

This Local Rule 68 supersedes prior Rule 68

**RULE 68 FAMILY COURT PROCEEDINGS
Effective May 1, 2010**

68.1 INITIAL FILING REQUIREMENTS

(1) At the time of filing a petition for dissolution of marriage, the attorney for the petitioner shall file a Certificate of Dissolution of Marriage on a form to be provided by the clerk, as required by law. and in cases where there are minor children the information required by statute shall be furnished in the original pleading or contained in a separate affidavit attached to the original pleading.

(2) An initial pleading filed in the family court division of the circuit court shall have attached thereto a certificate stating whether any other case involving any party to the action or any child of such party has been filed in the family court division and, if so, the certificate shall identify to the extent known by style and case number every other case in the family court division, whether pending or previously adjudicated, involving any such party or child.

(3) All original petitions and motions to modify prior decrees in domestic relations cases shall be filed with the Circuit Clerk cashier and processed as new cases for assignment purposes. All subsequent pleadings, motions and matters, including entries of appearance shall be filed with the domestic relations docket clerk.

(4) Due to issues of confidentiality, in any dissolution case in which paternity of one or more children must be established, a separate case shall be filed to establish paternity with no filing fee required. The paternity case and the dissolution case shall automatically be assigned to the same judge for disposition. In order to avoid a separate filing fee, the attorney filing the paternity case shall be responsible for advising the Clerk of the companion divorce case and its case number.

68.2 FILING OF INCOME AND EXPENSE AND PROPERTY STATEMENTS

(1) These practices and procedures shall apply to all petitions for dissolution of marriage or separate maintenance, decree of legal separation, petitions for declaration of paternity or involving the support of children including uniform support, and all motions to modify any of the previously listed categories.

(2) Income & Expense and Property Statements shall be completed, under oath on the form approved by the court and available from the Office of the Circuit Clerk of typed in substantially the same format, and shall be filed with the court and served on the other parties as provided herein.

(A) Petitioner/Movant shall file financial statements with their first pleading and shall serve them on the other parties at the same time as the first pleading. The Clerk shall not accept the pleading for filing unless the financial statements are filed. The amounts stated in the financial statement shall not state “varies” or “TBD” without approval of a family court judge.

(B) Respondent shall file financial statements within 60 days of service or entry of appearance whichever is earlier. A copy of the financial statements shall be mailed to the attorney for each opposing party or to any unrepresented party.

68.3 AUTOMATIC FAMILY COURT ORDER

(1) Upon the filing of a petition for dissolution of marriage, legal separation, annulment, declaration of paternity or child custody and/or support or a motion to modify any of the foregoing, the Office of the Circuit Clerk shall provide the filing party with a copy of this order setting forth practices and procedures consistent with the terms contained in paragraph (2) of this Rule. A copy of the Order shall also be attached to the summons and served on the other party along with the petition and summons.

(2) Terms.

(A) Neither party shall harass, abuse, threaten to abuse, stalk, molest or disturb the peace of the other party or any of the parties' minor children, wherever they may be found.

(B) Neither party shall conceal or damage any property, real or personal, owned solely by the other party or jointly with the other party.

(C) Neither party shall cease payment for, or cause to be terminated, any coverage for the other party or any of the parties' minor children under any policy of medical, dental, vision, hospitalization, automobile or disability insurance in force on the date of filing of the case unless ordered by the Court or unless consented to in writing by both parties.

(D) Neither party shall relocate the residence of any of the parties' minor children outside of the State of Missouri, nor shall any party conceal a child from the other or deprive or hinder a party with whom a child has resided for the sixty days immediately preceding the filing of the case from reasonable or previously ordered visitation or custody unless ordered by the Court or unless consented to in writing by both parties.

(E) In any dissolution, legal separation or annulment action, neither party shall shut off, cease payment for, or cause to be terminated the usual and necessary utilities being provided to the residence of either party unless ordered by the Court or unless consented to in writing by both parties.

(F) In any dissolution, legal separation or annulment action, neither party shall close or borrow against any bank or investment account, certificate of deposit or IRA or retirement account, nor shall either party dissipate, sell, remove, assign, transfer, dispose of, lend, mortgage, or encumber any property of a party, real or personal, except in the ordinary course of business or for the necessary expenses of the parties' family under the circumstances unless ordered by the court or unless consented to in writing by both parties.

(G) In any dissolution, legal separation or annulment action, neither party shall incur extraordinary credit card or other debt except in the ordinary course of business or for the necessary expenses of the parties' family under the circumstances unless ordered by the Court or unless consented to in writing by both parties.

(3) Duration. The terms of the Order shall continue in effect until further order of the Court. Either party may request a hearing to modify the Order by motion to the Court in the division to which the case has been assigned.

(4) Enforcement. Either party may request a hearing to enforce the Order by motion to the Court. Violation of the Order may constitute contempt of court and subject the violator to fines or other sanctions as allowed by the Court, including reimbursement of expenses or attorney's fees and costs incurred due to the violation.

(5) Effect. The terms of the Order are intended simply to preserve the current situation of the parties and are not intended to impact the ultimate decision of the Court as to custody or support of the parties' minor children, maintenance or property and debt division. Nothing in this Rule prohibits the Court from entering other appropriate orders pending the final adjudication of the case. The terms of the Order shall not serve to modify, amend or supercede any prior judgments involving the parties, including ex parte or final orders of protection which may prohibit communication between the parties.

68.4 PARENTING PLANS

(1) Within 30 days of service of the original petition or motion on the other party, each party shall file their proposed parenting plan on a form approved by the court consistent with the requirements of Missouri Statutes including a proposed Form 14.

68.5 MANDATORY EXCHANGE OF DOCUMENTS

(1) When applicable: This rule shall apply to all petitions for dissolution of marriage, legal separation, annulment, declarations of paternity or orders of custody and support and all motions to modify any such existing judgments.

(2) Purpose: The purpose of this rule is to make sure that all parties have equal access to information relevant to the case at the earliest opportunity so as to encourage the settlement of disputes. It is not intended to preclude a party from serving formal discovery requests upon the other party pursuant to the Missouri Rules of Civil Procedure.

(3) Notice of the requirement: Upon the filing of petition or motion the Office of the Circuit Clerk shall provide to the filing party a copy of this rule. A copy of the rule shall be attached to the summons and petition and served on the opposing party along with the petition and summons.

(4) Delivery of Documents: Within 60 days of service of summons each party shall deliver to the other party a complete and readable copy of each of the documents specified on the mandatory exchange of documents form. Each party must deliver to the opposing party copies of any documents that are in their possession or control, including documents which they may obtain electronically. Counsel for the parties or the party themselves, if unrepresented, shall coordinate a simultaneous exchange of such documents. So as to avoid the duplicate production of documents which are available to both parties, the parties may agree in writing as to which documents each party shall produce. This provision does not supercede any temporary or final order of protection which may prohibit communication between the parties. Disagreements regarding the production of certain documents shall be resolved at the initial conference with the court.

(5) Documents to be exchanged:

(A) The following documents must be exchanged in all cases:

1. Federal and state income tax returns including all schedules, W-2, K-1 and 1099 forms for the preceding three years;

2. Wage stubs (or other evidence of wages, tips or salaries if wage stubs are not issued) for the three months preceding the filing of the case;

3. Any statements or other documents evidencing expenses incurred in the last 12 months preceding the filing of the case pertaining to work related child care costs, premiums payments for health insurance for the children of the parties and dental and orthodontic costs attributable to the children of the parties.

(B) In addition, the following documents must be exchanged in cases involving an award of maintenance, an award of property or a division of debt or a request for the payment of attorney fees:

1. The three most recent statements for all bank accounts and all other accounts held jointly or individually by the parties in any brokerage firm or other financial institution;

2. The most recent benefit statement for any retirement plan, whether vested or not vested, in which a party has an interest;

3. Any appraisals of any marital or separate property conducted in the 12 month period preceding the filing of the case;

4. Credit card statements and store charges for purchases occurring during the three months preceding the filing of the case;

5. The most recent mortgage statement for any real property owned jointly or separately by the parties and copy of the deed for any such property;

6. The most recent balance statement for any existing debt owed jointly or separately by the parties.

(6) Documents not provided: If a document that is required to be provided pursuant to this local rule is not produced for exchange, the party shall advise the other party in writing of the name and current address of the person who is in possession or control of the required document or, if applicable, that no such document continues to exist or ever existed.

(7) Waiver: The parties may agree in writing to waive any portion of this rule to the extent that they agree that certain documents are not relevant to any issue to be presented in the case. All of the requirements of this mandatory document exchange rule shall be waived if within 60 days of service, the case has been scheduled for a default or noncontested hearing.

(8) Documentation of completion of the exchange: The mandatory document exchange compliance form is available in the print shop or on the court website. Upon completion of the exchange of documents, each party shall file with the court a compliance form approved by the court, certifying the date upon which the documents were exchanged, the documents that were exchanged or the reasons why certain documents were not exchanged. Copies of the documents exchanged need not be filed in the court file.

(9) Failure to comply: Any documents required to be produced under this Rule that are not timely exchanged with the other party shall not be admissible into evidence at any hearing or trial of the case unless the court finds good cause for the failure to exchange. The court may, in its discretion, impose any other penalty within its power for the failure to comply with any provision of this rule including an award of attorney fees.

68.6 SETTLEMENT CONFERENCES WITH THE COURT

(1) Scheduling:

As soon as a petition or motion is served on the other party or an entry of appearance has been filed, the party who filed the petition or motion shall be responsible for scheduling a conference with the Court in the division to which the case has been assigned. The conference should be scheduled for a date no later than 90 days after service. Subsequent conferences may be scheduled by the parties or the Court as appropriate as the case progresses. Only the Judge in the division to which the case has been assigned may reschedule the conferences.

(2) Communication:

Prior to any conference, counsel for the parties or the parties, if they are unrepresented, shall communicate with one another regarding the status of the pending case and areas of agreement and disagreement of the parties. This rule does not supersede any temporary or final order of protection that may be in effect against either party which prohibits any communication between the parties.

(3) Documents:

At the first conference, the parties and their attorneys shall either stipulate to the authenticity of documents exchanged pursuant to the mandatory exchange of documents rule or raise any such objections to the authenticity of the documents. If objections as to the authenticity of the documents are not raised at the first conference, any such objections shall be deemed to have been waived at trial except for good cause shown.

(4) Updated information:

At least 7 days prior to any conference, the parties shall exchange any updated income and expense statements or statements of property as well as any amended parenting plans or child support worksheets (Form 14).

(5) Issues to be discussed:

The parties and their attorneys shall be prepared to discuss any and all issues related to the pending case, including, but not limited to:

- (A) Discovery issues related to the mandatory exchange of documents rule;
- (B) The need for any further simultaneous exchange of documents;
- (C) Appointment of a guardian ad litem;
- (D) Referrals to Domestic Relations Services;
- (E) Any need for the addition of parties;
- (F) Any need for PDL relief;
- (G) Scheduling of a settlement conference or noncontested hearing.
- (H) The settlement of all or some of the issues in the case.
- (I) Setting the case for trial.

(6) Orders issued at conferences:

At the conference, the court may issues any orders which it deems appropriate, including but not limited to:

- (A) A schedule for discovery or orders for additional simultaneous exchange of information without the necessity of formal discovery;

(B) An order setting the matter for another settlement conference, uncontested hearing or contested trial date;

(C) Orders concerning the conduct of the trial addressing the production of exhibits and exhibit lists; the allocation of trial time; the deadline for disclosure of expert witnesses; and stipulations as to the admission of evidence;

(D) Any other order reasonable under the circumstances.

(7) Attendance:

All parties and their attorneys of record are required to attend the initial conference in person unless their attendance has been excused by the Judge in the division in which the case is pending or unless they have set the matter for a noncontested hearing within 30 days of the scheduled conference. Attorneys must have settlement authority from their clients and have their schedules available so as to identify any conflict dates for future court dates.

(8) Sanctions:

The failure of a party and their attorney to comply with any provisions of this rule may, without further notice, result in the entry of any sanctions within the power of the court including the dismissal of claims and an award of attorney fees occasioned by the failure to comply.

68.7 PRETRIAL CONFERENCE

(1) Scheduling: The Judge or counsel for the parties or the parties, if they are unrepresented, may schedule a pretrial conference for a date at least 45 days prior to trial.

(2) Updated information: At least seven days prior to the pretrial conference, counsel for the parties or the parties, if they are unrepresented, shall exchange updated income and

expense and property statements plus any amendments to their proposed parenting plan and Form 14 child support worksheets.

(3) Communication: At least seven days prior to the pretrial conference counsel for the parties or the parties, if they are unrepresented, shall exchange updated income and expense statements and property statements plus any amendments to their proposed parenting plans or Form 14.

(4) Orders at the pretrial conference: At the pretrial conference the court may issue orders including, but not limited to:

- (A) Any outstanding discovery issue;
- (B) The production of exhibits and exhibit lists;
- (C) The allocation of trial time;
- (D) Stipulations as to the admission of evidence;
- (E) Settlement of any of the issues in the case.

(5) Attendance: All parties and their attorneys are required to attend the pretrial conference in person unless previously excused by the judge of the division to whom the case has been assigned. The attorneys must have settlement authority.

(6) Sanctions: Failure of the parties or their attorneys to comply with any provision of this rule may, without further notice, result in the entry of any sanctions within the power of the court including the dismissal of claims and an award of attorney fees occasioned by the failure to comply.

68.8 NONCONTESTED HEARINGS

(1) Noncontested hearings shall be scheduled with the Clerk in the division to which the case is assigned.

(2) In all cases where written separation agreements are made under the provisions of Section 452.325, RSMo. a copy of such executed agreements shall be submitted to the court prior to the hearing.

(3) In all cases involving disposition of real estate, the legal description of each parcel of real estate shall be typewritten upon a separate sheet of paper, marked as an exhibit and offered in evidence with all rights of cross-examination or explanation covering such exhibits being reserved by the parties.

68.9 ENTRY OF JUDGMENT UPON AFFIDAVIT REQUIREMENTS

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

(A) There are no minor children of the mother and father and the mother is not pregnant, or one of the parties is represented by counsel and the parties have entered into a written agreement determining custody and child support; and

(B) The adverse party has been served in a manner provided by Missouri Rules of Civil Procedure or has formally filed a verified entry of appearance or responsive pleading; and

(C) There is no genuine issue as to any material fact; and

(D) There is no marital property to be divided or the parties have entered into a written agreement for the division of their marital property.

(2) Affidavit – Filing. If one party desires to submit the matter for entry of final orders upon an affidavit, the submitting party shall file an affidavit setting forth sworn testimony showing the court’s jurisdiction and factual averments sufficient to support the relief requested in the proceeding, together with a copy of the proposed decree or order, a copy of any written agreement proposed for adoption by the court, a completed Form 14, and any other supporting evidence. The filing of such affidavit shall not be deemed to shorten any statutory waiting period required for entry of a decree of dissolution or decree of legal separation.

(3) Hearing Required – When. The court shall not be bound to enter a decree or order upon the affidavit of either or both parties, but the court may, upon its own motion, require that a formal hearing be held to determine any or all issues presented by the pleadings.

68.10 FORMS OF DECREE

(1) Decrees shall be entered on forms provided by the court unless the trial judge authorizes another form.

68.11 CONTESTED HEARINGS

(1) In all cases concerning the division of property or allocation of debt, at least seven days prior to the first date of hearing the parties shall exchange typewritten schedules of all property which they claim has a value of at least \$100. The schedule must indicate for each item of property whether they contend that it is marital or separate property and the proposed division of each item of property. The schedules shall also include each debt with a balance of \$100 or more and as to each debt their proposal for allocation of that debt to Petitioner or Respondent.

(2) In all cases at least seven days prior to the first date of the hearing each party shall exchange any updated income and expense or property statements.

(3) In all cases in which the custody or support of children is at issue each party shall exchange any updated proposed parenting plans including their proposed Form 14 at least seven days prior to the hearing.

68.12 RETROACTIVE PAYMENT OF CHILD SUPPORT

(1) In all proceedings to modify any provision for support of a minor child or children in a decree of dissolution or order of paternity, there shall exist a presumption that any modification of the obligation for payment of support for a minor child shall be retroactive to the date of filing of movant's statement of income and expenses or the date of service of movant's motion to modify, whichever shall occur later.

(2) Any amount paid by a party in excess of the then existing support obligation under the decree of dissolution or order of paternity after the date of filing of movant's statement of income and expenses or the date of service of movant's motion to modify, whichever is later, shall be credited against the amount of any retroactive award. When the court reduces the child support retroactively, any amount shall be credited toward any arrearage and the balance, if any, applied to future support.

Effective May 1, 2010.