for jail time and court ordered restitution** shall be deducted from the cash bond before any money is refunded to the defendant.

**Outstanding criminal court costs, fines, room and board for jail time and court ordered restitution owed by the defendant to this Court on other cases shall also be deducted before any money is refunded to the defendant.**

A third party may claim any refundable money at the conclusion of the charges only if the defendant has properly assigned the defendant's bond receipt to that third party.

[Adopted eff. Jan. 5, 2001. Amended eff. Mar. 10, 2009.]

**RULE 13      COMMUNICATIONS WITH COURT**

**13.1            ORAL COMMUNICATIONS WITH THE COURT**

Oral communications with the Court about pending or contemplated cases are not permitted unless all parties are represented during such communications.

[Adopted eff. Jan. 5, 2001.]

**13.2            WRITTEN COMMUNICATIONS WITH THE COURT**

An attorney or party sending written communications to the Court is responsible for sending a copy of the communication to all other parties and verifying same on the copy of the communication sent to the Court. Written communications will be placed in the court file in the Clerk's Office, open to public inspection.

[Adopted eff. Jan. 5, 2001. Amended eff. Jan. 16, 2004.]

**GENERAL RULES**

**RULE 21      ATTORNEYS**

**21.1            RESOLUTION OF CONFLICTING TRIAL SETTINGS**

A.            If more than one case, in which the same attorney appears, be set for trial in different divisions at the same time, the following priorities shall govern:

1. Circuit Judge Division cases shall have precedence over Associate Circuit Judge Division cases.
2. Criminal trials shall have precedence over civil trials, and trials of same kind shall take precedence by date set.

B.            Should trial in one division be delayed because an attorney is engaged in another division, said cause shall be reset for trial.

C.            If a trial setting in a division is delayed because an attorney is engaged in an argument before an appellate court, said cause shall be reset for trial.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

**21.2            ENTRIES OF APPEARANCE**

Attorneys retained in pending cases shall file a written entry of appearance promptly after their employment.

[Adopted eff. Jan. 5, 2001.]

### **21.3 CONDUCT OF ATTORNEYS**

Attorneys are expected to conduct themselves in a professional and courteous manner.

[Adopted eff. Jan. 5, 2001.]

### **21.4 WITHDRAWAL OF ATTORNEYS**

The conditions under which an attorney is allowed to withdraw from the employ of a client are set out in Supreme Court Rule 4, V.A.M.R., (Code of Professional Responsibility) Canon 2, Ethical Consideration 2-32 and Disciplinary Rule 2-110. Any attorney who desires to withdraw as attorney of record for any party to any action pending in this Court shall comply with the following procedures:

A. The attorney shall file a written motion requesting leave of Court to withdraw. If the case is then set for trial, the reason for the request must be set forth in the motion. Attached to the motion shall be a notice of the day and time at which the moving attorney will call up the motion before the Court for hearing.

B. A copy of the motion and the notice shall be served upon all parties, including the client from whose employ the attorney is seeking leave to withdraw, in the manner provided by V.A.M.R. 43.01. **If the case in which the attorney is seeking leave to withdraw is a criminal case, the notice shall instruct the client that the client must appear in person at the hearing.**

C. The last known address of the client from whose employ the attorney is seeking leave to withdraw shall be plainly set out in the motion or the certificate of service thereon.

D. The attorney seeking leave to withdraw must appear in open court and call up the motion at the time specified in the notice. If the case in which the attorney is seeking leave to withdraw is a criminal case, it shall be the duty of the client to appear in person in compliance with the notice mentioned above.

E. If the client fails to appear, and if the attorney is granted leave to withdraw, the attorney shall immediately notify his former client by letter of the attorney's withdrawal and shall send a copy of the letter to the Clerk. Such letter shall advise the former client of any scheduled court proceedings or pleading deadlines in the case.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001.]

**21.5 FAILURE OF ATTORNEYS TO ANSWER DOCKET CALL**

Attorneys are expected to be present at the beginning of the docket call. If any matter is not ready when called, it will go to the bottom of the list of its particular category, and then if not ready, it will be passed to the end of the day.

[Adopted eff. Jan. 5, 2001.]

**21.6 APPOINTMENT OF ATTORNEYS**

No local rule.

**21.7 AGREEMENT OF ATTORNEYS**

Except for oral stipulations agreed to by both counsel in open court, no private oral agreement between parties or counsel will be recognized by the Court. Any agreement contemplating action or the withholding of action by this Court shall be in writing and filed with the Clerk.

[Adopted eff. Jan. 5, 2001.]

**21.8 ADVICE TO CLIENT AND WITNESS OF COURTROOM PROCEDURE**

No local rule.

**RULE 22 APPOINTMENT OF GUARDIAN ad LITEM**

No local rule.

**RULE 23 TRANSCRIPTS**

All Court Reporters working for the 45<sup>th</sup> Judicial Circuit shall prepare an original and three (3) copies of all indigent criminal transcripts on appeal and the cost of the extra copy shall be submitted to the State Courts Administrator's Office.

[Adopted eff. Jan. 5, 2001.]

**RULE 24 EXHIBITS**

A. All exhibits offered during the trial of a case, except depositions filed, marital settlement agreements, and required documents in domestic relations cases, shall remain in the custody of the attorney offering the same and shall at all reasonable times be subject to examination by opposing counsel.

B. **SPECIAL NOTE: Except for good cause shown, the attorney shall mark all exhibits proposed to be offered in evidence, and have the court reporter initial same prior to beginning trial.**

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

## **PRE-TRIAL MATTERS**

### **CASE MANAGEMENT - DIVISION I**

#### **RULE 31.1 DOMESTIC RELATIONS CASES – SEE RULE 68**

[Adopted Feb. 28, 2005, eff. March 7, 2005.]

#### **RULE 31.2 CIVIL CASES OTHER THAN DOMESTIC RELATIONS**

Civil cases are subject to the following deadlines, calculated from the date of filing, which shall be extended only for good cause.

1. 60 days – all parties to have served initial written discovery requests.
2. 90 days – all parties to have responded to initial discovery requests
3. 100 days – disclosure of plaintiff's experts
4. 120 days – plaintiff's experts' depositions completed
5. 135 days – disclosure of defendant's experts
6. 155 days – defendant's experts' depositions completed
7. 165 days – disclosure of plaintiff's rebuttal experts and supplementary disclosure of new experts or new opinions by all parties
8. 180 days – all experts' depositions completed, and case deemed ready for trial, written demand made by Plaintiffs and offer, if any, made by Defendants

[Adopted Feb. 28, 2005, eff. March 7, 2005.]

#### **RULE 31.3 CASE MANAGEMENT – DISMISSAL DOCKET**

In all civil cases, excluding domestic relations cases, the case shall be dismissed on a date at least one hundred eighty (180) days after the date of filing unless:

1. The case is placed on a pretrial docket;

2. The case is set for a non-contested hearing and granted prior to the dismissal date;
3. Set for a contested hearing/trial; or
4. Voluntarily dismissed by the parties.

The Circuit Clerk, within two (2) weeks of the filing of the initial pleading, shall provide to the party who filed the initial pleading a document entitled, "Notice of Dismissal", which shall set forth the specially assigned dismissal date along with the conditions of dismissal as set forth in the preceding paragraph.

[Adopted Feb. 28, 2005, eff. March 7, 2005. Amended eff. Nov. 28, 2007.]

**RULE 31.4 CERTIFICATION OF SETTLEMENT NEGOTIATIONS**

On the date required by Rule 31.3, counsel for each party shall sign and file with the Court a certification stating that a written demand and offer for settlement (if any) appear in each counsel's file, and that such settlement negotiations have been conveyed to the clients.

[Adopted Feb. 28, 2005, eff. March 7, 2005.]

**RULE 31.5 DOCKET MANAGEMENT**

The primary responsibility for Circuit Judge Division case management shall rest with the Judge assigned, who shall establish whatever procedures deemed necessary to achieve compliance with Supreme Court Administrative Rule 17. No provisions herein shall be construed as a limitation upon the exercise of discretion on the part of the assigned Judge to advance cases on the trial docket, to grant special settings where required for good cause, or in otherwise managing the docket.

IN THE CIRCUIT COURT OF LINCOLN/PIKE COUNTY, MISSOURI  
CIRCUIT JUDGE DIVISION

	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. _____
	)	
	)	
	)	
Defendant.	)	

## **SCHEDULING ORDER**

The above-styled cause is subject to the deadlines set forth herein. All dates are calculated from the date of the petition's filing.

Deviation from this Scheduling Order shall be only by consent of the parties and/or by leave of Court. Further, this Scheduling Order assumes prompt disposition of discovery disputes. The parties are strongly encouraged to resolve discovery disputes by mutual consent and without the need for Court intervention. In no event shall deviations from the deadlines in this Order or delays in resolving discovery disputes affect the "ready for trial" date set forth herein, except by Court order:

### **DEADLINES**

1. 60 days – all parties to have served initial written discovery requests.
2. 90 days – all parties to have responded to initial discovery requests
3. 100 days – disclosure of plaintiff's experts
4. 120 days – plaintiff's experts' depositions completed
5. 135 days – disclosure of defendant's experts
6. 155 days – defendant's experts' depositions completed
7. 165 days – disclosure of plaintiff's rebuttal experts and supplementary disclosure of new experts or new opinions by all parties
8. 180 days – All experts' depositions completed, and written demands/offers of settlement to have been made. No continuances will be granted after this date for incomplete discovery, absent leave of the Court for good cause shown. Case deemed ready for trial.

**The Court encourages early mediation.**

[Adopted Feb. 28, 2005, eff. March 7, 2005.]

## **RULE 32 DISCOVERY**

### **RULE 32.1 USE OF DISCOVERY AND CERTIFICATION TO CIRCUIT DIVISION**

Discovery should comply with Supreme Court rules 56, 57, 58 and 59.

[Adopted Feb. 28, 2005, eff. March 7, 2005.]

## **RULE 32.2 INTERROGATORIES**

A. Each party shall be limited to propounding a total of thirty (30) interrogatories, including subparts thereof. With leave of Court, upon good cause shown, additional interrogatories may be propounded.

B. The original of the interrogatories shall be served upon adverse counsel. The interrogatories **ARE NOT** to be filed with the Court except as provided by paragraph E herein. 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 Certificate of Mailing of Interrogatories which shall include the following:

1. The party to whom mailed.
2. The date of mailing.
3. Designation of pleading as first interrogatories, second interrogatories, etc..
4. The signature of attorney or party mailing the interrogatories.

C. The interrogated party shall retype the interrogatory before each answer, using the same interrogatory number as in the interrogatories propounded by the opponent.

D. The interrogated party shall prepare the affidavit to be signed by the appropriate party and attach it as a last page of the interrogatories and then mail a completed original containing both interrogatories and answers thereto to the interrogating party. **The interrogating party shall retain the original and bring to Court at time of trial.**

E. Where a party files objections to any interrogatories, the interrogatory objected to shall be set out in full before the stated objection.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

### **32.3 DEPOSITIONS**

No local rule.

### **32.4 MOTION FOR SANCTIONS**

No local rule.

### **32.5 CRIMINAL DISCOVERY**

No local rule

## **32.6 ATTEMPT TO RESOLVE**

The Court will not hear objections to interrogatories or the answers thereto, objections to requests for admissions or the replies thereto, objections to motions to produce, or motions for sanctions to enforce discovery unless there is filed with the Court, together with the notice of hearing, a certification signed by the attorney for the party calling for the hearing which states that he has attempted to discuss the matter with opposing counsel in a good faith effort to resolve the disputed issues.

[Amended eff. Dec. 5, 2001.]

## **RULE 33 PRETRIAL MOTIONS**

### **33.1 HEARING DATES**

All motions or other matters preliminary to trial may be heard on any Law Day or Supplemental Law Day upon five days notice to adverse parties by personal service, or eight days notice if by mail, or facsimile, or by consent of the parties.

[Adopted eff. Jan. 5, 2001. Amended eff. Jan. 16, 2004; Nov. 28, 2007.]

### **33.2 BRIEFS IN SUPPORT OF MOTIONS, WHEN REQUIRED**

No local rule.

### **33.3 ORAL ARGUMENTS-WHEN DESIRED AND HOW REQUESTED**

Oral argument on motions or other matters preliminary to trial shall be no longer than ten (10) minutes for each party with moving party permitted to divide total time with not more than five (5) minutes for rebuttal. On application by either party the court may grant additional time.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001.]

### **33.4 MOTIONS IN LIMINE**

All Motions in Limine shall be in writing and accompanied by citations of authority. They shall be filed and notice given to the adverse party no later than five (5) days prior to the date of trial, if in person, or eight days notice if by mail or facsimile.

[Adopted eff. Jan. 5, 2001.]

## **RULE 34 CONTINUANCE**

- A. In accordance with Supreme Court rules, an application for a continuance shall be made by a written motion and shall be accompanied by the affidavit of the applicant or some other credible person setting forth the facts upon which the application is based.
- B. All motions for a continuance shall be signed by the party and/or party's attorney.
- C. Continuances shall be granted upon a showing of good cause. In criminal cases, no continuances shall be granted unless the Court finds the ends of justice served by taking such action outweigh the benefits of a speedy trial.
- D. When a continuance is granted in any case in the Circuit Judge Division, said case shall be reset at that time or scheduled to a date certain to be reset.
- E. When a continuance is granted in a Probate Division case, Juvenile Division case, or Associate Circuit Judge Division case, hearing on said cause shall be reset to a date certain at the time the continuance is granted, or continued generally to be reset upon notice properly given.
- F. Every continuance granted on the application of a party may be at the cost of such party, if so ordered by the Court.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

**34.1 CIVIL CASES**

No local rule.

**34.2 CRIMINAL CASES**

No local rule.

**RULE 35 PRETRIAL CONFERENCES**

The Court upon request of either party, or upon its own motion, may order a pretrial conference in order to clarify issues and expedite the trial.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001.]

**RULE 36 SETTING CASES FOR TRIAL**

**36.1 REQUEST FOR TRIAL**

- A. Circuit Judge Division

Attorneys may file a request for trial setting (see sample below) in the division to which the case is assigned, giving exclusionary dates for the four (4) months following the request. A copy of the trial request must be sent to opposing counsel and opposing counsel will have ten (10) days to file exclusionary dates. Counsel for either party may indicate a preference for setting for more than sixty (60) days from trial setting request. If no exclusionary dates are forthcoming, the case may be set any time up to four months in advance. In cases where no request is made by either side and three months elapse with no action, or where cases exceed time standards, the case may be set for trial by the Court and upon failure to go to trial, cause may be dismissed without prejudice.

The Court and Clerk shall be promptly notified if a case is settled.

### CAPTION

### REQUEST FOR TRIAL SETTING

The above case is at issue, all discovery has been completed on behalf of (Plaintiff/Defendant), and request is hereby made that it be placed on the Court's Trial Docket.

I. Exclusionary dates for (Plaintiff/Defendant) are:

(a) Month 1 (May be excluded entirely)

(b) Month 2

(c) Month 3 (If more than 4 exclusionary dates – explanation for each is necessary)

(d) Month 4 (If more than 4 exclusionary dates – explanation for each is necessary)

II. Length of trial \_\_\_\_\_ Day(s); Jury \_\_\_\_\_ Non-jury \_\_\_\_\_

III. The names, addresses and telephone numbers of all trial counsel for all parties are as follows:

IV. Opposing counsel has ten (10) days to file exclusionary dates.

\_\_\_\_\_  
Attorney for \_\_\_\_\_

V. Certificate of mailing:

**NOTE: "Failure to designate jury trial on trial request shall be considered a waiver of right to jury trial."**

B. Associate Circuit Judge Division

Cases docketed in an Associate Circuit Judge Division may be set for trial by request either in writing or in open court on the return date or any setting day thereafter.

C. Amendment of Pleadings

After a case has been placed on the trial docket or set for trial, no pleadings may be amended except by leave of court, and such leave will be granted only upon a showing of due diligence in requesting such leave at the earliest practicable time.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

**RULE 37 DISMISSALS**

**37.1 DISMISSAL DOCKET**

(See Rule 8.2)

[Adopted eff. Jan. 5, 2001.]

**37.2 REINSTATEMENT OF CAUSE**

(See Rule 8.2)

[Adopted eff. Jan. 5, 2001.]

**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.

[Adopted eff. Jan. 5, 2001.]

**RULE 42 DEFAULT**

A. In any action or proceeding, if there shall be a default of any appearance by the defendant or the plaintiff, before judgment the moving party shall file a verified petition or an affidavit setting forth facts showing that defendant is not in military service. If unable to file such verified petition or affidavit, plaintiff shall in lieu thereof file a verified petition or affidavit setting forth either that the defendant is in military service or that plaintiff is not able to determine whether or not defendant is in such service. (Source U.S.C.A. 50 App. Sec. 520).

B. It shall be the duty of counsel to ascertain that process has been properly served in time, and to furnish a memorandum of the amount claimed before requesting judgments on undefended actions on bonds, bills, notes and accounts.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

## **TRIALS**

### **RULE 51 COURT-TRIED CASES**

#### **51.1 DEFAULT AND UNCONTESTED MATTERS**

At the time of hearing, counsel for the plaintiff or petitioner shall submit a proposed form of judgment to the Court, unless waived by the Court.

[Adopted eff. Jan. 5, 2001. Amended eff. Jan. 16, 2004.]

#### **51.2 CONTESTED MATTERS**

See Rule 54.1.

[Adopted eff. Jan. 5, 2001.]

#### **51.3 PREPARATION OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In all Court-tried 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 at the time of the trial, or within a reasonable time as directed by the Court.

[Adopted eff. Jan. 5, 2001.]

### **RULE 52 SELECTION OF JURY**

#### **52.1 JURY QUESTIONNAIRES**

No local rule.

### **RULE 53 JURY TRIALS**

#### **Waiver of Jury Trial-Civil**

- A. Parties shall be deemed to have waived trial by jury:
1. By failing to appear at trial;
  2. By filing with the Clerk written consent in person or by attorney;
  3. By oral consent in Court, entered on the record;
  4. By entering into trial before the Court without objection; or
  5. By failing to request jury trial, in writing, at time request for trial setting is made.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

### **53.1 INSTRUCTIONS**

A. Except for Good Cause Shown:

1. The attorneys shall submit to the Court their proposed instructions to the jury prior to trial, reserving their right to submit requests for additional or modified instructions thereafter in light of the opposing party's proposed instructions and unanticipated evidence.

[Adopted eff. Jan. 5, 2001.]

### **53.2 CLOSING ARGUMENTS**

No local rule.

## **RULE 54 JUDGMENT ENTRY**

### **54.1 CONTESTED CASES**

In non-jury cases, Counsel for each party is encouraged to prepare and submit a proposed judgment to the Court, and/or memoranda in support of said proposed judgment.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001.]

### **54.2 DEFAULT OR UNCONTESTED CASES**

At the time of hearing, counsel for the plaintiff or petitioner shall submit a proposed form of judgment to the Court, unless waived by the Court.

[Adopted eff. Jan. 5, 2001.]

**RULES RELATING TO PARTICULAR ACTIONS**

**RULE 61 ADOPTION**

**61.1 FILING REQUIREMENTS**

A. Upon the filing of a petition for adoption or for transfer of custody prior thereto, and upon application to the Court, the Court will appoint a Guardian ad Litem for the child sought to be adopted and order the statutory investigation and report.

If waiver of the statutory investigation is appropriate, Petitioner(s) may submit a motion for waiver of investigation (other than criminal record check) and submit a proposed order.

B. Before hearing of a petition for transfer of custody or for adoption, counsel for petitioner(s) may request a pretrial conference with the Court and Guardian ad Litem to verify compliance with statutory requirements. Said request for pretrial conference shall be made to the Presiding Judge, or Secretary to the Presiding Judge.

C. Counsel shall request a time certain for a hearing on said petition from the Presiding Judge, or Secretary to the Presiding Judge.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004]

**61.2 HOME STUDY**

No local rule.

**RULE 62 DRIVERS' CASES**

**62.1 APPLICATION FOR HARDSHIP DRIVING PRIVILEGES**

These cases are assigned to Associate Circuit Judges.

[Adopted eff. Jan. 5, 2001.]

**62.2 PETITIONS FOR REVIEW**

All petitions for review of administrative actions of the Department of Revenue relative to driving privilege shall be filed in the proper county. Petitions shall be filed with the circuit court, with either "associate circuit judge or circuit judge division" denoted in the caption. Such cases, if filed in the circuit judge division, may be assigned to an associate circuit judge for hearing in the discretion of the presiding judge.

[Adopted eff. Jan 5, 2001. Amended eff. Nov. 28, 2007.]

**62.3 BREATHALYZER TEST**

All petitions for review of driver’s license revocations for refusal to submit to a chemical or breath test shall be filed in the proper county. Petitions shall be filed with the circuit court, with either “associate circuit judge or circuit judge division” denoted in the caption. Such cases filed in the circuit judge division may be assigned to an associate circuit judge for hearing in the discretion of the presiding judge.

[Adopted eff. Jan. 16, 2004. Amended Nov. 28, 2007.]

**RULE 63 ASSOCIATE CIRCUIT JUDGE DIVISION CASES**

**FILING OF CASES:**

All filings shall be with the Circuit Clerk and assigned to the appropriate division.

**COST DEPOSITS SHALL BE DEPOSITED WITH THE COURT**

Fees and costs shall be submitted per rule 5 hereof.

**TRANSCRIPTS OF TAPED RECORDS**

A. The original of all taped records of proceedings in the Associate Circuit Judge Divisions are on file in the offices of the Circuit Clerk, and requests for transcripts and the appropriate costs postings shall be made in that office.

B. Request for copies of original tapes shall be made in the office of the Circuit Clerk. The person so requesting a copy of an original tape shall provide his own tape recorder and blank tapes and shall pay the appropriate cost deposit to the Division Clerk.

**TRIAL DE NOVO**

A. The right of Trial de Novo shall exist in all cases heard and determined by an Associate Circuit Judge except those Circuit Judge Division cases heard by Associate Circuit Judges on special assignment and those Associate Circuit Judge cases that are specially assigned by the Presiding Judge to be heard on the record under proceedings applicable before Circuit Judges.

B. Requests for Trial de Novo shall be filed in the division where the original judgment was made and accompanied by the appropriate fees.

**DISCOVERY AND THIRD PARTY ACTIONS**

A. Pursuant to Supreme Court Rules various types of discovery and third party practice shall be recognized in the Associate Circuit Judge Division. The Associate Circuit

Judge in any case where the discovery becomes burdensome may certify the cause to the Presiding Judge. In such cases, the plaintiff's attorney shall immediately post the required additional costs. In such cases the Court file shall remain in the Circuit Judge Division.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

**RULE 64      CASES ARISING UNDER CHAPTERS 207 AND 208, RSMo, 1978  
(COMMONLY KNOWN AS TITLE IV-D AND H.B. 601 ACTIONS)**

No local rule.

**RULE 65      CIVIL COMMITMENT**

No local rule.

**RULE 66      CONDEMNATION**

No local rule.

**RULE 67      CRIMINAL CASES**

**67.1          PRETRIAL RELEASE**

A.            All defendants bound over in felony cases shall appear in the Circuit Judge Division on the date specified in the Order binding them over.

B.            Associate Circuit Judge Division

1.            All criminal defendants released on bond shall appear in the Court designated and at the time, and on the date the bond is first returnable.

**67.1.1        MOTIONS TO SET BOND AND FOR BOND REDUCTION**

No local rule.

**67.1.2        DEPOSIT OF OPERATOR'S LICENSE**

No local rule.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

**67.2          PRELIMINARY HEARING**

1. The Associate Circuit Judges of this Circuit shall be responsible for setting Bonds in their Court in their respective counties.

2. If an Associate Circuit Judge shall be unavailable for setting Bonds for a period in excess of twenty (20) hours, then he/she shall make arrangements for another Associate Circuit Judge of this Circuit to be available for setting Bonds and, in any such event, the absent Judge or consenting Judge shall notify appropriate law enforcement agencies of that county, advising such agencies of the identity of the Judge substituting for him/her and where he/she can be reached.

3. For the purpose of effectuating the intent and purpose of this rule, this Court assigns and grants to the Associate Circuit Judges of this Circuit, the authority to assign one another to their respective counties for the purpose of setting such bonds in their absence.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

**67.3 GRAND JURY**

No local rule.

**67.4 ATTORNEYS**

No local rule.

**67.5 ARRAIGNMENTS**

If a defendant does not enter a plea of guilty at the arraignment, a date shall be set for the filing of all pretrial motions to be filed by either party, a date set for the hearing of all pretrial motions including request for psychiatric examinations, a date for pretrial conference, and a date for trial.

**67.5.1 IN GENERAL**

No local rule. (See 67.5 above)

**67.5.2 DATES**

No local rule. (See 67.5 above)

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

**67.6 DISCOVERY**

See Rule 32.2.

**67.7 MOTIONS**

No local rule.

**67.8 PLEA BARGAINING**

No local rule.

**67.9 GUILTY PLEA**

Those wishing to enter a guilty plea in Division I shall complete a Petition to Enter Plea of Guilty, have it marked as defendant's exhibit A by the court reporter, and submit same to the Court at time of plea. A single page form is available for misdemeanors, and a multiple page form for felonies. A separate, multiple page form is available for Alford Pleas. In Lincoln County, a court action form shall be completed in each case involving the recommendation of supervised probation.

**67.9.1 WHERE ENTERED**

No local rule.

**67.9.2 PETITION TO ENTER A PLEA OF GUILTY**

See Rule 67.9.

[Adopted eff. Jan. 5, 2001. Amended eff. Feb. 5, 2001; Jan. 16, 2004.]

**67.10 CALENDAR**

No local rule.

**67.11 PROBATION AND PAROLE**

Board of probation sentencing assessment reports, progress reports, and violation reports shall be removed from the Court files before inspection or examination by anyone other than the Court, the Prosecuting Attorney or his Assistant, Public Defender or his Assistant, Defense Counsel, and Defendant.

[Adopted eff. Jan. 5, 2001. Amended eff. Nov. 28, 2007.]

**67.12 EXAMINATION AND REPORTS**

Medical and psychiatric reports shall be treated as confidential and shall not be open for inspection or examination by anyone other than those expressly entitled to such inspection or examination by statute, Supreme court Rules, or by Rules of this court. Such reports shall be removed from the file by the Clerk prior to allowing examination thereof, except for those permitted to inspect and examine pursuant to the foregoing.

[Adopted eff. Jan. 5, 1001. Amended eff. Feb. 5, 2001.]

### **67.13 WARRANTS**

Upon execution, search warrants, the applications thereof, and written affidavits shall be retained by the designated court clerk in the office of the Circuit Clerk in the county from which the warrant was issued. The warrant, applications and affidavits shall remain confidential until the return of the warrant is filed or the warrant expires.

[Adopted eff. Nov. 28, 2007.]

## **RULE 68 DISSOLUTION OF MARRIAGE (FAMILY COURT)**

### **68.1 CREATION**

There is hereby created within and for the 45<sup>th</sup> Judicial Circuit a Family Court as provided in Section 487.010, et.seq. RSMo.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

### **68.2 DESIGNATIONS OF DIVISIONS**

The Circuit Judge, Division I, is assigned as the Family Court Division.

[Adopted eff. Jan. 5, 2001. Amended eff. Jan. 16, 2004.]

### **68.3 ASSIGNMENT OF FAMILY CASES**

Family court cases as defined in Section 487.080 RSMo. shall be assigned by the Administrative Judge of the Family Court to Family Court Divisions or by assignment by the Presiding Judge, either by class of case or on a case-by-case basis.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

### **68.4 FAMILY SERVICES AND JUSTICE FUND**

As provided in Section 488.2300 RSMo., a fee of \$30.00 per case shall be collected and deposited in the "Family Services and Justice Fund" to be expended for such purposes as allowed by law and in such amounts as the Presiding Judge or the Family Court Administrative Judge may from time to time authorize with the concurrence of the Circuit Court en banc.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

## **68.5 FILING REQUIREMENTS**

### **A. WAITING PERIOD**

1. No hearing shall be conducted nor judgment entered in any dissolution case until thirty (30) days after service of process has been obtained or entry of appearance filed in this Court.

### **B. STATISTICAL REPORT**

1. Information necessary to give notice to the Missouri Department of Health of the entry of judgment of dissolution of marriage or legal separation shall be supplied by counsel or the parties on the forms provided for the purpose by the Circuit Clerk. Completion and filing of the information form shall be effected at the time of the hearing or prior thereto.

### **C. UNIFORM CHILD CUSTODY ACT – REQUIREMENTS**

1. Petition or Affidavit attached thereto shall state:
  - a. Name and date of birth of each child born of the marriage.
  - b. Present residence of child(ren) and length of residence.
  - c. Residences of child(ren) for past six (6) months and with whom resided (names and addresses).
  - d. Prior litigation regarding custody of child(ren) in which petitioner has participated in any capacity in this or in any other state.
  - e. Pending custody proceedings in this or any other state.
  - f. Information regarding any person, not a party to this action who has physical custody of the child(ren) or who claims to have custody or visitation rights with respect to the child(ren).
2. Notices of Custody Proceedings shall be given to:
  - a. Any parent whose parental rights have not been terminated.
  - b. Any person having physical custody of the child.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

## **68.6 SEPARATION AGREEMENT**

In all cases where written separation agreements are made under the provisions of Sec. 452.325 RSMo., a copy of such executed agreement shall be submitted to the Court for approval prior to the hearing. **WAIVER OF THE DIVISION OF PROPERTY WILL NOT BE ACCEPTED BY THE COURT.**

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004.]

## **68.7 FORMS OF JUDGMENT**

**A.** All Family Court judgments, including Dissolution of Marriage, Paternity and Motions to Modify shall contain findings of the court and must include and recite:

1. Full name of attorney or attorneys and party represented. If either party is not represented by counsel, the judgment shall so state.
2. The social security numbers of the parties, and their minor children.
3. The addresses of the parties, and the employers' names, if disclosed in the pleadings.
4. Manner of service and when accomplished or entry of appearance, if one has been filed, showing date of filing.
5. Date and place of marriage, place of registration of marriage, and date of separation.
6. Residence of Missouri of not less than ninety (90) days.
7. Statement that at least thirty (30) days have elapsed since the service of the petition upon the non-moving party, or filing of entry of appearance by the non-moving party.
8. Statement regarding children born of the marriage (or if none, so state), names, social security numbers and dates of birth of children, in whose custody they are, and whether wife is pregnant.
9. That neither petitioner nor respondent is a member of the armed forces. If either party is a member of the armed forces, a statement that the member waives his/her rights under the Soldiers and Sailors Relief Act.
10. Whether or not there is marital property or marital debt to be divided or a written separation agreement entered into by the parties. The separation agreement shall be set forth in full, unless there is provision otherwise in the agreement. Provisions in settlement pertaining to custody and child support must be included in the judgment, along with a statement that the court has examined the separation agreement and found it fair and not unconscionable. If the parties own personal or real property, the judgment of dissolution

MUST provide for the disposition of all property, and if there is not real or personal property, the judgment shall so state.

11. A specific written parenting plan, setting forth the terms of such parenting plan arrangements specified in subsection 7 of section 452.310 RSMo. Such a plan may be a parenting plan submitted by the parties pursuant to section 452.310, RSMo., or, in the absence thereof, a plan determined by the court.

12. If there is a request that the wife's maiden name or former name be restored, the findings shall so state and set out in full the requested name to be restored.

13. In a proceeding for dissolution of marriage, that the marriage is irretrievably broken and that, therefore, there remains no reasonable likelihood that the marriage can be preserved. In a proceeding for legal separation, that the marriage is not irretrievably broken and that, therefore, there remains a reasonable likelihood that the marriage can be preserved.

**B.** The judgment of the court shall contain the following provisions:

1. In a proceeding for dissolution of marriage, that the marriage between (name parties) is dissolved; in a proceeding for legal separation, a judgment of legal separation.

2. An award as to the custody of the children, if any minor children, support and maintenance payments, to whom paid or Family Support Center, visitation rights and date payments are to begin. Upon application by the obligee or the Missouri Division of Child Support Enforcement of the Department of Social Services, the obligor's wages or other income shall be subject to withholding without further notice if the obligor becomes delinquent in maintenance or child support payments in an amount equal to one month's total support obligation. The order shall also contain provisions notifying the obligor that:

(a) The withholding shall be for the current month's maintenance and support;  
and

(b) The withholding shall include an additional amount equal to fifty percent of one month's child support and maintenance to defray delinquent support and maintenance, which additional withholding shall continue until the delinquency is paid in full.

3. Pursuant to subsection 11 of section 452.377 RSMo., every judgment establishing or modifying custody or visitation shall include the following language: "Absent exigent circumstances as determined by a court with jurisdiction, you, as a party to this action, are ordered to notify, in writing by certified mail, return receipt requested, at least sixty (60) days prior to the proposed relocation, each party to this action of any proposed relocation of the principal residence of the child, including the following information:

(a) the intended new residence, including the specific address and mailing address, if known, and if not known, the city;

- (b) the home telephone number of the new residence, if known;
- (c) the date of the intended move or proposed relocation;
- (d) a brief statement of the specific reasons for the proposed relocation of the child; and
- (e) a proposal for a revised schedule of custody or visitation with the child.

Your obligation to provide this information to each party continues as long as you or any other party by virtue of this order is entitled to custody of a child covered by this order. Your failure to obey the order of this court regarding the proposed relocation may result in further litigation to enforce such order, including contempt of court. In addition, your failure to notify a party of a relocation of the child may be considered in a proceeding to modify custody or visitation with the child. Reasonable costs and attorney fees may be assessed against you if you fail to give the required notice.

- 4. That the terms of the parenting plan shall be performed.
- 5. That the terms of the separation agreement (if one has been entered into) shall be performed.
- 6. Divide marital property and marital debt and set aside separate property, if appropriate.
- 7. Counseling for minor children as ordered by the court.
- 8. The wife's restored name shall be specified in full if restoration is requested.
- 9. That costs be taxed to one or both parties.

### **C. JUDGMENT AFFECTING REAL ESTATE**

1. Counsel may make written request to the Circuit Clerk that any judgment of dissolution of marriage or legal separation affecting title to real estate, upon entry thereof, be filed in the Office of the Recorder of Deeds in the county where the real estate is located. Said request shall specify the Office(s) of the Recorder where filing is to be made, and if other than in Pike or Lincoln County, Missouri, the mailing address. Such expense for recording the judgment shall be taxed as costs in the case. **THE COMPLETE LEGAL DESCRIPTION MUST BE INCLUDED IN THE JUDGMENT.**

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001; Jan. 16, 2004; Nov. 28, 2007.]

### **68.8 FILING OF FINANCIAL STATEMENTS**

A. In all actions for Dissolution of Marriage or Legal Separation, a Statement of Marital and Non-marital Assets and Debts **shall** be completed by each party, executed under oath, filed with the Court and served on the opposing party. In all actions for Dissolution of Marriage, Legal Separation, Paternity and Motions to Modify, a Statement of Income and Expense shall be completed by each party, executed under oath, filed with the Court and served on the opposing party. Petitioner shall file his/her statements with the petition. Respondent shall file his/her statements with the answer.

B. In all contested Motions to Modify Child Support, Alimony or Maintenance, a Statement of Income and Expenses shall be completed by each party, executed under oath, filed with the Court and served on the opposing party. The moving party shall file his/her statements with the motion. The responding party shall file his/her statements within thirty (30) days of service of the motion.

C. If any changes occur prior to the trial date, the information provided shall be updated immediately and served on the opposing attorney with a Certificate of Service of same to the Court.

D. If a party fails to timely file or update his/her Statement of marital and Non-marital Assets and Debts, or his/her Statement of Income and Expenses, the judge may, at his or her discretion, order sanctions against that party such as the party so failing being prohibited from presenting affirmative evidence as to the values of the property, income or expenses which were not provided to opposing counsel.

E. In all cases involving payment of maintenance or child support, petitioner shall submit OSCA form C516 or such similar form as is provided by the Circuit Clerk's office, on or before date of hearing. Any payment made by payer should be mailed to FSPC, P. O. Box 109002, Jefferson City, MO 65110-9002. Payment must include case number and social security number.

F. On all contested domestic relation proceedings, prior to the hearing, both parties shall, in addition to the financial statements, prepare a list of all items of personal property stating whether said items are marital or non-marital, the fair market value, who has possession, and the amount owed against said items.

[Adopted eff. Jan. 16, 2004. Amended eff. No. 28, 2007.]

**68.9                    MODIFICATION OF JUDGMENT**

No local rule.

**68.10                  ASSIGNMENT OF WAGES**

No local rule.

**68.11                  PARENT EDUCATION PROGRAM**

All parties before the court in any proceeding for dissolution of marriage, paternity suits where both parties are before the court, legal separation, annulment or modification or enforcement thereof, or post-proceedings, which involve child custody shall be required to participate in and successfully complete a court-approved parent educational program, at a facility licensed to present said program. A certificate of completion shall be filed with the Court, before entry of a judgment of dissolution, modification, paternity, etc., unless otherwise ordered by the court.

A party shall be considered “before the court” if he/she files any pleadings, entry of appearance, or signs a proposed marital settlement agreement or parenting plan.

The petitioner or movant shall attend said program within sixty (60) days of the filing of the petition or motion. The respondent in the proceeding shall attend said program within sixty (60) days of the date of service of process. Each party shall pay the cost of their respective attendance.

**NOTE:** The Court may strike/dismiss the pleadings of any non-complying party or impose any and all other appropriate sanctions. For good cause shown, the Court may waive application of this rule.

[Adopted eff. Jan. 16, 2004.]

## **68.12 ENTRY OF JUDGMENT UPON AFFIDAVIT – REQUIREMENTS**

A. **Final Order Entered – When:** Final orders in a proceeding for dissolution of marriage or legal separation, motions to modify, and actions for declaration of paternity may be entered upon affidavit of either or both parties when:

1. The parties have entered into a written agreement determining custody and child support; and
2. 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 pleading; and
3. There is no marital property to be divided or the parties have entered into a written agreement for the division of their marital property.

B. **Affidavit – Filing:** If one party desires to submit the matter for entry of final orders upon affidavit, the submitting party shall file an affidavit setting forth sworn testimony showing the court’s jurisdiction and factual averments sufficient to support the relief requested in the proceedings, together with a copy of the proposed judgment 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 an affidavit shall not be deemed to shorten any statutory waiting period required for entry of a judgment of dissolution or judgments of legal separation.

C. **Final Order Entered – When:** Final orders in a proceeding for change of name, and any other uncontested causes, may be entered upon affidavit of petitioner/plaintiff when:

1. Any person entitled to service has been served.

2. The submitting party shall file an affidavit setting forth the testimony showing the court’s jurisdiction and factual averments sufficient to support the relief requested in the proceedings, together with a proposed judgment or order. The filing of such an affidavit shall not be deemed to shorten any statutory waiting period required for entry of a judgment.

D. **Hearing Required – When:** The Court shall not be bound to enter a judgment or order upon affidavits of either or both parties, but the court may, upon its own motion, require that a formal hearing be held to determine any or all issues presented by the pleadings.

[Adopted eff. Jan. 16, 2004.]

**68.13 ALTERNATIVE DISPUTE RESOLUTION**

**A. ESTABLISHMENT OF PROGRAM**

Pursuant to Supreme Court Rule 17, the Court adopts the following alternative dispute resolution program. This program is applicable to all civil disputes except those subject to Supreme Court Rules 88.02 to 88.06. The alternative dispute resolution mechanism shall be mediation.

**B. NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES**

In all actions in which this rule applies, a notice of the availability of alternative dispute resolution services shall be furnished to all parties. The Circuit Clerk shall provide the notice to the party or parties initiating the action at the time the action is filed. All responding parties shall be provided the notice along with the summons and petition. The notice shall advise the parties of the availability of alternative dispute resolution and shall inform the parties that the names of mediators qualified under this rule and a description of their background and fees may be obtained from the court. Counsel for the parties shall discuss alternative dispute resolution with their clients.

**C. REFERRAL TO MEDIATION**

Any party to a proceeding may file a motion requesting alternative dispute resolution within thirty (30) days of the date in which responsive pleadings are due or the court may order the mediation on its own motion at any time. Upon the order of the court, the parties shall agree to a mediator within fifteen (15) days from the date of the order. If the parties are unable to agree upon a mediator within that time frame, then the court shall appoint a mediator from the court-approved list.

Nothing herein contained shall preclude the parties from agreeing to participate in mediation independent of this rule.

**D. CONFIDENTIALITY**

The mediation shall be private and confidential as provided by Supreme Court Rule 17.06. No stenographic, electronic or other record of the mediation shall be made.

**E. COMPENSATION**

The mediator shall receive compensation as the parties and the mediator selected agree. The fee, unless otherwise agreed by the parties, shall be borne equally by the parties and shall be paid directly to the mediator selected. The court reserves the right to review the reasonableness of the fee charged by the mediator.

**F. QUALIFICATIONS OF MEDIATORS**

The mediator must meet the qualifications as set forth in Supreme Court Rule 17.04.

**G. LIST OF MEDIATORS**

The Circuit Clerk shall maintain and make available to counsel, parties and the public the list of qualified neutrals compiled by the clerk under this rule. The list shall include the mediator's training, experience, qualifications and other information deemed appropriate by the court.

**H. DISQUALIFICATION AND WITHDRAWAL OF MEDIATORS**

No person shall serve as a mediator in any proceeding in which the mediator is interested, prejudiced, related to a party, has been counsel to a party in the cause, or under any circumstances which would reasonably call into questions to the mediator's impartiality. A mediator may withdraw for any reason set forth in this rule or for any other reason.

**I. RESULTS OF MEDIATION**

The results of the mediation shall not be reported to the court except as provided in Supreme Court Rule 17.05. Parties attempting resolution through alternative Dispute Resolution, without success, shall receive priority in trial settings.

[Adopted eff. Jan 16, 2004]

**RULE 68.14: MEDIATION OF CHILD CUSTODY AND VISITATION MEDIATION DEFINED**

Mediation under this local rule is the process by which a neutral mediator, selected by the parties or appointed by the court, assists the parties in reaching a mutually

acceptable agreement as to issues of child custody and visitation. The role of the mediator is to assist the parties in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise, and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties and not the decisions of the mediator. The agreement reached can resolve all or only some of the disputed issues.

[Adopted eff. Jan 16, 2004]

**RULE 68.15: MEDIATION – WHEN ORDERED - APPOINTMENT OF MEDIATOR**

- A. In every case involving contested issues of custody and/or visitation, the parties shall participate in a minimum of two (2) hours of mediation pursuant to Missouri Supreme Court Rule 88.02 through 88.08 and this local rule unless waived by the court as hereinafter set forth. In all family-law related cases referred to mediation by the terms of this rule, the parties are encouraged to mediate any or all other issues including, but not limited to, child support, property division and maintenance. Any mediation beyond the initial two hours shall proceed by mutual agreement of the parties and the mediator.
- B. Either party shall file Circuit Court Form 15 in all domestic relations matters in which there are minor children. Form 15 shall be filed no later than sixty (60) days from the date of service of summons on Respondent. The Court may dismiss the case if Form 15 is not filed in a timely manner. If mediation is appropriate under this rule, then the parties shall do the following within the same previously described sixty (60) day period: select a mutually agreeable mediator, schedule the initial mediation session and notify the court of the proposed date of mediation and the mediator's name. Thereafter, an order of mediation shall then be issued by the court. Mediation shall be completed within the time frame set forth in the court order for mediation.
- C. If the parties have not selected a mutually agreeable mediator from the court-approved list, the court shall appoint a mediator from the court-approved list to conduct mediation pursuant to this rule. Fees for mediation may be adjusted by the court upon consideration of the parties' Statement of Income and Expenses and if resources are available to the court.
- D. The mediator shall inform the court of his/her acceptance of appointment in writing. Within ten (10) days of the compliance and/or completion of the mediation, the mediator shall also file with the court a notice indicating the compliance with the minimum two hours of mediation pursuant to this rule, notice of the completion of the case as to whether or not the issues were settled, and any memo of understanding of the parties.
- E. Some cases may be inappropriate for mediation, which may include those with a history of domestic violence. If the case is deemed inappropriate for mediation due to domestic violence or for any other reason determined by the mediator, the mediator shall so notify the court in writing.

- F. All proceedings in cases in which mediation has been ordered pursuant to this rule shall be stayed for purposes of compliance with Missouri Supreme Court Rule 17 regarding time standards for a period not to exceed 60 days unless, upon application, the stay is modified by the court for good cause shown.

[Adopted eff. Jan. 16, 2004.]

**RULE 68.16: MEDIATION-QUALIFICATIONS OF THE MEDIATOR**

- A. A mediator who performs mediation in a contested child custody matter pursuant to this rule shall be a person who has stated by affidavit that he or she:
1. Is an attorney or a person who possesses a graduate degree in a field that includes the study of psychiatry, psychology, social work, counseling or other behavioral science substantially related to marriage and family interpersonal relationships; and,
  2. Has completed an approved training program which consists of at least forty (40) hours of curriculum requirements approved by the Missouri Supreme Court or its designee. Such curriculum shall substantially meet the training requirements and components as established by the Association of Conflict Resolution and must include at least four (4) hours dealing with domestic violence and power imbalance issues.
- B. All newly qualified mediators shall, within one (1) year of qualification, obtain the following training:
1. Attorney-mediators shall receive eight (8) hours additional training in matters relating to child psychology, child development, family dynamics or equivalent approved training in the field of behavioral sciences;
  2. Non-attorney mediators shall receive eight (8) hours additional training in areas relating to the law concerning family law matters.
- C. All new and existing mediators shall receive at least six (6) hours of continuing education annually in fields relating to alternative dispute resolution services or behavioral sciences that are applicable and relevant to issues of child and family development and psychology.
- D. All Rule 88 mediators trained prior to December 1, 2002, shall be exempt from the new education requirements established above with the exception of continuing education but shall advise the court and the Office of State Courts Administrator of the number of formal hours of mediation training received.
- E. The Circuit Clerk shall maintain a list of persons qualified to act as mediators under this rule. Only those persons who are included on the court-maintained list of mediators may be considered as mediators according to this rule. To be included on this court-maintained list, the interested person must file the previously described affidavit with

the Circuit Clerk along with a statement containing, at the minimum, the following information: business address; telephone number; fax number; e-mail address, if any; degree(s) and the institution(s) obtained therefrom; type and number of hours of mediation training; current profession and hourly rate of mediation. The person may also attach a resume or curriculum vitae in lieu thereof.

- F. The list of mediators shall be updated from time to time as deemed necessary by the presiding judge. All persons included in the list of mediators shall keep the circuit clerk apprised of any changes to their qualification, including any change in status with any professional association, and their fees.
- G. All mediators who serve in family law related cases by court order shall submit an application for listing on the Approved Mediators List to be established and maintained by the Office of State Courts Administrator.
- H. Disqualification of a mediator shall be ordered in any legal proceeding upon the filing of a written application with ten (10) days of appointment. Each party is entitled to one (1) disqualification in each proceeding, except a party may be entitled to additional disqualifications for good cause shown. A mediator who has been appointed shall advise the court of any fact bearing on their qualifications, including any fact which would be reason for their disqualification. If the court disqualifies a mediator, an order shall be entered naming a qualified replacement. Nothing shall limit the mediator's ability to refuse assignment of any mediation under this rule.

[Adopted eff. Jan. 16, 2004.]

**RULE 68.17: MEDIATION-DUTIES OF THE MEDIATOR**

- A. The mediator in writing shall:
  - 1. Inform the parties of the costs of mediation;
  - 2. Advise the parties that the mediator does not represent either or both of the parties;
  - 3. Define and describe the process of mediation to the parties;
  - 4. Disclose the nature and extent of any relationships with the parties and any personal, financial, or other interests that could result in a bias or a conflict of interest;
  - 5. Advise each of the parties to obtain independent legal advise;
  - 6. Disclose to the parties' attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by the parties;

7. Ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children;

B. The mediator may meet with the children of any party and, with the consent of the parties, may meet with other persons.

C. The mediator shall make a written memorandum of any understanding reached by the parties. A copy of the memorandum shall be provided to the parties and their attorneys, if any, at the time of filing notice of compliance. The mediator shall advise each party in writing to obtain legal assistance in drafting any agreement or for reviewing any agreement drafted by the other party. Any understanding reached by the parties as a result of mediation shall not be binding upon the parties until it is reduced to writing, signed by the parties and their attorneys, if any, and approved by the court. If any party is not represented, the mediator shall provide to the court the written summary of any understanding reached by the parties.

D. The mediator may act as a mediator in subsequent disputes between the parties. However, the mediator shall decline to act as attorney, counselor or psychotherapist for either party during or after the mediation or divorce proceedings unless the subsequent representation, counseling, or treatment is clearly distinct from the mediation issues. The mediator may not subsequently act as an investigator for any court-ordered report nor make any recommendations to the court regarding the child care issues.

[Adopted eff. Jan 16, 2004.]

#### **RULE 68.18: TERMINATION OF MEDIATION**

A. At any time after two hours of mediation either party may terminate mediation ordered under Rule 88.04.

B. The mediator shall terminate mediation whenever the mediator believes:

1. That continuation of the process would harm or prejudice one or more of the parties or the children; or
2. That the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely.

C. The mediator shall report the termination of mediation to the court. The mediator shall not state the reason for termination except when the termination is due to a conflict of interest or bias on the part of the mediator, in which case another mediator may be appointed.

[Adopted eff. Jan. 16, 2004.]

**RULE 68.19: CONFIDENTIALITY**

A. Mediation proceedings shall be regarded as settlement proceedings. With the exception of information released pursuant to subdivision 88.06(a)(6), any communication relating to the subject matter of such disputes made during the mediation by any participant, mediator, or any other person present at the mediation shall be a confidential communication. No admission, representation, statement or other confidential communication made in setting up or conducting such proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.

B. No person who serves as a mediator, nor any agent or employee of that person, shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the mediation.

[Adopted eff. Jan. 16, 2004.]

**RULE 68.20: CASE MANAGEMENT – DISMISSAL DOCKET**

In all Circuit Judge cases, including, but not limited to, those filed under Chapter 452 and 210 RSMo., the case shall be dismissed on a date at least one hundred fifty (150) days after the date of filing unless the case is placed on a pretrial docket, the case is set for a non-contested hearing and granted prior to the dismissal date, set for a contested hearing or voluntarily dismissed by the parties. Domestic relations cases shall also be dismissed on the specially assigned date if the parties have not completed, by the foregoing date, the mandatory mediation as set forth in Rule 68.15(A), if applicable, and/or the parent education program as set forth in Rule 68.11, if applicable.

The Circuit Clerk, within two (2) weeks of the filing of the initial pleading, shall provide to the party who filed the initial pleading a document entitled, “Notice of Dismissal”, which shall set forth the specially assigned dismissal date along with the conditions of dismissal as set forth in the preceding paragraph.

[Adopted eff. Jan. 16, 2004.]

**RULE 69 MUNICIPAL DIVISION**

No local rule.

**RULE 70 PARTITION**

A. In partition sales, plaintiff’s attorney shall assist the Sheriff or Commissioners in preparing all necessary reports of sale and orders of distribution and present them to the Court.

B. No report of commissioners in partition, and no report of a sale in partition by the Sheriff, or any Commissioner appointed by the Court, not excepted to, shall be confirmed

unless the same has been on file at least three (3) days, unless all parties in interest or their attorneys or guardians expressly request in writing that an order of confirmation be entered.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001.]

**RULE 71 ADMINISTRATIVE REVIEWS**

No local rule.

**RULE 72 PROBATE**

1. Guardianship/Conservatorship.

Prior to the hearing seeking appointment of guardian or conservator for alleged disabled or incapacitated person or minor counsel for Petitioners shall procure and file a criminal records check for each Petitioner seeking appointment as guardian/co-guardian or conservator/co-conservator. Said requirement shall not apply to Petitioners seeking appointment of the Public Administrator.

**RULE 73 SMALL CLAIMS**

No local rule. (See Supreme Court Rules 140 through 155)

**RULE 74 TRUST ESTATES**

No local rule.

**74.1 INVENTORY**

No local rule.

**74.2 REPORTS**

No local rule.

**74.3 RECORD**

No local rule.

**74.4 AUDIT**

No local rule.

**POST TRIAL**

**RULE 81 EXECUTION**

No local rule.

**RULE 82 GARNISHMENT**

No local rule.

**RULE 83 JUDICIAL SALES**

No local rule.

**INTERNAL ORGANIZATION**

**RULE 100 INTERNAL ORGANIZATION**

**100.1 PRESIDING JUDGE**

**100.1.1 ELECTION**

**100.1.2 DUTIES OF PRESIDING JUDGE**

A. The Presiding Judge of the Circuit shall have the authority to assign judges to hear such cases or classes of cases as the Presiding Judge may determine, and to assign judges to divisions.

B. The Presiding Judge of the Circuit shall not have the authority to assign:

1. A Municipal Judge to hear any case other than to initially hear a municipal ordinance violation case of the municipality which makes provision for such municipal judge;

2. A Judge to hear the trial of a felony case when he has previously conducted the preliminary hearing in that case;

[Adopted eff. Jan. 5, 2001.]

**100.2 LOCAL COURT RULES**

Any of the above rules or parts thereof in conflict with any rule of the Supreme Court of Missouri or any law of the State of Missouri is hereby considered amended to conform to said rule or law governing same.

**100.2.1 FORMULATION**

No local rule.

**100.2.2 PUBLICATION**

No local rule.

[Adopted eff. Jan. 5, 2001. Amended eff. Dec. 5, 2001.]

### **100.3 LIBRARY FUND**

All suits filed in the Circuit Court shall be accompanied by a deposit of fifteen dollars (\$15.00) as a Law Library fee. This deposit shall be in addition to all other deposits now or hereafter required by law or court rule, but is included in the deposits required under Rule 5.1 of these rules. No summons shall issue until the deposit has been made. This rule shall not apply to actions sent to the County on a change of venue within the Probate Court jurisdiction, cases filed under Chapter 517 RSMo. procedures, small claims procedures, applications for Trial de Novo, or to suits, civil or criminal, filed by the County or State or any City.

#### **Lincoln County:**

On the first day of each month, the Circuit Clerk of Lincoln County shall pay the entire fund created by said deposit in Lincoln County during the preceding month to the Treasurer of the Lincoln County Circuit Court Library Fund for the purpose of maintenance and upkeep of the Law Library. The Treasurer for said fund shall be Ben Burkemper, Associate Circuit Judge, Division III.

#### **Pike County:**

On the last day of each month, the Circuit Clerk of Pike County shall pay the entire fund created by said deposit in Pike County during the preceding month to the Treasurer of the Pike County Circuit Court Library Fund for the purpose of maintenance and upkeep of the Law Library. The Treasurer for said fund shall be Phillip G. Smith, attorney at law.

It is further provided that the Judges of the Circuit Court, the officers of all Courts of record and all attorneys licensed to practice law in any such County shall be entitled at all reasonable times to use said library to the support of which said funds are applied.

(See Section 514.440-514.489 RSMo.)

[Adopted eff. Jan. 5, 2001. Amended eff. Jan. 16, 2004.]

### **100.4 STORAGE OF RECORDS**

No local rule.

#### **100.4.1 REPRODUCTION, PRESERVATION, ARCHIVAL STORAGE AND DISPOSAL OF ORIGINAL CIRCUIT COURT FILED (AND THEIR CONTENTS)**

No local rule.

**100.4.2 REPRODUCTION AND PRESERVATION OF COURT RECORDS  
OTHER THAN FILES (AND THEIR CONTENTS)**

No local rule.

**100.4.3 RESPONSIBILITY FOR INDEXING AND PRESERVING COURT  
REPORTER NOTES**

No local rule.

**100.4.4 IDENTIFICATION OF REPORTER'S NOTES**

No local rule.

**100.4.5 INDEX**

No local rule.

**100.4.6 STORAGE OF NOTES**

No local rule.

**100.4.7 NOTES OF SUBSTITUTE REPORTERS**

No local rule.

**100.4.8 STORAGE OF NOTES UPON RETIREMENT, TERMINATION OR  
DEATH OF COURT REPORTER**

No local rule.

**100.4.9 BOXING AND STORING OF OLD NOTES**

No local rule.

**100.4.10 RESPONSIBILITY FOR FURNISHING MATERIALS AND SPACE FOR  
STORAGE OF COURT REPORTER NOTES**

No local rule.

**100.4.11 PROCEDURE FOR EXAMINATION OF CRIMINAL RECORDS**

No local rule.

**100.4.12      PROCEDURE FOR EXPUNGING AND CLOSING CRIMINAL RECORDS**

No local rule.

[Adopted eff. Jan. 5, 2001.]

**100.5            CLERK'S DUTIES**

No local rule.

**100.6            SELECTION OF VENIREMEN**

No local rule.