

# DOUGLAS COUNTY FAMILY COURT HANDBOOK

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## INTRODUCTION

The purpose of this handbook is to provide Family Court process information concerning actions affecting the family in Douglas County. This handbook is intended to comply with the provisions of § 767.105 of the Wisconsin Statutes (Stats.).

This handbook is for informational purposes only and should not be construed as legal advice. The information in this handbook may not apply for all situations and is not equivalent to personal legal advice and representation. If you have a specific legal question concerning your case you should contact an attorney. You can also review Wisconsin Statutes Chapter 767, which contains law on actions affecting the family. The Douglas County law library and the public library also have copies of the Wisconsin Statutes.

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## I. DIVORCE PROCEDURES

### A. STARTING THE DIVORCE\*

\*(This guide refers to divorce rather than legal separation or annulment. Most information about custody, support and property is the same whether the action is for divorce, legal separation or annulment.) Throughout this guide form numbers, which can be obtained at [wicourts.gov](http://wicourts.gov), are provided in parenthesis.

Before a divorce action can be started, you or your spouse must have lived in the State of Wisconsin for at least 6 months, and must also have lived in Douglas County for at least 30 days. Once this residency requirement is met, a divorce action can be filed. A legal separation or annulment may be started after a 30-day residency in Wisconsin and Douglas County. A filing fee is required.

The divorce is started when the Summons and Petition (**forms FA-4104/4105; FA-4108/4109**) signed by the person seeking the divorce, are filed with the Clerk of Court and served on the other spouse. Service of the Summons and Petition occurs when someone, usually the sheriff's deputy or private process server, delivers the papers to the Respondent. The server then provides the Petitioner with an Affidavit of Service (**form FA-4120**). Service of the Summons must be done by someone other than the Petitioner. If the other party will admit s/he has received the paperwork, service can be accomplished by an Admission of Service (**form FA-4119**). If the papers cannot be served on the Respondent personally, then the Court may permit the papers to be published in the newspaper and the Petitioner will file proof of such publication (**forms FA-4122; FA-4123**).

If both spouses want a divorce then a Joint Petition (**forms FA-4110/4111**) may be filed. No Summons or service is necessary if there is a Joint Petition.

The party seeking the divorce is the Petitioner and the other spouse is the Respondent. If both parties have filed they are Joint-Petitioners.

In Wisconsin a divorce cannot be granted until at least 120 days after the day the Summons was served on the other party or 120 days after filing of a Joint Petition. During this "cooling-off" period decisions must be made concerning issues such as legal custody and physical placement, use of the marital residence and payment of debts, maintenance and child support. Those issues can be addressed at a Temporary Order Hearing (**forms FA-4128/4129VA**).

Some people choose not to hire an attorney during the divorce process. A person who is involved in litigation and has not hired an attorney is appearing "pro se". "Pro se" means "by one's self". If there are any disputes about legal custody, physical placement, support, maintenance or property division, most people find that it is best to have an attorney.

Even if the parties are in full agreement on all issues and neither party chooses to retain an attorney, the basic divorce procedures still apply. Basic information about the procedure for obtaining a divorce is available from the Family Court Commissioner (FCC), or online at [www.wicourts.gov](http://www.wicourts.gov) (click on forms, circuit court, family). Obtaining, properly completing and filing the divorce forms is the responsibility of the parties. **The FCC is not able to give legal advice to pro se litigants. Pro se litigants are held to the same legal standards as a lawyer and must follow the same procedures that a lawyer must follow.**

## **B. PREPARATION FOR HEARING AND FINANCIAL DISCLOSURE STATEMENT**

When a divorce is started both parties must make a full disclosure of their assets, income and liabilities in a Financial Disclosure Statement (**form FA-4139**). The Financial Disclosure Statement lists the assets, income, debts and monthly budgets of each party. All assets must be disclosed. Even if the parties have reached an agreement as to how the assets are to be divided, the assets must be listed on the Financial Disclosure Statement. Wisconsin Law also requires the parties to attach current paystubs and W-2s to the Financial Disclosure Statement.

Of particular importance on the financial disclosure is the valuation of real estate and pension/profit sharing rights of the parties, as those assets may represent a substantial portion of the marital property. It is also important to state all the income of the parties accurately because this information is important if there is a future request regarding child support or maintenance.

A party may be asked to bring to the temporary order hearing the following information:

1. Wage statements for the previous 8 weeks;
2. Last two years income tax returns, including W-2s;
3. Life insurance policies;
4. Last bank statements for all accounts, including checking and savings accounts;
5. Copies of records on IRA's, CD's, stocks, bonds, saving passbooks, and any other evidence of value of assets;
6. Statements of mortgage balance, copy of the deed, and last real estate tax statement;

7. Retirement/pension information, including information supplied by the employer;
8. Latest bills showing balance owed to each creditor;
9. Utility bills;
10. Interest in any business, partnerships, Limited Liability Company or corporation;
11. Future interests, whether vested or non-vested;
12. Any other financial interest or source.

As soon as possible prepare a list of household furnishings, equipment, appliances, tools, etc., stating a value based on what someone would pay for these items considering the fact that they are now used. A party may be asked to sign releases for information concerning pensions, 401(K) or profit sharing plans, cash value of insurance policies and bank accounts. Information gathering and organizing is probably the most essential part of the divorce process. **While gathering all of the financial information may be tedious, the preparation will make the entire process easier in the long run.**

### **C. TEMPORARY ORDER HEARING**

If parties are in agreement during the pendency of the divorce regarding legal custody and physical placement of children; payment of child support or maintenance; payment of debt; use of the marital residence and personal property; and other such orders, they can submit a Stipulation for Temporary Order (**forms FA-4126/4127VA**).

If parties are not in agreement, either party can file a Motion or Order to Show Cause with a supporting Affidavit for a temporary order (**forms FA-4128/4129VA/VB**). This hearing is held by the FCC in Room 301 of the Douglas County Courthouse at 1313 Belknap Street in Superior. At the hearing the FCC will make temporary orders regarding legal custody and physical placement of children; payment of child support or maintenance; payment of debt; use of the marital residence and personal property; and other such orders. The parties and their attorneys will each receive a copy of the Temporary Order. This Order remains in effect until the judgment of divorce is granted or the case is dismissed.

The Temporary Order also restrains the parties from harassing each other and from interfering with each other. The parties are ordered not to sell or dispose any property without consent of each other or order of the court, and to not change medical or life insurance coverage during the divorce action. The Order also directs the parties not to borrow money while the divorce is pending.

### **D. STATUS CONFERENCE**

After the matter has been pending for 60 to 90 days, the Court will schedule a status conference. A party can also request that a status conference be scheduled any time (**form FA-4132**). The purpose of the status conference is to determine what issues may be in dispute, discuss the necessary forms, and schedule further hearings as may be necessary.

At the status conference the parties will be asked to obtain and complete certain forms, such as the Financial Disclosure Statement, a Marital Settlement Agreement (**forms FA-4150/4151**), and Findings of Fact, Conclusions of Law, and Judgment of Divorce (**forms FA-4160/4161VA**) for future submission to the court.

## **E. STIPULATED FINAL HEARING/DEFAULT DIVORCE**

Most divorces are settled by an agreement known as a Marital Settlement Agreement. The Marital Settlement Agreement will contain the agreement of the parties on child custody, periods of placement (formerly known as visitation), child support, division of property, payment of debts, maintenance, and any other matters relating to the divorce. If a divorce is settled by a stipulated Marital Settlement Agreement, the matter can be heard in a very short time after agreement has been reached and the 120-day waiting period has passed.

The Marital Settlement Agreement must be completed and signed by both parties before the final hearing can be scheduled. The following documents must be completed and reviewed by the FCC prior to the stipulated final hearing being scheduled:

1. Marital Settlement Agreement;
2. Financial Disclosure Statements;
3. Divorce/Annulment Worksheet;
4. Findings of Fact, Conclusions of Law & Judgment of Divorce.

## **F. TRIAL**

If the parties cannot agree to resolve all issues, a trial will be scheduled before a judge. The judge may issue a Pretrial Order directing the parties and the attorneys to meet and attempt to settle the issues that can be settled as well as prepare a joint list of disputed issues and each party's position on the issues. Compliance with all scheduling orders and pretrial orders is expected under the law.

At the trial the parties will submit the information the court needs to decide the case. Evidence regarding property division may include: statements of income; appraisals of personal property and real estate; and valuations of any retirement benefits. Pension and profit sharing must be valued and may be subject to division by the court as an asset even though you may not receive the pension until you retire or leave the company. A court may divide the proceeds of a pension or profit-sharing plan between the parties by use of a Qualified Domestic Relations Order which provides for a division of pension benefits at the time the pension is received or sooner depending on the terms of the pension or profit sharing plan. The assets of the marriage are usually divided equally, although, a court has discretion to deviate from an equal division of property. Gifted or inherited property is generally not subject to division.

The court will decide child-related issues regarding legal custody and physical placement according to the best interest of the children, after considering all evidence and the recommendations of the Guardian ad Litem.

## **G. DIVORCE JUDGMENT**

When the final divorce hearing occurs, whether by stipulation or trial, the parties or their attorneys will present to the Judge proposed Findings of Fact, Conclusions of Law and Judgment of Divorce. It is important that the parties read the Findings of Fact, Conclusions of Law and Judgment of Divorce and understand their rights and responsibilities under the divorce judgment. The divorce is final the day it is granted in court by the court.

If a judgment of divorce is granted, the parties may not remarry in Wisconsin or any other State until six months after the date the judgment is granted.

## **H. RECONCILIATION**

Between the first and final hearings the parties begin to live separately under the terms and conditions of the Temporary Order. During this time the parties may choose to live together and try reconciling without dismissing the action. Wisconsin law permits a suspension for a period up to 90 days.

To enter into a 90-day suspension, the parties must both sign and file a Stipulation Suspending Proceedings to Effect Reconciliation (**form FA-4144VA**). Once the 90 days elapses the parties must advise the court in writing whether they are going to dismiss the divorce or proceed with the action. If reconciliation occurs, the divorce action may be dismissed. If the parties decide to proceed with the action the matter is placed on the court's calendar for further proceedings. If one party wishes to stop the 90-day suspension, it can be stopped by completing and filing a Motion to Revoke Suspension of Proceedings to Effect Reconciliation (**form FA-4145VA/VB**) and the action will proceed

## **II. MAJOR ISSUES IN FAMILY COURT**

### **A. GROUNDS: DIVORCE, LEGAL SEPARATION**

The grounds for granting a divorce are that the marriage is irretrievably broken, and that there is no reasonable prospect of reconciliation. This no-fault concept eliminates the need for either party to make accusations against the other in order for the divorce to be granted. For the divorce to be granted at least one party must testify that the marriage is *irretrievably* broken.

If the Petition requests a Legal Separation, the judge will grant a legal separation if the parties testify the marital relationship is broken, unless the Respondent files a pleading with the Court requesting a divorce. Generally a divorce will then be granted.

If both parties wish to convert a Judgment of Legal Separation to a divorce, they may submit a written request (**forms FA-4162VA/VB; FA-4163VA/VB**) to the Court within one year of the granting of the legal separation to convert the judgment to divorce. A Judgment of Legal Separation may be revoked at any time upon reconciliation. After one year, a Judgment of Legal Separation may be converted to a Judgment of Divorce by either Stipulation of both parties or by Motion of either party. A party must apply to the Court to convert the judgment from legal separation to divorce before s/he may remarry.

In order to remarry in Wisconsin a person must be divorced. If the judgment is for legal separation, one or both parties must seek to have it converted to divorce before they are free to remarry. After the judgment of legal separation is converted to divorce, the parties you must still wait six months after the date of the conversion to remarry.

### **B. ANNULMENT**

An annulment is a court procedure that declares that a marriage never existed. Section 767.313, Stats., provides the legal grounds for annulment. Such grounds include: a party lacked capacity

to consent to marriage; a party was induced to enter into a marriage by force, duress, or by fraud involving essentials of marriage; a party lacks physical capacity to consummate marriage by sexual intercourse; a party was 16 or 17 years old and did not have consent of a parent/guardian, or was under 16 years of age; the marriage is prohibited by the law. You may wish to obtain legal assistance if you feel you qualify for an annulment.

### **C. LEGAL CUSTODY OF CHILDREN**

The Court will order if one or both parents should have legal custody of the children. Legal custody is the right to make major decisions concerning the child. There is a presumption that joint legal custody is in the best interests of a child. "Major decisions" include, but are not limited to, decisions regarding authorization for non-emergency health care, choice of school and religion, consent to marry, consent to enter the military service, and consent to obtain a motor vehicle license. Legal custody does not refer to routine daily decisions or to where the child lives.

If parties share joint legal custody, then both parents continue to make major decisions regarding the children together. Neither party's legal custody rights are superior to the other, unless specified by the Court. If a parent has sole legal custody then that parent has the right and responsibility to make the major decisions regarding the children without having to consult with the other parent.

### **D. PHYSICAL PLACEMENT**

Physical placement is the periods of time a child is physically placed with a parent. The Court will order one or both parents to have periods of physical placement of the children. During periods of placement the parent will have the right and responsibility to make routine daily decisions regarding the child's care. These routine daily decisions may not be inconsistent with any major decisions made by a parent with legal custody.

The Court will order each parent to have some periods of physical placement unless it is shown at a court hearing that a parent's periods of physical placement would endanger the child's physical, mental, or emotional health.

In determining issues of custody and placement, the Court will consider the following:

1. The wishes of the parents as shown by: a stipulation or agreement between the parties or a proposed Parenting Plan (**form FA-4147**);
2. The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future; the overall relationship between the child and each parent.
3. The age of the child and the child's developmental and educational needs at different ages and the mental and physical health of the child and each parent.
4. The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child;
5. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party;
6. Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the

- child, or whether one part is likely to unreasonably interfere with the child's continuing relationship with the other party;
7. The reports of appropriate professionals if admitted into evidence.

In any action affecting the family in which legal custody or primary physical placement is contested, the parties must complete a Proposed Parenting Plan. A parenting plan must also be completed by parties seeking shared placement of their children. A party who fails to timely file a parenting plan waives their right to object to the other party's parenting plan.

It is important for parents to understand that the issue of placement and the issue of child support are independent of one another. In other words, one parent may not deny the other parent periods of placement just because child support is not being paid. Similarly, a parent cannot refuse to pay child support if access to the child is being interfered with or denied.

Custody and placement disputes may be lengthy, bitter and very costly; not only in terms of money but also in their adverse affect on the emotional well-being of the children. **No one wins a custody battle.** Both parties and especially the children lose in a placement dispute. A thoughtfully stipulated arrangement determined by the parties rather than the Court, after considering the needs of the children and the parents, often results in a more successful relationship between parents and children after the divorce.

#### **E. MEDIATION**

If the parties cannot agree on legal custody and/or physical placement the Court will first refer the parties to mediation to hopefully resolve the issues. A party can file a Request for Court-Ordered Mediation (**form FA-4134**) at any time. Mediation is a confidential service using a mediator who meets with the parents in an attempt to help them resolve their disagreements. Usually only the parties are involved in mediation. The attorneys for the parties and the attorney for the child (Guardian ad Litem) are generally not involved. The best interests of the children are of paramount consideration.

Unless the Court determines that it is inappropriate to attempt mediation based upon evidence that there has been child or spousal abuse, that either party is impaired by alcohol or drug abuse, or that either party's health or safety would be endangered by attending the mediation session, the parties are required to attend an initial mediation session at no charge. If the parties are able to resolve all their issues in one session, no charge and no further mediation sessions will be necessary. If additional mediation sessions or assistance is needed, each party will be required to pay a \$100.00 fee.

#### **F. THE GUARDIAN AD LITEM**

If mediation does not result in agreement regarding the children the Court will appoint a Guardian ad Litem (GAL). Either party can also file a Petition for Appointment of Guardian ad Litem requesting the Court appoint a GAL (**form FA-4136**). The GAL is an attorney appointed to represent the best interests of the children. The GAL will conduct an investigation and will recommend what s/he believes is in the best interests of the children.

The GAL will gather information from the parties, the children (if old enough), and from other sources such as family, friends, schools, counselors and doctors. Typically, each parent will be



interviewed separately. Most cases will also require a conversation between the children and the GAL in private, out of the hearing of the parents or other adults in the children's lives. The GAL may choose to visit with the children at the office, home or any other setting in which the children feels comfortable and confident. The goal is to develop a sense of trust between the children and the GAL, and this may require more than one visit with the children.

When determining what is in the best interest of the children, the Court and the GAL cannot prefer one parent over the other on the basis of sex or race. The GAL considers the same factors used by the Court in determining the best interest of the children for custody and physical placement.

Payment of the GAL's fees will be made by either or both of the parents. It is important that the parties understand their responsibility to pay the GAL fees. Unless the Court orders otherwise, each party is responsible for one-half of the total cost of the GAL. Upon receipt of a notice of appointment of a GAL, each party is required to pre-pay a deposit of \$1,000.00 - \$2,000.00 towards the GAL fees.

## **G. GUIDELINES REGARDING CHILDREN**

When parents separate neither becomes a lesser parent unless they choose to do so. Although each parenting role may become more difficult, if the motivating factor is the children's best interests each parent has a greater chance to continue to be effective parents.

Children love both parents, divorced or not. They also learn from or imitate behaviors of the parents. Your behavior at this time will affect your children's growth as well as your relationship with them in later years. You may find it difficult at times to deal with your children as a single parent. If you apply the following guidelines it may help make the matter easier.

### **A. PARENTS SHOULD:**

1. Continue to teach their children to respect and love the other parent.
2. Protect the children from displays of anger, hurt, mistrust or bitterness toward the other parent. Refrain from interrogating the children regarding the activities of the spouse as well as demeaning the spouse in front of the children.
3. Communicate with each other regarding periods of physical placement and the children in general. Do not arrange placement through the children. Not only does this imply lack of respect for the other parent, depending on your children to arrange placement places unnecessary responsibilities on them.
4. Treat the children normally by not making promises of lavish gifts, exciting outings, etc., to outdo the other parent.
5. If plans between parents conflict, decide which activity is most beneficial to the children and allow them to attend that activity.
6. Never encourage children to take sides between parents. Many children blame themselves for the divorce and forcing them to decide between parents will only reinforce this misguided notion.

### **B. A PARENT WITH LESS PHYSICAL PLACEMENT SHOULD:**

1. See the children frequently and consistently. Avoid making your children feel unwanted or rejected by making last minute cancellations or by not seeing them on a regular basis. Notify your spouse in advance if you cannot see the children to avoid disappointing them.

2. Be on time to receive or deliver the children. This will benefit the children as they will be ready and waiting and excited to see you.
  3. Spend time with the children. Give each child individual time during these periods.
  4. Follow through with any promises made.
  5. Be with the children at reasonable, mutually agreed upon times.
  6. Abstain from the use of alcohol before or during times with the children.
- C. A PARENT WITH MORE PHYSICAL PLACEMENT SHOULD:
1. Prepare the children for time with the other parent, both physically and mentally. Don't deprive them of the anticipation. Let them know they are not hurting your feelings by enjoying these times. Have them ready on time to accommodate the other parent and the children.
  2. Make the children available for physical placement instead of making excuses or trying to bribe them with more exciting activities.
  3. Keep the other parent informed as to the health, schooling and special events involving the children.
  4. Inform the other parent as soon as possible should the children be unable to visit due to illness, unexpected events, etc.

Always consider what would most benefit your children; but do not allow the children to play upon the guilt or anger you may carry. They may be capable of using these circumstances to their own advantage. Only you, communicating with your former spouse and not jumping to conclusions, can avert this situation.

Remember this can be a painful and disruptive period for everyone involved. You may very well have difficulty adjusting to your new situation. Most people do. You cannot help your children adapt if you have not. There are mental health professionals in our area who can assist you. Generally, most medical insurance policies provide for counseling services and many agencies charge on the basis of ability to pay.

While everyone understands that in these situations a new "significant other" may become involved, remember that your children need time to adjust to the separation. They may, in time, become accustomed to a third party, but the situation cannot be forced. At no time should your children be coerced into accepting a third party as a replacement for mother or father.

CHILD'S BILL OF RIGHTS: I have the right to:

1. Know that my mother and father love me and will never divorce me.
2. Know that the divorce is not my fault, and not be told about the adult problems that caused it.
3. Be considered as a human being and not a piece of property to be fought for, bargained over or threatened.
4. Have decisions about me based on what is in my best interest, not on past wrongs, hurt feelings or my parents' needs.
5. Be allowed to love both my father and my mother without being forced to choose or feel guilty.
6. Know both my mother and father through regular and frequent involvement in my life.
7. Have the financial support of both my father and my mother.
8. Be spared having to listen to bad, hurtful comments about either of my parents.

9. Be a child, and not to be asked to tell a lie or act as a spy or messenger.
10. Be allowed to love other people who may come into my life without being forced to choose or feel guilty.

## PARENTING SEMINAR

In family actions where children are involved, the parties must attend a class regarding the affects of divorce/legal separation on children. The class is held the third Thursday of each month. The class addresses issues including: child development, family dynamics, how parental separation affects children's development, and what parents can do to make raising children in a separated situation less stressful for the children.

## H. MOVING WITH CHILDREN

Pursuant to § 767.481, Stats., a parent shall provide another parent who has legal custody and/or physical placement rights with at least 60 days written notice by certified mail of her/his intent to:

1. Establish legal residence outside of Wisconsin;
2. Remove the child from Wisconsin for more than 90 consecutive days; or
3. Establish residence within Wisconsin at a distance of 150 miles or more from the other parent.

Within 15 days after receipt of the notice the other parent may object in writing to the proposed move or removal. The objection must be sent to the parent wishing to move and a copy must be filed with the Court. If an objection is filed the parent proposing the move is prohibited from moving the children until an order is entered by the Court regarding the move.

If mediation is not successful, a parent may file a motion for modification of legal custody or physical placement of the children. If a motion is filed with the Court, the Court may change the legal custody or physical placement of the children and/or prohibit the move or removal of the children. The Court will consider those factors it is required to consider in determining if there should be a modification of custody or placement. There is a presumption that the current orders of custody and placement shall continue; however, that presumption may be overcome by a showing that the move or removal is unreasonable and not in the best interests of the minor children.

Another provision under Wisconsin law is a notice requirement for removals of 14 days or more. Unless the parents agree otherwise, the parent with legal custody and physical placement rights is required to notify the other parent before removing the child from his or her primary residence for a period of not less than 14 days.

## I. MAINTENANCE

The Court may require a spouse to make payments to support the other party while the divorce is pending or at the final divorce hearing. This support, which used to be called alimony, is called maintenance or family support. Maintenance and family support are different from child support.

If support payments are ordered without child support, it is called maintenance. If maintenance payments are combined with child support payments it is called family support.

The designation of payments as maintenance is important because payments under maintenance orders are generally tax deductible to the person making the payments and included as taxable income to the person receiving maintenance. In contrast, child support and family support payments are not tax deductible by the person who makes the payment, nor are they taxable income to the person who receives them.

A party who decides to waive any right s/he may have to maintenance will not be allowed under any circumstances to later seek maintenance from his or her former spouse.

If the parties to a divorce cannot agree as to whether maintenance should be paid or the amount or length of time maintenance payments should be made, the Court will decide these issues. The Court will consider the following in determining maintenance:

1. The length of the marriage.
2. The age, physical and emotional health of the parties.
3. The division of the parties' property in the divorce.
4. The educational level of each party at the time of the marriage and at the time the divorce is started.
5. The present and future earning capacity of the party requesting maintenance, including education, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to obtain education or training to enable the party to find appropriate employment.
6. The likelihood that the party requesting maintenance can become self-supporting at a standard of living similar to that enjoyed during the marriage, and if so, the length of time necessary to achieve this goal.
7. The tax consequences to each party.
8. Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.
9. The contribution by one party to the education, training or increased earning ability of the other.
10. Other relevant factors the Court considers important in the individual case.

After considering these factors the Court may order maintenance to be paid for a limited period of time or for an indefinite period of time. Indefinite maintenance may be revised, terminated or extended based upon a substantial change in the financial circumstances of one or the other party after the final divorce hearing. The party seeking a revision, termination or extension of maintenance must petition the Court in writing, with notice to the other party, for a hearing on the issue.

Limited maintenance may be revised, terminated or extended based upon a substantial change in circumstances, but will automatically terminate at the end of the term specified in the Court's order unless the person receiving maintenance petitions the Court in writing with notice to the other party for an extension of maintenance prior to the expiration of the original order.

If there is no specific agreement of the parties to the contrary, the Court will terminate maintenance payments on the remarriage of the person receiving the payments upon the application of the person making the payments and upon proof of such remarriage.

## **J. CHILD SUPPORT**

Child support in Wisconsin must be expressed as a set dollar amount and must be based upon a percentage of the payor's gross income. The set dollar amount is based upon the following percentage of income standards:

- 17% of the paying parent's gross income for one child
- 25% of the paying parent's gross income for two children
- 29% of the paying parent's gross income for three children
- 31% of the paying parent's gross income for four children
- 34% of the paying parent's gross income for five children or more

Also, parents in special circumstances, such as shared placement, low-income, and high-income status may have different calculations applied.

If a party requests it, the Court may change the amount of support under the percentage standard if the Court finds that the use of the percentage is unfair to the child or to either of the parties based upon the following:

1. The financial resources of the parties and the child;
2. Maintenance received by either party;
3. The needs of a party to support her/himself equal to at least the federal poverty level;
4. The obligation either party has, if any, to support another person;
5. If the parties were married, the standard of living the child would have enjoyed had the parents not divorced;
6. The desirability that the custodial parent live at home as a full-time parent;
7. Cost of day-care or value of services of the custodial parent;
8. The award of substantial periods of placement to both parents;
9. Extraordinary travel expenses incurred in exercising placement with the children;
10. The child's physical, mental, emotional health care needs including the costs of insurance and any uninsured health care of the child;
11. The child's educational needs;
12. The tax consequences to each party;
13. The best interest of the child;
14. The earning capacity of each parent based on education, training and work experience, and the availability of work in or near the parent's community;
15. Any other factors the Court considers relevant.

If the Court determines that using the percentage of income standard is unfair, the Court must state the following in writing or on the record:

1. The support amount that would be required using the percentage standard; and,
2. The amount by which the Court's order deviates from that amount and its reasons for finding that the percentage standard is unfair to the child or to a party;
3. The reasons for the amount of the modification and the basis of the modification.

## FAMILY SUPPORT

Family support is a payment which combines maintenance and child support. Under limited circumstances, family support may provide tax advantages. It is very important that both parties and their attorneys clearly understand the rights and responsibilities each has in reporting payments of family support and deducting family support on their income taxes.

### **K. WISCONSIN SUPPORT COLLECTIONS TRUST FUND**

Wisconsin law requires that all payments for child support, family support and maintenance be paid by income withholding through the Wisconsin Support Collections Trust Fund (WSCTF). The address for the Wisconsin Support Collections Trust Fund is:

Wisconsin Support Collections Trust Fund  
P.O. Box 74200  
Milwaukee, WI 53274-0200

A party ordered to pay support must make the required payments to the WSCTF until the income withholding is in place. A payer should never pay the support directly to the payee because those payments may be considered gifts.

Whenever support is ordered, both parties are required to notify the Douglas County Child Support Agency of any change of address within 10 business days of such change. In addition, the person ordered to pay the support is under a continuing order to notify the Child Support Agency and the payee, within 10 business days, of any change of employer and of any substantial change in the amount of his or her income, including receipt of bonus compensation.

Interest accrues at the rate of 1.0% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. Each year the payer must pay a receiving and disbursement fee of \$65.00 per year. Parents receiving \$500 or more in support pay a yearly \$25 fee on each of their court cases.

Parents with questions regarding child support can call an automated voice response system by dialing 1-800-991-5530; go to [www.myaccount.chase.com](http://www.myaccount.chase.com) or [childsupport.wisconsin.gov](http://childsupport.wisconsin.gov); or call the Douglas County Child Support Agency at (715) 395-1420.

### **L. INCOME ASSIGNMENT**

The income assignment is accomplished by an order of withholding which will be sent to the payer's employer, or other source of income, by the Douglas County Child Support Agency if either parent has submitted an application for child support services or if the parent with primary placement has received public assistance through the Department of Social Services. Generally, the frequency of the required payment corresponds with the payor's pay period.

Once the support payment is withheld from the paycheck of the payer, the employer will send it to the Wisconsin Support Collections Trust Fund. The employer is entitled to retain up to \$3 for this service each time. This fee is in addition to the amount of the support.

An employer is prohibited by law from disciplining an employee because of the existence of an income assignment.

Notification of a substantial change in the amount of the payer's income will not result in a change of the amount of support to be paid unless a revision of the order is sought by filing a motion pursuant to §§ 767.59 or 767.553, Stats.

Wisconsin law provides that if support is delinquent or is not paid on time, the Court may increase withholding by up to 50% of the current order to satisfy the delinquency. The payer has 10 days from receiving notice that the income withholding will be increased to request a hearing before the FCC to challenge the increase.

#### **M. TAX EXEMPTION**

Federal tax law provides that the parent with primary physical placement of a child may claim that child as an exemption on his or her income tax return, unless otherwise specified by a Court order. Under Wisconsin law, the Court is required to make a decision on tax exemptions if the parties have not agreed which parent should take the exemption. The Court shall make the decision in accordance with state and federal law, and must also take into account whether the medical insurance plan of either parent requires that the parent with medical coverage is awarded the exemption by the order of support.

The exemption may be more valuable to one parent than the other after considering: the income of the parties; the ability of a party to claim head of household status; qualification for the earned income credit; and, other factors/benefits provided by tax law.

If, as a non-custodial parent, you are granted an exemption, either by the Court or by stipulation, you will need to attach Form 8332 (available at the IRS), signed by the custodial parent, to your tax return. For further information, you should consult the IRS or an attorney.

#### **N. PROPERTY DIVISION**

Under Wisconsin law, the Court must attempt to divide all property equally between the parties at the time of the judgment of divorce. The only exception is property that was inherited or gifted to one party. Gifted or inherited property remains the property of the party who received the gift or inheritance and is generally not subject to division.

Property owned before the marriage of the parties is subject to division unless the parties have entered a prenuptial or postnuptial agreement identifying the property as that which was owned by the parties before the marriage and not subject to division. The Court will also consider the following when dividing the property:

1. The length of the marriage.
2. The property brought to the marriage by either party.
3. Whether one party has substantial assets (received by gift or inheritance) that are not subject to division.
4. Economic contribution each party made to the marriage including economic value of child care and homemaking.
5. The age, physical and emotional health of the parties.

6. Contributions by one party to the education, training or increased earning power of the other party.
7. Earning capacity of the parties including educational background, training, employment skills, work experience, absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable a party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
8. The desirability of awarding the use and possession of the family home to the party having physical placement for the greater period of time.
9. The amount and duration of an order under § 767.56, Stats., granting maintenance payments to either party, any order for periodic family support payments under § 767.531, Stats., and whether the property division is in lieu of such payments.
10. Other economic circumstances of each party, including pension benefits, vested or non-vested, and future interests.
11. The tax consequences to each party.
12. Any written agreement made by the parties concerning any arrangement for property distribution; such agreements shall be binding upon the Court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The Court shall presume any such agreement to be equitable as to both parties.
13. Such other factors as the Court may determine to be relevant.

### **III. POST-JUDGMENT PROCEDURES AND ISSUES**

#### **A. MODIFIABLE ISSUES IN GENERAL**

After a judgment is entered, the Court can modify or change the provisions of the judgment concerning the child related issues of custody, placement and child support. On custody and placement issues, children are no longer subject to the jurisdiction of the Court when the children reach the age of 18, except that child support may be modified until the child graduates high school, but in no instance past age 19.

Maintenance can only be modified if it is awarded or held open in the original judgment. If maintenance is waived or denied in the original judgment, it cannot be granted at a later time. If limited maintenance is awarded, the motion to modify or extend the maintenance must be filed prior to the end of the term of maintenance.

Property division is also final as of the date of the divorce and may not be modified at any time after the judgment of divorce is entered. The only exception is if the judgment of divorce is reopened. A judgment of divorce cannot be reopened except under circumstances of fraud or neglect.

#### **B. MODIFICATION OF CHILD SUPPORT**

Orders relating to child support may later be changed or modified upon request of either party, either by written agreement of the parties or upon the filing of the appropriate motion. If the parties reach an agreement to modify the amount of child support, the written agreement can be made part of a Stipulation and Order to Change: Support/Maintenance (**forms FA-604A/B**) to be



filed with the Court which states the terms of the agreement. The Stipulation and Order must first be presented to the Douglas County Child Support Agency for approval.

If the parties cannot reach a written agreement to modify the support out of court, the party requesting a change must file a Motion or Order to Show Cause with the Court. Prior to filing the Motion or Order to Show Cause, you must bring the Motion or Order to Show Cause to the FCC, who will give you a court date. Once the request to change child support has been filed, it is the responsibility of the party requesting the change to have a copy of the documents properly served on the other party.

Both parties should bring as much income information to the hearing as possible, including recent pay stubs, recent income tax returns, and business records, and if applicable, evidence of work search efforts.

An order for support may provide for an annual adjustment in the amount to be paid based upon a change in the payor's income if the amount of support is expressed as a fixed sum. An adjustment may not be made more than once in a year. No adjustment is effective until the order is signed by the Court.

If the underlying order does not provide for an annual adjustment, then the Court will not change a child support order unless the party requesting such a change presents proof of a substantial change in circumstances. The burden of proving that a change is necessary rests with the party seeking to alter the existing judgment.

### **C. MODIFICATION OF MAINTENANCE**

In modification of maintenance, the Court is again required to consider all of the statutory factors it considered in the original award of maintenance. Once a maintenance order has been entered, it may be extended indefinitely by the Court if the motion is filed timely, and if the requesting party can show the Court that there has been a substantial change in circumstances. This may occur even though the original order may have provided that maintenance would end on a specific date or after a specific period of time. Any request for extension of maintenance must be filed and served upon the other party prior to the expiration of the maintenance order.

Maintenance cannot be retroactively increased or decreased.

The remarriage of the recipient of maintenance or the death of either party will result in termination of the maintenance obligation if the payer files a motion to terminate the maintenance based upon the remarriage or death of the recipient.

### **D. MODIFICATION OF CUSTODY/PLACEMENT**

There are two different standards of proof required to substantially modify a legal custody or physical placement order. Generally it is more difficult to modify a custody order within the first two years after the initial order. After two years, it is less difficult to modify an order of custody or physical placement. Within two years, it must be shown that the current legal custody or placement arrangement is physically or emotionally harmful to the child, and that modification of legal custody and/or physical placement is necessary.

After two years, it must be shown that the modification of legal custody or physical placement is in the best interest of the child, and that there is a substantial change in circumstances since the date of the last order. Even after two years, it is presumed that the current legal custody and physical placement arrangement is in the best interest of the child.

A change in economic or marital status is an insufficient basis to change an existing legal custody or physical placement arrangement.

If parties have substantially equal periods of physical placement, the Court may change the arrangement at any time upon motion of a party if the Court finds that circumstances make it impractical for the parties to continue to have substantially equal placement and that the change is in the best interests of the children. In addition, the Court may change placement at any time if it finds that a parent has repeatedly and unreasonably failed to exercise periods of physical placement granted under an order allocating specific times for placement.

Modification of legal custody or physical placement motions are referred to mediation. If mediation is not appropriate or successful, the Court will appoint a GAL.

#### **E. ENFORCEMENT OF CHILD SUPPORT PAYMENTS**

If a person ordered to make child support, family support or maintenance payments fails to do so, the person entitled to receive the payments can do the following:

1. Bring action in court to enforce the order, including contempt. Contempt is when a party intentionally violates a court order. If a person is found in contempt the judge may order sanctions which may include fines and jail time.
2. Contact the Douglas County Child Support Agency. The Agency may assist by locating an absent parent and bringing action to enforce or modify an order, including enforcement through tax-intercept. When eligibility thresholds are met, a child support payer's federal and/or state income tax refunds may be intercepted and applied to child support arrears.
3. Under certain circumstances failure to pay child support is a crime. The Child Support Agency may refer cases to the District Attorney for criminal prosecution.

#### **F. ENFORCEMENT OF CUSTODY AND PHYSICAL PLACEMENT RIGHTS**

A parent with legal custody or physical placement rights who believes that those rights are being interfered with may file Motion to Enforce Physical Placement Rights (**form FA-609**) and/or an Affidavit and Order to Show Cause for Contempt (**forms FA-4172VA /VB**) if: 1) the parent has had one or more periods of physical placement denied or substantially interfered with by the other parent, or, 2) the parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement.

If after a hearing the Court finds that a parent did intentionally and unreasonably interfere with placement, a court will enter Orders which may include giving the parent make-up time, granting an injunction to ensure strict compliance with the placement schedule, and requiring the payment of the moving party's costs and attorney fees depending upon the facts and circumstances of the case.

Periods of physical placement with a child may not be denied by the parent with primary placement of the child, for failure of the other parent to pay child support or meet any other financial obligation. Similarly, violation of physical placement rights by the parent with primary placement does not constitute a reason for failure to meet child support or other financial obligations.

Appendix:

Forms are available at no charge at [www.wicourts.gov](http://www.wicourts.gov) (click on forms, circuit court, family).  
Family Court form names and numbers:

Stipulation to Change: Custody/Placement/Support/Maintenance	FA-604A
Order to Change: Custody/Placement/Support/Maintenance	FA-604B
Family Medical History Questionnaire	FA-608
Notice and Motion to Enforce Physical Placement Order	FA-609
Order to Enforce Physical Placement Order	FA-611
Summons with/without Minor Children	FA-4104/4105
Petition with/without Minor Children	FA-4108/4109
Joint Petition with/without Minor Children	FA-4110/4111
Response and Counterclaim	FA-4113
Admission of Service	FA-4119
Affidavit of Service	FA-4120
Affidavit of Mailing	FA-4121
Publication Summons	FA-4122
Publication Affidavit of Mailing	FA-4123
Stipulation for Temporary Order with/without Minor Children	FA-4126/4127VA
Temporary Order with/without Minor Children	FA-4126/4127VB
Affidavit and Request for Temporary Order with Minor Children	FA-4128/4129VA
Order to Show Cause with/without Minor Children	FA-4128/4129VB
Request for Status Conference	FA-4132
Request for Court-ordered Mediation	FA-4134
Petition for Appointment of Guardian ad Litem	FA-4136
Financial Disclosure Statement	FA-4139
Stipulation/Order Dismissing Divorce/Legal Separation	FA-4143VA/VB
Stipulation/Order Suspending Proceedings to Effect Reconciliation	FA-4144VA/VB
Motion/Order to Revoke Suspension of Proceedings	FA-4145VA/VB
Proposed Parenting Plan	FA-4147
Marital Settlement Agreement with/without Minor Children	FA-4150/4151
Proposed Marital Settlement with Minor/without Children	FA-4152/4153
Findings of Fact, Conclusions of Law, Judgment	FA-4160/4161VA
Parties Approval of Findings of Fact, Conclusions of Law, Judgment	FA-4160/4161VB
Stipulation/Order Converting Legal Separation to Divorce	FA-4162VA/VB
Motion/Order Converting Legal Separation to Divorce	FA-4163VA/VB
Stipulation Vacating Judgment of Divorce or Legal Separation	FA-4164VA
Order Vacating Judgment of Divorce or Legal Separation	FA-4164VB
Motion to Change: Custody, Placement, Child Support, Maintenance	FA-4170
Affidavit to Change: Custody/Placement/Support/Maintenance	FA-4171VA
Order to Show Cause: Custody/Placement/Support/Maintenance	FA-4171VB
Affidavit for Finding of Contempt	FA-4172VA
Order to Show Cause for Finding of Contempt	FA-4172VB
Order to Change: Custody, Placement, Child Support, Maintenance	FA-4175
Decision and Order for Contempt	FA-4176
Confidential Petition Addendum	GF-179

THIS DOCUMENT IS BASED UPON A DOCUMENT USED WITH PERMISSION FROM  
THE FOND DU LAC FAMILY COURT COMMISSIONER'S OFFICE.