

LANGLADE COUNTY CIRCUIT COURT RULES

(rev. 2019)

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CIRCUIT COURT
LANGLADE COUNTY
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Marilyn Baraniak
CLERK OF CIRCUIT COURT

CHAPTER 1 GENERAL COURT RULES

1.1 Purpose

These rules are established to provide a system for the effective administration of the Lantlade County Circuit Court. They are intended to provide guidance to members of the Bar that practice in this Court as well as members of the public that are self represented. All previous rules are expressly repealed and shall have no force or effect after the effective date of these rules.

1.2 Amendment

This Court expressly reserves the right and power to amend, delete, depart from or add to these rules from time to time as circumstances may require. Further, such rules may not be strictly applied in all instances if in a given situation strict application may not be fair or appropriate. Such modifications, whether temporary or permanent, may be made with or without prior opportunity of any interested party to comment.

1.3 Scheduling Policy: Motions

Any attorney or party that files a motion or other document which requires a hearing before the Court shall be responsible for scheduling that hearing according to the following procedure:

- (a) The attorney or party that files the motion shall contact the Judicial Assistant to obtain a Court date. In the event that there exists an attorney of record representing any opposing party, that attorney or his/her office shall be contacted by the moving attorney at the same time to arrange a date with the Judicial Assistant that is convenient for all represented parties. Unrepresented litigants need not be contacted at the time of initial scheduling, but shall have the right to participate in scheduling or rescheduling requests with the Court after receiving written notice of the selected date.
- (b) Any motions filed with the Clerk of Court with no specific date and time indicated may not be acted upon until the filing counsel/party complies with 1.3(a). The Court reserves the right to sua sponte schedule such motion at a date convenient with the Court, but without contacting any counsel. Any counsel not available on that date shall engage in the process outlined in section 1.3 (a) to obtain another date if the selected date is not convenient.

- (c) No attorney/party shall schedule additional motions on a pre-existing motion date for the same case without first advising the Court to determine if sufficient time has been set aside for an additional motion. Any motion filed with the Court without adherence to this rule may not be considered by the Court.
- (d) The above rules shall apply in all cases regardless of type unless otherwise specified in these rules.

1.4 Facsimile Transmissions

(a) Facsimile transmissions of documents to be filed with the Clerk of Court are generally not allowed unless one of the following exceptions applies.

- 1. Correspondence directed to the Clerk of Court or Judicial Assistant, which addresses the administration of the case, and is not a pleading, brief or motion.
- 2. A notice of retainer.

(b) The above-stated limitations do not apply to the following:

- 1. Any document for which transmittal by facsimile has been approved by the Judge.
- 2. Copies of documents that are sent directly to the Judge and are either documents that are not to be filed with the Clerk of Court, or are courtesy copies of documents the originals of which have been or are at the same time filed with the Clerk of Court by mail or in person. No facsimile shall exceed fifteen (15) pages in length.

1.5 Miscellaneous Provisions

(a) Scheduling conferences shall be held at the request of a party, or if the Judge believes a conference is necessary for defining the issues in the case and setting forth dates upon which specific matters are to be completed. In all cases which are scheduled for jury trial, a final pre-trial conference will be held in close proximity to the scheduled trial date. The parties must personally appear with counsel for this conference unless excused for good cause. Failure to appear may result in a

removal of the case from the trial calendar at the court's discretion.

- (b) All pleadings submitted for filing shall have a caption page that sets forth the legal caption of the case. No pleading submitted shall have a caption that varies from the original caption unless any such modification has been approved by order of the Court.
- (c) In all foreclosure actions, each action filed shall have attached to the summons a notice to the defendants, that they have the option to participate in the Langlade County Foreclosure Program. Copies of said forms are available at <https://mediatewisconsin.com>. No action shall be accepted for filing without having attached thereto such forms.

CHAPTER 2 SMALL CLAIMS PROCEDURE

2.1 How Claims are Commenced

- (a) An action is commenced by the filing of a Small Claims Summons and Complaint. Forms for this purpose are available at the Office of the Clerk of Court.
- (b) Once filed the summons and complaint must be served on all opposing parties in the following manner:
 1. For Replevin and other civil actions where a defendant resides within Langlade County, service may be accomplished by regular mail, certified mail or personal service. The Clerk shall be responsible for such mailing and may charge an appropriate fee for this service.
 2. For Replevin and other Civil actions, in which any defendant resides outside of Langlade County, such defendant shall be served by personal service.
 3. In Evictions, contempt proceedings, and Personal Injury actions as well as other tort actions, service must be made by personal service. Proceedings for contempt must be served no later than seventy two (72) hours before the scheduled hearing.
 4. If with reasonable diligence a defendant cannot be served as stated above the defendant shall be served according to the procedures set forth in Wis. Stats. Sec. 799.12 (4) thru (6).

- (c) The filing and service fees shall be as set forth by statute, as time to time amended. The current fee schedule shall be in writing and maintained by the Clerk of Court.

2.2 Appearances

(a) Appearances by Plaintiff.

1. The Plaintiff shall appear personally on the return date set forth on the summons, except the Plaintiff's appearance is waived on the return date if a written answer has been filed by Defendant.
 - a. A plaintiff's attorney may appear by correspondence received and file stamped by the Clerk of Court at least forty-eight (48) hours prior to the return date. The correspondence shall indicate on its face that a copy of that correspondence is transmitted to all defendants in the action.
 - b. A Plaintiff not represented by an attorney and who resides more than sixty (60) miles from the Langlade County Courthouse may also appear by writing under the same circumstances as an attorney, provided an affidavit is filed at the same time stating under oath the distance the plaintiff resides from the Courthouse.
 - c. Upon application to the Court Official assigned to hear Small Claims cases, a plaintiff may request to appear by telephone or in writing as set forth above, alleging special and unique hardship. Such request shall be in writing and must be received at least five (5) business days prior to the return date. Such written request shall provide a telephone number where said Plaintiff can be reached during business hours and indicate that a copy is sent simultaneously to the Defendant. If permission to appear by telephone is granted, notice of such shall be provided by telephone or email by the Court or Court Commissioner or designee. The failure to provide notice of permission to appear by telephone shall be deemed a denial of such permission.

(b) Appearance by Defendant:

1. The defendant shall appear as provided in Wisconsin Statute Sec. 799.20

2. Upon receipt of a denial or a response that places one or more issues in controversy, the presiding Court Official shall schedule a pre-trial conference on a selected date and all parties shall appear personally or in such manner as may be approved by the Court. In the event the matter is not resolved the matters shall be scheduled for trial.

2.3 Trials

- (a) All trials shall be before the Court Commissioner assigned to hear such cases by the Circuit Court Judge. The trial will not be reported but will be recorded by a Digital Audio Recorder. Verbatim CD copies can be obtained from the Clerk of Court for a prescribed fee as amended from time to time.
- (b) Contested eviction actions shall be heard by the Circuit Court Judge. Such actions may be scheduled for trial without a pre-trial conference. After the eviction phase is completed, the Court Commissioner may hear any remaining issues related to damages.
- (c) Any party aggrieved of a decision by the Court Commissioner, may request a de novo hearing before the Judge.
- (d) The plaintiff must file an "Affidavit of Nonmilitary Service", Form GF-175 before judgment can be entered.

CHAPTER 3 PROBATE AND GUARDIANSHIP PROCEDURE

3.1 Self-Represented Litigants/Parties

Probate and guardianship laws and procedures are complex. All parties are encouraged to retain or consult with a licensed attorney regarding all guardianship and probate matters. The employees of the Register in Probate/Juvenile Court Clerk's office can assist with providing forms and scheduling. However, they may not give legal advice or practice law and self-represented litigants and parties should not ask or expect them to do so.

3.2 Deadlines for Completion of Probate Matters

It is not in the interests of the public or heirs or creditors of an estate for closure of probate matters to be delayed. Wis. Stats. § 863.33 states "All estates are to be completed as soon as reasonably possible and without unnecessary delay." The deadlines and procedures set forth in Wis. Stats. §§ 863.35 and 857.09 are to be adhered to by all parties,

personal representatives, special administrators, and attorneys. All probate matters should be concluded and closed within 18 months of filing, except upon express approval by the court for good cause. Failure to close a probate matter within 18 months of filing may result in dismissal of the matter, contempt sanctions, or removal of the personal representative, special administrator, or attorney at the discretion of the court after an order to show cause hearing.

CHAPTER 4 FAMILY COURT PROCEDURE

4.1 Family Court Commissioner

- (a) The Family Court Commissioner shall have all duties and responsibilities as are set forth by Wisconsin Statutes. In addition, the Family Court Commissioner shall have the authority to hear stipulated divorces as well as stipulated post divorce matters. All contested matters, other than temporary hearings shall be heard by the Judge.
- (b) Any Temporary Order entered by the Family Court Commissioner shall be in full force and effect until the final hearing before the Judge. If no final hearing is conducted or scheduled within twelve (12) months of the date of the temporary order, upon order to show cause with notice to the parties, the temporary order shall be declared null and void and the action shall be dismissed for lack of prosecution.

4.2 Cases in which child custody and placement is an issue

Mediation

- (a) In any case in which the Court or Family Court Commissioner believes that custody or placement will be at issue, the Family Court Commissioner shall first refer parents to mediation. The Court shall provide forms for that purpose and shall advise the parents accordingly.
 - 1. No further action on the case, apart from the temporary order, shall take place until the mediation process is completed.
 - 2. Each party shall pay one-half of mediation fees. If a party has limited ability to pay for mediation costs the fee portion of that party may be reduced by applying a sliding fee schedule formula implemented by the mediator. In cases of extreme Indigency, the Court may waive the fee requirement entirely and

require the County to pay the entire portion of that party's mediation expenses. The County shall, through the Corporation Counsel and Clerk of Court, have the option to seek recoupment by any available means allowed by law, if it appears that such efforts are likely to result in recoupment of fees advanced by the County.

3. In the event an agreement is reached the mediator shall reduce said agreement to writing, and file the same with the Court after each party has signed the agreement. That agreement, once filed, shall be adopted by the Court as its order regarding custody and placement.
 - a. If an agreement is not reached and an impasse occurs, the mediator shall so certify and file a report to that effect. The Court must then consider the matter as a contested issue requiring an evidentiary hearing.
 - b. At such time as an impasse occurs as set forth above, the Court or Family Court Commissioner shall first appoint an attorney to act as Guardian Ad Litem for the minor children. The Guardian Ad Litem shall have responsibilities as set forth by statute.

Guardians Ad Litem

- (a) The Guardian Ad Litem shall not begin any duties as part of the assignment until all of the following conditions are met.
 1. The Guardian Ad Litem signs the order authorizing appointment.
 2. The required fees are posted by the parents.
 - a. The Court or Family Court Commissioner may waive this requirement if exigent circumstances exist, but the time devoted to the case shall not exceed the time allowed by the appointing authority.
 - b. In each instance in which it is necessary to appoint a Guardian Ad Litem the Court or Family Court Commissioner shall require Guardian Ad Litem fees to be posted in advance of the service being rendered.

3. In non-indigency cases the Court Commissioner or Judge shall appoint a Guardian Ad Litem who shall make arrangements for the payment of fees directly with the parties.
 4. In cases in which the ability to pay is an issue, the fee to be posted shall be \$500.00. Each parent shall post one-half of that amount, however, the appointing authority may allocate payment in a different proportion based upon ability to pay by either parent.
 5. In instances in which any parent, because of poverty is unable to pay Guardian Ad Litem fees, and the other parent is not able to assume responsibility for all such fees, then, in such instances, the appointing authority may require the County to pay those fees. The County may seek recoupment by requiring such parent to enter into a payment plan enforceable by contempt and commitment proceedings or civil judgment.
 6. The hourly rate for Guardian Ad Litem fees shall be seventy dollars (\$70.00) (one hundred dollars \$100.00 effective January 1, 2020) per hour, unless the parties and Guardian Ad Litem all agree otherwise or unless the Family Court Commissioner or Judge orders otherwise.
- (b) The Guardian Ad Litem shall devote no more than eight (8) hours of billable time to each case. This shall include Court appearances as well as drafting reports. In the event that the complexity of the case dictates that devotion of additional time is necessary, the Guardian Ad Litem shall petition the appointing authority, which petition shall contain a brief statement justifying the request. If granted, the parents shall be required to advance the necessary additional Guardian Ad Litem fees.
- (c) The limitations set forth with respect to billable hours is based upon the premise that in most instances parents in these situations are experiencing severe financial pressure, and the legal process should minimize, to the extent possible, adding to those financial pressures. With that in mind, those that serve as Guardians Ad Litem are encouraged to allocate time devoted to each case as efficiently as possible, bearing in mind the need to protect the best interests of their client. Among those responsibilities that should be scrutinized are as follows:
1. Whether the time and expense of a home visit is warranted.
 2. Whether more than one school official should be contacted.

3. Whether contacting multiple references are cumulative and probative.
 4. Whether entertaining calls from parents on a repetitive basis and/or which involve complaints about the other parent are not relevant to the best interests of the children.
 5. The extent to which the Guardian Ad Litem mediates with the parents with respect to time consuming issues such as placement times, holiday visits, transportation, and other related issues that may be more effectively resolved by returning the parents to mediation.
- (d) Payment of unpaid Guardian Ad Litem fees will be handled the same as other unpaid court obligations, such as unpaid traffic tickets. The party will be given sixty (60) days to pay the total amount due or enter into a payment plan with the Clerk of Court. Further non-payment may result in incarceration under commitment order or civil judgment being entered.

4.3 Co-Parenting Class Required

- (a) In all cases in which an action for divorce with minor children or contested custody or placement is filed, each parent shall be required to participate in a parenting program established to provide parents with guidance in matters involving parenting of children whose parents are no longer together. Each parent shall be required to post the required fee for this purpose prior to attending the class.
- (b) No final hearing shall be scheduled until such time as the class is completed by at least one parent, and certificate of attendance is filed with the Clerk of Court.
- (c) The Court or Family Court Commissioner, may, for good cause, waive the attendance of not more than one parent.

4.4 Divorce Actions in which Petitioner is Self-Represented

- (a) In divorce proceedings in which the petitioner is self-represented, no action shall be scheduled for final hearing unless at the time the request is made, the petitioner submits for the Court's review, proposed Findings of Fact, Conclusions of Law, and Proposed

Judgment. The proposal shall include any addendum that is suggested in the printed forms used for this purpose.

1. The documents shall be prepared on approved forms for this purpose and shall be legible and understandable.
 2. The respondent may submit, at or prior to final hearings, his/her proposed Findings of Fact, Conclusions of Law and Proposed Judgment.
- (b) The Court may, after final hearing, adopt the documents as presented, or may direct modifications based upon the decision of the Court. The proponent shall then incorporate those modifications into a final draft to be reviewed and adopted by the Court at a hearing scheduled for that purpose.
1. The divorce shall be granted only upon acceptance by the Court of approved Findings of Fact, Conclusions of Law, and Judgment.
 2. In any event that there is a failure to comply with this rule, the Court may elect to dismiss the action for lack of prosecution.

CHAPTER 5 JUVENILE COURT PROCEDURE

5.1 Filing of Juvenile Citations

All original citations must be filed with the Clerk by the issuing agency no later than seventy-two (72) hours prior to the date of the scheduled initial appearance.

5.2 Petitions for Children in Need of Services or Delinquency

- (a) If a request is made for Temporary Physical Custody, the request may be filed at any time prior to the scheduled hearing.
- (b) Each parent shall be notified of the hearing as soon as it is determined that temporary relief will be requested. Notice may be in any manner that time will allow. The filing agency shall, if requested, detail for the Court, what efforts were made to locate a parent, in instances in which a parent is not present for the hearing.

- (c) Notice shall also be given to any attorney of record, or existing Guardian Ad Litem, existing foster parent, or current custodian, if known.
- (d) Any interested party may request from the court permission to appear by telephone. This request should be made in writing if possible and time allows.
- (e) Upon filing a request for Temporary Physical Custody, the Clerk shall make reasonable efforts to appoint and secure the attendance of a Guardian Ad Litem for such hearing if there is an existing Guardian Ad Litem, or there was a previous case involving the same child and a Guardian Ad Litem was appointed on that case, or the issuing prosecutor advised the Clerk that this case is particularly severe or is of such character that an immediate appointment of a Guardian Ad Litem is necessary.
- (f) All dispositional reports and recommendations shall be filed at least three (3) business days prior to the hearing date and forwarded to the Judge. These reports are confidential and may only be circulated or copied with the court's permission.

5.3 Petitions for Termination of Parental Rights

The petitioning agency or attorney shall file with the Court medical and genetic data as required by Wis. Stats. Section 48.425. If such information is unavailable, an affidavit shall be filed, prior to the hearing date, detailing the efforts that have been made to obtain such information and reasons for non-compliance. No final disposition will be made until the information or affidavit is filed.

CHAPTER 6 CRIMINAL PROCEDURE

6.1 Notice of Retainer required

All attorneys representing defendants in criminal cases shall, as soon as practical, file a notice of retainer with the Court. This shall insure that counsel will receive all required notices and communications that involve the case.

6.2 Withdrawal from Representation

Any counsel of record who concludes that it is necessary that he/she withdraw from further representation of a particular defendant shall submit to the Court an affidavit and proposed order. A copy shall be

sent to the defendant at the same time. The Court may, upon considering such affidavit grant the request without hearing and notice if it appears the motion is based on a request from the defendant. Otherwise, the five (5) day rule applies.

6.3 Court Appointed Counsel

- (a) In the event that a defendant is unable to qualify for representation from the State Public Defender's Office and is unable to retain counsel utilizing his/her own resources, then such defendant may apply for a Court Appointed Attorney. The Clerk of Court shall provide forms to be used for that purpose. Once that form is completed, signed and notarized, it shall be processed in the following fashion:
1. Once completed it shall be given to the Judicial Assistant who shall present the same to the Judge for review. If the Judge concludes that the petition has merit and the applicant is indigent or otherwise eligible for a court appointed attorney, the application will be approved and returned to the Judicial Assistant for assignment to an attorney.
 2. The Court shall determine on a case by case basis, whether a particular attorney has the requisite skills and experience to represent defendants in criminal cases.
 3. The Court shall determine, based upon the application, how much of an initial retainer the defendant is capable of posting, and the monthly payment to be required. Assignment of counsel shall not take place until the initial retainer is posted with the office of the Clerk of Court.
- (b) Attorneys interested in participating in this program shall request that their name be added to the list.
- (c) Attorney's shall be paid seventy (\$70.00) (one hundred \$100 effective January 1, 2020) dollars per hour for services rendered in such representation. They shall also be entitled to reimbursement for all out of pocket expenses and travel time at the rate of \$25.00 per hour. The number of hours devoted to each case shall be based upon the complexity of the case, the seriousness of the charges, and other like variable factors. However, in order to keep some control over fees, it is expected that representation with respect to felony cases should not exceed eight (8) hours, and five (5) hours for misdemeanor cases. Any time in excess of those hours must first be approved by the Court.

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- (d) The attorney, once appointed, will be notified in writing. The defendant shall receive a copy of such correspondence, so that the case can move forward as soon as practical.
 - (e) At the completion of the case, counsel shall promptly submit a final bill which shall be paid by the Clerk of Court from those sums collected from the defendant during the period of time the case has been pending. Payment of unpaid fees for court-appointed attorneys will be handled the same as other unpaid court obligations, such as unpaid traffic tickets. The party will be given sixty (60) days to pay the total amount due or enter into a payment plan with the Clerk of Court. Further non-payment may result in incarceration under commitment order or civil judgment being entered.