

Evaluation of the Effectiveness
of Local Court Rules and the
Mediation Program in the Twenty - Second Judicial
Circuit of Missouri

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ABSTRACT

Limited resources and increased demand on the court system have created the necessity for periodic evaluation of current programs and procedures. This process dictates the demand to discard those programs and procedures, which are not efficiently serving their purpose, and to provide sufficient funding for those that promote satisfaction and case settlement.^[1] As the St. Louis City Family Court began to research what type of changes could be made it was found that courts are not alone in this endeavor. The National Center for State Courts, The National Center for Juvenile and Family Court Judges, State Justice Institute, and others are interested in how to make the business of running a court profitable. Profitable not in the monetary sense (although that is important) but in the human sense. After all, courts are people. This study will first examine the importance of local rules, their historical purpose, and their purpose in current court practice today.^[2] Secondly, this paper will look at one court specifically and how local rule expansion has driven change.

There were many questions explored in this study. The research provided information about how stakeholders (attorneys and clients) perceive the Court's performance.^[3] More specifically, are stakeholders satisfied with the court-connected mediation services they have received? Have mandatory programs (i.e. mandatory mediation and parent education) provided a means to educate and empower families?^[4]

A survey instrument was utilized to question stakeholders about pre and post local rules, mandatory mediation, and enforcement of visitation programs. ^[5] The rule changes were made to improve expedition, timeliness, and access to justice and to eliminate lost or drifting cases. ^[6]

Research of this nature will benefit this circuit and others who may be exploring similar questions by providing information about different aspects of court performance.

The measurable objectives of this research project that were used to assess the stakeholder's perceptions are: results of satisfaction surveys, statewide Missouri statistical information, qualitative data collected from the stakeholders, and the use of relevant studies to compare and contrast the results. The surveys inquired whether the current services are providing the delivery that the expanded rules were designed to do and whether more resources should be allocated. The surveys and the data collected were beneficial. The significance of the research is to determine if resources have been properly allocated and to consider how future data should be collected. Recommendations were derived from the results of the surveys.

INTRODUCTION

Missouri is comprised of 45 judicial circuits with total filings in 2000 of 939,216. The Twenty-Second Circuit is comprised of 31 court divisions (31 judges and 6 commissioners) and had total filings in 2000 of 38,530. Of these total filings, 9,553 were domestic.^[7] There are currently four judicial officers assigned to handle domestic matters. Two circuit-level judges, one associate-level judge, and a commissioner.^[8] In July 1997, when the rules were rewritten, one circuit-level and one associate-level judge handled all domestic matters. A re-organization of personnel and the creation of a unified family court increased judicial resources. In St. Louis, the trend has been that as the population has decreased the filings in domestic relations cases have increased. The needs of families have also increased with the filings. Increasingly, courts are tasked to work with families in more detail than ever before. One response by courts has been to create expansive local rules.^[9] The working definition of local court rule is those rules made by an individual circuit to outline the scope of work and organization of the work. Expanded local rules, in St. Louis, were in part due to a scarcity of resources. A diminished taxbase has created the impetus for examining the cost effectiveness of all court services to determine the optimal level of services to be provided in family court. Moving cases to settlement without trial and reducing the number of formal filings in

contempt and family- access matters would have a huge impact on not only the court but the consumers of our services. St. Louis City Circuit Court has designated Local Rule 68 as the rule that speaks to domestic matters. Prior to the revision the rule did not guide the case management needs of the divisions. Local Rule 68 was re-written to address these issues.

Local rules most often are created to expand on or explain how a circuit will interpret state supreme-court rules. Local rules are written and approved by either the presiding judge (smaller circuits) or by the court en banc (in large circuits). Expansive family court rules are indicated due to the myriad of needs that families present. Those needs include, but are not limited to, parent education, custody and visitation education, mediation, anger management, drug and alcohol issues, child abuse and/neglect issues and property and income matters. Without clear rules of order about what is going first and how to proceed and when, the process can be chaotic.

In July 1997 the court en banc of the Twenty-Second Judicial Circuit of Missouri approved and authorized implementation of Local Rule 68. Local Rule 68 had been rewritten with a goal of actually directing how cases should flow through the court from beginning to end. In general, the idea was that if the court directed the way that cases would flow then it would increase consumer satisfaction and decrease the number of cases exceeding ABA time standards for domestic cases.

There were two mandatory programs authorized in rule 68 - mediation (68.6) and mandatory parent education classes (68.10). The new rule specified that any petition filed wherein child custody was “at issue” generate a court order for mandatory mediation. Also, any filing with minor children would send the parties to mandatory parent education. There is no fee to the client for these programs. The new rule also authorized the implementation of an informal service called enforcement of visitation (68.20) [\[10\]](#). These above-mentioned areas are the ones that touch on both the courtroom activities and the mediation unit and are the focus of this inquiry. Other aspects of the local rule that were new to the domestic relations divisions were an offer of judgment (68.16) and the plan for a continuous (date certain) docket (68.23). Changes to the local rule were made with the intention of providing a high quality service to stakeholders, and so the Court was knowledgeable and aware of all pending matters. The changes also empowered court

staff with the knowledge of how cases were going to flow in the future. In August 1997, the court began to implement the expanded rule.

Launching a sweeping change like this does not come without an implementation plan. It was recognized early on that changes of this nature would require training, educational seminars, and public notice.^[11] To accomplish this there were articles written, postings were placed in the legal newspaper, and in-service legal education seminars (with continuing legal education credits) for domestic bar attorneys who practice in the city were provided. Publicizing the expanded rule in this manner was important because it signaled to practitioners that not only did the court expect to do business differently but the court expected them to do so as well. There were those who spoke loudly about the court exceeding its authority. There were some that believed it inappropriate to send all parents with minor children and conflict to mandatory mediation. There were others who thought the court was on the right track. Still others thought it would never work. Some of those others included court staff. Resistance to change was expected. Planning for the resistance was as important as planning for the change. Consistency and perseverance helped persuade affected parties that the court believed in what it was doing.

St. Louis City's domestic court divisions and mediation unit, are significant in the court system because they have more contact with attorneys and consumers than probably any other part of the court. The Mediation and Special Court Services Unit of the Family Court provides service to all areas of the Family Court.^[12] The domestic relations divisions have many tasks. The statute grants jurisdiction over dissolution of marriage petitions (divorce), paternity (parties who were never married), motions to modify (custody money or property issues), family access motions (problems with custody and visitation), and contempt motions (contempt in family court can range from non-payment of child support to violating the existing court order with regard to custody and visitation).^[13] For a great many consumers this will be their only significant contact with the court system. The importance of creating equality, fairness, and integrity, access to justice, expedition and timeliness, and public trust and confidence is enormous.

All of these court performance standards come into play in domestic relations court. Most of these standards can be evaluated by measuring the satisfaction of the stakeholders. If survey questions are designed to assess satisfaction in these key areas and stakeholders respond that they are reasonably satisfied then a court is on the right track. Likewise, if the impression is less than satisfactory in one or more areas then the court has an idea of where to focus energy and resources. Not only is stakeholder satisfaction an ethical concern, the impression made here has far reaching consequences in our community. After all, ultimately it is the taxpayer that pays the bills, builds the new courthouses, and it is to the taxpayer that we as courts are ultimately accountable.

Changes in the local rule both directly and indirectly affected the operations of the Mediation and Special Court Services Unit formally known as the Domestic Relations Unit. This unit has been in existence for over thirty years. The unit has, historically, performed duties such as marriage counseling, child custody evaluations, home study investigations, family counseling, supervised custody exchanges and supervised visits. In 1997 it was decided that the unit would become more focused on mediation and less focused on evaluation. Prior to 1997 the mediation was considered non-confidential and was presented to attorneys and clients in that manner. Mediators appeared at every pre-trial that their assigned family attended. Mediators were very hands-on in every aspect of the settlement negotiations with respect to custody and visitation. In early 1999 it was decided that mediators would no longer attend pre-trials and that only one domestic relations officer would appear on the custody docket to assist the judge with unanticipated needs. This decision was made for two reasons. One reason is that there just were not enough hours in a week to see everyone referred for services. Another, very important reason, was that a decision was made to move to confidential mediation model. This was an important step for the court. Both judges and court staff had to learn a new way to communicate. This decision was difficult for everyone. The staff were not used to practicing in this manner and the change was slow and frustrating. The judges wanted confidential mediation but still wanted information. [\[14\]](#)

Both Judges and mediators have now become used to this manner of practice and can see many

benefits of it. One is that the mediator/client relationship is protected. If a client needs or wants to come in for post-judgment mediation or enforcement of visitation mediation they can be seen again on a confidential basis. Judges know that the relationship is protected and confidential so they can send clients to mediation to work out the complicated issues that take a lot of courtroom time. One change that occurred in the day-to-day practice between the courtroom and the mediation unit, was that prior to the rule change parties were referred to mediation when after a number of pre-trials the judge or one of the attorneys suggested it. In the two years prior to the rule change the judge began ordering all parties with children to mediation and found that the settlement rate for custody and visitation was higher. In mediation, cases often don't settle on the spot. The learning effect often occurs after the next pretrial. After being educated the client sees the courtroom proceedings and the attorneys role a little differently. Most people settle child custody and visitation issues shortly after mediation. Another change was that the judge placed every pending case with children on a child custody docket held all day Wednesday and Thursday mornings. Also, important, no one left one pretrial without a date certain to return. Again, attorneys complained but soon found they could have four or five cases on the docket at once and began seeing this as cost and time efficient. It was helpful to the court because the judge could hear up to fifty pre-trials in an eight-hour day. Judgement could be entered at the pretrial if all the issues were settled in the status conference. It was also found to be helpful that the mediation unit could provide court staff to assist the judge with unanticipated needs without having to be in the courtroom five days a week. These changes alone saved substantial time and resources.

Mediation is an important focus in St. Louis City's local court rule because it is an inexpensive way to educate parties about domestic relations court procedures, mandatory education programs, and about the traditional court process versus the mediation process. There are many goals of mediation that are not settlement oriented.^[15] The traditional model is one where the attorneys are in the center of the action and in consultation with the judge. They communicate between the parties and much like the children's game of telephone (to play this game one person whispers in their neighbor's ear and after the message goes all around the room it is comical to hear how the

message has changed), often the message is unclear or not even the original message. The mediation model is one wherein the parties put themselves in the center of the action and in consultation with their attorneys inform the court of the family decision for custody and visitation.^[16]

Once the parties have been ordered mediation, a notice letter is mailed with an appointment date and time. Also enclosed is an educational sheet describing what decisions can be made in mediation.^[17] Parties are requested to call and confirm their attendance and to disclose any drug or domestic abuse. This type of mediation is always via court order.

A court order is unnecessary to request Enforcement of Visitation Mediation. The enforcement of visitation rule (68.20) was implemented in August 1997. The goal of this rule is to defer contempt and family- access filings by dealing with issues before they rise to the level of court intervention. The intention is that by addressing issues as they arise families can avoid further litigation. The result for the family is less litigation and for the court is more expedient dockets.

The complaining party in the form of a letter initiates services for enforcement of visitation complaints. A post-judgment case is opened and assigned for mediation services.^[18] A copy of the complaining parent's letter along with a notice to appear is then mailed to the other parent. The only requirement to this rule is that the order of judgment be from this circuit. The service is free. Within 48 hours of receipt a notice letter is sent to both parties to appear. Usually within ten working days the mediator will see the parties and begin working on the current issues. The same family issue would take up to six weeks to be placed on a court docket.. The appearance, by the parties, is totally voluntary but their absence, it is explained, could give the complaining party reason to file a contempt or family access motion. An enforcement of visitation mediation report is mailed, along with any agreement between the parties, to the court file.

When this project began there were many questions about enforcement of visitation. The literature supported having continuing mediation and other social services available to assist families and keep them out of a courtroom. The challenge was how to measure the effect this

service had had on the docket. What, if any, effect on satisfaction had the implementation of Local Rule 68 had on attorneys and clients and what is the perception of subsequent mediation services mandated by the rule? Have unofficial services had an influence on the rate of contempt and family-access motions being filed? This study found that the manner in which cases were captured and categorized was not amenable to measuring what was desired. When contempt cases were filed they were grouped together as contempt whether it was for non- payment of child support or a visitation complaint. Courts need to know this type of information and data needs be stored in such a way that those measures can be sorted. These questions were addressed by sending surveys to stakeholders. The survey asked questions that primarily measured attorney and clients perceptions. Their perceptions provided an overall picture of the amount of satisfaction stakeholders have with programming. Data were also pulled that attempted to sort contempt filings in the years before the local rule changes and after. Without being able to demonstrate the efficiency of programs should the court allocate funding for services to continue to help families? Is that the courts' responsibility?

In both pre and post judgement intervention mediation is the first service rendered. Having competent staff (in St. Louis mediators are circuit employees) who are invested in families and children is vital. The mediation process in pre and post judgement sessions are identical services.

There are differences between court-connected and private mediation. Mediation is two people with a conflict coming together with the aid of a balanced third party to reach a settlement or solution to the conflict. The belief that parents are the best place for custody and visitation plans to originate is the essence of both types of mediation. The way in which clients appear for private mediation and why is very different from court-connected work. In court-connected mediation there is generally a court order to mediate after the filing of a petition. In private mediation the parties voluntarily seek out a mediator and over the course of a month or months settle their case prior to the filing of a petition. Court-connected mediation is an attempt at settling the issues of custody and visitation . Important education is derived in the process about the Court's expectation of parental problem solving. [\[19\]](#) In both types of mediation; however, the goal is the process not

the outcome.^[20] The process of mediation, is one key factor that sets mediation apart from the practice of law and social work. The process consists of educating clients about the continued responsibilities of parenting. This might include, but is not limited to, a discussion concerning the creation of a more business-like relationship between the parties for the benefit of their children. The process normalizes the emotional roller coaster that families ride during litigation. The mediator may talk about stress and its' detrimental effects on the family, (for example, how children tend to act out the feelings of their parents during this time). Anything to normalize the feelings they are having will serve to reduce the impact of the stress and will be valuable to the family.^[21] Once stress is reduced, problem solving can occur.

A successful mediation session and a full settlement are not necessarily the same thing. A successful mediation session is one in which the parties have a full understanding of the process facing them. This includes understanding their continuing rights and responsibilities toward their children and each other. The process encourages the parties to make as many family decisions as possible. A full settlement in mediation, is one in which the parties are both educated about the process and are able to work out the custody and visitation issues to such an extent that it can be settled. This is certainly desirable, but it is not the main goal. Mediation is also used to teach families about their own ability to make the continuing decisions about the future of their children. The preferred technique in mediation is to utilize a balanced approach rather than a neutral approach. Neutral implies that the mediator is just a facilitator. Balanced implies that the mediator may go where the inequity exists and create a balanced environment in which decisions can fairly be made.^[22]

There are three main barriers to court-connected mediation. The first is that that clients can be and often are somewhat resistant. To overcome this resistance court-connected mediators spend a great deal of time assuring clients and their attorneys that the court order to mediate is only to appear for the session and to submit to some education about the process.^[23] The choice to mediate and or settle the matter is totally up to the parties and there is no court order to settle the

matter pending before the court.^[24] This understanding generally reduces resistance to a manageable level. The second barrier to court-connected mediation is the expense. It costs far less to hire qualified full time mediators than to operate courtrooms.^[25] Finally, a third barrier is that some attorneys are concerned that court-connected mediators may want to interrupt their law practice. The result is that often attorneys will downplay the importance of mediation or suggest that court-connected mediation is not a way to proceed. This is confusing to clients who must trust what attorneys say and creates an overly resistant client. Judge Robert Page, from Camden NJ, stated in a speech in 1997 that he often would tell attorneys that mediation is a good expedient way to settle cases and have happy clients. He would pose the question to them: Would you rather have 100 happy clients paying you \$1,000 each and referring you to others or one unhappy client who will owe you \$100,000.00 forever?^[26] This exaggerates the power of mediation somewhat, but when used in training, it does put a different perspective on settling cases. Resistance is another good reason that local court rules must be clear and enforced is so that the court will have control of the process and thus, manage the volume of cases. Attorneys have only their client to satisfy. The court has many competing interests and the outcome for the whole family must be considered. Since the court is where families end up when they can't settle matters it is important that when families are drawing up the blueprint for their future that the court has hands-on involvement.

Literature Review

The purpose of court rules has changed over time. Historically, rules were associated with power. The rules often favored the wealthy and discriminated against the poor. It is not being argued that the person or organization that makes the rules has the power. Nor is it being argued that today people with wealth are not treated differently by the system. Wealth does buy legal expertise and the law is complicated. What is different today is that ethical issues of equality and fairness are more prevalent than in the 17th, 18th, 19th and early 20th Century. In those centuries litigation was primarily about land issues. They were solved quickly and usually in favor of male landowners. Then, as now, the people who made the rules were able to determine outcome and

thus stay and become more powerful. Today, rules are still associated with power and outcome.

Rule making in the state courts is usually driven by state Supreme Court rules.^[27]

As stated earlier, as the family structure has changed, so has the type and amount of authority people have been willing to permit the court to have. The decisions being made in family court today do not resemble the decisions being made even twenty-five years ago. Most courts are not prepared for the responsibility and many are still attempting to manage dockets and families in the ‘same old way’. In order for family courts to keep up with the myriad of family issues it has become imperative that a structure or rule be implemented to guide and direct service provision. Once implemented it is vital that as staff and judges rotate into these divisions they be trained. On-going training and graduated rotations can provide stability.^[28]

The allocation of resources and how to justify these expenditures are very important issues to judges and court administrators. In the St. Louis City Family Court survey completed by attorneys, most answered the question about appropriate allocation of resources with “I don’t know how the money is allocated.” Most people are surprised that St. Louis City Family Court has elected to provide services without additional court fees. The question of whether or not the service should be free, free to some, fee for service or sliding scale fee has been debated. In this circuit it was decided that important court services would be without fees.^[29] The problem with fee for service is that the court could be in the position of, inadvertently, denying access to a service that is recognized to help families. One study conducted, with 248 attorney respondents, demonstrated that court-connected mediation is effective in resolving child custody matters. It expressed that the mediators should be court employees and that the service should be free. In the same study judges disagreed that the service should be free. Of note, female attorneys favored mediation over male attorneys. Exposure to professional mediation over time seems to lessen the gender bias.^[30] Litigants want fast service. In an age of immediate satisfaction and drive-up windows, litigants are demanding more and want it quickly. When polled, litigants stated that most would prefer that their case be disposed of in three months or less. Litigants want speed but

they also want fairness, want to be heard, and want orders written in a language they understand. In New Mexico satisfaction, access, timeliness, and affordability were surveyed. The data collected demonstrated that litigants overwhelmingly found the judges in domestic-relations matters to be fair and their cases were settled in a timely manner. [\[31\]](#)

In California, the stated purpose of mediation is to facilitate an agreement between the parties that can become the basis for a final judgment. California studies in 1991 and 1994 studies found that when asked the same questions about the relevance of mediation, litigants reported that mediation is helpful to resolve issues and that they were very satisfied with the process. [\[32\]](#) The Virginia Commonwealth University in Richmond conducted a study and found that overwhelmingly that mediation is effective in reducing the adversarial nature of separation. Overall research in this area is encouraging. [\[33\]](#)

Once parties have entered into a family visitation plan and the final judgment has been entered a new set of issues emerge. Research into visitation, lack of visitation, visitation complaints, and alienation is interesting. Often they are connected but seldom is the lack of visitation in the best interest of children. In highly litigious families visitation becomes the prize and the game is how long can each party afford to stay in court. Research demonstrates that children with continuing contact with both parents can have the same high levels of perceived safety and security as children who reside in healthy two-parent households. It has been estimated that from one-third to one-half of all children living in single parent households have little to no contact with the non-custodial parent. In one study conducted nine years post judgement it was found that the lowest incidence of childhood maladjustment was in the mediation group. The mediation group was more likely to have continued visitation as often as once per week. Children in the litigation group were very likely to have maladjustment and had significantly lower rates of visitation with the non-custodial parent. [\[34\]](#) It seems that bringing parents together for the initial decision making and the availability of continued support systems for these families does make a difference in the outcomes for children. Families who have had mediation and know about the process of working out

problems as they occur report that the non-custodial parent has more continuing decision sharing input than those families who litigated only. It could be argued that parents who choose mediation are more likely the ones who would have worked these issues out anyway. This may be true. Also, true is that many families do not know about how mediation could really help them. Whether it is pre or post judgment, mediation of visitation issues is a beneficial way to help children and families. Making mediation of custody and visitation mandatory, creates an opportunity for families who would otherwise not receive these services, to be educated about the benefits. [\[35\]](#) There are many ideas about why post-judgment visitation is problematic and some non-custodial parents may elect not to visit. Without the marriage, all responsibility for the children is handed over to the custodial parent. Hostility about child support orders may influence visitation problems. Parental alienation is another. [\[36\]](#) It has been argued that if the allegations by the custodial parent of a non-custodial parent are true then there is no alienation. It is something but not alienation. Fathers groups have estimated that residential parents are responsible for nearly 40% of all noncontact. No contact may be a result of many issues. New spouses/love interests, lack of or poor communication between parents which results in no contact and safety are other concerns. In another study it was found that there was no consistency between custodial and non-custodial parents as to why visits do not occur. The custodial parent most often reported that non-custodial parents did not take advantage of what was provided them and that they often failed to appear for visits. Non-custodial parents argue that custodial parents are rigid about make-up visits, do not allow telephone contact, and that requests for last minute changes would not be accommodated. Children who refuse to visit is a frequent complaint from custodial parents. The non-custodial parent usually alleges that if alienation of affection had not occurred by the custodial parent there would be no reluctance to visit. [\[37\]](#)

Interestingly, it is argued that the use of the word custody and visitation set up their own set of problems for the future. If as mediators, judges, and attorneys the best interest of children is as important as is said, then why don't the words, language and attitude utilized convey that? For

example, the word custody has become a synonym for power and control and the word visitation a synonym for “second rate”. It is recommended that as professionals in this business language and attitude be examined. It is suggested that incorporation of more ‘family friendly’, future-oriented language like “when in the care of” instead of visitation or ‘caring for’ or ‘when your caring for’ instead of custody be implemented by Family Court practitioners. [\[38\]](#)

Unofficial services to prevent unnecessary formal court intervention have been implemented in St. Louis City since 1997. When a parent’s rights to visitation or custody with a minor child under any decree of dissolution or legal separation or order of paternity is denied, the Mediation and Special Court Services Unit of the Family Court is authorized, at the request of the complaining parent, to notice the parties to appear for a mediation session which focus’ on the current issues of custody and visitation. [\[39\]](#) The original intention was that families whose concerns did not rise to the level of a contempt or family access motion would have somewhere to go before the problems escalated. [\[40\]](#) In fact, over the last two years more and more attorneys have been making referrals to clients to call the unit before filing. Clients, satisfied, that there is a place to be heard have found the service to be helpful. This program has developed into a mandatory stop either before a motion for contempt is filed or just after it is filed. Most practitioners will recognize that the majority of families just want to deal with the current issues and move on. These matters are resolved, by agreement between the parties, and the matter is closed. Assuming that all families are highly litigious and consume excessive time, is planning for the exceptions. Highly litigious families are screened out of the process after a time or two. This informal process is time-limited and available on a continuing basis only to those who continue to work hard and in good faith to implement agreements.

Methodology

Pre-Test

A pre-test was conducted during a random morning domestic docket. Subjects chosen for the pretest were attorneys and clients who were on the docket for that morning. They were asked to complete the survey and to include any questions or concerns the survey raised. There was one survey for each population of stakeholder (client or attorney). After the pretest the surveys and the comments were evaluated, questions were slightly revised following suggestions identified during the pretest. Another factor taken into consideration during the pretest was how long it took participants to complete the survey. The survey took approximately 5-7 minutes to complete. Of course, those respondents who had lengthy answers to the questions portion took substantially longer. One respondent took thirty minutes.

Participants and Procedure

Attorneys and clients were asked questions to express their perceptions in the key areas of service, satisfaction, and education. The surveys were mailed. Attorneys and clients were asked to respond on a seven point Likert scale (1 = strongly disagree, 7 = strongly agree). For the convenience of the respondents and to help ensure responses were returned, a self-addressed stamped envelope was enclosed for both the attorney and client surveys.

Attorneys

Attorneys were identified as survey candidates if they described their law practices as domestic or family. The Bar Association of Metropolitan St. Louis (BAMSL) provided names of members who fit that description. Three hundred and eighty-nine (389) surveys were mailed over a one-week period. The deadline for accepting completed surveys was approximately three weeks later. There were zero (0) surveys returned by the post office as undeliverable. As of the deadline there were a total of fifty-one (51) respondents. There were no other surveys returned.

Clients

SPSS Version 10.0 was used to randomly select the participants from a MSCS database. There

were four hundred and sixty-seven files chosen for a total of nine hundred and thirty-four surveys were mailed. The surveys were mailed over a one-week period. The deadline for accepting completed surveys was approximately three weeks later. There were ninety-seven (97) returned by the post office as undeliverable. There were a total of sixty-nine (69) respondents one survey returned was not filled out and it was noted that the respondent was deceased so the final number of respondents was sixty-eight (68).

Measures

Attorney Survey

Attorneys were asked questions about age, race, number of child custody cases handled yearly, and if they were practicing domestic law in STL City prior to the Local Rule 68 change. If they were practicing before the rule change there were quantitative questions relating to overall satisfaction. All attorneys were asked to answer quantitative questions relating to post-rule satisfaction. Elements of the trial court performance standards that were utilized to create measurable constructs for the questionnaire. The pre-rule change and post-rule change questions were directed at relative satisfaction with court performance 1.3 effective participation, 3.4 clarity, 4.2 accountability for public resources, and, 5.2 expeditious fair and reliable court functions.

The construct on effective participation - 1.3 was measured by one item (e.g. Overall, the family court gave all who appeared before it the opportunity to participate without undue hardship or inconvenience). Clarity - 3.4 was measured by two items (e.g. The family courts reached clear decisions regarding child custody). The reliability coefficient for these questions was .95 indicating that the scale was reliable.[\[41\]](#) The construct for accountability for public resources - 4.2 was measured by two items (e.g. The family court responsibly used its public resources.) The reliability coefficient for these questions was .92 indicating that the scale was reliable.[\[42\]](#) The construct on expeditious, fair and reliable court functions - 5.2 was measured by one item (e.g. The

child custody agreements reached by the family courts were fair.) There were also three overall satisfaction questions (e.g. Mediation has had a positive impact on child custody cases).

In addition to quantitative questions the respondents were asked to respond to six (6) qualitative questions (e.g. What do you like most about mediation?).^[43] Some constructs were measured using one question. It could be argued that one question is not a rigorous enough to measure any one area but was utilized to avoid response fatigue. Too few questions and the data may be unreliable but, on the other hand, if the survey was too long the risk is that there will be fewer respondents. The questionnaire constructs were deemed sufficient to elicit the necessary data and to maximize the possible respondents and thus increase the validity of the survey.

Client Survey

Clients were asked to self-disclose information about age, race, and education level. Survey questions were derived from the following court performance areas. Safety, accessibility and convenience 1.2 was measured by using five questions (e.g. I felt safe when attending mediation sessions.) The reliability coefficient for these questions was .85 suggesting that the scale was reliable. The construct on courtesy responsiveness and respect - 1.4 was measured by one item (e.g. The staff members treated me with courtesy and respect.) The construct on clarity –3.4 was measured by two items (e.g. I understood the agreements reached at the end of the mediation process.) The reliability coefficient for these questions was .81 suggesting a reliable scale. The construct on accessibility - 5.1 was measured by two items (e.g. The staff members were knowledgeable.) The reliability coefficient for these questions was .93 suggesting a reliable scale. The construct on expeditious, fair and reliable court functions - 5.2 was measured by three items (e.g. The mediator was fair). The reliability coefficient for these three items was .85 suggesting a reliable scale.

There were two general questions, not related directly to the court performance standards that the court specifically wanted to look at 1) it would be helpful if mediation sessions could be held in the evenings and, 2) my time was wasted by attending the mediation sessions. These are issues that clients routinely raise and so it was felt to be an important area to assess. [\[44\]](#) In addition to the quantitative questions the respondents were asked to respond to six (6) qualitative questions (e.g. what did you like least about the mediation session).[\[45\]](#)

Findings

Before testing the research questions, descriptive statistics were computed for all variables to check the data for outliers and missing values.[\[46\]](#) In addition, an alpha level of .05 was set for all statistical tests. [\[47\]](#)

Attorney Demographics

The total number of respondents for this population was fifty-one (51). This can better be described as a thirteen percent (13%) response rate. The average age of the respondents was 47.43 with a range of 27-75. The race of the respondents is as follows: African American = 1; Asian = 1; Caucasian = 48; Hispanic = 1. The number of child custody cases handled yearly by the respondents is as follows: 0-20 = 38; 21-50 = 10; 51-101 = 3. The sample size varies question by question because some respondents did not answer all the questions in the survey. One question asked how many attorneys were practicing law before the rule change. The response was: yes = 37; no = 11; no response = 3.

Attorney results

Court performance standards (described in the literature review) were utilized to form the basis for the qualitative questions. A Likert-type scale (1-7) was utilized for all answers (e.g. 1=strongly disagree , 7= strongly agree).

A section of the attorney survey asked attorneys if they had practiced law prior to and/or after the local court rule expansion. The construct that measured effective participation (standard 1.3) looked at general accessibility and the overall accessibility to all persons including those with disabilities. The attorneys were asked to indicate their agreement or disagreement with the following statement: Overall, the family courts gave all who appeared before it the opportunity to participate without undue hardship or inconvenience. The number of respondents (n) = 37 and the mean response = 5.00. After the rule change the perception of effective participation rose to a mean of 5.3 with total respondents numbering 47. A one-sample t-test was conducted and found significant results in the direction of individuals having more positive perceptions following the rule change.[\[48\]](#)

Clarity (standard 3.4) measures how well the practicing bar believes the court communicates its judgments or orders. There were two statements constructed to measure this standard. The attorneys were asked to indicate their agreement or disagreement with the following statements: 1) The family courts reached clear decisions regarding child custody; 2) The family courts communicated their decisions regarding child custody clearly. The number of respondents totaled 37 and the mean response = 5.16. After the rule change the perception of clarity rose to a mean of 5.44 with an n of 44. A one-sample t-test was conducted and found significant results.

Accountability for public resources (standard 4.2) measures whether the practicing bar perceived resources to be used wisely. A one-sample t-test was conducted and it was found that this measure was not statistically significant but did approach significance. There were a small number of respondents to this measure.[\[49\]](#) Some respondents wrote on the questionnaire that they did not know how or have a perception of how the court used its public resources. There were two

questions asked to measure this standard. The questions were: 1) The family courts responsibly used its public resources; 2) The family courts responsibly accounted for its public resources. The number of respondents totaled 29 and the mean response was 4.45. After the rule change the perception of accountability rose to a mean of 5.0 with total respondents of 37.

Expeditious, fair and reliable court functions (standard 5.2) measures the practicing bar’s perception of equality and fairness across populations and cases. The question asked respondents was: The child custody agreements reached by the family courts were fair. The number of respondents totaling 36 and the mean response = 4.75. After the rule change the perception of expeditious, fair and reliable rose to 5.34 with total respondents of 39. One question about overall pre-rule change satisfaction was asked of respondents. The respondents totaled 37 and indicated that they had an overall satisfaction of 4.81.

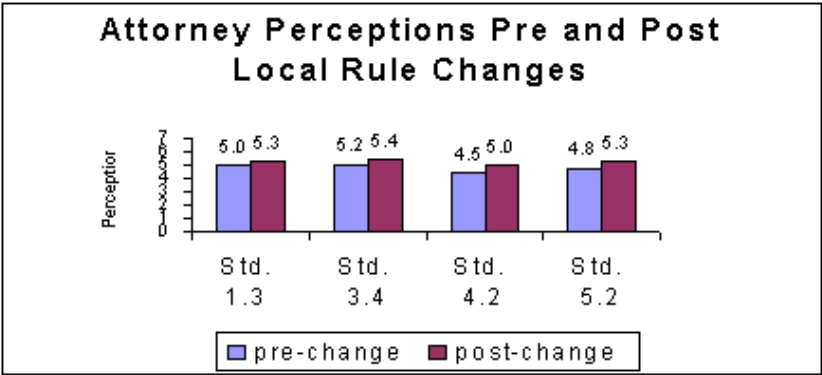


Table 1.1

The seven point Likert scale was also utilized to measure post-rule change satisfaction Three questions addressed this. 1) Mediation has had a positive impact on child custody cases. There were a total of 41 respondents to this question and the mean answer was 5.00. 2) Mediation is a

was as follows: some high school = 9; completed high school or GED = 19; some college = 17; associate's degree = 5; BA/BA degree = 12; MA/MS = 5; Ph.D. = 1. The gender of respondents was 40 = female and 28 = male. This sample seems to be a somewhat fair representation of the population seen by the Mediation and Special Court Services Unit.

Client Results

Court performance standards (described in the literature review) were utilized to form the basis for the qualitative questions. A Likert-type scale (1-7) was utilized for all answers (e.g. 1= strongly disagree, 7= strongly agree).

Safety, accessibility and convenience (standard 1.2) measures client perceptions of staff helpfulness, safety while in court, parking, signage and security. There were five (5) questions utilized to measure this construct. They were: 1) I felt safe when attending mediation sessions; 2) The location of the mediation sessions was convenient; 3) Parking at Family Court services was convenient; 4) The times scheduled for my mediation sessions were convenient; 5) Overall, it was convenient for me to attend mediation sessions. The number of respondents (n) = 61 and the mean response was 4.97. The reliability coefficient for these questions was .85 suggesting that the scale was reliable. The standard deviation was 1.39.

Courtesy, responsiveness and respect (standard 1.4) was measured by this one question: The staff members treated me with courtesy and respect. The number of respondents (n) = 64 with a mean response of 5.78. A one-sample t-test was conducted and yielded significant results.

Clarity (standard 3.4) measures the courts ability to clearly state its orders and the means or method for satisfying them. There were two questions utilized to measure this construct. They were: 1) I understood the agreements reached at the end of the mediation process; 2) The agreements reached were unclear. These questions were asked in different ways to measure how well the questions were being read and understood. The reliability coefficient was .81 for this

construct indicating a reliable scale. There were a total of 62 respondents with a mean score overall of 5.40 and a standard deviation of 1.57. The reliability coefficient was .81 suggesting a reliable scale. A one-sample t-test was conducted and yielded significant results.

Accessibility (standard 5.1) measures the degree to which the client feels that court staff are helpful and knowledgeable. There were two questions utilized to measure this construct. They were: 1) It was easy to find staff members who could answer my questions; 2) The staff members were knowledgeable. There were a total of 60 respondents with a mean score of 4.83. The reliability coefficient was .93 suggesting a reliable scale. A one-sample t-test was conducted and yielded significant results.

Expedition, fair and reliable court functions (standard 5.2) measures the clients perceptions of how they and others they observed were treated while at the court. There were three questions utilized to measure this construct. They were: 1) The mediator was fair; 2) The agreements reached were fair; 3) The mediation services were provided in a timely manner. There were a total of 62 respondents to these questions with a mean response of 4.79 and a standard deviation of 1.83. The reliability coefficient was .85 suggesting a reliable scale. A one-sample t-test was conducted and yielded significant results.

There were two questions asked that seemed pertinent to how court services may be directed in the future. 1) It would be helpful if mediation sessions could be held in the evenings. There were 62 respondents and the mean response was 4.95 and a standard deviation of 1.67. 2) My time was wasted by attending the mediation sessions. There were 62 respondents with a mean response rate of 3.17 and a standard deviation of 2.18.

There were six (6) qualitative questions asked of clients. The range of responses and total numbers thereof are located in the appendix. The responses recorded below are the most frequent responses. 1) What did you like most about the mediation process? *It was an objective approach. It was a great opportunity.* There were equal responses for *None of it. I did not like the process.*

waste of time. There were 44 respondents and the mean answer was 2.48 (Please note, this is reverse scored). 3) Overall, I was very satisfied with the mediation services provided by the family courts in child custody cases. There were 43 respondents to this question and the mean answer was 4.93. ■

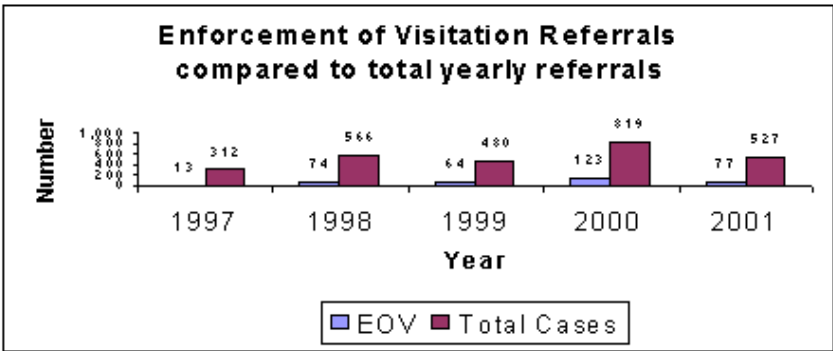
There were six (6) qualitative questions asked of attorneys. The range of responses and total numbers thereof are located in the appendix. The responses recorded below are the most frequent responses. 1) What do you like most about the mediation process? *It allows the parties the opportunity to resolve issues without interference from lawyers and the court. Speedy resolution.* 2) What do you like least about the mediation process? *Depending on the personality of the parties' one party may be "bullied" into a decision, and also Mediators who do not understand their role.* 3) What is the one thing you would like to change about the mediation process? *Have attorneys involved in some way.* 4) Generally, what is the biggest obstacle in settling child custody cases? *Parents problems with each other that get "tangled-up" with custody.* 5) Do you have different levels of satisfaction associated with the family court services provided by the three respective divisions (i.e., Division 14, Division 15, and Division 30)? If so, please describe. *No.* 6) Please provide us with any general comments you have about mediation. *Overall the program is very good. The majority of the cases are handled efficiently and successfully.*

Client Demographics

The total number of respondents for this population was sixty-eight (68). Sixty-eight respondents can better be described as a seven percent (7%) response rate. Ninety-eight (98) or ten percent (10%) of the total surveys mailed were returned undeliverable. Taking the ninety-eight undeliverable surveys out of the total count of surveys mailed increases the response rate slightly to eight percent (8%). The average age of the respondents was 39 with the minimum age being 21 and the maximum age 63. The race of the respondents is as follows: African American = 18; Asian = 3; Caucasian = 45; Native American = 1; Mixed racial = 1. The educational level of respondents

2) What did you like least about the mediation process? *It seemed to be one-sided at times.* (not a bad response, rather one that suggests balance) 3) What is the one thing you would like to change about the mediation process? *Nothing. Very educational* 4) What was the biggest problem you had when trying to settle your case? *Communication.* 5) What was the outcome of your case? *Divorce with visitation.* 6) What did you know about the mediation services provided by Family Court Services before your case? Where did you learn this information? *Nothing.*

Enforcement of Visitation



It is known that enforcement of visitation mediation numbers are going up each year. Therefore, it was suspected that this service was diverting families from the family court dockets. From the data requested, it was discovered that contempt filings in family court are all grouped together. This includes failure to pay child support, failure to pay maintenance, visitation issues, relocation issues, and others. Statewide statistics, court filing statistics, and unit statistics were examined to determine whether or not the questions could be answered. This research examined how many contempt motions

Table 1.2

(relating to visitation) had been filed previous to the rule change and how many after. Unlike contempt motions, family access motions are only for visitation enforcement problems so that data is relatively easy to interpret. Between August 1997 and June 2001 the mediation unit has received an average of 539 total referrals (divorce, paternity, motions to modify, etc) per year with a range of 312 to 810. During the same period the unit has conducted an average of 70.02 enforcement's per year with a range of 13 to 123. On average 12% of the unit practice is now enforcement of visitation. The assumption is that this service is keeping families out of court. [50] Overall, the contempt rate has continued to rise even while the total population of St. Louis City has continued to decrease. State statistics between 1994 and 2000 have increased from 7440 in 1994 to 9553 in

2000.^[51] There were an average of 565 motions to modify per year between 1994 and 1997. The smaller numbers may be due to informal services diverting families from the system, but this isn't clear from the data due to the methodology used to collect the data.

The first year that family access motions were recorded is 1998. In that year there were zero family access motions. In 1997 there was one. There were 14 in 2000 and 23 so far in 2001. The number of family access motions is going up each year. The number of contempt motions are going up each year. The number of enforcement of visitation complaints the MSCS is servicing is going up each year.

There is no doubt that the mediation unit is providing an important service to families. It is difficult to measure the significance of the unit's services. More work will need to be done to ascertain how to isolate numbers so that this type of service provision can be measured. From the available data no conclusions can be drawn about the impact of informal services provided by the local rule changes in 1997. It can be inferred that clients are increasingly using both formal and informal court services to settle enforcement issues.

Discussion

In conclusion, this study posed three questions. The first was: Are attorneys more or less satisfied with court procedures since the implementation of St. Louis City Family Court Local Rule 68? The second was: Are clients and attorneys satisfied with the mandatory services mandated by Local Rule 68? Finally, the third question was: Has the institution of Local Rule 68.20: Enforcement of Visitation been successful at diverting less critical matters from Family Access and Contempt Dockets? The study was comprised of two populations of stakeholders. Domestic bar attorneys and clients who have had matters before the Domestic Relations Divisions of the Family Court. A survey utilizing trial court performance standards was designed to assess whether there was a

perception of improvement after the local rule was expanded. This survey was the basis for the findings of question one and two. The results found that attorneys who practiced both before and after the rule change have a more positive perception of the court following the rule change. Attorneys needed to be assured that the Court was attempting to provide service to clients and not trying to inter with their practice of law. Asking for input and opinions about practice and policy seemed risky but necessary. Attorneys and clients who participated reported that services were meeting their needs. This was accomplished with education, time, and consistency. There were a number of people who, initially, found fault with such a comprehensive local rule. It was encouraging that the results were favorable toward the new rule and that the overall perception of attorneys and clients is satisfaction.

There were one thousand three hundred and twenty-three (1,323) surveys mailed and a total of one hundred and twenty (120) respondents (9% response rate).

Clients surveyed gave a wide variety of responses and their responses were so emotion laden that it caused each person reading the surveys to reflect on individual practice. The study reveals that clients are satisfied with the way that family court cases are heard, and with the services available to them. The approach utilized for creating those services has been to find the excuses for failure and either create or contract with a community agency to provide the needed service. As one family court judge stated “The days of doing business within the confines of the courtroom are over.” For example, when one Family Court Judge kept hearing there were no jobs so no child support could be paid he asked a employment service to appear on those dockets. There was no charge to the Court for this service. Applications were taken on the spot and many people found employment as a result. Even ten years ago it would have been difficult to imagine that this might be a role for a Family Court Judge. Another excuse heard was that the other parent was a terrible parent so visitation was denied. The court arranged for access to parenting classes and a reporting vehicle to reduce these conflicts. Families seem to increasingly give decision making powers to courts (by not following court orders, etc) which confronts the court with responsibility for families

they never imagined. The results of these surveys would seem to indicate that both attorneys and clients believe the court has been responsive to their needs. The surveys have also pointed out where the courts' work is still needed. The responsibility for families and the sheer numbers of children create an environment of haste. Caution should be exercised and an individualized approach to families should be incorporated into family court practice (routine should not be confused with 'cookie-cutter' solutions). The creation of a systematic approach from the filing of a case to the disposition is one means of incorporating this individual attention. All aspects of a case can be routinized. Policy and procedure should be made around routine cases and as cases become or emerge as exceptions they can be appropriately managed.

There are four primary recommendations that will support and enhance consistent application of Local Rule 68. The first is that the rule must be applied uniformly to avoid any hint of favoritism or prejudice. Secondly, it is problematic that the family court bench, in St. Louis, rotates annually. Family Court Judges should be appointed for a term of no less than three years. No more than one-half of the total should rotate off the Family Court bench in any one year. The reason for this is that just as judges are fully understanding their role and how the Local Rule can assist them it is time to rotate. Thirdly, the Rule should be institutionalized and become the foundation for case management. One way to accomplish this is for the administrative staff to create 'how to' bench books and provide mandatory in-service education for judges to decrease the learning curve from nearly ten months to four or five. Fourth, there needs to be adequate staffing for all areas of the family court. Judges should be assisted on all social needs. Family Court Judges have to have a professional and caring social work staff. Mediation Unit must be actively engaged in on-going training and evaluation. One way to accomplish this is to provide mandatory advanced mediation training yearly, continuing education about families and their needs, program evaluation from an independent observer and an effective tool for evaluating the strengths and weaknesses of staff. St. Louis City Family Court has plans that include incorporating training films into the mediator in-service training, increased use of interns to sharpen mediation skills, and more intensive hands-on

feedback yearly.

The findings of this study are comparable to other studies of this nature. The literature review documents studies that have been conducted all over the United States. It seems that people receiving services in St. Louis are as satisfied with mediation as anywhere else. Alternative dispute resolution seems to create an environment where a person can be educated and heard. Overwhelmingly, the mediation and education about court procedures is well received.

Finally, scarce resources and increased need have created a unique opportunity for courts to institute systems of measuring all programming. Statisticians have a saying “what gets counted – counts”. Satisfaction surveys have become commonplace. Every court program should have the means to measure its’ effectiveness. The Trial Court Performance Standards and Measurement System Implementation Manual was created to assist courts with this process. Mandatory programs should be supported by local rules. Local rules can be created with the assistance of an ad hoc committee of practicing attorneys. This approach might lessen resistance to change. Ultimately, however, managing court dockets and resources are the court’s responsibility. Finally, it is suggested that the method for moving cases and attendance at any mandatory programming be supported by and described in comprehensive local court rules.

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APPENDIX A

**LOCAL COURT RULE 68
EFFECTIVE 07/01/97**

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TWENTY-SECOND JUDICIAL CIRCUIT OF MISSOURI FAMILY COURT

LOCAL COURT RULE

RULE 68 DISSOLUTION OF MARRIAGE

This rule shall apply to all petitions for dissolution of marriage, legal separation or declaration of invalidity, motions to modify, motions for contempt, and petitions for declaration of paternity filed on or after July 1, 1997.

68.1 Filing Requirements

1. The Clerk of the Court shall not accept and file any petition for dissolution of marriage, legal separation, declaration of invalidity or declaration of paternity, motion to modify or motion for contempt unless the caption contains the (1) name and social security number of each party, (2) the address at which personal service may be effected upon respondent, and (3) the

nature of the action.

2. The Clerk of the Court shall not accept and file any petition for dissolution of marriage, legal separation or declaration of invalidity unless such petition is accompanied by the statistical information form provided by the Court properly completed, signed and notarized.

3. Upon filing a petition for dissolution of marriage, legal separation, declaration of invalidity or declaration of paternity, motion to modify or motion for contempt, petitioner or movant, by counsel or, where appropriate, individually, shall certify whether or not, based upon reasonable investigation, child custody or visitation is expected to be a genuine and substantial issue and, if so, shall include in the caption of the pleading the following legend: “Child Custody or Visitation at Issue”.

4. Upon filing an entry of appearance or an initial pleading in response to a petition for dissolution of marriage, legal separation, declaration of invalidity or declaration of paternity, or within thirty (30) days after service of a motion to modify or motion for contempt, unless petitioner or movant has certified that child custody or visitation is expected to be at issue, respondent, by counsel or, where appropriate, individually, shall certify whether or not, based upon reasonable investigation, child custody or visitation is expected to be a genuine and substantial issue and, if so, shall include in the caption of the initial responsive pleading the following legend: Child Custody or Visitation at Issue”.

5. Within fifteen (15) days after the filing of an entry of appearance or an initial pleading in response to a petition for dissolution of marriage, legal separation, declaration of invalidity or declaration of paternity or within fifteen (15) days, after the expiration of thirty days after service of a motion to modify or motion for contempt, if child custody or visitation has been certified by any party to be a genuine and substantial issue, the Domestic Relations Unit of the Family Court shall direct to each party by ordinary mail a notice which (1) requires the party to forward to the Domestic Relations Unit within fifteen (15) days a proposed plan for parental decision making, parenting time and residential arrangements for any minor child, (2) advises the party that attorneys fees and costs may be awarded, upon the request of any party or on the Court’s

own motion, if the Court finds that custody or visitation is not a genuine and substantial issue, and (3) schedules an appointment for the party for mediation with a Deputy Juvenile Officer pursuant to Rule 68.6.2 hereof. Form 68.1, which is incorporated in and made a part of this Rule, shall constitute the requisite notice to each party by the Domestic Relations Unit.

6. Failure of counsel or any party not represented by counsel to comply with this Rule shall warrant imposition of sanctions upon the request of any party or on the Court's own motion. In ordering sanctions, the Court shall be guided by the provisions of Supreme Court Rule 61.01.

68.4 Filing of Financial Statements

1. Statement of Property

A Statement of Property shall be filed with all petitions for dissolution of marriage, legal separation or declaration of invalidity, all motions to modify, and all petitions for declaration of paternity where the father is petitioner and, therefore, shall be served upon respondent with the petition or motion.

A Statement of Property shall be filed with the initial pleading filed in response to a petition for dissolution of marriage, legal separation or declaration of invalidity and any petition for declaration of paternity where the father is petitioner and, therefore, shall be served upon each opposing party with the initial pleading.

In any action in which no responsive pleading is required, such as motions to modify, a Statement of Property shall be filed within thirty (30) days after service of the original pleading and contemporaneously served on each opposing party.

The Statement shall be on a form obtained from the Clerk, or on a substantially similar form prepared by counsel, and shall be under oath.

The Statement shall include a brief description of the assets, including the legal description of any real estate, the estimated fair market value of each asset, the outstanding balance of any encumbrances, the name of the party with possession or control of each asset, and the characterization of each asset as marital or nonmarital.

The Court may, on its own motion or on the motion of any party, require a party to file or amend a Statement of Property in connection with any scheduled status conference or evidentiary hearing.

2. Statement of Income and Expense

A Statement of Income and Expense shall be filed with all petitions for dissolution of marriage, legal separation or declaration of invalidity, all motions to modify, and all petitions for declaration of paternity where the father is petitioner and, therefore, shall be served upon respondent with the petition or motion.

A Statement of Income and Expense shall be filed with the initial pleading filed in response to a petition for dissolution of marriage, legal separation or declaration of invalidity and any petition for declaration of paternity where the father is petitioner and, therefore, shall be served upon each opposing party with the initial pleading.

In any action in which no responsive pleading is required, such as motions to modify, a Statement of Income and Expense shall be filed within thirty (30) days after service of the original pleading and contemporaneously served on each opposing party.

The Statement shall be on a form obtained from the Clerk, or on a substantially similar form prepared by counsel, and shall be under oath.

The Statement shall list the income of the party from all sources and his or her separate expenses, together with the expenses of any dependent children in his or her physical custody.

The Court may, on its own motion or on the motion of any party, require a party to file or amend a Statement of Income and Expense in connection with any scheduled status conference or evidentiary hearing.

3. Sanctions For Failure to Send or Deliver

Failure of counsel or any party not represented by counsel to file with the Court and, where necessary, deliver to each opposing party the Statement of Property and Statement of Income and Expense, including any amendments thereto, within the time prescribed under this Rule, or as allowed by the Court, shall warrant imposition of sanctions upon the request of any party or on the Court's own motion. In ordering sanctions, the Court shall be guided by the provisions of Supreme

Court Rule 61.01.

68.6 Investigations – Mediation

1. In each action assigned to the Family Court in which custody or visitation has been certified pursuant to Rule 68.1.2 or Rule 68.1.3 hereof to be a genuine and substantial issue, including motions to modify and motions for contempt, the Court may, on its own motion or upon the request by any party, order an investigation and, where appropriate, report regarding the provisions to be made for protection of the best interests of each minor child.

2. In each actions in which child custody or visitation has been certified pursuant to Rule 68.1.2 or 68.1.3 hereof to be a genuine and substantial issue, the parties and, where appropriate, each minor child shall present themselves to a Deputy Juvenile Officer assigned to the Domestic Relations Unit of the Family Court for mediation of any issues of child custody or visitation. Form 68.6, which is incorporated in and made a part of this Rule, shall be completed at the time of filing and pleading which certifies that child custody or visitation is genuine and substantial issue and forwarded upon receipt by the Clerk of the Court to the Domestic Relations Unit to initiate the mediation process.

3. Mediation hereunder is the process by which a Deputy Juvenile Officer, as neutral mediator, assists the parties in reaching a mutually acceptable agreement on issues of child custody or visitation. Mediation hereunder shall be conducted, to the extent practicable, in accordance with the ABA Standards of Practice for Lawyer Mediators in Family Disputes but recognizing that the mediator is a Deputy Juvenile Officer and not an attorney. The mediator should aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement.

4. The Deputy Juvenile Officer shall inform the Court at a scheduled status conference or, as appropriate, in writing the (i) mediation has been completed and the issues of child custody or visitation have been resolved, (ii) mediation has been completed without resolution of the issues of child custody or visitation, or (iii) mediation has not been completed, but continued mediation

will serve the best interests of each minor child.

5. All statements by the parties or a minor child during mediation conducted pursuant to Rule shall constitute statements made as part of settlement negotiations and, therefore, shall be inadmissible at any evidentiary hearing.

6. Failure of any party to comply with this Rule shall warrant imposition of sanctions upon the request of any party or on the Court's own motion. In ordering sanctions, the Court shall be guided by the provisions of Supreme Court Rule 61.01.

68.7 Reports and Records

1. All files and written records or reports prepared pursuant to Rule 68.6.1 hereof shall be maintained as confidential and not disclosed to any person without an order of Court. Such files, records and reports may be destroyed from time to time by order of Court but, in all events, shall be maintained until the parties' youngest child has reached the age of 22 or is otherwise earlier emancipated.

2. Nothing in Rule 68.6 hereof shall prevent the Court from ordering such other investigations and supervision of child custody or visitation issues as may be authorized by law.

68.8 Service – Default Hearings – Status Conference

1. If a respondent has not filed an entry of appearance or initial pleading and no executed return of service has been filed prior to expiration of the outstanding summons, the Court shall inform petitioner or movant, by counsel or, where appropriate, individually, that an alias summons or, where appropriate, pluries summons must be requested within fourteen (14) days, unless extended by the Court. Forms 68.8.1A, 68.8.1B and 68.8.1C, which are incorporated in and made a part of this Rule, shall be used to notify petitioner or movant.

Upon the failure of petitioner or movant to request an alias summons or, as appropriate, pluries summons within the time prescribed under this Rule, or as allowed by the Court, the petition for dissolution of marriage, legal separation, declaration of invalidity or declaration of paternity or the motion to modify shall be dismissed without prejudice for failure to prosecute.

2. Within forty-five (45) days after the filing of an executed return of service, where no entry of appearance or responsive pleading has been filed, or within forty-five (45) days after a verified entry of appearance has been filed without a responsive pleading to a petition for dissolution of marriage, legal separation, declaration of invalidity or declaration of paternity, the Court shall schedule an evidentiary hearing in each action for entry of a final decree of dissolution, legal separation or declaration of invalidity or a final order of paternity.

If a party fails to appear, in person or by counsel, at a scheduled evidentiary hearing, the Court may on its own motion dismiss the petition for dissolution of marriage, legal separation, declaration of invalidity or declaration of paternity for failure to prosecute.

The evidentiary hearing need not be conducted, but the date for the evidentiary hearing need be set, by the Court within the time prescribed under this Rule.

There shall be no direct assignment to Division 14 upon the filing of a petition for dissolution of marriage, legal separation, declaration of invalidity or declaration of paternity, but an action may be transferred to Division 14 for an evidentiary hearing hereunder by the Court or upon the request of a party, by counsel or, where appropriate, individually.

3. Within thirty (30) days after the filing of the initial pleading in response to a petition for dissolution of marriage, legal separation, declaration of invalidity or declaration of paternity or within thirty (30) days after the filing of an executed return of service on a motion to modify, the Court shall schedule a status conference in each action. Forms 68.8.4A and 68.8.4B, which are incorporated in and made a part of this Rule, shall be used to schedule the status conference.

Where an action is not ready for final hearing at the time of the status conference or where the parties represent during a status conference that further negotiations may produce an agreed upon resolution, the Court shall (1) establish a discovery schedule or continue the action to allow further negotiations, and (2) schedule another status conference.

The status conference need not be conducted, but the date for the status conference need be set, by the Court within the time prescribed under this Rule.

If a party has not retained counsel and fails to appear in person at a status conference, the

Court may at that time conduct an evidentiary hearing and enter judgment against said litigant.

4. It is the policy of the Court to encourage informal discovery wherever practicable and avoid Court involvement in the discovery process. Accordingly, all parties shall exchange income tax returns, with supporting schedules, and employment benefit information prior to the initial status conference.

5. The Court may exempt an action from automatic assignment for a status conference upon the filing of an applications, stating the reasons therefor, within ten (10) days after the filing of the order for the status conference. The application shall be signed by counsel and personally by the party or parties requesting an exemption.

6. Failure of an attorney or a party to be prepared for, appear at, or cooperate in a status conference may subject the attorney or party to sanctions, including an award of attorneys fees and expenses to any attorney or party prejudiced or inconvenienced by such conduct. In ordering sanctions, the Court shall be guided by the provisions of Supreme Court Rule 61.01.

68.9 Interrogatories

1. Any party propounding interrogatories shall use the Pattern Interrogatories approved by the Court, but, upon request, the Court may permit other or further interrogatories.

2. Whenever the Pattern Interrogatories are not used, each interrogatory shall be in the following form: (1) the question shall first be stated, (2) followed by the verified answer of the party asking the question as if the question had been asked of him or her, and (3) followed by a space for the verified answer of the party of whom the question is asked. Each interrogatory shall be prepared in such form that it is gender neutral.

3. Any party propounding interrogatories shall file with the Court, contemporaneously with service of the interrogatories on any other party and in lieu of filing the interrogatories themselves, a Certificate of Service which shall include (1) the identity of the attorney or party served with the interrogatories, (2) the manner of service, (3) the date of service, and (4) the signature of the attorney or party propounding the interrogatories.

4. A party shall answer the Pattern Interrogatories and answer or object to such other or further interrogatories allowed by the Court in the space following each interrogatory and, where appropriate, may answer an interrogatory by specific reference to the appropriate section of said party's Statement of Income and Expense or Statement of Property.

5. Any party answering interrogatories shall file with the Court, contemporaneously with service of the answers on the party who propounded the interrogatories and in lieu of filing the answers themselves, a Certificate of Service which shall include (1) the identity of the attorney or party upon whom the answers are served, (2) the manner of service, (3) the date of service, and (4) the signature of the attorney or party answering the interrogatories.

6. A request for an extension of time to answer interrogatories shall be made first to the party propounding the interrogatories. A request for an extension of time to which the party propounding the interrogatories agrees shall not be filed with the Court unless an order is subsequently requested under Rule 68.22.2 hereof or Supreme Court Rule 61.01(b) for failure to answer the interrogatories.

A request for an extension of time to which the party propounding the interrogatories does not agree shall be filed with the Court, accompanied by a statement that the request was submitted to the party propounding the interrogatories and the reasons expressed for refusal of the request, on or before the required date for filing the interrogatory answers.

A request for an extension of time to which the party propounding the interrogatories does not agree may not be presented to the Court ex parte and shall be presented to Court, with notice to the party propounding the interrogatories, within ten (10) days of the required date for answering the interrogatories; otherwise, the request shall be deemed denied.

7. Objections to interrogatories shall be filed with the Court and noticed for hearing within thirty (30) days after the filing of the Certificate of Service by the party propounding the interrogatories; otherwise, the objections shall be deemed waived. Objections to the Pattern Interrogatories may warrant imposition of sanctions upon the requests of any party or on the Court's own motion.

8. Failure of counsel or any party not represented by counsel to comply with this Rule shall warrant imposition of sanctions upon the request of any party or on the Court's own motion. In ordering sanctions, the Court shall be guided by the provision of Supreme Court Rule 61.01.

68.10 Child Custody Education

1. In any action for dissolution of marriage, legal separation, declaration of invalidity, declaration of paternity, or modification thereof, involving minor unemancipated children shall participate in a Court approved program designed to educate parents on the detrimental effect of parental conflict on children and how to avoid such conflict and the resulting negative effects.

2. The management of the program shall cause to be filed with the Court a Certificate of Completion for each party who completes the program.

3. Petitioner or movant shall complete the program and have a Certificate of Completion filed with the Court within forty-five (45) days after filing the petition for dissolution of marriage, legal separation, declaration of invalidity, declaration of paternity or motion to modify.

4. Respondent shall complete the program and have a Certificate of Completion filed with the Court within forty-five (45) days after service of the petition for dissolution of marriage, legal separation, declaration of invalidity, declaration of paternity or motion to modify.

5. For good cause, the Court may waive the requirements of this Rule for any party.

6. No evidentiary hearing pursuant to Rule 68.8.2 hereof shall be held until the Certificate of Completion of each non-defaulting party has been filed with the Court.

7. Failure of any party to comply with this Rule shall warrant imposition of sanctions upon the request of any party or on the Court's own motion. In ordering sanctions, the Court shall be guided by the provisions of Supreme Court Rule 61.01.

8. The management of the program may request a reasonable voluntary contribution from each participant in the program but may not condition issuance of Certificate of Completion thereon.

68.11 Ex Parte Requests

1. Immediately upon the filing of a petition for dissolution of marriage, legal separation or declaration of invalidity, the Court shall, upon application, enter orders which, during the pendency of the proceeding:

(1) Restrain each party from transferring, concealing, encumbering or in any way disposing of property, marital or separate, except in the usual course of business or for the necessities of life, and, additionally, require notice of any proposed extraordinary expenditures and an accounting of all extraordinary expenditures; and

(2) Restrain each party from harassing, abusing, stalking, molesting or disturbing the peace of any other party and any minor children; and

(3) Restrain each party from terminating any existing coverage for any other party or any minor children under a policy of medical hospitalization insurance; and

(4) Award custody of any minor children, consistent with Section 452.310.3 R.S.Mo., to the party with actual physical custody of the minor child on the date of filing of the petition for dissolution of marriage, legal separation or declaration of invalidity; and

(5) Award scheduled visitation with any minor children to the party without actual physical custody unless the initial pleading of the party with actual physical custody alleges that unrestricted regular visitation will endanger the minor children's physical health or impair the minor children's emotional development;

(6) Restrain each party, consistent with Section 452.310.3 R.S.Mo., from removing any minor children from the State of Missouri without Court permission.

2. In any proceeding for dissolution of marriage, legal separation or declaration of invalidity or any proceeding for declaration of paternity where the father is petitioner, subject to the provisions of subsection 3, the Court may, if necessary, enter orders which, during the pendency of the proceeding:

(1) Provide for the use, occupancy, management and control of property,

marital or separate, and, upon a showing that physical or emotional harm may result, exclude a party from the family home or from the home of any party;

- (2) Provide for the legal and physical custody of any minor children;
- (3) Provide for regular visitation with any minor children;
- (4) Provide for the maintenance of any party and the support of any minor children;
- (5) Provide for coverage of any party or any minor children under a policy of medical and hospitalization insurance;
- (6) Provide for the expenses of litigation and, where appropriate, reasonable attorney's fees;
- (7) Preserve the status quo of the parties and assure each party reasonable access to and use of the assets and credit of the parties.

3. Any order authorized under subsection 2 of this Rule may be entered ex parte upon any party filing a verified pleading which sets forth each party's income, earned and unearned, the factual basis for the relief requested, and the specific amounts requested. Any pleading filed under this subsection shall be accompanied by the party's Statement of Income and Expenses, Statement of Property and, where appropriate, Form 14.

(1) No order entered under subdivision (2) of subsection 2 may change the legal or physical custody of any minor children from the party with custody of the minor children under any order entered pursuant to subdivision (4) of subsection 1 without sworn testimony or affidavit, as the Court may determine, demonstrating extraordinary circumstances.

(2) No order entered under subdivision (3) of subsection 2 may change the scheduled visitation with any minor children by the party without actual physical custody under subdivision (5) of subsection 1 without sworn testimony or affidavit, as the Court may determine, demonstrating extraordinary circumstances.

(3) Sanctions may be imposed, upon the request of any party or on the Court's own motion, if the Court finds that the party will actual physical custody of any minor children has

alleged that unrestricted regular visitation by the party without actual physical custody will endanger the minor children's physical health or impair the minor children's emotional development for the purpose of unduly limiting contact between any minor children and the party without actual physical custody.

4. Any order entered under this Rule, subject to the limitations of subsection 6, shall be immediately effective and, subject to the provisions of subsection 5, shall remain in full force and effect, without necessity of further order of Court, until a final decree or order is entered or the proceeding is dismissed.

(1) Service of process of any order entered under this Rule shall be effected only by personal service pursuant to the requirements of Supreme Court Rule 54.

5. The Court shall hear any motion to vacate or modify an order entered under this Rule, except for good cause, within fifteen (15) days after the filing of the motion to vacate or modify.

(1) Any order entered in modification or vacation of an order entered under this Rule shall be retroactive to the date of entry of the original order.

(2) The Court may, if a separate written request is filed contemporaneously with any motion to vacate or modify an order entered under this Rule, order an evidentiary hearing, which shall be conducted pursuant to Rule 68.12 hereof, to determine whether any order entered pursuant to subsections 1 and 2 shall be vacated or modified and, if so, the order which shall be entered in modification or vacation thereof.

(3) Subject to the provisions of subsection 6, any request for an evidentiary hearing will not suspend or delay commencement of the rights and obligations under any order entered pursuant to subsections 1 and 2.

6. Any order entered pursuant to subdivisions (4) and (6) of subsection 2 may be enforced by execution or garnishment as follows:

(1) No writ of execution or garnishment shall be issued unless (A) 15 or more days have elapsed since the date on which the order was served upon the party required to pay

support, maintenance, attorneys fees or litigation expenses, and (B) the order contains a notice that it is enforceable by execution or garnishment and that the party served with the order has a right to request that the order be vacated or modified by motion filed within 15 days after service of the order.

(2) No bond shall be required for the issuance of a writ of execution of garnishment under this Rule, but any writ of execution or garnishment issued hereunder shall be subject to the procedures and limitations of Supreme Court Rule 90.

(3) A party requesting issuance of a writ of execution or garnishment on any order entered under this Rule shall file an affidavit with the Court Clerk that:

(A) The order contained the notice required under subdivision (1) of this subsection; and

(B) 15 or more days have elapsed since the order was served upon the party required to pay support, maintenance, attorneys fees or litigation expenses; and

(C) Either no motion to vacate or modify the order was timely filed, or a motion to vacate or modify the order was timely filed and, after hearing, the court neither vacated nor modified the order.

68.12 Pendants Lite Orders

1. Any request for an evidentiary hearing pursuant to Rule 68.11 hereof on issues of custody or visitation shall advise the Court of any other order or pending proceeding which relates to custody or visitation of a minor unemancipated child whose custody or visitation is at issue.

2. Any evidentiary hearing ordered under Rule 68.11 hereof may, in the sole discretion of the Court, be conducted by a master, who shall be an attorney licensed to practice law in this State and shall be appointed by the Court within five (5) days after the filing of the separate written request for an evidentiary hearing required under subsection 5 of Rule 68.11 hereof.

3. Any evidentiary hearing before a master shall be held, except for good cause, no later than then (10) days after appointment of the master, shall be limited to three (3) hours, which

shall be divided equally between the parties, and shall be conducted on the record only if one party arranges for the attendance of a court reporter, in which event said party shall bear the cost of attendance of the reporter and preparation of the original transcript for filing with the Court.

4. The master shall be paid a reasonable fee, as determined by the Court, for none hour of preparation before and after the hearing and for each hour of hearing, which shall be paid by the party requesting the evidentiary hearing no later than immediately prior to commencement of the hearing. The Court may later enter a judgement assessing the fee paid to the master as recoverable against any other party.

68.13 Entry of Judgement Upon Affidavit

1. A final order of decree in any action for dissolution of marriage, legal separation, declaration of invalidity, or declaration of paternity, or in any action in modification thereof, may be entered upon the affidavit of any party when:

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

(b) The respondent has been served in accordance with the Missouri Rules of Civil Procedure or has filed with the Court 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 are represented by counsel and have entered into a written agreement for the division of their marital property.

2. Any party requesting a final order or decree upon affidavit shall file with the Court an affidavit containing the facts necessary to establish the jurisdiction of the Court and support the relief requested, together with a proposed final order or decree, any written agreement to be submitted to the Court for approval, a completed Form 14, and all other supporting documents.

3. The filing of an affidavit shall not shorten any statutory waiting period required for entry of a final decree of dissolution of marriage or legal separation.

4. The Court is not required to enter a final order of decree upon the affidavit of any party but may, on its own motion, require an evidentiary hearing to determine any or all issues presented by the pleadings.

68.14 Discovery Schedule - Forms

[Attached to this rule are] Forms 68.14A and 68.14B; which are incorporated in and made a part of this Rule, may be used, where appropriate, to schedule discovery. [These forms may be modified as necessary.]

68.15 Production of Documents

1. Any party requesting the production of designated documents by any other party shall attach to the request for production (1) a copy of each document which such party would be required to produce if the request for production had been made upon him or her, and (2) a verified statement identifying each designated document not in the possession or control of such party. Each request for production shall be prepared in such form that it is gender neutral.

2. Any party requesting the production of designated documents shall file with the Court, contemporaneously with service of the request for production on any other party and in lieu of filing the request for production and the designated documents themselves, a Certificate of Service which shall include (1) the identity of the attorney or party served with the request for production, (2) the manner of service, (3) the date of service, and (4) the signature of the attorney or party requesting production of the designated documents.

3. Any party producing designated documents shall file with the Court, contemporaneously with service of the response to the request for production and the designated documents on the party who requested their production and in lieu of filing the response and documents themselves, a Certificate of Service which shall include (1) the identity of the attorney or party to whom the documents have been produced, (2) the manner of service, (3) the date of service, and (4) the signature of the attorney or party producing the documents.

4. A request for an extension of time to respond to a request for production shall be made first to the party requesting production of designated documents. A request for an extension of time to which the party requesting production agrees shall not be filed with the Court unless an order is subsequently requested under Rule 68.22.2 hereof or Supreme Court Rule 61.01(b) for failure to produce any designated documents.

A request for an extension of time to which the party requesting production does not agree shall be filed with the Court, accompanied by a statement that the request was submitted to the party requesting production and the reasons expressed for refusal of the request, on or before the date for producing the designated documents.

A request for an extension of time to which the party requesting production does not agree may not be presented to the Court ex parte and shall be presented to the Court, with notice to the party requesting production, within ten (10) days of the required date for producing the requested documents; otherwise, the request shall be deemed denied.

5. Objections to production of any designated document shall be filed with the Court and noticed for hearing within thirty (30) days after the filing of the Certificate of Service by the party requesting production; otherwise, the objections shall be deemed waived.

6. Failure of counsel or any party not represented by counsel to comply with this Rule shall warrant imposition of sanctions upon the request of any party or on the Court's own motion. In ordering sanctions, the Court shall be guided by the provisions of Supreme Court Rule 61.01.

68.16 Offer of Judgement

1. In any action for dissolution of marriage, legal separation, declaration of invalidity, or declaration of paternity, or in any action in modification thereof, any time prior to ten (10) days before commencement of the evidentiary hearing, any party may serve upon any other party a written offer for entry of the judgment therein.

2. The offer, which subject to the provisions of subsection 3, shall be filed with the Court only at the conclusion of the evidentiary hearing, may include all issues before the Court or

be limited to one or more of the following issues: (1) custody and visitation, (2) child support, (3) maintenance, (4) attorneys fees, (5) division of marital property, (6) determination of status of property as separate or marital, (7) that the marriage is irretrievably broken, (8) the existence of the parent-child relationship, or (9) a substantial and continuing change of circumstances.

3. To accept an offer, the offeree shall serve on the offeror, within the acceptance period specified in subsection 4, written notice of agreement to entry of the judgment specified in the offer and shall file with the Court a copy of the offer and the notice of agreement and proof of service of the notice of agreement on the offeror, in which event the Court shall enter the agreed upon judgment unless it finds that the provisions for custody, visitation or support of the minor children are not in their best interests or that the provisions for the division of property are unconscionable.

An offer is irrevocable during the acceptance period specified in subsection 4, and any offer not accepted within the acceptance period shall be deemed withdrawn and, except in a proceeding to determine costs, evidence thereof shall be inadmissible.

4. The acceptance period shall be ten (10) days from receipt of an offer unless the offer is made within ninety (90) days after service and discovery is incomplete. Upon the request of the offeree within the said ninety (90) day period, the Court may extend the period for acceptance of an offer, but, in all events, the acceptance period shall terminate upon expiration of the said ninety day period or upon expiration of any extended period, whichever is later. Any party who has made an offer shall have ten (10) days to respond to any counter-offer. Notwithstanding any other provision of this Rule, the acceptance period shall terminate upon commencement of the evidentiary hearing.

5. If the judgement entered after the evidentiary hearing is not more favorable to the offeree than the offer, upon the request of the offeror, the offeree must pay the actual costs incurred by the offeror subsequent to the date of service of the offer on the offeree in prosecution or defense of those issues specified in the offer. "Actual costs" are the costs and fees taxable in a civil action and a reasonable attorneys fee for the services incurred by counsel for the offeror as a result of the

failure of the offeree to agree to entry of the judgment specified in the offer.

6. Any request by the offeror under this Rule for actual costs shall include a copy of the offer and proof of service of the offer on the offeree and shall be filed with the Court and noticed for hearing within thirty (30) days after entry of the judgment or of an order denying a timely motion for new trial or to set aside the judgment.

The hearing for actual costs need not be conducted, but the date for the hearing need be set, by the Court within the time prescribed under this Rule; otherwise, the request by the offeror for actual costs shall be deemed waived.

7. In any proceeding to determine actual costs, except for good cause, the Court shall consider only evidence presented during the evidentiary hearing. Failure to present evidence relevant to actual costs which was available shall not be good cause hereunder.

8. The making of an offer which is not accepted does not preclude the making of a subsequent offer, and if a party makes more than one offer, the most recent offer controls for the purpose of this Rule.

9. The making of an offer pursuant to this Rule shall not by itself be cause for continuance or postponement of an evidentiary hearing.

10. If the Court rejects the acceptance of any part of any offer, this Rule shall not apply to the rejected parts of the offer, and, in such event, within ten (10) days of the rejection by the Court, either party may withdraw the remaining parts of the offer or acceptance.

68.17 Retroactive Payment of Child Support

1. In any action to modify an obligation of support of a minor child in a decree of dissolution, decree of legal separation or order of paternity, there shall exist a presumption that any modification (increase or decrease) 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 later occur.

2. If the obligation for payment of support for a minor child is increased, any amounts paid by a party in excess of the existing support obligation under a decree of dissolution, decree of

legal separation 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.

3. If the obligation for payment of support for minor child is decreased, any amounts paid by a party in excess of the support obligation, as modified, under a decree of dissolution, decree of legal separation 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 toward any arrearage and the balance, if any, applied to future support.

68.18 Court Appointed Experts

1. On its own motion or the motion of any party, the Court may appoint an expert witness on any issue which the Court must resolve under any petition for dissolution of marriage, legal separation, declaration of invalidity or declaration of paternity, motion to modify or motion for contempt.

2. An expert witness may be an individual agreed upon by the parties or, in the absence of their agreement, selected as follows: each party shall submit a list of qualified individuals to the other party, who shall, upon receipt, reduce the list to one nominee for submission to the Court, which shall, upon receipt of each party's nominee, select one individual to be the expert witness or, if, in its sole discretion, it finds neither nominee qualified, direct the parties to repeat the selection procedure.

3. No individual shall be appointed an expert witness under this Rule unless he or she consents to act. The Court shall inform the expert witness of his or her duties in writing, a copy of which shall be filed with the Clerk, or at a status conference at which all parties are represented and have an opportunity to participate.

4. An expert witness appointed under this Rule shall advise all parties in writing of his or her findings and conclusions, which shall be admissible in evidence without foundation, may be deposed by a party, may be called to testify by the Court or any party, and may be cross-examined by the Court and all parties, including the party who calls him or her as a witness.

5. Within twenty (20) days after his or her appointment, the expert witness shall request in writing production within thirty (30) days by each party, in person or, where appropriate, by counsel, of all documents and information in the possession or control of such party necessary for the expert witness to prepare his findings and conclusions.

6. An expert witness appointed under this Rule is entitled to reasonable compensation for his or her services, which compensation shall be determined by the Court, in its sole discretion, and shall be paid by the parties in such proportions and at such times as the Court directs.

7. Nothing in this Rule shall prohibit any party from retaining an expert witness of his or her own selection, who shall confer with the expert witness selected by the Court under this Rule and prepare a written list of issues on which they agree and disagree, including the reasons for any disagreement, and, except for good cause shown, such expert witness shall be compensated by said party.

68.19 Motions to Modify - Notice

1. Notice of any hearing on a motion to modify a prior order for child custody and a copy of each order modifying a prior order for child custody shall be served by ordinary mail at the last known address on any person who has been served with a copy of the motion to modify and who has not filed a verified response consenting to modification of the prior order for child custody.

68.20 Enforcement of Visitation

1. Within five (5) days after receipt of a written complaint stating the specific facts which constitute a violation of a parent's rights to visitation or custody with a minor child under any decree of dissolution or legal separation or order of paternity, the Domestic Relations Unit shall initiate proceedings to enforce the provisions for visitation or custody under the decree of dissolution or legal separation or order of paternity.

2. The Domestic Relations Unit shall send by ordinary mail to the parent who has

allegedly violated the provisions for visitation or custody in any decree of dissolution or legal separation or order of paternity a notice which informs the parent of the specific facts which constitutes the alleged violations and of the availability of mediation through the Domestic Relations Unit to assist in resolving the existing difficulties with compliance with the said provisions for visitation and custody. The notice shall contain the following statement in boldface type:

PURSUANT TO LOCAL RULE 68.20, FAILURE TO ATTEND THE SCHEDULED APPOINTMENT, OR TO OTHERWISE RESPOND TO THIS LETTER WITHIN 5 DAYS, TO DISCUSS A SATISFACTORY RESOLUTION OF THE ALLEGATIONS OF THE COMPLAINT MAY RESULT IN THE FILING OF A MOTION FOR CONTEMPT AGAINST YOU.

3. Within fourteen (14) days after notice to the alleged violator, the Domestic Relations Unit shall meet with the parents and, where appropriate, the minor child to attempt mediation of the existing difficulties with compliance with the said provisions for visitation or custody.

4. Upon completion of the initial mediation session, the Domestic Relations Unit may, in its sole discretion, schedule subsequent sessions with the parents and, to the extent appropriate, any minor child.

5. Upon completions of the scheduled mediation sessions, the Domestic Relations Unit shall (1) inform the Court that mediation has been successful, that the existing difficulties have been resolved, and that, therefore, no further intervention by the Court is required at this time, (2) inform the Court that mediation has been unsuccessful in resolving the existing difficulties as a result of the failure of the complaining parent to cooperate and that, therefore, intervention by the Court is unnecessary at this time, or (3) inform the Court that mediation has been unsuccessful in resolving the existing difficulties and that, therefore, the complaining parent has been advised of the right to file a motion for contempt.

6. Upon finding the parent who has allegedly violated the provisions for visitation or temporary custody in any decree of dissolution or legal separation or order of paternity in

contempt, the Court may impose any sanction authorized by law.

Rule 68.21 Extensions of Time - Pleadings

1. A request for an extension of time to file a responsive pleading shall not be granted except as expressly provided in this Rule.
2. A request for an extension of twenty (20) days within which to file a responsive pleading, if timely filed, will, upon the contemporaneous filing of an entry of appearance, be granted ex parte. A subsequent requests for an extension of time shall be made first to each opposing party, by counsel or, where appropriate, individually.
3. A subsequent request for an extension of time to which all parties agree shall not be filed with the Court, but if any opposing party does not consent, the request, accompanied by a specific statement that the request has been submitted to each opposing party and the reasons expressed for refusal of the request, shall be filed with the Court on or before the date required for filing the responsive pleading.
4. A subsequent request for an extension of time which has been timely filed may not be presented to the Court ex parte and shall be presented to the Court, with notice to each opposing party, within ten (10) days of the date for filing the responsive pleading; otherwise, the request shall be deemed denied.

68.22 Pre-Trial Motions – Compelling Discovery

1. An pre-trial motion, other than a motion for an ex parte order, and the notice of hearing on such motion shall be served on all parties not in default not later than five (5) days before the scheduled hearing on such motion or within five (5) days after scheduling the motion for hearing, whichever is earlier, unless a different period is ordered by the Court. Any pre-trial motion which is non-testimonial, including any motion filed pursuant to subsection 5 of Rule 68.11 hereof, shall be scheduled for hearing within thirty (30) days after filing; otherwise, the motion shall be deemed withdrawn.

Any pre-trial motion scheduled for hearing for which neither party appears, by counsel or, where appropriate, individually, and of which the Court is not apprised of an agreed upon resolution or continuance shall be deemed denied.

2. Any party requesting an order compelling discovery shall file with the Court and serve pursuant to section 1 on the party failing to comply with discovery a motion to compel discover, together with a notice of hearing and the certificate required under Rule 33.5 hereof.

At any hearing on the said motion, the party requesting an order compelling discovery shall present to the Court, in person or by counsel, an order which sets forth (1) the specified discovery sought, (2) the specific time period for compliance, and (3) the sanctions to be imposed for failure to comply within the specified time period.

If the party failing to comply with discovery appears, in person or by counsel, pursuant to the notice of hearing, the order compelling discovery shall be effective on the date of its entry, but if the party failing to comply with discovery does not appear, in person or by counsel, the order compelling discovery will be effective on the date of service of a copy of the order on the party failing to comply with discovery.

Rule 68.23 Case Management Plan

1. Division 15 of the Family Court will employ a “Day Certain Case Management System”, which will insure that each action always has a “Future Action Date”.

An action may be placed in the “Day Certain System” by the Court scheduling or by a party requesting, by counsel or, where appropriate, individually, a status conference. Once an action is placed in the “Day Certain System”, it shall always have a “Future Action Date,” which may include a discovery schedule or other activity but will always include a date for either an evidentiary hearing, another status conference, or, if the prescribed activity is not completed timely, dismissal.

2. Evidentiary hearings will be scheduled only during a status conference after all parties, by counsel or, where appropriate, individually, have confirmed their availability and, in

most cases, only after discovery has been completed. An evidentiary hearing will not be continued for the failure of any party to complete discovery, and each evidentiary hearing will be finalized within an allotted time period.

On the scheduled date for the evidentiary hearing, there shall be no further settlement discussions initiated by the Court. The status conferences will be the only attempts by the Court to achieve an agreed upon resolution.

Adopted	05/27/97
Effective	07/01/97

APPENDIX B

ATTORNEY SURVEY

General information:

We were going to throw out all of the information for attorneys who handled less than 20 child custody cases per year..however, over half the sample handled less than 20 so kept all.

About the population:

Total number of respondents: 51

Age:

Range: 27-75

Mean: 47.43

N = 44

SD = 11.18

RACE

African American = 1

Asian = 1

Caucasian = 48

Hispanic = 1

Number of child custody cases handled:

0-20 = 38

21-50 = 10

101+ = 4

Were you practicing domestic law in STL city prior to Local Rule 68?

37 = yes

11 = no

3 = no response

THESE ARE QUESTIONS PERTAINING TO 1995!!!!

Standard 1.3-Effective Participation

This standard was measured by one item:

1. Overall the family courts gave all who appeared before it the opportunity to participate without undue hardship or inconvenience.

N = 37

Mean = 5.00

sd = 1.37

t = 4.43

p<.000

Standard 3.4 – Clarity

This standard was measured by 2 items:

1. The family courts reached clear decisions regarding child custody.
2. The family courts communicated their decisions regarding child custody clearly.

Alpha = .95

N = 37

Mean = 5.16

p = .000

t = 4.53

Standard 4.2-Accountability for public resources

1. The family courts responsibly used its public resources.
2. The family courts responsibly accounted for its public resources.

Alpha = .92

N = 29

Mean = 4.45

p = .101

t = 1.70

Standard 5.2-Expeditious, fair and reliable court functions

1. The child custody agreements reached by the family courts were fair.

N = 36

Mean = 4.75

p = .004

t = 3.04

Overall satisfaction question:

N = 37

Mean = 4.81

p = .002

t = 3.27

THESE ARE QUESTIONS PERTAINING TO 2000!!!!

Standard 1.3-Effective Participation

This standard was measured by one item:

1. Overall, the family courts gave all who appeared before it the opportunity to participate without undue hardship or inconvenience.

N = 47

Mean = 5.3

sd = 1.44

t = 6.13

p<.000

Standard 3.4 – Clarity

This standard was measured by 2 items:

1. The family courts reached clear decisions regarding child custody.
2. The family courts communicated their decisions regarding child custody clearly.

Alpha = .97

N = 46

Mean = 5.44

sd = 1.35

p = .000

t = 7.23

Standard 4.2-Accountability for public resources

1. The family courts responsibly use its public resources.
2. The family courts responsible accounted for its public resources.

Alpha = .95
N = 37
sd = 1.20
Mean = 5.00
p = .00
t = 25.30

Standard 5.2-Expeditious, fair and reliable court functions

1. The child custody agreements reached by the family courts were fair.

N = 39
Mean = 5.34
sd = 1.15
p = .000
t = 7.31

Overall satisfaction questions:

1. Mediation has had a positive impact on child custody cases.

N = 41
Mean = 5.00
SD = 1.6
p = .000
t = 4.010

2. Mediation is a waste of time.

N = 44
Mean = 2.48 (remember this is reverse scored)
SD = 1.59
p = .000
t = -6.35

3. Overall, I was very satisfied with the mediation services provided by the family courts in child custody cases.

N = 43
Mean = 4.93

SD = 1.70

p = .001

t = 3.597

Mean Comparisons

Paired Sample Statistics					
		Mean	N	Std. Deviation	Std. Error Mean
Pair 1	ST3.4	5.1622	37	1.5593	.2563
	ST3.42	5.3986	37	1.4086	.2316
Pair 2	ST4.2	4.3571	28	1.3599	.2570
	ST4.22	4.8929	28	1.1969	.2262
Pair 3	9th	5.13	39	1.56	.25
	ST5.22	5.3397	39	1.1449	.1833

Paired Samples Correlation's					
			N	Correlation	Sig
Pair 1	ST3.4 & ST3.42		37	.093	.584
	ST3.4 & ST3.42		37	.093	.584
Pair 2	ST4.2 & ST4.22		28	.189	.335
	ST4.2 & ST4.22		28	.189	.355
Pair 3	9h & ST5.22		39	.933	.000
	9h & ST5.22		39	.933	.000

Paired Samples Test									
		Paired Differences Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of Difference				
					Lower	Upper			
Pair 1	ST3.4- ST3.42	-.2365	2.0017	.3291	-.9039	.4309	-.719	36	.477
Pair 1	ST3.4-	.2365	2.0017	.3291	-.9039	.4309	-.719	36	.477

	ST3.42									
Pair 2	ST4.2-	-.5357	1.6326	.3085	-1.1688	9.734E-02	-1.736	27	.094	
	ST4.22									
Pair 2	ST4.2-	.5357	1.6326	.3085	-1.1688	9.734E-02	-1.736	27	.094	
	ST4.22									
Pair 3	9h-	-.2115	.6401	.1025	-.4190	-4.0577E-03	-2.064	38	.046	
	ST5.22									

**In the Circuit Court of the City of St. Louis
Family Court**

November 13, 2001

To Whom It May Concern:

Attached you will find a survey. The court is involved in research to determine how effective you found mediation services. This survey measures satisfaction, access, timeliness, and public trust and confidence.

How were you selected? This survey was mailed to all members of the Family Law section of the Metropolitan St. Louis Bar Association. Your responses are completely confidential. If you would like to state your name that is voluntary.

The results of this survey are a major piece of a research project, which will focus on court-connected mediation and local rules. As courts around the country struggle with increasingly more complicated matters and longer dockets they are looking at ways of moving cases more effectively. **As a consumer (both directly and indirectly) of our service your input and ideas are very important. Your participation is very important.**

This survey should take about **5 minutes to complete**. After you are finished please place in the postage-paid envelope provided and return to the court. You may use a pencil or a pen.

If some portion of the survey does not apply just indicate N/A.

If faxing is more convenient please fax back at 552-2393.

Thank you very much.

Katherine B. Miller, M.Ed.

Supervisor, Mediation and Special Court Services

SECTION 1: Please tell us a little about yourself.

Name _____

1. Age _____

2. Sex _____

4. Telephone number _____

5. Race (please check all that apply)

African American/Black

Alaskan Native

Asian

Caucasian/White

Hispanic

Native American

Other (please specify _____)

6. Education Level

Some high school

High School/GED

Some college

Associates Degree

B.A./B.S.

M.A./M.S.

Ph.D.

SECTION 2: The following questions ask you to rate your level of agreement with each of the statements provided. These statements refer to your feelings about the mediation services provided by the court (i.e., when you, your child's other parent, and a court connected person met to discuss child custody issues **outside** of the courtroom). Please write the number which corresponds most closely with your level of agreement in the blank to the left of each statement.

1	2	3	4	5	6	7
Strongly Disagree	Disagree	Slightly Disagree	Neutral	Slightly Agree	Agree	Strongly Agree

- _____ 1) I felt safe when attending mediation sessions.
- _____ 2) The location of the mediation sessions was convenient.
- _____ 3) Parking at Family Court Services was convenient.
- _____ 4) The times scheduled for my mediation session were convenient.
- _____ 5) The staff members treated me with courtesy and respect.
- _____ 6) It would be helpful if mediation sessions could be held in the evening.
- _____ 7) My time was wasted by attending the mediation sessions.
- _____ 8) Staff members responded to my requests for information quickly.
- _____ 9) I understood the agreements reached at the end of the mediation process.
- _____ 10) The agreements reached were unclear.
- _____ 11) Overall, it was convenient for me to attend the mediation sessions.
- _____ 12) Overall, I was very satisfied with the mediation services provided to me.
- _____ 13) It was easy to find staff members who could answer my questions.
- _____ 14) The staff members were very knowledgeable.
- _____ 15) The mediation services were provided in a timely manner.

_____ 16) The mediator was fair.

_____ 17) The agreements reached were fair.

SECTION 3: Sometimes close-ended responses do not enable a person to fully express his/her opinion. In the space provided, please respond to the questions in your own words. If you need more space, please use the back of this sheet.

1. What did you like most about the mediation process?

2. What did you like least about the mediation process?

3. What is the one thing you would like to change about the mediation process?

4. What was the biggest problem you had when trying to settle your case?

5. What was the outcome of your case?

6. What did you know about the mediation services provided by Family Court Services before your case? Where did you learn this information?

**In the Circuit Court of the City of St. Louis
Family Court**

November 2001

To Whom It May Concern:

Attached you will find a survey. The court is involved in research to determine how effective you found mediation services. This survey measures satisfaction, access, timeliness, and public trust and confidence.

How were you selected? All domestic files were placed in a randomization database and only those names selected were sent this survey. Your responses are completely confidential. If you would like to state your name that is voluntary.

The results of this survey are a major piece of a research project, which will focus on court-connected mediation and local rules. As courts around the country struggle with increasingly more complicated matters and longer dockets they are looking at ways of moving cases more effectively. **As a consumer of our service you're input and ideas are very important. Your participation is very important.**

This survey should take about **5 minutes to complete**. After you are finished please place in the postage-paid envelope provided and return to the court. You may use a pencil or a pen.

If some portion of the survey does not apply just indicate N/A.

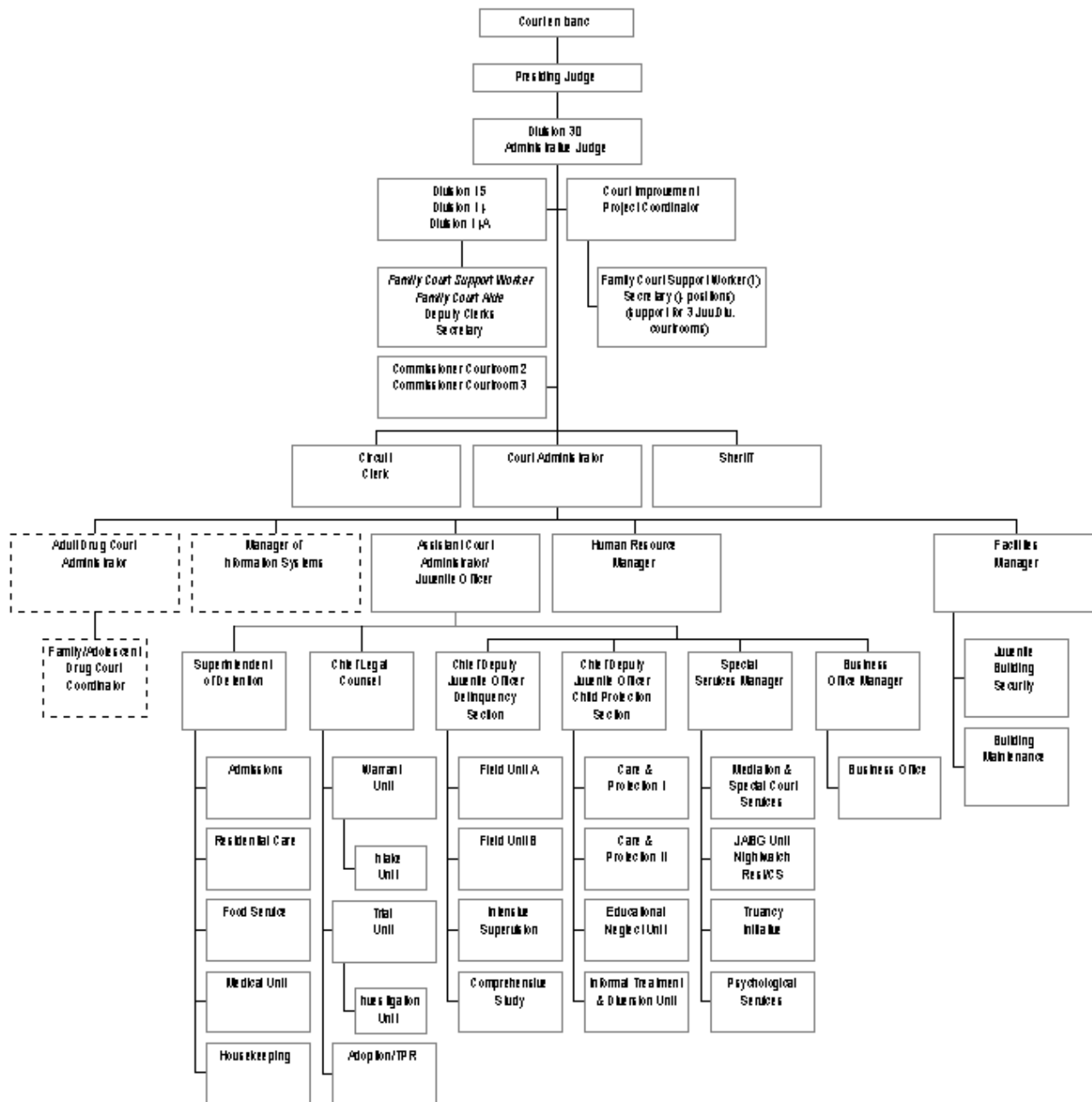
If faxing is more convenient please fax back at 552-2393.

Thank you very much.

Katherine B. Miller, M.Ed.
Supervisor, Mediation and Special Court Services

APPENDIX C

Twenty-Second Judicial Circuit Unified Family Court Table of Organization



Italics indicates UFC positions not yet funded. Two deputy clerk positions remain unfunded.

December 2001

APPENDIX D

IN THE CIRCUIT COURT OF THE CITY OF ST LOUIS STATE OF MISSOURI

Date

Cause No.: _____

Dear: _____

We have been contacted by your former spouse with regard to difficulties he/she is experiencing in exercising his/her rights to visitation and temporary custody under a decree of dissolution which awarded to him/her temporary custody and visitation with his/her minor child(ren). (See Complaint attached).

PURSUANT TO LOCAL RULE 68.20, FAILURE TO ATTEND THE SCHEDULED APPOINTMENT OR OTHERWISE RESPOND TO THIS LETTER WITHIN 5 DAYS TO DISCUSS A SATISFACTORY RESOLUTION OF THE ALLEGATIONS OF THE COMPLAINT MAY RESULT IN THE FILING OF A MOTION FOR CONTEMPT AGAINST YOU.

We are prepared to assist you and your former spouse in resolving the existing difficulties. Accordingly, an appointment for mediation with the Mediation and Special Court Services Unit at the Family Court located at 920 North Vandeventer, St. Louis, Missouri 63108 or 3827 Enright, St. Louis, Missouri, which is cost free, is scheduled for you and your former spouse on _____, 200__ at _____ a.m./p.m. Please call the Mediation and Special Court Services Unit at (314) 552-_____ to confirm your attendance.

MEDIATION AND SPECIAL COURT SERVICES UNIT

BY: _____

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THIS OFFICE AT 920 NORTH VANDEVENTER, ST. LOUIS, MO 63108, OR BY PHONE (314) 552-2000 VOICE/TDD (314) 531-6158.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

In re the Matter of:)	
)	
_____)	
_____)	Cause No.
Petitioner)	
_____ and)	Division No.
)	
_____)	
Respondent)	

_____ Date:

_____ Pursuant to Local Rule 68.20 the
(Petitioner) (Respondent) has initiated proceedings to enforce the provisions of the Court Order dated
_____. As such, and according to local rule, the parties were
noticed to appear in the Mediation and Special Court Services Unit on
_____ at _____ (A.M.) (P.M.).

Present for enforcement of visitation were:

(Check if present)

_____ Petitioner
(name)

_____ Respondent
(name)

Child(ren) (name & ages of each)

Local Rule 68.20 instructs that the following shall be reported to the Court.

Mediation has been successful, and existing difficulties have been resolved, and that, therefore, no further intervention by the Court is required at this time.

Mediation has been unsuccessful in resolving the existing difficulties as a result of the failure of the complaining parent to cooperate and that, therefore, intervention by the Court is unnecessary at this time.

Mediation has been unsuccessful in resolving the existing difficulties and that, therefore, the complaining parent has been advised of the right to file a motion for contempt and/or a Family Access Motion.

Be advised that the parent who has allegedly violated the provisions for visitation or temporary custody in any decree of dissolution or legal separation or order of paternity may be in contempt. As such, the Court **MAY** impose any sanction authorized by law.

Respectfully Submitted on _____

Mediator

Mediation and Special Court Services Unit

Attachment: A (signed) (unsigned) agreement between the parties (is) (is not) attached.

cc: All parties

APPENDIX E

Missouri Revised Statutes

Chapter 452

Dissolution of Marriage, Divorce, Alimony and Separate Maintenance

August 28, 2001

Remarriage of former spouse ends alimony.

452.075. When a divorce has been granted, and the court has made an order or decree providing for the payment of alimony and maintenance, the remarriage of the former spouse shall relieve the spouse obligated to pay support from further payment of alimony to the former spouse from the date of the remarriage, without the necessity of further court action, but the remarriage shall not relieve the former spouse from the provisions of any judgment or decree or order providing for the support of any minor children.

(L. 1957 p. 390 § 1, A.L. 2001 H.B. 537)

(1977) Subsequent remarriage terminated alimony even though such marriage was annulled because of fraud. Glass v. Glass (A.), 546 S.W.2d 738.

Decree for alimony--a lien, when.

452.080. Upon a decree of divorce, the court may, in its discretion, decree alimony in gross or from year to year. When alimony is decreed in gross, such decree shall be a general lien on the realty of the party against whom the decree may be rendered, as in the case of other judgments. When such decree is for alimony from year to year, such decree shall not be a lien on the realty as aforesaid, but an execution in the hands of the proper officer, issued for the purpose of enforcing such decree, shall constitute a lien on the real and personal property of the defendant in such execution, so long as the same shall lawfully remain in the possession of such officer unsatisfied. In lieu of the lien of such decree for alimony from year to year, it is hereby provided that the party against whom such decree may be rendered shall be required to give security ample and sufficient for such alimony; but where default has been made in giving such security, the decree for alimony from year to year shall be a lien as in case of general judgments.

(RSMo 1939 § 1520, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 1356; 1919 § 1807; 1909 § 2376

(1977) Statute allowing award of maintenance in gross was not repealed by the dissolution of marriage statutes and § 452.335 does not preclude award of maintenance in gross. Carr v. Carr (A.), 556 S.W.2d 511.

Decree as to alimony only subject to review.

452.110. No petition for review of any judgment for divorce, rendered in any case arising pursuant to this chapter, shall be allowed, any law or statute to the contrary notwithstanding; but there may be a review of any order or judgment touching the alimony and maintenance of the spouse, and the care, custody and maintenance of the children, or any of them, as in other cases.

(RSMo 1939 § 1525, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 1361; 1919 § 1812; 1909 § 2381

Spouse abandoned, court to adjudge maintenance--execution to enforce.

452.130. When a person, without good cause, shall abandon his or her spouse, and refuse or neglect to maintain and provide for him or her, the circuit court, on his or her petition for that purpose, shall order and adjudge such support and maintenance to be provided and paid by such person for the spouse and the spouse's children, or any of them, by that marriage, out of his property, and for such time as the nature of the case and the circumstances of the parties shall require, and compel the person to give security for such maintenance, and from time to time make such further orders touching the same as shall be just, and enforce such judgment by execution, sequestration of property, or by such other lawful means as are in accordance with the practice of the court; and as long as said maintenance is continued, the person shall not be charged with the spouse's debts, contracted after the judgment for such maintenance.

(RSMo 1939 § 3376, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 2989; 1919 § 7314; 1909 § 8295

CROSS REFERENCE: Amounts paid under order of support, credited how, RSMo 454.280

(1973) Judgment of trial court dismissing Petition for Separate Maintenance with prejudice may not be set aside unless it is clearly erroneous. Brokaw v. Brokaw (A.), 492 S.W.2d 859.

No property exempt from attachment or execution, when.

452.140. No property shall be exempt from attachment or execution in a proceeding instituted by a

person for maintenance, nor from attachment or execution upon a judgment or order issued to enforce a decree for alimony or for the support and maintenance of children. And all wages due to the defendant shall be subject to garnishment on attachment or execution in any proceedings mentioned in this section, whether the wages are due from the garnishee to the defendant for the last thirty days' service or not.

(RSMo 1939 § 3377, A.L. 1957 p. 391, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 2990; 1919 § 7315; 1909 § 8296

(1952) Garnishment on judgment in divorce action for support and maintenance of minor children held limited to ten percent of wages of defendant who had remarried, had children and was head of family. *York v. York* (A.), 249 S.W.2d 870.

(1957) Where judgment consisting of \$1,243.33 for alimony and \$2,486.67 for child support was revived in 1953 against nonresident defendant, garnishment could reach only 10% of amount of defendant's wages for child support but entire amount of wages could be seized to satisfy judgment for alimony. *Ferneau v. Armour & Co.* (A.), 303 S.W.2d 161.

Services and earnings of unmarried minor children--custody and control of.

452.150. The father and mother living apart are entitled to an adjudication by the circuit court as to their powers, rights and duties in respect to the custody and control and the services and earnings and management of the property of their unmarried minor children without any preference as between the said father and mother, and neither the father nor the mother has any right paramount to that of the other in respect to the custody and control or the services and earnings or of the management of the property of their said unmarried minor children; pending such adjudication the father or mother who actually has the custody and control of said unmarried minor children shall have the sole right to the custody and control and to the services and earnings and to the management of the property of said unmarried minor children.

(RSMo 1939 § 1526, A.L. 1998 S.B. 910)

Prior revisions: 1929 § 1362; 1919 § 1813

CROSS REFERENCES: Consent of parents necessary to adopt, RSMo 453.030 to 453.050 Custody of children, award on habeas corpus, RSMo 532.370 Transfer of custody of child prohibited, RSMo 453.110

(1953) Where divorce decree awarded custody of child to father and made no provision for visitation by the mother, nor for keeping the child in this state, the removal of the child from the state by the father did not constitute contempt. *Middleton v. Tozer* (A.), 259 S.W.2d 80.

(1953) On motion to modify decree as to custody of minor child, there must not only be proof of a change in conditions but it must be a change that would beneficially affect the interest of the child. *Frams v. Black* (A.), 259 S.W.2d 104.

(1954) In action by divorced mother to recover amounts expended for support of child from its father, limitations must be computed from the time the cause of action accrued and not from the date of last item in the account. *Allen v. Allen*, 364 Mo. 955, 270 S.W.2d 33.

(1957) Court of equity has inherent power to allow suit money attorney fees to the mother in proceeding to obtain custody of child. *I.... v. B....* (A.), 305 S.W.2d 713.

(1963) Where court makes no custody award in a divorce action, it is not res judicata in subsequent action for custody of children. R.... v. E.... (A.), 364 S.W.2d 821.

(1963) Jurisdiction of trial court in divorce action to make an ad interim order with respect to the temporary custody of minor children pending the appeal, upon pleading and proof that their welfare is substantially endangered during that period, is not divested by the giving of the statutory supersedeas bond. State ex re. Stone v. Ferris (Mo.), 369 S.W.2d 244.

(1968) The Missouri Supreme Court held that the proper construction of Missouri statutory provisions relating to the obligations and rights of parents affords illegitimate children a right equal with that of legitimate children to require support by their fathers. Prior cases to the contrary were expressly overruled. R.... v. R.... (Mo.), 431 S.W.2d 152.

Father and mother, parent, child, defined--how construed.

452.160. The terms of section 452.150 shall apply to children born out of wedlock and to children born in wedlock, and the terms "father and mother", "parent", "child", shall apply without reference to whether a child was born in lawful wedlock.

(RSMo 1939 § 1527)

Prior revision: 1929 § 1363

CROSS REFERENCE: Issue of certain marriages legitimate, RSMo 474.080

(1968) The Missouri Supreme Court held that the proper construction of Missouri statutory provisions relating to the obligations and rights of parents affords illegitimate children a right equal with that of legitimate children to require support by their fathers. Prior cases to the contrary were expressly overruled. R. . . . v. R. . . . (Mo.), 431 S.W.2d 152.

Petition for enjoyment of spouse's separate estate, when.

452.170. If any married person shall hold real estate in his or her own right, and his or her spouse, by criminal conduct toward him or her, or by ill usage, shall give him or her cause to live separate and apart from him or her, such person may petition the circuit court, setting forth such facts, and therein pray that such estate may be enjoyed by him or her for his or her sole use and benefit.

(RSMo 1939 § 3386, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 2999; 1919 § 7324; 1909 § 8305

Circuit court may make decree.

452.180. The circuit court, on due proof of such facts, may, in its discretion, make such order and decree in the premises as shall give such married person the sole use and benefit of such real estate, or such part thereof as it may think reasonable.

(RSMo 1939 § 3387, A.L. 2001 H.B. 537)

Authorization by court to sell property.

452.190. When any married person shall abandon his or her spouse, or from worthlessness, drunkenness or other cause fail to make sufficient provision for his or her support, the circuit court of the county where he or she has his or her home and residence may, on his or her petition, authorize him or her to sell and convey his or her real estate, or any part thereof, and also any personal estate which shall, at the time, have come to such person by reason of the marriage, and which may remain within the state undisposed of by him.

(RSMo 1939 § 3378, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 2991; 1919 § 7316; 1909 § 8297

Married person enjoined from squandering property at suit of spouse.

452.200. Any married person may file a petition in the circuit court, setting forth that his or her spouse, from habitual intemperance, or any other cause, is about to squander and waste the property, money, credits or choses in action to which he or she is entitled in his or her own right, or any part thereof, or is proceeding fraudulently to convert the same, or any part thereof, to the spouse's own use, for the purpose of placing the same beyond his or her reach, and depriving him or her of the benefit thereof; and the court, upon the hearing of the case, may enjoin the spouse from disposing of or otherwise interfering with such property, moneys, credits and choses in action, and may appoint a receiver to control and manage the same for the benefit of the petitioner, and may also make such other order in the premises as they may deem just and proper, and upon the filing of such petition an injunction may be allowed as in other cases, and such petition shall be filed in the county where said petitioner resides, and the spouse of said petitioner shall be made a party defendant to said petition.

(RSMo 1939 § 1682, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 1518; 1919 § 1968; 1909 § 2533

Court may authorize persons holding money of married person to pay spouse.

452.210. The court may also, upon the petition of such person, authorize any person holding money or other personal estate to which the spouse is entitled in his or her right to pay and deliver the same to the petitioner, and may authorize him or her to give a discharge for the same, which discharge shall be as valid as if made by the spouse.

(RSMo 1939 § 3379, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 2992; 1919 § 7317; 1909 § 8298

Married person entitled to proceeds of earnings of his or her minor children, when.

452.220. Such married person, during the period his or her spouse shall fail to provide for his or her support, as stated in section 452.130, shall be entitled to the proceeds of the earnings of his or her minor children; and the same shall be under his or her sole control and shall not be liable in any manner for the spouse's debts.

(RSMo 1939 § 3380, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 2993; 1919 § 7318; 1909 § 8299

Proceeds used for support of himself or herself and family.

452.230. All the proceeds of such sales, and all other money and personal estate which shall come to the hands of a person by force of the provisions of sections 451.250 to 451.300, RSMo, and sections 452.130, 452.140, 452.170 to 452.190 and 452.210 to 452.250, may be used and disposed of by him or her for the necessary support of himself or herself and family.

(RSMo 1939 § 3381, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 2994; 1919 § 7319; 1909 § 8300

CROSS REFERENCE: Workers' compensation death benefits, rights of widows and children, RSMo 287.240

Filing of petition, proceedings.

452.240. The petition of a married person for any of the purposes before mentioned may be filed and the case heard and determined in the circuit court, and the like process and proceedings shall be had as in other civil suits triable before circuit judges.

(RSMo 1939 § 3382, A.L. 1978 H.B. 1634, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 2995; 1919 § 7320; 1909 § 8301

Proceedings on such petition--appeal allowed, when and where.

452.250. The same proceedings shall be had in relation to such petition as the law requires in other proceedings before circuit judges, and in relation to enforcing the orders and decrees, except that no appeal shall be allowed to the supreme court, or court of appeals, from any order or decree, on the part of the person's spouse, until he or she has indemnified the petitioner for all delays and costs, in such manner as the court shall direct.

(RSMo 1939 § 3388, A.L. 1973 S.B. 263, A.L. 1978 H.B. 1634, A.L. 2001 H.B. 537)

Prior revisions: 1929 § 3001; 1919 § 7326; 1909 § 8307

Procedure and venue.

452.300. 1. The rules of the supreme court and other applicable court rules shall govern all proceedings pursuant to sections 452.300 to 452.415.

2. A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled: "In re the Marriage of and".

3. The initial pleading in an original proceeding pursuant to sections 452.300 to 452.415 shall be denominated a "petition" and the responsive pleading in an original proceeding shall be denominated an "answer". Other pleadings in an original proceeding and all pleadings in other proceedings pursuant to sections 452.300 to 452.415 shall be denominated as provided in the rules of the supreme court and other applicable court rules.

4. Any party who files the initial pleading in an original proceeding pursuant to sections 452.300 to 452.415 shall be denominated the "petitioner" and any party who is required to file or who files a responsive pleading in an original proceeding shall be denominated the "respondent". Each party shall retain such denomination from the original proceeding in any other proceedings pursuant to sections 452.300 to 452.415.

5. An original proceeding pursuant to sections 452.300 to 452.415 shall be commenced in the county in which the petitioner resides or in the county in which the respondent resides. If an original proceeding is commenced in the county in which the petitioner resides, upon motion by the respondent filed prior to the filing of a responsive pleading, the court in which the proceeding is commenced may transfer the proceeding to the county in which the respondent resides if:

(1) The county in which the respondent resides had been the county in which the children resided during the ninety days immediately preceding the commencement of the proceeding; or

(2) The best interest of the children will be served if the proceeding is transferred to the county in which the respondent resides because:

(a) The children and at least one parent have a significant connection with the county; and

(b) There is substantial evidence concerning the present or future care, protection and personal relationships of the children in the county.

6. In proceedings pursuant to sections 452.300 to 452.415, "judgment" shall include a "decree".

(L. 1973 H.B. 315 § 1, A.L. 1998 S.B. 910)

Judgment of dissolution, grounds for--legal separation, when --judgments to contain Social Security numbers.

452.305. 1. The court shall enter a judgment of dissolution of marriage if:

- (1) The court finds that one of the parties has been a resident of this state, or is a member of the armed services who has been stationed in this state, for ninety days immediately preceding the commencement of the proceeding and that thirty days have elapsed since the filing of the petition; and
- (2) The court finds that there remains no reasonable likelihood that the marriage can be preserved and that therefore the marriage is irretrievably broken; and
- (3) To the extent it has jurisdiction, the court has considered and made provision for child custody, the support of each child, the maintenance of either spouse and the disposition of property.

2. The court shall enter a judgment of legal separation if:

- (1) The court finds that one of the parties has been a resident of this state, or is a member of the armed services who has been stationed in this state, for ninety days immediately preceding the commencement of the proceeding and that thirty days have elapsed since the filing of the petition; and
- (2) The court finds that there remains a reasonable likelihood that the marriage can be preserved and that therefore the marriage is not irretrievably broken; and
- (3) To the extent it has jurisdiction, the court has considered and made provision for the custody and the support of each child, the maintenance of either spouse and the disposition of property.

3. Any judgment of dissolution of marriage or legal separation shall include the Social Security numbers of the parties.

(L. 1973 H.B. 315 § 2, A.L. 1997 S.B. 361, A.L. 1998 S.B. 910)

(1976) Held, a cross bill seeking separate maintenance coupled with an after trial motion to amend the dissolution decree to one of legal separation does not require court to enter a decree of legal separation. *Nichols v. Nichols* (A.), 538 S.W.2d 727.

(1977) Held, that court must grant a decree of legal separation if either party requests it. The court applies the rule that when conflicting provisions occur in an act the last in order of position shall prevail. *McRoberts v. McRoberts* (A.), 555 S.W.2d 682.

Petition, contents--service, how--rules to apply--defenses abolished--parenting plans submitted, when, content.

452.310. 1. In any proceeding commenced pursuant to this chapter, the petition, a motion to modify, a motion for a family access order and a motion for contempt shall be verified. The petition in a proceeding for dissolution of marriage shall allege that the marriage is irretrievably broken and that therefore there remains no reasonable likelihood that the marriage can be preserved. The petition in a proceeding for legal separation shall allege that the marriage is not irretrievably broken and that therefore there remains a reasonable likelihood that the marriage can be preserved.

2. The petition in a proceeding for dissolution of marriage or legal separation shall set forth:

- (1) The residence of each party, including the county, and the length of residence of each party in this state and in the county of residence;
- (2) The date of the marriage and the place at which it is registered;
- (3) The date on which the parties separated;
- (4) The name, date of birth and address of each child, and the parent with whom each child has primarily resided for the sixty days immediately preceding the filing of the petition for dissolution of marriage or legal separation;
- (5) Whether the wife is pregnant;
- (6) The Social Security number of the petitioner, respondent and each child;
- (7) Any arrangements as to the custody and support of the children and the maintenance of each party; and
- (8) The relief sought.

3. Upon the filing of the petition in a proceeding for dissolution of marriage or legal separation, each child shall immediately be subject to the jurisdiction of the court in which the proceeding is commenced, unless a proceeding involving allegations of abuse or neglect of the child is pending in juvenile court. Until permitted by order of the court, neither parent shall remove any child from the jurisdiction of the court or from any parent with whom the child has primarily resided for the sixty days immediately preceding the filing of a petition for dissolution of marriage or legal separation.

4. The mere fact that one parent has actual possession of the child at the time of filing shall not create a preference in favor of such parent in any judicial determination regarding custody of the child.

5. The respondent shall be served in the manner provided by the rules of the supreme court and applicable court rules and, to avoid an interlocutory judgment of default, shall file a verified answer within thirty days of the date of service which shall not only admit or deny the allegations

of the petition, but shall also set forth:

- (1) The Social Security number of the petitioner, respondent and each child;
 - (2) Any arrangements as to the custody and support of the child and the maintenance of each party;
and
 - (3) The relief sought.
6. Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.
7. The petitioner and respondent shall submit a proposed parenting plan, either individually or jointly, within thirty days after service of process or the filing of the entry of appearance, whichever event first occurs of a motion to modify or a petition involving custody or visitation issues. The proposed parenting plan shall set forth the arrangements that the party believes to be in the best interest of the minor children and shall include but not be limited to:
- (1) A specific written schedule detailing the custody, visitation and residential time for each child with each party including:
 - (a) Major holidays stating which holidays a party has each year;
 - (b) School holidays for school-age children;
 - (c) The child's birthday, Mother's Day and Father's Day;
 - (d) Weekday and weekend schedules and for school-age children how the winter, spring, summer and other vacations from school will be spent;
 - (e) The times and places for transfer of the child between the parties in connection with the residential schedule;
 - (f) A plan for sharing transportation duties associated with the residential schedule;
 - (g) Appropriate times for telephone access;
 - (h) Suggested procedures for notifying the other party when a party requests a temporary variation from the residential schedule;
 - (i) Any suggested restrictions or limitations on access to a party and the reasons such restrictions are requested;
 - (2) A specific written plan regarding legal custody which details how the decision-making rights and responsibilities will be shared between the parties including the following:
 - (a) Educational decisions and methods of communicating information from the school to both parties;
 - (b) Medical, dental and health care decisions including how health care providers will be selected

and a method of communicating medical conditions of the child and how emergency care will be handled;

(c) Extracurricular activities, including a method for determining which activities the child will participate in when those activities involve time during which each party is the custodian;

(d) Child care providers, including how such providers will be selected;

(e) Communication procedures including access to telephone numbers as appropriate;

(f) A dispute resolution procedure for those matters on which the parties disagree or in interpreting the parenting plan;

(g) If a party suggests no shared decision-making, a statement of the reasons for such a request;

(3) How the expenses of the child, including child care, educational and extraordinary expenses as defined in the child support guidelines established by the supreme court, will be paid including:

(a) The suggested amount of child support to be paid by each party;

(b) The party who will maintain or provide health insurance for the child and how the medical, dental, vision, psychological and other health care expenses of the child not paid by insurance will be paid by the parties;

(c) The payment of educational expenses, if any;

(d) The payment of extraordinary expenses of the child, if any;

(e) Child care expenses, if any;

(f) Transportation expenses, if any.

8. If the proposed parenting plans of the parties differ and the parties cannot resolve the differences or if any party fails to file a proposed parenting plan, upon motion of either party and an opportunity for the parties to be heard, the court shall enter a temporary order containing a parenting plan setting forth the arrangements specified in subsection 7 of this section which will remain in effect until further order of the court. The temporary order entered by the court shall not create a preference for the court in its adjudication of final custody, child support or visitation.

9. Within one hundred twenty days after August 28, 1998, the Missouri supreme court shall have in effect guidelines for a parenting plan form which may be used by the parties pursuant to this section in any dissolution of marriage, legal separation or modification proceeding involving issues of custody and visitation relating to the child.

(L. 1973 H.B. 315 § 3, A.L. 1990 H.B. 1370, et al., A.L. 1998 S.B. 910, A.L. 1999 S.B. 1, et al.)

Petition for dissolution filed when, requirements.

452.311. A petition is not filed within the meaning of supreme court rule 53.01 in any cause of action authorized by the provisions of this chapter, unless a summons is issued forthwith as required by supreme court rule 54.01, a verified entry of appearance of respondent is filed or an attorney files an entry of appearance on behalf of respondent.

(L. 1989 1st Ex. Sess. H.B. 2 § 7, A.L. 1991 S.B. 312)

Parties' current employers and Social Security numbers to be contained in certain pleadings and decrees.

452.312. 1. Every petition for dissolution of marriage or legal separation, every motion for modification of a decree respecting maintenance or support, and every petition or motion for support of a minor child shall contain the name and address of the current employer and the Social Security number of the petitioner or movant, if a person, and, if known to petitioner or movant, the name and address of the current employer and the Social Security number of the respondent.

2. Every responsive pleading to a petition for dissolution of marriage or legal separation, motion for modification of a decree respecting maintenance or support, and petition or motion for support of a minor child shall contain the name and address of the current employer and the Social Security number of the respondent, if the respondent is a person.

3. Every decree dissolving a marriage, every order modifying a previous decree of dissolution or divorce, and every order for support of a minor child shall contain the Social Security numbers of the parties, if disclosed by the pleadings.

(L. 1984 H.B. 1275)

Guardian for incapacitated person may file for dissolution or separation if ward is a victim of spousal abuse.

452.314. Notwithstanding any other provision of law to the contrary, a guardian for an incapacitated person may file a petition for dissolution of the marriage of, or if the incapacitated person has a history of religious objection to divorce, the guardian may file for a legal separation for such incapacitated person and may give testimony in support of the allegations contained in the petition, if the guardian has reasonable cause to believe that the incapacitated person has been the victim of abuse by the spouse of such incapacitated person.

(L. 1990 H.B. 1370, et al.)

Authorized motions--restraining order, when, answer, when due, effect of--child support, temporary order, when, amount.

452.315. 1. In a proceeding for dissolution of marriage or legal separation, either party may move for temporary maintenance and for temporary support for each child entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested. In a proceeding for disposition of property, maintenance or support following the dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for maintenance and for support of each child entitled to support. This motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested. This motion and the affidavit shall be served as though an original pleading upon the opposite party.

2. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue an order after notice and hearing:

(1) Restraining any person from transferring, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the order is issued;

(2) Enjoining a party from harassing, abusing, molesting or disturbing the peace of the other party or of any child;

(3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(4) Establishing and ordering compliance with a custody order and providing for the support of each child.

3. The court may issue a restraining order only if it finds on the evidence that irreparable injury would result to the moving party if an order is not issued until the time for answering has elapsed.

4. An answer may be filed within ten days after service of notice of motion or at the time specified in the restraining order.

5. On the basis of the showing made and in conformity with section 452.335 on maintenance and section 452.340 on support, the court may issue a temporary injunction and an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances.

6. A restraining order or temporary injunction:

(1) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceedings;

(2) May be revoked or modified prior to final judgment on a showing by affidavit of the facts necessary to revocation or modification of a final judgment pursuant to section 452.370; and

(3) Terminates when the final judgment is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

7. The court shall enter a temporary order requiring the provision of child support pending the final judicial determination if there is clear and convincing evidence establishing a presumption of paternity pursuant to section 210.822, RSMo. In determining the amount of child support, the court shall consider the factors set forth in section 452.340.

8. Any order entered in modification or vacation of any temporary order entered pursuant to this section may be retroactive to the date of entry of the original temporary order.

(L. 1973 H.B. 315 § 4, A.L. 1997 S.B. 361, A.L. 1998 S.B. 910)

Termination of insurance prohibited, when.

452.317. From the date of filing of the petition for dissolution of marriage or legal separation, no party shall terminate coverage during the pendency of the proceeding for any other party or any minor child of the marriage under any existing policy of health, dental or vision insurance.

(L. 1998 S.B. 910 § 3)

Counseling for minor children ordered, when, costs.

452.318. In any action for dissolution of marriage involving minor children, the court may order counseling for such children. The court may assess and apportion the costs of child counseling between the parties.

(L. 1999 S.B. 329 § 1)

Finding that marriage is irretrievably broken, when--notice--denial by a party, effect of--alternate findings.

452.320. 1. If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after considering the aforesaid petition or statement, and after a hearing thereon shall make a finding whether or not the marriage is irretrievably broken and shall enter an order of dissolution or dismissal accordingly.

2. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation, and after hearing the evidence shall

(1) Make a finding whether or not the marriage is irretrievably broken, and in order for the court to find that the marriage is irretrievably broken, the petitioner shall satisfy the court of one or more of the following facts:

- (a) That the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) That the respondent has abandoned the petitioner for a continuous period of at least six months preceding the presentation of the petition;
- (d) That the parties to the marriage have lived separate and apart by mutual consent for a continuous period of twelve months immediately preceding the filing of the petition;
- (e) That the parties to the marriage have lived separate and apart for a continuous period of at least twenty-four months preceding the filing of the petition; or

(2) Continue the matter for further hearing not less than thirty days or more than six months later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. No court shall require counseling as a condition precedent to a decree, nor shall any employee of any court, or of the state or any political subdivision of the state, be utilized as a marriage counselor. At the adjourned hearing, the court shall make a finding whether the marriage is irretrievably broken as set forth in subdivision (1) above and shall enter an order of dissolution or dismissal accordingly.

(L. 1973 H.B. 315 § 5, A.L. 1977 H.B. 470)

(1976) This act is not a true "no fault" dissolution law and dissolution should not be granted over the objection of an innocent spouse. In re Marriage of Mitchell (A.), 545 S.W.2d 313.

(1977) If a party denies under oath that a marriage is irretrievably broken the court must find one of the statutory grounds has been met. Failure to prove any of these grounds must result in a refusal to dissolve the marriage. In re Marriage of Capstick (A.), 547 S.W.2d 522.

(1977) Held, parties had been living "separate and apart" even though they lived in the same home. In re Marriage of Uhls (A.), 549 S.W.2d 107.

(1977) Failure to mail notice does not deprive the court of jurisdiction. LeBeau v. LeBeau (A.), 556 S.W.2d 204.

(1977) Court erroneously applied the law by failing to hold a hearing on whether marriage is irretrievably broken, when absent party, after receiving notice of interlocutory finding, files an objection within ten days. Brown v. Brown (A.), 561 S.W.2d 374.

(1978) Court must make specific finding that marriage was irretrievably broken before granting a decree of dissolution, B.W. v. F.E.W. (A.), 562 S.W.2d 137.

Separation agreements authorized, effect of--orders for disposition of property,

when--terms of agreement, how enforced.

452.325. 1. To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the custody, support and visitation of their children.

2. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except terms providing for the custody, support, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

3. If the court finds the separation agreement unconscionable, the court may request the parties to submit a revised separation agreement or the court may make orders for the disposition of property, support, and maintenance in accordance with the provisions of sections 452.330, 452.335 and 452.340.

4. If the court finds that the separation agreement is not unconscionable as to support, maintenance, and property:

(1) Unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

(2) If the separation agreement provides that its terms shall not be set forth in the decree, only those terms concerning child support, custody and visitation shall be set forth in the decree, and the decree shall state that the court has found the remaining terms not unconscionable.

5. Terms of the agreement set forth in the decree are enforceable by all remedies available for the enforcement of a judgment, and the court may punish any party who willfully violates its decree to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

6. Except for terms concerning the support, custody or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides.

(L. 1973 H.B. 315 § 6)

Effective 1-1-74

(1979) Purpose of statute to put to rest questions of overreaching and fraud in the settlement of property questions, does not require the trial court to make evidentiary examinations of the economic circumstances only after it is found that the separation agreement is unconscionable. *Block v. Block* (A.), 593 S.W.2d 584.

(1987) This section allows but does not require court to investigate and examine the economic circumstances of the parties to the divorce and other relevant factors in determining conscionability of the settlement agreements. *Dow v. Dow*, 732 S.W.2d 906 (Mo. banc).

(1989) Amendment to statute which changes the age on which the obligation to pay child support terminates is a change in condition which authorizes a modification of the judgment where father did not agree to anything beyond that required by law. (Mo.App.W.D.) Kocherov v. Kocherov, 775 S.W.2d 539.

Disposition of property and debts, factors to be considered.

452.330. 1. In a proceeding for dissolution of the marriage or legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall set apart to each spouse such spouse's nonmarital property and shall divide the marital property and marital debts in such proportions as the court deems just after considering all relevant factors including:

- (1) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children;
- (2) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;
- (3) The value of the nonmarital property set apart to each spouse;
- (4) The conduct of the parties during the marriage; and
- (5) Custodial arrangements for minor children.

2. For purposes of sections 452.300 to 452.415 only, "marital property" means all property acquired by either spouse subsequent to the marriage except:

- (1) Property acquired by gift, bequest, devise, or descent;
- (2) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;
- (3) Property acquired by a spouse after a decree of legal separation;
- (4) Property excluded by valid written agreement of the parties; and
- (5) The increase in value of property acquired prior to the marriage or pursuant to subdivisions (1) to (4) of this subsection, unless marital assets including labor, have contributed to such increases and then only to the extent of such contributions.

3. All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation or dissolution of marriage is presumed to be marital property regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection 2 of this

section.

4. Property which would otherwise be nonmarital property shall not become marital property solely because it may have become commingled with marital property.

5. The court's order as it affects distribution of marital property shall be a final order not subject to modification; provided, however, that orders intended to be qualified domestic relations orders affecting pension, profit sharing and stock bonus plans pursuant to the U.S. Internal Revenue Code shall be modifiable only for the purpose of establishing or maintaining the order as a qualified domestic relations order or to revise or conform its terms so as to effectuate the expressed intent of the* order.

6. A certified copy of any decree of court affecting title to real estate may be filed for record in the office of the recorder of deeds of the county and state in which the real estate is situated by the clerk of the court in which the decree was made.

(L. 1973 H.B. 315 § 7, A.L. 1981 H.B. 96, A.L. 1988 H.B. 1272, et al., A.L. 1996 S.B. 869, A.L. 1998 S.B. 910)

*Word "the" omitted from original rolls.

(1975) Rights acquired under a contract to purchase land constitute "property" and "marital property" and are subject to division by the court in a dissolution of marriage. *Claunch v. Claunch* (A.), 525 S.W.2d 788.

(1975) Discussion of items constituting "marital property" and various awards allowable under this section. *Nixon v. Nixon* (A.), S.W.2d 835.

(1975) For extensive discussion of the law under this section, see *In re Marriage of Powers* (A.), 527 S.W.2d 949.

(1976) All property acquired subsequent to marriage taken in joint names is marital property subject to division upon dissolution unless (1) it is shown that such property was acquired in exchange for property acquired prior to the marriage, and (2) it is shown by clear and convincing evidence that the transfer was not intended as a provision for a settlement upon or as a gift to the other spouse. *Conrad v. Bowers* (A.), 533 S.W.2d 614.

(1976) For the purposes of this division of marital property under this section, the "conduct" of the parties during the marriage is a relevant factor to be considered by the trial court and the award to the husband of all of the real estate determined to be marital property was not error. *Conrad v. Bowers* (A.), 533 S.W.2d 614.

(1976) Trial courts are vested with broad discretion in dividing marital property in dissolution of marriage proceedings. *In re Marriage of Vanet* (A.), 544 S.W.2d 236.

(1976) The word "conduct" means general conduct of the parties during the marriage and is not limited to conduct relating to financial misdeeds. *Butcher v. Butcher* (A.), 544 S.W.2d 249.

(1976) For discussion of division of marital property and definition of same see *Davis v. Davis* (A.), 544 S.W.2d 259.

(1977) While wife's misconduct was to be taken into account in dividing marital property, it had begun late in the nineteen year marriage and was not such as to deprive her of right to share equitably in marital property. Thus, in addition to shares in closely held corporation awarded by trial court, she would be awarded a farm acquired by parties during marriage. *Marriage of Schulte* (A.), 546 S.W.2d 41.

(1977) Requirement that court make a division of marital property in a dissolution action is mandatory and failure to comply results in no final judgment in the action. The fact that a final judgment has not been rendered bars an appeal under the provisions of § 512.020, RSMo. *Corder v. Corder* (A.), 546 S.W.2d 798.

(1977) Property purchased with earnings during marriage is marital property regardless of how title is taken. Held error to set a future date for sale of property and allow a party a dollar value when sold. Inflation could seriously alter the value of the amount received so that proper judgment should have been for a percentage of the sale to be held in the future. *Ortmann v. Ortmann* (A.), 550 S.W.2d 226.

(1977) Held, failure of either party's petition to ask for division of property does not relieve trial judge from duty to make a division of the property. *Hulsey v. Hulsey*, (A.), 550 S.W.2d 902.

(1977) A husband may not voluntarily limit his work to reduce his income and escape support payments. A court may in proper circumstances impute an income to a husband according to what he could have earned by the use of his best efforts. *Klinge v. Klinge* (A.), 554 S.W.2d 474.

(1978) Statute does not require equal division of marital property, but only "just" division. This is true where one spouse has engaged in marital misconduct. *Arp v. Arp* (A.), 572 S.W.2d 232.

(1978) Personal jurisdiction over an absent spouse is not necessary to confer jurisdiction for the purpose of dividing marital property. *Chenoweth v. Chenoweth* (A.), 575 S.W.2d 871.

(1984) "Source of funds" theory, adopted in this case, requires that the court determine the character of property by the source of funds financing the purchase, so that the property is considered to have been "acquired" as it is paid for. This theory allows for reimbursement for increase in value of the property. *Hoffman v. Hoffman* (Mo. banc), 676 S.W.2d 817.

(1985) Held, the "source of funds rule" as announced in *Hoffman v. Hoffman*, 676 S.W.2d 817 (Mo banc 1984) should be retrospectively applied. *Sumners v. Sumners*, (Mo.), 701 S.W.2d 720.

(1987) Goodwill in a professional practice is property subject to division pursuant to this section and is defined as the value of the practice which exceeds its tangible assets and which is the result of the tendency of clients/patients to return to and recommend the practice irrespective of the reputation of the individual practitioner. *Hanson v. Hanson*, 738 S.W.2d 429 (Mo. banc.).

(1987) Proper date for valuing marital property in a dissolution proceeding is the date of the trial. *Taylor v. Taylor*, 736 S.W.2d 388 (Mo. banc.).

(1987) It was proper for the court to consider, as an economic circumstance, in making a division of property, the sums voluntarily expended by husband for the support and education of a healthy adult child and to offset the wife's entitlement to husband's retirement pay by sums she received or would have received in maintenance. In *Re Marriage of Dildy*, 737 S.W.2d 756 (Mo.App.S.D.).

(1997) Statute does not allow the court to quash a QDRO and replace it with a domestic relations order that was not qualified. *Offield v. Offield*, 955 S.W.2d 247 (Mo.App.W.D.).

(1999) Statute does not give a trial court discretion to divide and distribute marital property to the parties' children. *Randolph v. Randolph*, 8 S.W.3d 160 (Mo.App.W.D.).

Maintenance order, findings required for--termination date, may be modified, when.

452.335. 1. In a proceeding for nonretroactive invalidity, dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order to either spouse, but only if it finds that the spouse seeking maintenance:

(1) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and

(2) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

2. The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

(1) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(2) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(3) The comparative earning capacity of each spouse;

(4) The standard of living established during the marriage;

(5) The obligations and assets, including the marital property apportioned to him and the separate property of each party;

(6) The duration of the marriage;

(7) The age, and the physical and emotional condition of the spouse seeking maintenance;

(8) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance;

(9) The conduct of the parties during the marriage; and

(10) Any other relevant factors.

3. The maintenance order shall state if it is modifiable or nonmodifiable. The court may order maintenance which includes a termination date. Unless the maintenance order which includes a termination date is nonmodifiable, the court may order the maintenance decreased, increased, terminated, extended, or otherwise modified based upon a substantial and continuing change of circumstances which occurred prior to the termination date of the original order.

(L. 1973 H.B. 315 § 8, A.L. 1988 H.B. 1272, et al.)

(1975) For extensive discussion of the law under this section, see *In re Marriage of Powers* (A.), 527 S.W.2d 949.

(1976) This section does not apply to modification of existing dissolution decree but only to original decree.

Modifications are governed by § 453.370. *Sifers v. Sifers* (A.), 544 S.W.2d 269.

(1976) For discussion of "abuse of discretion" and items to be considered in making property settlements, support and attorney's fee awards, see *Beckman v. Beckman* (A.), 545 S.W.2d 300.

(1977) Held, trial court erred in making a periodically decreasing or "stairstepped" award. Modifications must not be made on speculation. In re Marriage of Cornell (A.), 550 S.W.2d 823.

(1977) Appellate court held that under the circumstances wife, though guilty of misconduct, was entitled to greater proportion of marital property and a continuation, after dissolution of marriage, of maintenance of \$375.00 a month awarded by trial court. Marriage of Schulte (A.), 546 S.W.2d 41.

(1977) Held, "reasonable needs" does not automatically equal the standard of living established during the marriage. There is an affirmative duty on the part of a spouse seeking dissolution to seek employment. Brueggemann v. Bueggemann (A.), 551 S.W.2d 853.

(1977) Maintenance in gross may be awarded under this section. Miller v. Miller (A.), 553 S.W.2d 482.

(1977) Statute allowing award of maintenance in gross was not repealed by the dissolution of marriage statutes and § 452.335 does not preclude award of maintenance in gross. Carr v. Carr (A.), 556 S.W.2d 511.

Child support, how allocated--factors to be considered--abatement or termination of support, when--support after age eighteen, when --public policy of state--payments may be made directly to child, when--child support guidelines, rebuttable presumption, use of guidelines, when--retroactivity--obligation terminated, how.

452.340. 1. In a proceeding for dissolution of marriage, legal separation or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the support of the child, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors including:

- (1) The financial needs and resources of the child;
- (2) The financial resources and needs of the parents;
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) The physical and emotional condition of the child, and the child's educational needs;
- (5) The child's physical and legal custody arrangements, including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements; and
- (6) The reasonable work-related child care expenses of each parent.

2. The obligation of the parent ordered to make support payments shall abate, in whole or in part, for such periods of time in excess of thirty consecutive days that the other parent has voluntarily relinquished physical custody of a child to the parent ordered to pay child support, notwithstanding any periods of visitation or temporary physical and legal or physical or legal custody pursuant to a judgment of dissolution or legal separation or any modification thereof. In a IV-D case, the division of child support enforcement may determine the amount of the abatement pursuant to this

subsection for any child support order and shall record the amount of abatement in the automated child support system record established pursuant to chapter 454, RSMo. If the case is not a IV-D case and upon court order, the circuit clerk shall record the amount of abatement in the automated child support system record established in chapter 454, RSMo.

3. Unless the circumstances of the child manifestly dictate otherwise and the court specifically so provides, the obligation of a parent to make child support payments shall terminate when the child:

(1) Dies;

(2) Marries;

(3) Enters active duty in the military;

(4) Becomes self-supporting, provided that the custodial parent has relinquished the child from parental control by express or implied consent;

(5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply; or

(6) Reaches age twenty-two, unless the provisions of the child support order specifically extend the parental support order past the child's twenty-second birthday for reasons provided by subsection 4 of this section.

4. If the child is physically or mentally incapacitated from supporting himself and insolvent and unmarried, the court may extend the parental support obligation past the child's eighteenth birthday.

5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary school program of instruction, the parental support obligation shall continue, if the child continues to attend and progresses toward completion of said program, until the child completes such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school or completion of a graduation equivalence degree program and so long as the child enrolls for and completes at least twelve hours of credit each semester, not including the summer semester, at an institution of vocational or higher education and achieves grades sufficient to reenroll at such institution, the parental support obligation shall continue until the child completes his or her education, or until the child reaches the age of twenty-two, whichever first occurs. To remain eligible for such continued parental support, at the beginning of each semester the child shall submit to each parent a transcript or similar official document provided by the institution of vocational or higher education which includes the courses the child is enrolled in and has completed for each term, the grades and credits received for each such course, and an official document from the institution listing the courses which the child is enrolled in for the upcoming term and the number of credits for each such course. If the circumstances of the child manifestly dictate, the court may waive the October first deadline for enrollment required by this subsection. If the child is enrolled in such an institution, the child or parent obligated to pay support may petition the court to amend the order to direct the obligated parent to make the payments directly to the child. As used in this section, an "institution of vocational education" means any postsecondary

training or schooling for which the student is assessed a fee and attends classes regularly. "Higher education" means any junior college, community college, college, or university at which the child attends classes regularly. A child who has been diagnosed with a learning disability, or whose physical disability or diagnosed health problem limits the child's ability to carry the number of credit hours prescribed in this subsection, shall remain eligible for child support so long as such child is enrolled in and attending an institution of vocational or higher education, and the child continues to meet the other requirements of this subsection. A child who is employed at least fifteen hours per week during the semester may take as few as nine credit hours per semester and remain eligible for child support so long as all other requirements of this subsection are complied with.

6. The court shall consider ordering a parent to waive the right to claim the tax dependency exemption for a child enrolled in an institution of vocational or higher education in favor of the other parent if the application of state and federal tax laws and eligibility for financial aid will make an award of the exemption to the other parent appropriate.

7. The general assembly finds and declares that it is the public policy of this state that frequent, continuing and meaningful contact with both parents after the parents have separated or dissolved their marriage is in the best interest of the child except for cases where the court specifically finds that such contact is not in the best interest of the child. In order to effectuate this public policy, a court with jurisdiction shall enforce visitation, custody and child support orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or future obligation of support and may transfer the physical and legal or physical or legal custody of one or more children if it finds that a parent has, without good cause, failed to provide visitation or physical and legal or physical or legal custody to the other parent pursuant to the terms of a judgment of dissolution, legal separation or modifications thereof. The court shall also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court costs incurred by the prevailing party.

8. The Missouri supreme court shall have in effect a rule establishing guidelines by which any award of child support shall be made in any judicial or administrative proceeding. Said guidelines shall contain specific, descriptive and numeric criteria which will result in a computation of the support obligation. The guidelines shall address how the amount of child support shall be calculated when an award of joint physical custody results in the child or children spending substantially equal time with both parents. Not later than October 1, 1998, the Missouri supreme court shall publish child support guidelines and specifically list and explain the relevant factors and assumptions that were used to calculate the child support guidelines. Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less than once every three years to ensure that its application results in the determination of appropriate child support award amounts.

9. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established pursuant to subsection 8 of this section is the correct amount of child support to be awarded. A written finding or specific finding on the record in a judicial or administrative proceeding that the application of the guidelines would be unjust or inappropriate in a particular case, after considering all relevant factors, including the factors set out in subsection 1 of this

section, is required if requested by a party and shall be sufficient to rebut the presumption in the case. The written finding or specific finding on the record shall detail the specific relevant factors that required a deviation from the application of the guidelines.

10. Pursuant to this or any other chapter, when a court determines the amount owed by a parent for support provided to a child by another person, other than a parent, prior to the date of filing of a petition requesting support, or when the director of the division of child support enforcement establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of section 454.465, RSMo, the court or director shall use the guidelines established pursuant to subsection 8 of this section. The amount of child support resulting from the application of the guidelines shall be applied retroactively for a period prior to the establishment of a support order and the length of the period of retroactivity shall be left to the discretion of the court or director. There shall be a rebuttable presumption that the amount resulting from application of the guidelines under subsection 8 of this section constitutes the amount owed by the parent for the period prior to the date of the filing of the petition for support or the period for which state debt is being established. In applying the guidelines to determine a retroactive support amount, when information as to average monthly income is available, the court or director may use the average monthly income of the noncustodial parent, as averaged over the period of retroactivity, in determining the amount of presumed child support owed for the period of retroactivity. The court or director may enter a different amount in a particular case upon finding, after consideration of all relevant factors, including the factors set out in subsection 1 of this section, that there is sufficient cause to rebut the presumed amount.

11. The obligation of a parent to make child support payments may be terminated as follows:

- (1) Provided that the child support order contains the child's date of birth, the obligation shall be deemed terminated without further judicial or administrative process when the child reaches age twenty-two if the child support order does not specifically require payment of child support beyond age twenty-two for reasons provided by subsection 4 of this section;
- (2) The obligation shall be deemed terminated without further judicial or administrative process when the parent receiving child support furnishes a sworn statement or affidavit notifying the obligor parent of the child's emancipation in accordance with the requirements of subsection 4 of section 452.370, and a copy of such sworn statement or affidavit is filed with the court which entered the order establishing the child support obligation, or the division of child support enforcement;
- (3) The obligation shall be deemed terminated without further judicial or administrative process, when the parent paying child support files a sworn statement or affidavit with the court which entered the order establishing the child support obligation, or the division of child support enforcement, stating that the child is emancipated and reciting the factual basis for such statement; which statement or affidavit is served by the court or division on the child support obligee; and which is either acknowledged and affirmed by the child support obligee in writing, or which is not responded to in writing within thirty days of receipt by the child support obligee;
- (4) The obligation shall be terminated as provided by this subdivision by the court which entered

the order establishing the child support obligation, or the division of child support enforcement, when the parent paying child support files a sworn statement or affidavit with the court which entered the order establishing the child support obligation, or the division of child support enforcement, stating that the child is emancipated and reciting the factual basis for such statement; and which statement or affidavit is served by the court or division on the child support obligee. If the obligee denies the statement or affidavit, the court or division shall thereupon treat the sworn statement or affidavit as a motion to modify the support obligation pursuant to section 452.370 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion as provided by law; provided that the court may require the payment of a deposit as security for court costs and any accrued court costs, as provided by law, in relation to such motion to modify.

12. The court may enter a judgment terminating child support pursuant to subdivisions (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party. The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant to subsection 11 of this section on both the obligor and obligee parents. The supreme court may promulgate uniform forms for sworn statements and affidavits to terminate orders of child support obligations for use pursuant to subsection 11 of this section and subsection 4 of section 452.370.

(L. 1973 H.B. 315 § 9, A.L. 1988 H.B. 1272, et al., A.L. 1989 1st Ex. Sess. H.B. 2, A.L. 1990 S.B. 834, A.L. 1993 S.B. 253, A.L. 1994 H.B. 1491 & 1134, A.L. 1995 S.B. 174, A.L. 1997 S.B. 361, A.L. 1998 S.B. 910, A.L. 1999 S.B. 1, et al. merged with S.B. 291)

Effective 7-1-99 (S.B. 291) 8-28-99 (S.B. 1, et al.)

(1974) For discussion of child support criteria see *Williams v. Williams* (Mo.), 510 S.W.2d 452.

(1977) Held, trial court did not abuse its discretion in awarding income tax exemption for children to father who did not have custody and was required to pay twenty dollars a week per child as child support. *Roberts v. Roberts* (A.), 553 S.W.2d 305.

(1977) An adopted child is a "child of the marriage" see § 453.090 RSMo. *D.L.C. v. L.C.C.* (A.), 559 S.W.2d 623.

(1993) Parental child support obligation should not be terminated as a result of child's temporary inability to attend classes due to illness or physical disability when substantial evidence supports finding that interruption is temporary and that child intends to continue education. *Braun v. Lied*, 851 S.W.2d 93 (Mo. App W.D.).

(1993) Statute relating to parental support obligation does not require that child attend an institution of higher education on full-time basis. Age limitation protects parent from protracted college education. *Harris v. Rattini*, 855 S.W.2d 410 (Mo. App. E.D.).

(1993) Where child brought action against health care providers for injuries sustained during mother's pregnancy and child was not conceived at time of alleged negligent medical treatment, tort recovery was not barred by two-year statute of limitation. Exception to statute of limitations for children under age ten applied to action. *Lough v. Rolla Women's Clinic, Inc.*, 866 S.W.2d 851 (Mo en banc).

(1994) Cadet at West Point was considered emancipated for purposes of child support even though academy provided education. Cadet's life at West Point is largely controlled by the government, which also provides for the bulk of the cadet's material needs. Federal law establishes that a cadet is part of the regular Army. *Porath v. McVey*, 884 S.W.2d 692 (Mo. App. S.D.).

(1997) Per diem payments received from an employer can be included in gross income when calculating a parent's child support obligation. *Buckner v. Jordan*, 952 S.W.2d 710 (Mo.banc).

(1997) Home-study program for attaining high school diploma was not "secondary school program of instruction" absent a showing of seriousness and good faith efforts on child's part to complete his education. *Russell v. Russell*, 949 S.W.2d 87 (Mo.App.W.D.).

(1999) Section requiring unmarried, divorced or legally separated parents to pay child support for college expenses does not violate equal protection clauses of federal and state constitutions. *In re Marriage of Kohring*, 999 S.W.2d 228 (Mo.banc).

(2000) Section requires child to receive credit for at least twelve hours to maintain eligibility to receive child support. *Lombardo v. Lombardo*, 35 S.W.3d 386 (Mo.App.W.D.).

Obligor may request affidavit, when--cause of action for failure to execute, when--false affidavit, penalty.

452.341. 1. Any person obligated under a judgment or order of a court to make installment payments of child support or spousal support may request from the person entitled to such support payments an affidavit attesting to the fact that the obligor is current in such support payments and that there are, on the date that the request is made, no installment payments due and unpaid. Upon such request by an obligor, any person entitled to child support or spousal support shall execute an affidavit as required by this section.

2. No affidavit shall be required to be executed if any installment of the obligor's support obligation is due or unpaid on the date that the request is made. If, however, any obligor who is current in payment of support obligations makes a request for a statement of that fact under this section and the person entitled to such support payment refuses or fails to execute the affidavit required by this section within ten days of the request, the obligor shall have a cause of action against such person for any damages caused by such failure or refusal and may, in addition to such cause of action, petition a court of competent jurisdiction to order the person entitled to the support obligation to execute the affidavit. Any person who executes a false affidavit under this section commits a class A misdemeanor as provided in section 575.050, RSMo.

(L. 1986 H.B. 1479)

Summary of expenses paid on behalf of child, required when.

452.342. The court which issued a judgment or order of child support payments may, upon petition of the party obligated to make the payments and upon good cause shown, order the custodial parent to furnish the party having the support obligation with a regular summary of expenses paid by the custodial parent on behalf of the child. The court may prescribe the form and substance of the summary.

(L. 1988 H.B. 1272, et al.)

All judgments and orders shall contain the parties' Social Security numbers.

452.343. Notwithstanding any provision of law to the contrary, every judgment or order issued in this state which, in whole or in part, affects* child custody, child support, visitation, modification of custody, support or visitation, or is issued pursuant to section 454.470 or 454.475, RSMo, shall contain the Social Security number of the parties to the action which gives rise to such judgment or order.

(L. 1997 S.B. 361 § 2)

Effective 7-1-97

*Word "effects" appears in original rolls.

Support obligations, bond or other guarantee to secure, when required, procedure--default, effect of.

452.344. 1. Upon entry of an order for support or division of property under this chapter or otherwise, or at any time the court finds any of the elements which constitute grounds for attachment under section 521.010, RSMo, the court, by its own motion or that of a party or assignee of a party, may require that the obligor provide sufficient security, bond or other guarantee to secure the obligation to make support payments or to secure the division of property, conditioned that the obligor will pay all support payments as they come due, together with interest thereon, and will abide the orders of the court with respect to division of property.

2. The bond shall be filed with the clerk of the circuit court in the county where the order for support or division of property is filed, and the bond may be entered into before the clerk, if the court or judge entering the order for support or division of property shall first approve of the security.

3. The court, upon default in the condition of the bond, shall enter judgment against the obligors on the bond, according to the circumstances of the case, including interest or damages, and may award execution thereon, or otherwise enforce such judgment, according to the rules and practice of the court.

(L. 1984 H.B. 1275)

Maintenance or support payments to circuit clerk or family support payment center, when--procedure--duties of parties--failure to pay, circuit clerk duties.

452.345. 1. As used in sections 452.345 to 452.350, the term "IV-D case" shall mean a case in which support rights have been assigned to the state of Missouri or where the division of child support enforcement is providing support enforcement services pursuant to section 454.400,

RSMo.

2. At any time the court, upon its own motion, may, or upon the motion of either party shall, order that maintenance or support payments be made to the circuit clerk as trustee for remittance to the person entitled to receive the payments. The circuit clerk shall remit such support payments to the person entitled to receive the payments within three working days of receipt by the circuit clerk. Circuit clerks shall deposit all receipts no later than the next working day after receipt. Payment by a nonguaranteed negotiable financial instrument occurs when the instrument has cleared the depository institution and has been credited to the trust account. Effective October 1, 1999, at any time the court may upon its own motion, or shall upon the motion of either party, order that support payments as required by section 454.530, RSMo, be made to the family support payment center established in section 454.530, RSMo, as trustee for remittance to the person entitled to receive the payments. However, in no case shall the court order payments to be made to the payment center if the division of child support enforcement notifies the court that such payments shall not be made to the center. In such cases, payments shall be made to the clerk as trustee until the division notifies the court that payments shall be directed to the payment center. Further, with the agreement of the division, the court may order payments to be made to the payment center prior to October 1, 1999.
3. The circuit clerk shall maintain records in the automated child support system which list the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order. Nothing in this section shall prohibit the division of child support enforcement from entering information in the records of the automated child support system, as provided for in chapter 454, RSMo.
4. The parties affected by the order shall inform the circuit clerk or the payment center established in section 454.530, RSMo, of any change of address or of other conditions that may affect the administration of the order.
5. For any case in which an order for support or maintenance was entered prior to January 1, 1994, which has not been modified subsequent to that date, except a IV-D case, if a party becomes delinquent in maintenance or support payments in an amount equal to one month's total support obligation, the provisions of this subsection shall apply. If the circuit clerk has been appointed trustee under subsection 2 of this section, or if the person entitled to receive the payments files with the clerk an affidavit stating the particulars of the obligor's noncompliance, the circuit clerk shall send by regular mail notice of the delinquency to the obligor. This notice shall advise the obligor of the delinquency, shall state the amount of the obligation, and shall advise that the obligor's income is subject to withholding for repayment of the delinquency and for payment of current support, as provided in section 452.350. For such cases, the circuit clerk shall, in addition to the notice to the obligor, send by regular mail a notice to the obligee. This notice shall state the amount of the delinquency and shall advise the obligee that income withholding, pursuant to section 452.350, is available for collection of support delinquencies and current support, and if the support order includes amounts for child support, that support enforcement services, pursuant to section 454.425, RSMo, are available through the Missouri division of child support enforcement of the department of social services.

S.B. 248 merged with S.B. 361, A.L. 1999 S.B. 291)

Effective 7-1-99

(1976) Proceeding to cite defendant for contempt for failure to pay court ordered support and maintenance for plaintiff and their minor children classified as civil contempt and subject to review on appeal. Judgment, with sentence of imprisonment, reversed and remanded since there was no evidence from which trial court could have concluded that defendant was financially able to pay the award. *Teefey v. Teefey* (Mo.), 533 S.W.2d 563.

(1976) Held that imprisonment for contempt is proper remedy for failure to comply with court order for maintenance and child support when person disobeying order has intentionally placed himself in a position which made compliance impossible. *State ex rel. Stanhope v. Pratt* overruling *Coughlin v. Ehlert*, 39 Mo. 285 (1866). *State ex rel. Stanhope v. Pratt* (Mo.), 533 S.W.2d 567.

(1976) Court may not amend an alimony payment order of its own motion. *Dolan v. Dolan* (A.), 540 S.W.2d 220.

Medical assistance documentation provided, when.

452.346. Upon written request of a parent of a child, as defined in section 452.302, who is receiving medical assistance pursuant to section 208.151, RSMo, the division of family services shall provide such parent with documentation that allows the child to obtain medical assistance. This section shall not apply to parents of children in the custody of a public agency.

(L. 1998 S.B. 910 § 6)

Notice of a child support establishment or modification proceeding, when--copy of the order provided, when.

452.347. In any proceeding before a court where child support may be established or modified for an applicant or recipient of child support services pursuant to chapter 454:

(1) The applicant or recipient of child support enforcement services shall be provided by any other party with notice pursuant to Rule 41 of the Missouri rules of civil procedures of all proceedings in which support obligations may be established or modified. Notice to an attorney representing a party is deemed notice on the party for purposes of this section; and

(2) A copy of any order establishing or modifying a child support obligation, or an order denying a modification shall be mailed to the division of child support enforcement by the court within fourteen days of issuance of such order.

(L. 1997 S.B. 361)

Effective 7-1-97

Withholding of income, voluntary or court may order, when, when effective--hearing, when--employer, duties, liabilities, fee --discharge or discipline of employee because of a withholding notice prohibited, penalty--civil contempt proceeding authorized --amendment, termination and priorities of withholdings.

452.350. 1. Until January 1, 1994, except for orders entered or modified in IV-D cases, each order for child support or maintenance entered or modified by the court pursuant to the authority of this chapter, or otherwise, shall include a provision notifying the person obligated to pay such support or maintenance that, upon application by the obligee or the Missouri division of child support enforcement of the department of social services, the obligor's wages or other income shall be subject to withholding without further notice if the obligor becomes delinquent in maintenance or child support payments in an amount equal to one month's total support obligation. The order shall also contain provisions notifying the obligor that:

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

2. For all orders entered or modified in IV-D cases, and effective January 1, 1994, for every order for child support or maintenance entered or modified by the court pursuant to the authority of this chapter, or otherwise, income withholding pursuant to this section shall be initiated on the effective date of the order, except that such withholding shall not commence with the effective date of the order in any case where:

- (1) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding. For purposes of this subdivision, any finding that there is good cause not to require immediate withholding must be based on, at least, a written determination and an explanation by the court that implementing immediate wage withholding would not be in the best interests of the child and proof of timely payments of previously ordered support in cases involving the modification of support orders; or
- (2) A written agreement is reached between the parties that provides for an alternative arrangement.

If the income of an obligor is not withheld as of the effective date of the support order, pursuant to subdivision (1) or (2) of this subsection, or otherwise, such obligor's income shall become subject to withholding pursuant to this section without further exception on the date on which the obligor becomes delinquent in maintenance or child support payments in an amount equal to one month's total support obligation. Such withholding shall be initiated in the manner provided in subsection 4 of this section. All IV-D orders entered or modified by the court shall contain a provision notifying the obligor that he or she shall notify the division of child support enforcement regarding the availability of medical insurance coverage through an employer or a group plan, provide the name of the insurance provider when coverage is available, and inform the division of any change in

access to such insurance coverage. Any income withheld pursuant to this section for a support order initially entered on or after October 1, 1999, shall be paid to the payment center pursuant to section 454.530, RSMo. Any order of the court entered on or after October 1, 1999, establishing the withholding for a support order as defined in section 454.460, RSMo, or notice from the clerk issued on or after October 1, 1999, pursuant to this section for a support order shall require payment to the payment center pursuant to section 454.530, RSMo.

3. The provisions of section 432.030, RSMo, to the contrary notwithstanding, if income withholding has not been initiated on the effective date of the initial or modified order, the obligated party may execute a voluntary income assignment at any time, which assignment shall be filed with the court and shall take effect after service on the employer or other payor.

4. The circuit clerk, upon application of the obligee or the division of child support enforcement, shall send, by certified mail, return receipt requested, a written notice to the employer or other payor listed on the application when the obligated party is subject to withholding pursuant to the child support order or subsection 2 of this section. For orders entered or modified in cases known by the circuit clerk to be IV-D cases in which income withholding is to be initiated on the effective date of the order, and effective January 1, 1994, for all orders entered or modified by the court in which income withholding is to be initiated on the effective date of the order, the circuit clerk shall send such notice to the employer or other payor in the manner provided by this section at the time the order is entered without application of any party when an employer or other payor is identified to the circuit clerk by inclusion in the pleadings pursuant to section 452.312, or otherwise. The notice of income withholding shall be prepared by the person entitled to support pursuant to the order, or the legal representative of that person, on a form prescribed by the court, and shall be presented to the clerk of the court at the time the order of support is entered. The notice shall direct the employer or other payor to withhold each month an amount equal to one month's child support and maintenance until further notice from the court. In the event of a delinquency in child support or maintenance payments in an amount equal to one month's total support obligation, the notice further shall direct the employer or other payor to withhold each month an additional amount equal to fifty percent of one month's child support and maintenance until the support delinquency is paid in full. The notice shall also include a statement of exemptions which may apply to limit the portion of the obligated party's disposable earnings which are subject to the withholding pursuant to federal or state law and notify the obligor that the obligor may request a hearing and related information pursuant to this section. The notice shall contain the Social Security number of the obligor if available. The circuit clerk shall send a copy of this notice by regular mail to the last known address of the obligated party. A notice issued pursuant to this section shall be binding on the employer or other payor, and successor employers and payors, two weeks after mailing, and shall continue until further order of the court or the division of child support enforcement. If the notice does not contain the Social Security number of the obligor, the employer or other payor shall not be liable for withholding from the incorrect obligor. The obligated party may, within that two-week period, request a hearing on the issue of whether the withholding should take effect. The withholding shall not be held in abeyance pending the outcome of the hearing. The obligor may not obtain relief from the withholding by paying overdue support, if any. The only basis for contesting the withholding is a mistake of fact. For the purpose of this section, "mistake of fact" shall mean an error in the amount of arrearages, if applicable, or an error as to the identity of the obligor. The

court shall hold its hearing, enter its order disposing of all issues disputed by the obligated party, and notify the obligated party and the employer or other payor, within forty-five days of the date on which the withholding notice was sent to the employer.

5. For each payment the employer may charge a fee not to exceed six dollars per month, which shall be deducted from each obligor's moneys, income or periodic earnings, in addition to the amount deducted to meet the support or maintenance obligation subject to the limitations contained in the federal Consumer Credit Protection Act (15 U.S.C. 1673).

6. Upon termination of the obligor's employment with an employer upon whom a withholding notice has been served, the employer shall so notify the court in writing. The employer shall also inform the court, in writing, as to the last known address of the obligor and the name and address of the obligor's new employer, if known.

7. Amounts withheld by the employer or other payor shall be transmitted, in accordance with the notice, within seven business days of the date that such amounts were payable to the obligated party. For purposes of this section, "business day" means a day that state offices are open for regular business. The employer or other payor shall, along with the amounts transmitted, provide the date each amount was withheld from each obligor. If the employer or other payor is withholding amounts for more than one order, the employer or other payor may combine all such withholdings that are payable to the same circuit clerk or the family support payment center and transmit them as one payment, together with a separate list identifying the cases to which they apply. The cases shall be identified by court case number, name of obligor, the obligor's Social Security number, the IV-D case number, if any, the amount withheld for each obligor, and the withholding date or dates for each obligor, to the extent that such information is known to the employer or other payor. An employer or other payor who fails to honor a withholding notice pursuant to this section may be held in contempt of court and is liable to the obligee for the amount that should have been withheld. Compliance by an employer or other payor with the withholding notice operates as a discharge of liability to the obligor as to that portion of the obligor's periodic earnings or other income so affected.

8. As used in this section, the term "employer" includes the state and its political subdivisions.

9. An employer shall not discharge or otherwise discipline, or refuse to hire, an employee as a result of a withholding notice issued pursuant to this section. Any obligor who is aggrieved as a result of a violation of this subsection may bring a civil contempt proceeding against the employer by filing an appropriate motion in the cause of action from which the withholding notice issued. If the court finds that the employer discharged, disciplined, or refused to hire the obligor as a result of the withholding notice, the court may order the employer to reinstate or hire the obligor, or rescind any wrongful disciplinary action. If, after the entry of such an order, the employer refuses without good cause to comply with the court's order, or if the employer fails to comply with the withholding notice, the court may, after notice to the employer and a hearing, impose a fine against the employer, not to exceed five hundred dollars. Proceeds of any such fine shall be distributed by the court to the county general revenue fund.

10. A withholding entered pursuant to this section may, upon motion of a party and for good cause

shown, be amended by the court. The clerk shall notify the employer of the amendment in the manner provided for in subsection 4 of this section.

11. The court, upon the motion of obligor and for good cause shown, may terminate the withholding, except that the withholding shall not be terminated for the sole reason that the obligor has fully paid past due child support and maintenance.

12. A withholding effected pursuant to this section shall have priority over any other legal process pursuant to state law against the same wages, except that where the other legal process is an order issued pursuant to this section or section 454.505, RSMo, the processes shall run concurrently, up to applicable wage withholding limitations. If concurrently running wage withholding processes for the collection of support obligations would cause the amounts withheld from the wages of the obligor to exceed applicable wage withholding limitations and includes a wage withholding from another state pursuant to section 454.932, RSMo, the employer shall first satisfy current support obligations by dividing the amount available to be withheld among the orders on a pro rata basis using the percentages derived from the relationship each current support order amount has to the sum of all current child support obligations. Thereafter, delinquencies shall be satisfied using the same pro rata distribution procedure used for distributing current support, up to the applicable limitation. If concurrently running wage withholding processes for the collection of support obligations would cause the amounts withheld from the wages of the obligor to exceed applicable wage withholding limitations and does not include a wage withholding from another state pursuant to section 454.932, RSMo, the employer shall withhold and pay to the payment center an amount equal to the wage withholding limitations. The payment center shall first satisfy current support obligations by dividing the amount available to be withheld among the orders on a pro rata basis using the percentages derived from the relationship each current support order amount has to the sum of all current child support obligations. Thereafter, arrearages shall be satisfied using the same pro rata distribution procedure used for distributing current support, up to the applicable limitation.

13. The remedy provided by this section applies to child support and maintenance orders entered prior to August 13, 1986, notwithstanding the absence of the notice to the obligor provided for in subsection 1 of this section, provided that prior notice from the circuit clerk to the obligor in the manner prescribed in subsection 5 of section 452.345 is given.

14. Notwithstanding any provisions of this section to the contrary, in a case in which support rights have been assigned to the state or in which the division of child support enforcement is providing support enforcement services pursuant to section 454.425, RSMo, the director of the division of child support enforcement may amend or terminate a withholding order issued pursuant to this section, as provided in this subsection without further action of the court. The director may amend or terminate a withholding order and issue an administrative withholding order pursuant to section 454.505, RSMo, when the director determines that children for whom the support order applies are no longer entitled to support pursuant to section 452.340, when the support obligation otherwise ends and all arrearages are paid, when the support obligation is modified pursuant to section 454.500, RSMo, or when the director enters an order that is approved by the court pursuant to section 454.496, RSMo. The director shall notify the employer and the circuit clerk of such amendment or termination. The director's administrative withholding order or withholding termination order shall preempt and supersede any previous judicial withholding order issued

pursuant to this or any other section.

15. For the purpose of this section, "income" means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation benefits, disability benefits, payments pursuant to a pension or a retirement program and interest.

16. If the secretary of the Department of Health and Human Services promulgates a final standard format for an employer income withholding notice, the court shall use or require the use of such notice.

(L. 1973 H.B. 315 § 11, A.L. 1982 S.B. 468, A.L. 1984 H.B. 1275, A.L. 1986 H.B. 1479, A.L. 1987 H.B. 484, A.L. 1990 S.B. 834, A.L. 1993 S.B. 253, A.L. 1994 H.B. 1491 & 1134, A.L. 1997 S.B. 361, A.L. 1999 S.B. 291)

Effective 7-1-99

(1980) Statute providing specifically for assignment of future wages upon order of court for purposes of enforcing order for maintenance created an exception to § 432.030 prohibiting the assignment of future wages. *Briny v. Karen's* (A.), 595 W.W.2d 465.

Allocation of cost of action and attorney fees by court--actions for failure to pay child support, reasonable costs and attorney fees to be paid by obligor, when--definitions.

452.355. 1. Unless otherwise indicated, the court from time to time after considering all relevant factors including the financial resources of both parties, the merits of the case and the actions of the parties during the pendency of the action, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding pursuant to sections 452.300 to 452.415 and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding and after entry of a final judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name.

2. In any proceeding in which the failure to pay child support pursuant to a temporary order or final judgment is an issue, if the court finds that the obligor has failed, without good cause, to comply with such order or decree to pay the child support, the court shall order the obligor, if requested and for good cause shown, to pay a reasonable amount for the cost of the suit to the obligee, including reasonable sums for legal services. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

3. For purposes of this section, an "obligor" is a person owing a duty of support and an "obligee" is a person to whom a duty of support is owed.

4. For purposes of this section, "good cause" includes any substantial reason why the obligor is unable to pay the child support as ordered. Good cause does not exist if the obligor purposely maintains his inability to pay.

(L. 1973 H.B. 315 § 12, A.L. 1988 H.B. 1272, et al., A.L. 1998 S.B. 910)

(1977) Prospective termination of spousal maintenance without evidence of change in circumstances is abuse of discretion. *In re Marriage of Valleroy* (A.), 548 S.W.2d 857.

Judgment of dissolution or legal separation final when entered --appeal, effect of--distribution of property final--conversion of judgment of legal separation to dissolution, when--notice, to whom.

452.360. 1. A judgment of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from a judgment of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the judgment which dissolves the marriage beyond the time for appealing from that provision, so that either of the parties may remarry pending appeal.

2. The court's judgment of dissolution of marriage or legal separation as it affects distribution of marital property shall be a final judgment not subject to modification.

3. No earlier than ninety days after entry of a judgment of legal separation, on motion of either party, the court may convert the judgment of legal separation to a judgment of dissolution of marriage.

4. On motion of both parties, the court shall set aside a judgment of legal separation.

5. The circuit clerk shall give notice of the entry of a judgment of legal separation or dissolution to the department of social services.

(L. 1973 H.B. 315 § 13, A.L. 1998 S.B. 910)

(1976) Held that court rule 75.01 is not affected by this section and insofar as an appeal is concerned the judgment does not become final until thirty days after its entry absent the timely filing of a motion for new trial. *State ex rel. Nilges v. Rush* (A.), 532 S.W.2d 857.

(1978) Distinction between separate maintenance and legal separation; held separate maintenance decree cannot be converted into a decree of dissolution as a decree of legal separation can. *In re Marriage of E. A. W.* (A.), 573 S.W.2d 689.

(1987) Converting a decree of separation into a decree of dissolution is a new and separate cause of action, so full notice must be given to adverse parties. *Madsen v. Madsen*, 731 S.W.2d 324 (Mo.App. E.D.).

(1987) Unappealed partial decree was final although not subject to appeal and issues unresolved in decree were not abated by death of ex-husband. *Fischer v. Seibel*, 733 S.W.2d 469 (Mo.App.W.D.).

Party failing to comply with decree, effect of.

452.365. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit

visitation is not suspended but he may move the court to grant an appropriate order.

(L. 1973 H.B. 315 § 14)

Effective 1-1-74

Modification of judgment as to maintenance or support, when --termination, when--rights of state when an assignment of support has been made--court to have continuing jurisdiction, duties of clerk, clerk to be "appropriate agent", when--severance of responsive pleading.

452.370. 1. Except as otherwise provided in subsection 6 of section 452.325, the provisions of any judgment respecting maintenance or support may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable. In a proceeding for modification of any child support or maintenance judgment, the court, in determining whether or not a substantial change in circumstances has occurred, shall consider all financial resources of both parties, including the extent to which the reasonable expenses of either party are, or should be, shared by a spouse or other person with whom he or she cohabits, and the earning capacity of a party who is not employed. If the application of the child support guidelines and criteria set forth in section 452.340 and applicable supreme court rules to the financial circumstances of the parties would result in a change of child support from the existing amount by twenty percent or more, a prima facie showing has been made of a change of circumstances so substantial and continuing as to make the present terms unreasonable, if the existing amount was based upon the presumed amount pursuant to the child support guidelines.

2. When the party seeking modification has met the burden of proof set forth in subsection 1 of this section, the child support shall be determined in conformity with criteria set forth in section 452.340 and applicable supreme court rules.

3. Unless otherwise agreed in writing or expressly provided in the judgment, the obligation to pay future statutory maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

4. Unless otherwise agreed in writing or expressly provided in the judgment, provisions for the support of a child are terminated by emancipation of the child. The parent entitled to receive child support shall have the duty to notify the parent obligated to pay support of the child's emancipation and failing to do so, the parent entitled to receive child support shall be liable to the parent obligated to pay support for child support paid following emancipation of a minor child, plus interest.

5. If a parent has made an assignment of support rights to the division of family services on behalf of the state as a condition of eligibility for benefits pursuant to the Temporary Assistance for Needy Families program and either party initiates a motion to modify the support obligation by reducing it, the state of Missouri shall be named as a party to the proceeding. The state shall be served with a copy of the motion by sending it by certified mail to the director of the division of

child support enforcement.

6. The court shall have continuing personal jurisdiction over both the obligee and the obligor of a court order for child support or maintenance for the purpose of modifying such order. Both obligee and obligor shall notify, in writing, the clerk of the court in which the support or maintenance order was entered of any change of mailing address. If personal service of the motion cannot be had in this state, the motion to modify and notice of hearing shall be served outside the state as provided by supreme court rule 54.14. The order may be modified only as to support or maintenance installments which accrued subsequent to the date of personal service. For the purpose of 42 U.S.C. 666(a)(9)(C), the circuit clerk shall be considered the "appropriate agent" to receive notice of the motion to modify for the obligee or the obligor, but only in those instances in which personal service could not be had in this state.

7. If a responsive pleading raising the issues of custody or visitation is filed in response to a motion to modify child support filed at the request of the division of child support enforcement by a prosecuting attorney or circuit attorney or an attorney under contract with the division, such responsive pleading shall be severed upon request.

8. Notwithstanding any provision of this section which requires a showing of substantial and continuing change in circumstances, in a IV-D case filed pursuant to this section by the division of child support enforcement as provided in section 454.400, RSMo, the court shall modify a support order in accordance with the guidelines and criteria set forth in supreme court rule 88.01 and any regulations thereunder if the amount in the current order differs from the amount which would be ordered in accordance with such guidelines or regulations.

(L. 1973 H.B. 315 § 15, A.L. 1982 S.B. 468, A.L. 1986 H.B. 1479, A.L. 1987 H.B. 484, A.L. 1988 H.B. 1272, et al., A.L. 1990 S.B. 834, A.L. 1993 S.B. 253, A.L. 1994 H.B. 1491 & 1134, A.L. 1997 S.B. 361, A.L. 1998 S.B. 910)

CROSS REFERENCES: Court may abate past or future support obligation if custodial parent, without good cause, fails to honor visitation order, RSMo 452.340 Emancipation of child, factors determining, RSMo 452.340

(1976) Evidence that former husband had suffered, at most, eight percent reduction in pay since time of divorce, that he had been on strike for six weeks, and that he had suffered loss of income as result of medical and dental care held insufficient to show changed circumstances so substantial and continuing as to make terms of alimony decree unreasonable. Ward v. Ward (A.), 534 S.W.2d 593.

(1976) Receipt of inheritance by wife held not to constitute such a change in circumstances as would justify modification of alimony decree (\$65,900.00) increase in net worth. Seelig v. Seelig (A.), 540 S.W.2d 142.

(1977) Held that increase of father's income from twenty thousand dollars a year to fifty-one thousand dollars a year justified increasing child support from one hundred dollars a month to four hundred fifty dollars a month. Barnhill v. Barnhill (A.), 547 S.W.2d 858.

(1977) Court seems to say that income of "new" wife is to be considered as part of father and former husband's "means" in determining amount of award for attorney's fees and impliedly in computing ability to pay child support. In re Marriage of Engelhardt (A.), 552 S.W.2d 356.

(1978) Reduction of monthly child support by \$140, and not \$200, was authorized, where only changed circumstances following marriage dissolution was ex-husband's \$140 reduced monthly income. Nagel v. Nagel (A.), 561 S.W.2d 693.

(1978) Held, finding that wife, unemployed at time of divorce, but who now earned salary of \$654 a month, was

substantial enough circumstances to make terms of original decree awarding alimony unreasonable. *Stahlhut v. Stahlhut* (A.), 562 S.W.2d 764.

(1978) Held, that although facts that needs of growing children increase, and increase in income of supporting spouse would support a modification of decree, it must be shown that their effect make the decree unreasonable. *Plattner v. Plattner* (A.), 567 S.W.2d 139.

(1981) Common law rule that parent's obligation for child support terminates on death of parent was not modified by enactment of statute governing termination of support by emancipation of child. *Bushell v. Schepp* (A.), 613 S.W.2d 689.

(1981) Purpose of statute governing termination of child support is to make it absolute that, absent express provisions to contrary in divorce decree or separation agreement, obligation ends upon emancipation and does not automatically continue to age 21. *Bushell v. Schepp* (A.), 613 S.W.2d 689.

(1985) The phrase "future statutory maintenance" is held to limit termination by reason of remarriage to periodic maintenance of indefinite duration subject to modification upon change of circumstances, as well as those cases in which the parties have otherwise agreed. An award of monthly payments to be used only to pay off a marital debt cannot be considered "statutory maintenance". *Lietz v. Moore* (A.), 703 S.W.2d 54.

(1986) An award of maintenance in gross payable in installments rendered under this section is distinct from any award rendered under section 452.080, RSMo, and therefore may terminate with the death or remarriage of the spouse to whom the award is made. *Nelson v. Nelson*, 720 S.W.2d 947 (Mo.App.W.D.).

(1987) Custodial parent who petitioned for modification of child support less than two years after original dissolution decree was not entitled increase in child support on the basis that, in general, children are more expensive when they are older but must present specific evidence of the increased needs of the children for which increased child support is sought. *Farris v. Farris*, 733 S.W.2d 819 (Mo.App.W.D.).

(1987) Dissolution decree may expressly provide that ex-husband's obligation to provide maintenance in the form of life insurance is not terminated upon his death pursuant to subsection 2 of this section. *McAvinew v. McAvinew*, 733 S.W.2d 816 (Mo.App.W.D.).

Declining jurisdiction in a modification proceeding, when.

452.371. 1. Notwithstanding the provisions of subsection 1 of section 452.455, RSMo, or subsection 6 of section 452.370, RSMo, to the contrary, the court with jurisdiction may decline to exercise jurisdiction in any modification proceeding if such court finds that exercise of its jurisdiction would be clearly inconvenient to either party to the proceeding. The court shall consider the following factors in determining whether exercise of its jurisdiction would be clearly inconvenient:

- (1) Place of residence of the parties;
- (2) Location of witnesses; and
- (3) The availability to either party of another more convenient court with jurisdiction.

2. A finding that a court is a clearly inconvenient forum pursuant to subsection 1 of this section may be made on the court's own motion or on the motion of either party to the proceeding.

3. If the court finds that it is an inconvenient forum and a court of another county is a more

appropriate forum, and such court will accept jurisdiction of the case, the original court shall order a change of venue to the more appropriate forum and state the reasons for such change. The clerk shall transmit the original papers with a transcript of all docket entries to the clerk of the court to which the removal is ordered or the court may order the clerk to prepare a full transcript of the record and proceeding in the case, and transmit the same, duly certified with all the original papers in the civil action but not forming part of the record to the clerk of the court to which the removal is ordered.

(L. 1997 S.B. 361 § 4)

Effective 7-1-97

Mandatory educational sessions, when--alternative dispute resolution, when.

452.372. 1. When a person files a petition for dissolution of marriage or legal separation and the custody or visitation of a minor child is involved, the court shall order all parties to the action to attend educational sessions pursuant to section 452.605. Parties to a modification proceeding who previously have attended educational sessions pursuant to section 452.605 may also be required to attend such educational sessions.

2. In cases involving custody or visitation issues, the court may, except for good cause shown or as provided in subsection 3 of this section, order the parties to the action to participate in an alternative dispute resolution program pursuant to supreme court rule to resolve any issues in dispute or may set a hearing on the matter. As used in this section, "good cause" includes, but is not limited to, uncontested custody or temporary physical custody cases, or a finding of domestic violence or abuse as determined by a court with jurisdiction after all parties have received notice and an opportunity to be heard, but does not mean the absence of qualified mediators.

3. Any alternative dispute resolution program ordered by the court pursuant to this section may be paid for by the parties in a proportion to be determined by the court, the cost of which shall be reasonable and customary for the circuit in which the program is ordered, and shall:

- (1) Not be binding on the parties;
- (2) Not be ordered or used for contempt proceedings;
- (3) Not be ordered or utilized for child support issues; and
- (4) Not be used to modify a prior order of the court, except by agreement of the parties.

4. Within one hundred twenty days after August 28, 1998, the Missouri supreme court shall have a rule in effect allowing, but not requiring, each circuit to establish an alternative dispute resolution program for proceedings involving issues of custody and temporary physical custody relating to the child.

(L. 1998 S.B. 910)

Custody--definitions--factors determining custody--prohibited, when --public policy of state--custody options plan, when required --findings required, when-- exchange of information and right to certain records, failure to disclose--fees, costs assessed, when --joint custody not to preclude child support--support, how determined--domestic violence or abuse, specific findings.

452.375. 1. As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Custody", means joint legal custody, sole legal custody, joint physical custody or sole physical custody or any combination thereof;
- (2) "Joint legal custody" means that the parents share the decision-making rights, responsibilities, and authority relating to the health, education and welfare of the child, and, unless allocated, apportioned, or decreed, the parents shall confer with one another in the exercise of decision-making rights, responsibilities, and authority;
- (3) "Joint physical custody" means an order awarding each of the parents significant, but not necessarily equal, periods of time during which a child resides with or is under the care and supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way as to assure the child of frequent, continuing and meaningful contact with both parents;
- (4) "Third-party custody" means a third party designated as a legal and physical custodian pursuant to subdivision (5) of subsection 5 of this section.

2. The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

- (1) The wishes of the child's parents as to custody and the proposed parenting plan submitted by both parties;
- (2) The needs of the child for a frequent, continuing and meaningful relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child;
- (3) The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests;
- (4) Which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent;
- (5) The child's adjustment to the child's home, school, and community;
- (6) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved. If the court finds that a pattern of domestic violence has occurred, and, if the court also finds that awarding custody to the abusive parent is in the best interest of the child,

then the court shall enter written findings of fact and conclusions of law. Custody and visitation rights shall be ordered in a manner that best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm;

(7) The intention of either parent to relocate the principal residence of the child; and

(8) The wishes of a child as to the child's custodian.

The fact that a parent sends his or her child or children to a home school, as defined in section 167.031, RSMo, shall not be the sole factor that a court considers in determining custody of such child or children.

3. The court shall not award custody of a child to a parent if such parent has been found guilty of, or pled guilty to, a felony violation of chapter 566, RSMo, when the child was the victim, or a violation of chapter 568, RSMo, except for section 568.040, RSMo, when the child was the victim.

4. The general assembly finds and declares that it is the public policy of this state that frequent, continuing and meaningful contact with both parents after the parents have separated or dissolved their marriage is in the best interest of the child, except for cases where the court specifically finds that such contact is not in the best interest of the child, and that it is the public policy of this state to encourage parents to participate in decisions affecting the health, education and welfare of their children, and to resolve disputes involving their children amicably through alternative dispute resolution. In order to effectuate these policies, the court shall determine the custody arrangement which will best assure both parents participate in such decisions and have frequent, continuing and meaningful contact with their children so long as it is in the best interests of the child.

5. Prior to awarding the appropriate custody arrangement in the best interest of the child, the court shall consider each of the following as follows:

(1) Joint physical and joint legal custody to both parents, which shall not be denied solely for the reason that one parent opposes a joint physical and joint legal custody award. The residence of one of the parents shall be designated as the address of the child for mailing and educational purposes;

(2) Joint physical custody with one party granted sole legal custody. The residence of one of the parents shall be designated as the address of the child for mailing and educational purposes;

(3) Joint legal custody with one party granted sole physical custody;

(4) Sole custody to either parent; or

(5) Third-party custody or visitation:

(a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or the welfare of the child requires, and it is in the best interests of the child, then custody, temporary custody or visitation may be awarded to any other person or persons deemed by the court to be suitable and able to provide an adequate and stable environment for the child. Before the court awards custody, temporary custody or visitation to a third person under this subdivision, the court shall make that person a party to the action;

(b) Under the provisions of this subsection, any person may petition the court to intervene as a party in interest at any time as provided by supreme court rule.

6. If the parties have not agreed to a custodial arrangement, or the court determines such arrangement is not in the best interest of the child, the court shall include a written finding in the judgment or order based on the public policy in subsection 4 of this section and each of the factors listed in subdivisions (1) to (8) of subsection 2 of this section detailing the specific relevant factors that made a particular arrangement in the best interest of the child. If a proposed custodial arrangement is rejected by the court, the court shall include a written finding in the judgment or order detailing the specific relevant factors resulting in the rejection of such arrangement.

7. Upon a finding by the court that either parent has refused to exchange information with the other parent, which shall include but not be limited to information concerning the health, education and welfare of the child, the court shall order the parent to comply immediately and to pay the prevailing party a sum equal to the prevailing party's cost associated with obtaining the requested information, which shall include but not be limited to reasonable attorney's fees and court costs.

8. As between the parents of a child, no preference may be given to either parent in the awarding of custody because of that parent's age, sex, or financial status, nor because of the age or sex of the child.

9. Any judgment providing for custody shall include a specific written parenting plan setting forth the terms of such parenting plan arrangements specified in subsection 7 of section 452.310. Such plan may be a parenting plan submitted by the parties pursuant to section 452.310 or, in the absence thereof, a plan determined by the court, but in all cases, the custody plan approved and ordered by the court shall be in the court's discretion and shall be in the best interest of the child.

10. Unless a parent has been denied custody rights pursuant to this section or visitation rights under section 452.400, both parents shall have access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records. If the parent without custody has been granted restricted or supervised visitation because the court has found that the parent with custody or the child has been the victim of domestic violence, as defined in section 455.200, RSMo, by the parent without custody, the court may order that the reports and records made available pursuant to this subsection not include the address of the parent with custody or the child. Unless a parent has been denied custody rights pursuant to this section or visitation rights under section 452.400, any judgment of dissolution or other applicable court order shall specifically allow both parents access to such records and reports.

11. Except as otherwise precluded by state or federal law, if any individual, professional, public or private institution or organization denies access or fails to provide or disclose any and all records and information, including, but not limited to, past and present dental, medical and school records pertaining to a minor child, to either parent upon the written request of such parent, the court shall, upon its finding that the individual, professional, public or private institution or organization denied such request without good cause, order that party to comply immediately with such request and to pay to the prevailing party all costs incurred, including, but not limited to, attorney's fees and court costs associated with obtaining the requested information.

12. An award of joint custody does not preclude an award of child support pursuant to section 452.340 and applicable supreme court rules. The court shall consider the factors contained in section 452.340 and applicable supreme court rules in determining an amount reasonable or necessary for the support of the child.

13. If the court finds that domestic violence or abuse, as defined in sections 455.010 and 455.501, RSMo, has occurred, the court shall make specific findings of fact to show that the custody or visitation arrangement ordered by the court best protects the child and the parent or other family or household member who is the victim of domestic violence or abuse, as defined in sections 455.010 and 455.501, RSMo, from any further harm.

(L. 1973 H.B. 315 § 16, A.L. 1982 S.B. 468, A.L. 1983 S.B. 94, A.L. 1984 H.B. 1513 subsecs. 1 to 5, 7, A.L. 1986 H.B. 1479, A.L. 1988 H.B. 1272, et al., A.L. 1989 H.B. 422, A.L. 1990 H.B. 1370, et al., A.L. 1993 S.B. 180, A.L. 1995 S.B. 174, A.L. 1998 S.B. 910)

(1976) The desirability of awarding custody of children of tender years, especially girls, to their mother should not be indulged in to the extent of excluding all other relevant matters. *R.G.T. v. Y.G.T. (A.)*, 543 S.W.2d 330.

(1976) This section does not change the ruling case law that general custody of a child must be awarded to one parent or the other unless they are both unfit. Decree awarding joint custody held void. *Cradic v. Cradic (A.)*, 544 S.W.2d 605.

(1976) Child support portion of decree ordering husband to "maintain and provide for the necessities for the two children born of this marriage" held to be indefinite and void. Since it is a judgment for money, decree must specify with certainty the amount for which it is rendered. *Cradic v. Cradic (A.)*, 544 S.W.2d 605.

(1977) Held, giving father temporary custody of children five times a year was abuse of discretion when children lived in Maine and father in Missouri. *Taylor v. Taylor (A.)*, 548 S.W.2d 866.

(1985) Held that this section does not require agreement between the parties as a prerequisite of joint custody. The court may order joint custody over the objection of a parent. *Goldberg v. Goldberg (A.)*, 691 S.W.2d 312.

(1987) Husband was properly awarded the house and custody of the children and wife's visitation rights were properly limited in view of wife's decision to openly practice homosexuality and court was not in error for amending judgment of decree ten days after it had been entered into the record taking the home, custody of the children, maintenance and support away from wife after husband discovered his wife's homosexual relations. *S.E.G. v. R.A.G.*, 735 S.W.2d 164 (Mo.App.E.D.).

Noncustodial parent's right to receive child's school progress reports-- administrative fees to be set by school, when--exclusion of address of custodial parent, when.

452.376. 1. Unless a noncustodial parent has been denied visitation rights under section 452.400, such noncustodial parent or any parent who has joint custody of a child shall, upon request and payment of an administrative fee sufficient to cover the cost, receive any deficiency slips, report cards or pertinent progress reports regarding that child's progress in school. If a noncustodial parent has been granted restricted or supervised visitation because the court has found that the custodial parent or the child has been the victim of domestic violence or abuse, as defined in sections 455.010 and 455.501, RSMo, by the noncustodial parent, the court may order that the reports and records made available pursuant to this subsection not include the address of the custodial parent or

the child.

2. School districts shall annually set an administrative fee estimated to cover the costs of preparing, copying and mailing the student information required to be provided pursuant to this section.

(L. 1989 H.B. 422 § 1, A.L. 1993 S.B. 180, A.L. 1998 S.B. 910)

**Relocation of child by parent for more than ninety days, required procedure--
violation, effect--notice of relocation of parent, required procedure.**

452.377. 1. For purposes of this section and section 452.375, "relocate" or "relocation" means a change in the principal residence of a child for a period of ninety days or more, but does not include a temporary absence from the principal residence.

2. Notice of a proposed relocation of the residence of the child, or any party entitled to custody or visitation of the child, shall be given in writing by certified mail, return receipt requested, to any party with custody or visitation rights. Absent exigent circumstances as determined by a court with jurisdiction, written notice shall be provided at least sixty days in advance of the proposed relocation. The notice of the proposed relocation shall include the following information:

- (1) The intended new residence, including the specific address and mailing address, if known, and if not known, the city;
- (2) The home telephone number of the new residence, if known;
- (3) The date of the intended move or proposed relocation;
- (4) A brief statement of the specific reasons for the proposed relocation of a child, if applicable; and
- (5) A proposal for a revised schedule of custody or visitation with the child, if applicable.

3. A party required to give notice of a proposed relocation pursuant to subsection 2 of this section has a continuing duty to provide a change in or addition to the information required by this section as soon as such information becomes known.

4. In exceptional circumstances where the court makes a finding that the health or safety of any adult or child would be unreasonably placed at risk by the disclosure of the required identifying information concerning a proposed relocation of the child, the court may order that:

- (1) The specific residence address and telephone number of the child, parent or person, and other identifying information shall not be disclosed in the pleadings, notice, other documents filed in the proceeding or the final order except for an in camera disclosure;
- (2) The notice requirements provided by this section shall be waived to the extent necessary to protect the health or safety of a child or any adult; or

(3) Any other remedial action the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

5. The court shall consider a failure to provide notice of a proposed relocation of a child as:

(1) A factor in determining whether custody and visitation should be modified;

(2) A basis for ordering the return of the child if the relocation occurs without notice; and

(3) Sufficient cause to order the party seeking to relocate the child to pay reasonable expenses and attorneys fees incurred by the party objecting to the relocation.

6. If the parties agree to a revised schedule of custody and visitation for the child, which includes a parenting plan, they may submit the terms of such agreement to the court with a written affidavit signed by all parties with custody or visitation assenting to the terms of the agreement, and the court may order the revised parenting plan and applicable visitation schedule without a hearing.

7. The residence of the child may be relocated sixty days after providing notice, as required by this section, unless a parent files a motion seeking an order to prevent the relocation within thirty days after receipt of such notice. Such motion shall be accompanied by an affidavit setting forth the specific factual basis supporting a prohibition of the relocation. The person seeking relocation shall file a response to the motion within fourteen days, unless extended by the court for good cause, and include a counter-affidavit setting forth the facts in support of the relocation as well as a proposed revised parenting plan for the child.

8. If relocation of the child is proposed, a third party entitled by court order to legal custody of or visitation with a child and who is not a parent may file a cause of action to obtain a revised schedule of legal custody or visitation, but shall not prevent a relocation.

9. The party seeking to relocate shall have the burden of proving that the proposed relocation is made in good faith and is in the best interest of the child.

10. If relocation is permitted:

(1) The court shall order contact with the nonrelocating party including custody or visitation and telephone access sufficient to assure that the child has frequent, continuing and meaningful contact with the nonrelocating party unless the child's best interest warrants* otherwise; and

(2) The court shall specify how the transportation costs will be allocated between the parties and adjust the child support, as appropriate, considering the costs of transportation.

11. After August 28, 1998, every court order establishing or modifying custody or visitation shall include the following language: "Absent exigent circumstances as determined by a court with jurisdiction, you, as a party to this action, are ordered to notify, in writing by certified mail, return receipt requested, and at least sixty days prior to the proposed relocation, each party to this action of any proposed relocation of the principal residence of the child, including the following information:

(1) The intended new residence, including the specific address and mailing address, if known, and

if not known, the city;

- (2) The home telephone number of the new residence, if known;
- (3) The date of the intended move or proposed relocation;
- (4) A brief statement of the specific reasons for the proposed relocation of the child; and
- (5) A proposal for a revised schedule of custody or visitation with the child.

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

12. Violation of the provisions of this section or a court order under this section may be deemed a change of circumstance under section 452.410, allowing the court to modify the prior custody decree. In addition, the court may utilize any and all powers relating to contempt conferred on it by law or rule of the Missouri supreme court.

13. Any party who objects in good faith to the relocation of a child's principal** residence shall not be ordered to pay the costs and attorney's fees of the party seeking to relocate.

(L. 1984 H.B. 1513 § 452.375 subsec. 6, A.L. 1998 S.B. 910)

*Word "warrant" appears in original rolls.

**Word "principle" appears in original rolls.

Temporary custody, motion for--dismissal of action, effect of.

452.380. 1. A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit. The court may award temporary custody after a hearing or, if there is no objection, solely on the basis of the affidavits.

2. If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(L. 1973 H.B. 315 § 17)

Effective 1-1-74

Child's wishes as to custodian, how determined.

452.385. The court may interview the child in chambers to ascertain the child's wishes as to his custodian and relevant matters within his knowledge. The court shall permit counsel to be present at the interview and to participate therein. The court shall cause a record of the interview to be made and to be made part of the record in the case.

(L. 1973 H.B. 315 § 18)

Effective 1-1-74

(1975) Held failure to allow counsel to be present and failure to make a record of judge's interview with children was reversible error. *Duncan v. Duncan* (A.), 528 S.W.2d 806.

(1976) Held that court order which directed in chambers interview record sealed and did not make it part of record on appeal was not arbitrary and appellant's failure to take steps to make record available bars his claim for relief. *A.M.S. v. J.L.S.* (A.), 544 S.W.2d 885.

Investigation and report on custodial arrangements for a child--how conducted--report due, when--material to be available to counsel and parties.

452.390. 1. The court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the county welfare office, the county juvenile officer, or any other competent person.

2. In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian, but the child's consent must be obtained if he has reached the age of sixteen, unless the court finds that he lacks mental capacity to consent.

3. At least ten days prior to the hearing the investigator shall furnish his report to counsel and to any party not represented by counsel. No one else, including the court, shall be entitled thereto prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel an investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection 2, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call as witnesses the investigator and any person whom the investigator has consulted.

(L. 1973 H.B. 315 § 19)

Effective 1-1-74

Custody proceedings, priority of--judge to determine law and fact--secrecy, when.

452.395. 1. Custody proceedings shall receive priority in being set for hearing.

2. The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case.

3. If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

(L. 1973 H.B. 315 § 20, A.L. 1996 S.B. 869)

Effective 7-1-97

Visitation rights, defined in detail, when--history of domestic violence, consideration of--prohibited, when--modification of, when--supervised visitation defined--noncompliance with order, effect of--family access motions, procedure, penalty for violation --attorney fees and costs assessed, when.

452.400. 1. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical health or impair his emotional development. The court shall enter an order specifically detailing the visitation rights of the parent without physical custody rights. In determining the granting of visitation rights, the court shall consider evidence of domestic violence. If the court finds that domestic violence has occurred, the court may find that granting visitation to the abusive party is in the best interests of the child. The court shall not grant visitation to the parent not granted custody if such parent has been found guilty of or pled guilty to a felony violation of chapter 566, RSMo, when the child was the victim, or a violation of chapter 568, RSMo, except for section 568.040, RSMo, when the child was the victim or an offense committed in another state, when the child is the victim, that would be a felony violation of chapter 566, RSMo, or chapter 568, RSMo, except for section 568.040, RSMo, if committed in Missouri. The court shall consider the parent's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault on other persons and shall grant visitation in a manner that best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm. The court, if requested by a party, shall make specific findings of fact to show that the visitation arrangements made by the court best protect the child or the parent or other family or household member who is the victim of domestic violence from any further harm.

2. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical health or impair his emotional development. When a court restricts a parent's visitation rights or when a court orders supervised visitation because of allegations of abuse or domestic violence, a showing of proof of treatment and rehabilitation shall be made to the court before unsupervised visitation may be ordered.

"Supervised visitation", as used in this section, is visitation which takes place in the presence of a responsible adult appointed by the court for the protection of the child.

3. The court shall mandate compliance with its order by all parties to the action, including parents, children and third parties. In the event of noncompliance, the aggrieved person may file a verified motion for contempt. If custody, visitation or third-party custody is denied or interfered with by a parent or third party without good cause, the aggrieved person may file a family access motion with the court stating the specific facts which constitute a violation of the judgment of dissolution or legal separation. The state courts administrator shall develop a simple form for pro se motions to the aggrieved person, which shall be provided to the person by the circuit clerk. Clerks, under the supervision of a circuit clerk, shall explain to aggrieved parties the procedures for filing the form. Notice of the fact that clerks will provide such assistance shall be conspicuously posted in the clerk's offices. The location of the office where the family access motion may be filed shall be conspicuously posted in the court building. The performance of duties described in this section shall not constitute the practice of law as defined in section 484.010, RSMo. Such form for pro se motions shall not require the assistance of legal counsel to prepare and file. The cost of filing the motion shall be the standard court costs otherwise due for instituting a civil action in the circuit court.

4. Within five court days after the filing of the family access motion pursuant to subsection 3 of this section, the clerk of the court shall issue a summons pursuant to applicable state law, and applicable local or supreme court rules. A copy of the motion shall be personally served upon the respondent by personal process server as provided by law or by any sheriff. Such service shall be served at the earliest time and shall take priority over service in other civil actions, except those of an emergency nature or those filed pursuant to chapter 455, RSMo. The motion shall contain the following statement in boldface type: "PURSUANT TO SECTION 452.400, RSMO, YOU ARE REQUIRED TO RESPOND TO THE CIRCUIT CLERK WITHIN TEN DAYS OF THE DATE OF SERVICE. FAILURE TO RESPOND TO THE CIRCUIT CLERK MAY RESULT IN THE FOLLOWING:

(1) AN ORDER FOR A COMPENSATORY PERIOD OF CUSTODY, VISITATION OR THIRD-PARTY CUSTODY AT A TIME CONVENIENT FOR THE AGGRIEVED PARTY NOT LESS THAN THE PERIOD OF TIME DENIED;

(2) PARTICIPATION BY THE VIOLATOR IN COUNSELING TO EDUCATE THE VIOLATOR ABOUT THE IMPORTANCE OF PROVIDING THE CHILD WITH A CONTINUING AND MEANINGFUL RELATIONSHIP WITH BOTH PARENTS;

(3) ASSESSMENT OF A FINE OF UP TO FIVE HUNDRED DOLLARS AGAINST THE VIOLATOR;

(4) REQUIRING THE VIOLATOR TO POST BOND OR SECURITY TO ENSURE FUTURE COMPLIANCE WITH THE COURT'S ORDERS;

(5) ORDERING THE VIOLATOR TO PAY THE COST OF COUNSELING TO REESTABLISH THE PARENT-CHILD RELATIONSHIP BETWEEN THE AGGRIEVED PARTY AND THE CHILD; AND

(6) A JUDGMENT IN AN AMOUNT NOT LESS THAN THE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COURT COSTS ACTUALLY INCURRED BY THE AGGRIEVED PARTY AS A RESULT OF THE DENIAL OF CUSTODY, VISITATION OR THIRD-PARTY CUSTODY.".

5. If an alternative dispute resolution program is available pursuant to section 452.372, the clerk shall also provide information to all parties on the availability of any such services, and within fourteen days of the date of service, the court may schedule alternative dispute resolution.

6. Upon a finding by the court pursuant to a motion for a family access order or a motion for contempt that its order for custody, visitation or third-party custody has not been complied with, without good cause, the court shall order a remedy, which may include, but not be limited to:

(1) A compensatory period of visitation, custody or third-party custody at a time convenient for the aggrieved party not less than the period of time denied;

(2) Participation by the violator in counseling to educate the violator about the importance of providing the child with a continuing and meaningful relationship with both parents;

(3) Assessment of a fine of up to five hundred dollars against the violator payable to the aggrieved party;

(4) Requiring the violator to post bond or security to ensure future compliance with the court's access orders; and

(5) Ordering the violator to pay the cost of counseling to reestablish the parent-child relationship between the aggrieved party and the child.

7. The reasonable expenses incurred as a result of denial or interference with custody or visitation, including attorney's fees and costs of a proceeding to enforce visitation rights, custody or third-party custody, shall be assessed, if requested and for good cause, against the parent or party who unreasonably denies or interferes with visitation, custody or third-party custody. In addition, the court may utilize any and all powers relating to contempt conferred on it by law or rule of the Missouri supreme court.

8. Final disposition of a motion for a family access order filed pursuant to this section shall take place not more than sixty days after the service of such motion, unless waived by the parties or determined to be in the best interest of the child. Final disposition shall not include appellate review.

9. Motions filed pursuant to this section shall not be deemed an independent civil action from the

original action pursuant to which the judgment or order sought to be enforced was entered.

(L. 1973 H.B. 315 § 21, A.L. 1977 S.B. 430, A.L. 1982 S.B. 468, A.L. 1983 S.B. 94, A.L. 1988 H.B. 1272, et al., A.L. 1989 H.B. 422, A.L. 1993 S.B. 180, A.L. 1995 S.B. 174, A.L. 1998 S.B. 910, A.L. 1999 S.B. 1, et al.)

(1977) Where original decree is silent as to visitation rights no change of circumstance need be shown to authorize "modification" (really clarification) of visitation rights. Adoption of E.N. v. E.M.N. (A.), 559 S.W.2d 543.

Grandparent's visitation rights granted, when, terminated, when --guardian ad litem appointed, when--attorney fees and costs assessed, when.

452.402. 1. The court may grant reasonable visitation rights to the grandparents of the child and issue any necessary orders to enforce the decree. The court may grant grandparent visitation when:

(1) The parents of the child have filed for a dissolution of their marriage. A grandparent shall have the right to intervene in any dissolution action solely on the issue of visitation rights. Grandparents shall also have the right to file a motion to modify the original decree of dissolution to seek visitation rights when such rights have been denied to them;

(2) One parent of the child is deceased and the surviving parent denies reasonable visitation rights;

(3) A grandparent is unreasonably denied visitation with the child for a period exceeding ninety days; or

(4) The child is adopted by a stepparent, another grandparent or other blood relative.

2. The court shall determine if the visitation by the grandparent would be in the child's best interest or if it would endanger the child's physical health or impair the child's emotional development. Visitation may only be ordered when the court finds such visitation to be in the best interests of the child. The court may order reasonable conditions or restrictions on grandparent visitation.

3. If the court finds it to be in the best interests of the child, the court may appoint a guardian ad litem for the child. The guardian ad litem shall be an attorney licensed to practice law in Missouri. The guardian ad litem may, for the purpose of determining the question of grandparent visitation rights, participate in the proceedings as if such guardian ad litem were a party. The court shall enter judgment allowing a reasonable fee to the guardian ad litem.

4. A home study, as described by section 452.390, may be ordered by the court to assist in determining the best interests of the child.

5. The court may, in its discretion, consult with the child regarding the child's wishes in determining the best interest of the child.

6. The right of a grandparent to seek or maintain visitation rights pursuant to this section may terminate upon the adoption of the child.

7. The court may award reasonable attorneys fees and expenses to the prevailing party.

(L. 1977 S.B. 430 § 2, A.L. 1984 H.B. 1513, A.L. 1988 H.B. 1272, et al., A.L. 1996 S.B. 869, A.L. 1998 S.B. 674)

(1990) Although father of child born out of wedlock did not acknowledge paternity, pay support or otherwise establish a relationship with the child, parent of father could seek grandparent's visitation under statute. In the Matter of C.E.R., 796 S.W.2d 423 (Mo.App.S.D.).

(1993) Statute granting grandparent's visitation rights held to be constitutional. Herndon v. Tuhey, No. 75184, Mo. S. Ct., June 29, 1993.

(1993) Although parents have constitutional right to make decisions affecting family, statute is constitutional as court considers magnitude of infringement by state as significant factor and whether there is substantial infringement by state on family relationship. Statute granting grandparents right to petition court for visitation with grandchildren is reasonable both because it contemplates only minimal intrusion on family relationship and because it is narrowly tailored to adequately protect interests of parents and children. Herndon v. Tuhey, 857 S.W.2d 203 (Mo. banc).

(2000) Award of grandparent visitation to child's maternal step-grandparents not authorized pursuant to statute governing grandparent visitation rights. Hampton v. Hampton, 17 S.W.3d 599 (Mo.App.W.D.).

Grandparent denied visitation, court may order mediation upon written request, purpose--costs--venue--termination of mediation, when.

- 452.403. 1. Upon the written request of a grandparent denied visitation with a grandchild, the associate division of the circuit court may order mediation with any party who has custody or visitation rights with the minor child and appoint a mediator. Such written request need not follow the rules of civil procedure and need not be written or filed by an attorney.
2. As used in this section, "mediation" is the process by which a neutral mediator appointed by the court assists the parties in reaching a mutually acceptable voluntary and consensual agreement in the best interests of the child as to issues of child care and visitation. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of common interest and finding points of agreement. An agreement reached by the parties shall be based on the decisions of the parties and not the decisions of the mediator. The agreement reached may resolve all or only some of the disputed issues.
3. At any time after the third mediation session, either party may terminate mediation ordered pursuant to this section.
4. The costs of the mediation shall be paid by the grandparent requesting the mediation order.
5. The venue shall be in the county where the child resides.

(L. 1992 H.B. 1492 § 1)

Neutral location for exchange of children, when.

- 452.404. To ensure compliance with the parenting plans or court orders, the court may require

parents, or parents may agree, to bring the minor children to a neutral location for the exchange pursuant to such plans or orders. Such location may include a center specifically established for such exchanges or an existing location suitable for such exchanges. A neutral third party may be present at each exchange to provide an accurate documentation of the compliance or noncompliance with the ordered exchange.

(L. 1998 S.B. 910 § 5)

Custodian to determine child's upbringing, exception--continued supervision, when.

452.405. 1. Except as otherwise ordered by the court or agreed by the parties in writing at the time of the custody decree, the legal custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing finds, upon motion by the parent without legal custody, that in the absence of a specific limitation of the legal custodian's authority the child's physical health would be endangered or his emotional development impaired.

2. The legal custodian shall not exercise legal custody in such a way as to significantly and detrimentally impact the other parent's visitation or custody rights.

3. The court may order the county welfare office or the county juvenile officer to exercise continuing supervision over the case.

(L. 1973 H.B. 315 § 22, A.L. 1998 S.B. 910)

Custody, decree, modification of, when.

452.410. 1. Except as provided in subsection 2 of this section, the court shall not modify a prior custody decree unless it has jurisdiction under the provisions of section 452.450 and it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child.

Notwithstanding any other provision of this section or sections 452.375 and 452.400, any custody order entered by any court in this state or any other state prior to August 13, 1984, may, subject to jurisdictional requirements, be modified to allow for joint custody in accordance with section 452.375, without any further showing.

2. If either parent files a motion to modify an award of joint legal custody or joint physical custody, each party shall be entitled to a change of judge as provided by supreme court rule.

(L. 1973 H.B. 315 § 23, A.L. 1978 H.B. 914, A.L. 1984 H.B. 1513, A.L. 1990 H.B. 1370, et al.)

CROSS REFERENCE: Court may transfer custody if custodial parent, without good cause, fails to honor visitation order, RSMo 452.340

(1976) In motion to modify child custody decree under this section, it is not necessary to wait for manifestations of harmful consequences before action is taken. L.H.Y. v. J.M.Y. (A.), 535 S.W.2d 304.

(1978) Court may not modify original dissolution decree vesting custody on stipulation of partner, but must conduct hearing and make findings required in best interests of child. Fleming v. Fleming (A.), 562 S.W.2d 168.

Change of residence deemed grounds for modification of custody, when.

452.411. If either parent of a child changes his residence to another state, such change of residence of the parent shall be deemed a change of circumstances under section 452.410, allowing the court to modify a prior visitation or custody decree.

(L. 1988 H.B. 1272, et al. § 10, A.L. 1998 S.B. 910)

When sections 452.300 to 452.415 shall apply.

452.415. 1. Sections 452.300 to 452.415 apply to all proceedings commenced on or after January 1, 1974.

2. Sections 452.300 to 452.415 apply to all pending actions and proceedings commenced prior to January 1, 1974, with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after January 1, 1974, shall be in compliance with sections 452.300 to 452.415.

3. Sections 452.300 to 452.415 apply to all proceedings commenced after January 1, 1974, for the modification of a judgment or order entered prior to January 1, 1974.

4. In any action or proceeding in which an appeal was pending or a new trial was ordered prior to January 1, 1974, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

(L. 1973 H.B. 315 § 24)

Effective 1-1-74

(1975) Where plaintiff filed divorce action in 1972, case was heard in 1973, statutes on dissolution of marriage became effective January 1, 1974, and no judgment had been entered on case pending; the issue for decision then became whether marriage was irretrievably broken and not whether plaintiff was entitled to a divorce for indignities. Bishop v. Bishop (A.), 521 S.W.2d 26.

Parent's change in income due to military service, effect on order of child support--director of division of child support enforcement, duties.

452.416. 1. Notwithstanding any other provision of law to the contrary, whenever a parent in emergency military service has a change in income due to such military service, such change in income shall be considered a change in circumstances so substantial and continuing as to make the terms of any order or judgment for child support or visitation unreasonable.

2. Upon receipt of a notarized letter from the commanding officer of a noncustodial parent in emergency military service which contains the date of the commencement of emergency military service and the compensation of the parent in emergency military service, the director of the division of child support enforcement shall take appropriate action to seek modification of the order or judgment of child support in accordance with the guidelines and criteria set forth in section 452.340 and applicable supreme court rules. Such notification to the director shall constitute an application for services under section 454.425, RSMo.

3. Upon return from emergency military service the parent shall notify the director of the division of child support enforcement who shall take appropriate action to seek modification of the order or judgment of child support in accordance with the guidelines and criteria set forth in section 452.340 and applicable supreme court rules. Such notification to the director shall constitute an application for services under section 454.425, RSMo.

4. As used in this section, the term "emergency military service" means that the parent is a member of a reserve unit or national guard unit which is called into active military duty for a period of more than thirty days.

(L. 1991 S.B. 358, A.L. 1998 S.B. 910)

Proceedings to be heard by circuit judge--exception.

452.420. All proceedings authorized in chapter 452 to be maintained in circuit court shall be heard by circuit judges, except that said proceedings may be heard by an associate circuit judge if he is assigned to hear such case or class of cases or if he is transferred to hear such case or class of cases pursuant to other provisions of law or section 6 of article V of the constitution.

(L. 1978 H.B. 1634)

Effective 1-2-79

Guardian ad litem appointed, when, duties--disqualification, when --fees--volunteer advocates, expenses.

452.423. 1. In all proceedings for child custody or for dissolution of marriage or legal separation where custody, visitation, or support of a child is a contested issue, the court may appoint a guardian ad litem. The court shall appoint a guardian ad litem in any proceeding in which child abuse or neglect is alleged. Disqualification of a guardian ad litem shall be ordered in any legal

proceeding only pursuant to chapter 210, RSMo, or this chapter, upon the filing of a written application by any party within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad litem in each proceeding, except a party may be entitled to additional disqualifications of a guardian ad litem for good cause shown.

2. The guardian ad litem shall:

(1) Be the legal representative of the child at the hearing, and may examine, cross-examine, subpoena witnesses and offer testimony;

(2) Prior to the hearing, conduct all necessary interviews with persons having contact with or knowledge of the child in order to ascertain the child's wishes, feelings, attachments and attitudes. If appropriate, the child should be interviewed;

(3) Request the juvenile officer to cause a petition to be filed in the juvenile division of the circuit court if the guardian ad litem believes the child alleged to be abused or neglected is in danger.

3. The appointing judge shall require the guardian ad litem to faithfully discharge such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad litem and appoint another. The judge in making appointments pursuant to this section shall give preference to persons who served as guardian ad litem for the child in the earlier proceeding, unless there is a reason on the record for not giving such preference.

4. The guardian ad litem shall be awarded a reasonable fee for such services to be set by the court. The court, in its discretion, may award such fees as a judgment to be paid by any party to the proceedings or from public funds. Such an award of guardian fees shall constitute a final judgment in favor of the guardian ad litem. Such final judgment shall be enforceable against the parties in accordance with chapter 513, RSMo.

5. The court may designate volunteer advocates, who may or may not be attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties for the court. The volunteer advocate shall be provided with all reports relevant to the case made to or by any agency or person and shall have access to all records of such agencies or persons relating to the child or such child's family members. Any such designated person shall receive no compensation from public funds. This shall not preclude reimbursement for reasonable expenses.

(L. 1988 H.B. 1272, et al., A.L. 1990 H.B. 1370, et al., A.L. 1996 S.B. 869, A.L. 1998 S.B. 910)

(2000) Section allowing party to custody or visitation proceeding to disqualify one guardian ad litem as matter of right is constitutional. *Suffian v. Usher*, 19 S.W.3d 130 (Mo.banc).

Sheriff or law enforcement to enforce custody and visitation orders, when-- limitations.

452.425. Any court order for the custody of, or visitation with, a child may include a provision that

the sheriff or other law enforcement officer shall enforce the rights of any person to custody or visitation unless the court issues a subsequent order pursuant to chapter* 210, 211, 452 or 455, RSMo, to limit or deny the custody of, or visitations with, the child. Such sheriff or law enforcement officer shall not remove a child from a person who has actual physical custody of the child unless such sheriff or officer is shown a court order or judgment which clearly and convincingly verifies that such person is not entitled to the actual physical custody of the child, and there are not other exigent circumstances that would give the sheriff or officer reasonable suspicion to believe that the child would be harmed or that the court order presented to the sheriff or officer may not be valid.

(L. 1998 S.B. 910 § 8)

*Word "chapters" appears in original rolls.

Short title.

452.440. Sections 452.440 to 452.550 may be cited as the "Uniform Child Custody Jurisdiction Act".

(L. 1978 H.B. 914 § 1)

(1989) Motion for contempt is not a determination of custody and a court may enforce its original custody order even though a child has lived outside the state for more than six months, if there is no evidence of a request for reconsideration of the Missouri custody order. (Mo.App.E.D.) Levis v. Markee, 771 S.W.2d 928.

Definitions.

452.445. As used in sections 452.440 to 452.550:

- (1) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. This term does not include a decision relating to child support or any other monetary obligation of any person; but the court shall have the right in any custody determination where jurisdiction is had pursuant to section 452.460 and where it is in the best interest of the child to adjudicate the issue of child support;
- (2) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage, legal separation, separate maintenance, appointment of a guardian of the person, child neglect or abandonment, but excluding actions for violation of a state law or municipal ordinance;
- (3) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;
- (4) "Home state" means the state in which, immediately preceding the filing of custody proceeding, the child lived with his parents, a parent, an institution; or a person acting as parent, for at* least

six consecutive months; or, in the case of a child less than six months old, the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period;

(5) "Initial decree" means the first custody decree concerning a particular child;

(6) "Litigant" means a person, including a parent, grandparent, or step-parent, who claims a right to custody or visitation with respect to a child.

(L. 1978 H.B. 914 § 2, A.L. 1982 S.B. 468)

*Word "a" appears in original rolls.

Jurisdiction.

452.450. 1. A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) This state:

(a) Is the home state of the child at the time of commencement of the proceeding; or

(b) Had been the child's home state within six months before commencement of the proceeding and the child is absent from this state for any reason, and a parent or person acting as parent continues to live in this state; or

(2) It is in the best interest of the child that a court of this state assume jurisdiction because:

(a) The child and his parents, or the child and at least one litigant, have a significant connection with this state; and

(b) There is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) The child is physically present in this state and:

(a) The child has been abandoned; or

(b) It is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse, or is otherwise being neglected; or

(4) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with subdivision (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that this court assume jurisdiction.

2. Except as provided in subdivisions (3) and (4) of subsection 1 of this section, physical presence of the child, or of the child and one of the litigants, in this state is not sufficient alone to confer

jurisdiction on a court of this state to make a child custody determination.

3. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(L. 1978 H.B. 914 § 3)

(1984) Missouri Uniform Child Custody Jurisdiction Act is in compliance with federal enactment of uniform act. (Mo.App.) Kilgore v. Kilgore, 666 S.W.2d 923.

(1987) The absence of the jurisdictional elements of this section cannot be waived nor can such jurisdiction be established through the voluntary submission of one parent. State ex rel. Laws v. Higgins, 734 S.W.2d 274 (Mo.App.S.D.).

Petition for modification--procedure.

452.455. 1. Any petition for modification of child custody decrees filed under the provisions of section 452.410, or sections 452.440 to 452.450, shall be verified and, if the original proceeding originated in the state of Missouri, shall be filed in that original case, but service shall be obtained and responsive pleadings may be filed as in any original proceeding.

2. Before making a decree under the provisions of section 452.410, or sections 452.440 to 452.450, the litigants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child must be served in the manner provided by the rules of civil procedure and applicable court rules and may within thirty days after the date of service (forty-five days if service by publication) file a verified answer. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to section 452.460.

(L. 1978 H.B. 914 § 4, A.L. 1979 S.B. 154)

Effective 3-6-79

Notice to persons outside this state--submission to jurisdiction.

452.460. 1. The notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be given in any of the following ways:

- (1) By personal delivery outside this state in the manner prescribed for service of process within this state;
- (2) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;
- (3) By certified or registered mail; or
- (4) As directed by the court, including publication, if any other means of notification are

ineffective.

2. Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof of service may be a receipt signed by the addressee or other evidence of delivery to the addressee.

3. The notice provided for in this section is not required for a person who submits to the jurisdiction of the court.

(L. 1978 H.B. 914 § 5, A.L. 1979 S.B. 154)

Effective 3-6-79

Simultaneous proceedings in other states.

452.465. 1. A court of this state shall not exercise its jurisdiction under sections 452.440 to 452.550 if, at the time of filing the petition, a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with sections 452.440 to 452.550, unless the proceeding is stayed by the court of that other state for any reason.

2. Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under section 452.480 and shall consult the child custody registry established under section 452.515 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of that state.

3. If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending in order that the issue may be litigated in the more appropriate forum and that information may be exchanged in accordance with sections 452.530 to 452.550. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court in order that the issues may be litigated in the more appropriate forum.

(L. 1978 H.B. 914 § 6)

Inconvenient forum.

452.470. 1. A court which has jurisdiction under this act* to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an

inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

2. A finding that a court is an inconvenient forum under subsection 1 above may be made upon the court's own motion or upon the motion of a party or a guardian ad litem or other representative of the child. In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction.

3. Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court, with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

4. If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

5. The court may decline to exercise its jurisdiction under this act* if a custody determination is incidental to an action for dissolution of marriage or another proceeding while retaining jurisdiction over the dissolution of marriage or other proceeding.

6. If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

7. Upon dismissal or stay of proceedings under this section, the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

8. Any communication received from another state informing this state of a finding that a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this state shall inform the original court of this fact.

(L. 1978 H.B. 914 § 7, A.L. 1979 S.B. 154)

Effective 3-6-79

*Original rolls contain words "this act". This section and five others were reenacted by S.B. 154, 1979. Apparently those words were intended to refer to the entire Uniform Child Custody Jurisdiction Act, §§ 452.440 to 452.550.

Jurisdiction declined because of conduct.

452.475. 1. If the petitioner for an initial decree has wrongfully taken the child from another state

or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

2. Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

3. In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

(L. 1978 H.B. 914 § 8)

Information under oath to be submitted to the court.

452.480. 1. In his first pleading, or in an affidavit attached to that pleading, every party in a custody proceeding shall give information under oath as to the child's present address, with whom the child is presently living and with whom and where the child lived, other than on a temporary basis, within the past six months. In this pleading or affidavit every party shall further declare under oath whether:

- (1) He has participated in any capacity in any other litigation concerning the custody of the same child in this or any other state;
- (2) He has information of any custody proceeding concerning the child pending in a court of this or any other state; and
- (3) He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

2. If the declaration as to any of the items listed in subdivisions (1) through (3) of subsection 1 above is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

3. Each party has a continuing duty to inform the court of any change in information required by subsection 1 of this section.

(L. 1978 H.B. 914 § 9, A.L. 1979 S.B. 154)

Effective 3-6-79

Additional parties.

452.485. If the court learns from information furnished by the parties pursuant to section 452.480 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it may order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state he shall be served with process or otherwise notified in accordance with section 452.460.

(L. 1978 H.B. 914 § 10, A.L. 1979 S.B. 154)

Effective 3-6-79

Appearance of parties--child--guardian ad litem appointed, fee -- disqualification, when.

452.490. 1. The court may order any party to the proceeding who is in this state to appear personally before the court. If the court finds the physical presence of the child in court to be in the best interests of the child, the court may order that the party who has physical custody of the child appear personally with the child.

2. If a party to the proceeding whose presence is desired by the court is outside this state, with or without the child, the court may order that the notice given under section 452.460 include a statement directing that party to appear personally with or without the child.

3. If a party to the proceeding who is outside this state is directed to appear under subsection 1* of this section or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

4. If the court finds it to be in the best interest of the child that a guardian ad litem be appointed, the court may appoint a guardian ad litem for the child. The guardian ad litem so appointed shall be an attorney licensed to practice law in the state of Missouri. Disqualification of a guardian ad litem shall be ordered in any legal proceeding pursuant to chapter 210, RSMo, or this chapter, upon the filing of a written application by any party within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad litem in each proceeding, except a party may be entitled to additional disqualifications of a guardian ad litem for good cause shown. The guardian ad litem may, for the purpose of determining custody of the child only, participate in the proceedings as if such guardian ad litem were a party. The court shall enter judgment allowing a reasonable fee to the guardian ad litem.

(L. 1978 H.B. 914 § 11, A.L. 1979 S.B. 154, A.L. 1996 S.B. 869, A.L. 1998 S.B. 910)

*Text of uniform act refers to subsection 2.

(1985) Held, it is an abuse of discretion not to appoint a guardian ad litem, as permitted by subdivision (4) of this section, where the choice of the custodian of minor children is in issue, and the court has knowledge, from the pleadings or from other sources, that the children in question, have been, or are being, abused while in the custody of one claiming the right to custody. C.J.(S.)R. v. G.D.S. (A.), 701 S.W.2d 165.

(1987) Failure of court to appoint guardian ad litem is not necessarily an abuse of discretion. Smith v. Smith, 724 S.W.2d 541 (Mo.App.S.D.).

Binding force and res judicata effect of custody decree.

452.495. A custody decree rendered by a court of this state which had jurisdiction under section 452.450 binds all parties who have been served in this state or notified in accordance with section 452.460, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made, unless and until that determination is modified pursuant to law, including the provisions of section 452.410 and sections 452.440 to 452.550.

(L. 1978 H.B. 914 § 12)

Recognition of out-of-state custody decrees.

452.500. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with sections 452.440 to 452.550, or which was made under factual circumstances meeting the jurisdictional standards of sections 452.440 to 452.550, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of sections 452.440 to 452.550.

(L. 1978 H.B. 914 § 13)

Modification of custody decree of another state.

452.505. If a court of another state has made a custody decree, a court of this state shall not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with sections 452.440 to 452.550 or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(L. 1978 H.B. 914 § 14)

Filing and enforcement of custody decree of another state.

452.510. 1. A certified copy of a custody decree of another state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the decree in the same manner as a custody decree of the circuit court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

2. A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

(L. 1978 H.B. 914 § 15)

Registry of out-of-state custody decrees and proceedings.

452.515. The clerk of each circuit court shall maintain a registry in which he shall enter the following:

- (1) Certified copies of custody decrees of other states received for filing;
- (2) Communications as to the pendency of custody proceedings in other states;
- (3) Communications concerning findings of inconvenient forum under section 452.470 by a court of another state; and
- (4) Other communications or documents concerning custody proceedings in another state which in the opinion of the circuit judge may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

(L. 1978 H.B. 914 § 16)

Certified copies of custody decrees.

452.520. The clerk of the circuit court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, may, upon payment therefor, certify and forward a copy of the decree to that court or person.

(L. 1978 H.B. 914 § 17)

Taking testimony in another state.

452.525. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may obtain the testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

(L. 1978 H.B. 914 § 18)

Hearings and studies in another state--orders to appear.

452.530. 1. A court of this state may request the appropriate court of another state to hold a hearing to obtain evidence, to order persons within that state to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise obtained, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties.

2. A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against the appropriate party.

(L. 1978 H.B. 914 § 19)

Assistance to courts of other states.

452.535. 1. Upon request of the court of another state, the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to obtain evidence or to produce or give evidence under other procedures available in this state for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise obtained may, in the discretion of the court and upon payment therefor, be forwarded to the requesting court.

2. A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

3. Upon request of the court of another state, a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

(L. 1978 H.B. 914 § 20)

Preservation of documents for use in other states.

452.540. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches eighteen years of age. When requested by the court of another state the court may, upon payment therefor, forward to the other court certified copies of any or all of such documents.

(L. 1978 H.B. 914 § 21)

Request for court records of another state.

452.545. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state, upon taking jurisdiction of the case, shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 452.540.

(L. 1978 H.B. 914 § 22)

Priority.

452.550. Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under sections 452.440 to 452.550, determination of jurisdiction shall be given calendar priority and handled expeditiously.

(L. 1978 H.B. 914 § 23)

Surcharge collected, when, use.

452.552. In addition to any other court costs required to institute an action in the circuit division of the circuit court, a surcharge of three dollars shall be paid by the person filing such action. The surcharge shall be collected and disbursed in a manner provided by sections 488.012 to 488.020, RSMo, by the court clerk at the time the petition is filed and shall be payable to the director of revenue for deposit in the domestic relations resolution fund established in section 452.554.

Domestic relations resolution fund established, use.

452.554. There is established in the state treasury a special fund to be known as the "Domestic Relations Resolution Fund". The director of revenue shall credit to and deposit all amounts received pursuant to section 452.552 to the fund. The general assembly shall appropriate moneys annually from the domestic relations resolution fund to the state courts administrator to pay the cost associated with the handbook created in section 452.556 and to reimburse local judicial circuits for the costs associated with the implementation of and creation of education programs for parents of children, alternative dispute resolution programs and similar programs applicable to domestic relations cases. The provisions of section 33.080, RSMo, shall not apply to the domestic relations resolution fund.

(L. 1998 S.B. 910, A.L. 1999 S.B. 1, et al.)

Handbook, contents, availability.

452.556. 1. The state courts administrator shall create a handbook or be responsible for the approval of a handbook outlining the following:

- (1) What is included in a parenting plan;
- (2) The benefits of the parties agreeing to a parenting plan which outlines education, custody and cooperation between parents;
- (3) The benefits of alternative dispute resolution;
- (4) The pro se family access motion for enforcement of custody or temporary physical custody;
- (5) The underlying assumptions for supreme court rules relating to child support; and
- (6) A party's duties and responsibilities pursuant to section 452.377, including the possible consequences of not complying with section 452.377. The handbooks shall be distributed to each court and shall be available in an alternative format, including Braille, large print, or electronic or audio format upon request by a person with a disability, as defined by the federal Americans with Disabilities Act.

2. Each court shall mail a copy of the handbook developed pursuant to subsection 1 of this section to each party in a dissolution or legal separation action filed pursuant to section 452.310, or any proceeding in modification thereof, where minor children are involved, or may provide the petitioner with a copy of the handbook at the time the petition is filed and direct that a copy of the handbook be served along with the petition and summons upon the respondent.

3. The court shall make the handbook available to interested state agencies and members of the public.

(L. 1998 S.B. 910, A.L. 2001 S.B. 267)

Educational sessions program shall be established by courts--for proceedings involving custody or support.

452.600. The circuit courts, by local rule, shall establish a program of educational sessions for parties to actions for dissolution of marriage or in postjudgment proceedings involving custody or support, concerning the effects of dissolution of marriage on minor children of the marriage, and the benefits of alternative dispute resolution, including mediation. In lieu of establishing such a program, the circuit court may, by local rule, designate a similar program of educational sessions offered by a private or public entity.

(L. 1993 H.B. 353 § 1 subsec. 1, A.L. 1998 S.B. 910)

Court shall order parties to action and may order children to attend, when.

452.605. In an action for dissolution of marriage or legal separation involving minor children, or in a postjudgment proceeding wherein custody of minor children is to be determined by the court, the court shall, except for good cause, unless otherwise provided by local rule, order the parties to attend educational sessions concerning the effects of custody and the dissolution of marriage on children. As used in this section "good cause" includes, but is not limited to, situations where the parties have stipulated to the custody and visitation of the child, or a finding by a court with jurisdiction after all parties have received notice and an opportunity to be heard that the safety of a party or child may be endangered by attending the educational sessions. The court may order the minor children to attend age-appropriate educational sessions.

(L. 1993 H.B. 353 § 1 subsec. 2, A.L. 1998 S.B. 910)

CROSS REFERENCE: Educational sessions required in dissolution, when, RSMo 452.372

Confidentiality of facts obtained at sessions not considered in adjudication, exception.

452.607. The facts adduced at any educational session resulting from a referral pursuant to the provisions of sections 452.600 to 452.610 shall not be considered in the adjudication of a pending or subsequent judicial proceeding, nor shall any report resulting from such educational session, except a certification for completion of the session, become part of the record of any judicial proceeding unless the parties have stipulated in writing to the contrary.

Cost of educational session, amount.

452.610. The fees or costs of educational sessions under sections 452.600 to 452.610 shall be less than seventy-five dollars per person and shall be borne by the parties as deemed equitable.

(L. 1993 H.B. 353 § 1 subsec. 4, A.L. 1996 S.B. 869)

Effective 7-1-97

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APPENDIX F

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT OF THE STATE OF MISSOURI IN AND FOR THE CITY OF ST. LOUIS

In re the matter of:)	Case No.:)
_____))
_____))
MEDIATION REPORT			
Petitioner,)		
And)	Division No.: ____	
)		
_____)		Scheduled Pretrial Date:
)		
_____ Respondent.)		

Pursuant to Local Rule 68.6 mediation has been concluded for one of the following reasons:

_____ 1. (Both parties) (One party) (has) (have) failed to appear at the initial mediation conference as instructed in the Order from Division

2. (Both parties) (One party) (has) (have) failed to appear at subsequent mediation conference as scheduled by Division ____ or the assigned mediator.

3. The parties have appeared at the mediation conference(s) but no agreement was reached.

4. The mediation agreement was mailed to the parties on _____

_____ 5. Other:

_____ Respectfully submitted this _____ day of ___, 20__

Mediator

Phone Number: _____

pc: All parties
DRU file
Court file

APPENDIX G

Mediation Procedure

A mediation order is received by the Mediation Unit after the respondent has been served and an answer has been filed. At that time the parties are ordered to parent education and mediation. The pre-trial is set out six weeks from that date. When the mediation unit receives the order it is assigned within 24 hours and notice to appear letters are mailed within 48 hours. When the case is assigned to a mediator that mediator stays with that family with each subsequent referral. Once a mediator is assigned a case or family that family remains with them. It is nearly impossible to change mediators once the assignment is made. This rule is important as a means of setting limits with clients and modeling that even when we don't get along with someone a business relationship is possible. This is the relationship that we are encouraging parents to have with one another.

Often it is found that when the parties appear they haven't spoken for some time (on the advice of their attorneys). The longer the traditional method of divorce has gone on the bigger the communication gap between the parties. Usually the session begins with a routine question and answer period to put the parties at ease. Once that is accomplished goals for the session are explored. The mediator begins to probe about what has worked with regard to parenting time for each party. If parties have been separated for some time then hopefully, they have begun to work out arrangements. If so, then the mediator will build on what has been working.^[52] If not, then an exploration of what they would want or expect for the future is conducted. It is important at this point that the mediator attempt to reinforce that two parents are better than one and that the decision making about their family is their responsibility. If the mediator senses an imbalance in the decision making they may call for a caucus with each party separately.^[53] This is done on the spot and it is crucial here that the mediator spend as much time with one party as with the other. Once assured that both parties are making independent decisions the mediation session resumes. If the mediator is unable to assure that both parties are making reasoned decisions the session is terminated. The session is never ended abruptly as this could create a safety concern for one or both parties. Usually, the mediator will ask questions to assess willingness to come for another appointment, suggestions to consult with their attorney about some of the questions raised so that the next session can be productive, etc. It is not recommended that the session be terminated without first bringing the parties together and the mediator ending the session. To do so may give one party the impression that something negative has occurred and that may bring on violence or unnecessary trouble between the parties. Managing the feelings and the tension is a very important part of any session. Normalizing the situation within the context of other separations and other families is also valuable. Couples who have a history have made hundreds of decisions on behalf of their family. In mediation, the request is that one more decision, on behalf of the family, be made. Mediation may consist of one session or as many as the family feels is necessary to work out issues.

During the enforcement session the parties are given the opportunity to discuss what has been

happening in the family. Often the problems have to do with developmental changes of the children or a recent remarriage. With developmental changes the parties have decisions like what school the children will attend or if the children should play one or two sports, take piano lessons or all of the above. Another big reason for enforcement of visitation complaints is interference from new spouses. Often a reminder to the parents that they are still the primary caretakers is needed. It is emphasized that new family members have an important place but that that place is not to replace a parent. This often helps to clear the air. Once a new agreement between the parties is worked out the mediator completes a letter of agreement in which the parties are informed that the agreement does not modify the court order. Should either party decide not to do what they have agreed the parties must revert to the terms of the court order or make a new agreement. The parties are asked to sign three copies of the agreement. One copy is provided to each party and one copy along with the enforcement of visitation report is sent to the court file. This is an important step for families. If a contempt motion is filed and no enforcement of visitation report is in the file then the judge sends them to mediation (if appropriate). If, however, there are letters of agreement and enforcement of visitation reports in the file and the parties are still confronting the same issues the judge can move on hearing the case more quickly. This form of differential case management is what ensures that the dockets can move quickly and efficiently.

Survey questions were designed from the Trial Court Performance Standards and Measurement System Implementation Manual.^[54] Other court databases were utilized to study what, if any, the effect of informal mediation services has had at reducing the number of subsequent filings.

APPENDIX H

Enforcement of Visitation

An enforcement of visitation mediation session is usually arranged by the complaining party sending the supervisor of the mediation unit a letter outlining the goal of mediation. The letter gives instruction about how to reach the alleged offending parent. During the enforcement session the parties are given the opportunity to discuss what has been happening in the family. Often the problems have to do with developmental changes of the children or a recent remarriage. With developmental changes the parties have decisions like what school the children will attend or if the children should play one or two sports, take piano lessons or all of the above. Another big reason for enforcement of visitation complaints is interference from new spouses. Often a reminder to the parents that they are still the primary caretakers is needed. It is emphasized that new family members have an important place but that that place is not to replace a parent. This often helps to clear the air. Once a new agreement between the parties is worked out the mediator completes a letter of agreement in which the parties are informed that the agreement does not modify the court order. Should either party decide not to do what they have agreed the parties must revert to the terms of the court order or make a new agreement. The parties are asked to sign three copies of the agreement. One copy is provided to each party and one copy along with the enforcement of visitation report is sent to the court file. This is an important step for families. If a contempt motion is filed and no enforcement of visitation report is in the file then the judge sends them to mediation (if appropriate). If, however, there are letters of agreement and enforcement of visitation reports in the file and the parties are still confronting the same issues the judge can move on hearing the case more quickly. This form of differential case management is what ensures that the dockets can move quickly and efficiently.

APPENDIX I

Attorney Surveys - Qualitative Questions 1/6

1. What do you like most about the mediation process?

Opportunity for parties to explore resolution, vent, without pressures of court lawyers, and fees.

Intensive opportunity to explore win/win. 1

It can achieve a result where arguing attorneys and clients cannot. II

Provides opportunity for parties to settle matters and short-circuit an otherwise costly legal process. II

It provides a neutral third party who can verify when one party or the other is ignoring his/her parental responsibility to act in the best interests of the kids.

Unbiased assessment 1

Gives parties more control. Focus' communication on children III

Offers clients a neutral ground in which to bring issues. However, when one party or both are not willing to compromise, mediation does not help.

It allows the parties the opportunity to resolve issues without interference from lawyers and the court. Speedy resolution. IIII IIII

Gives people a voice in the possible outcome, gives a safe way for people to vent and hopefully resolve issues in neutral context. Lot of small issues to attorney or court but big issues to people to get resolved without wasting court's time and without incurring too many fees. (e.g. what is the

best time for a custody exchange?) Also can't underestimate the education. IIII

It helps a lot in some cases but for some parties it doesn't help, that is because of the parties themselves. I

Staff is professional and conscientious. III

Allows clients cost-free, neutral impact on developing a parenting plan. The ability to allow parents to discuss issues in a non-confrontational environment. IIII

Never used it. IIII

I like the mediation process in that it provides parental input to tailor child custody plans. What the city courts provide, however, is NOT mediation. Mediation should be confidential and conducted by an impartial mediator. The city court provides what I would term directed outcomes – non-confidential but not mediation. II

There is nothing wrong with the mediation process but there some cases where it would be good if the family court offered the range of services that it used to. (e.g. investigations, homestudies, etc.) I

Nothing. Strongly opposed to it. II

6. What did you know about the mediation services provided by Family Court Services before your case? Where did you learn this information?

Nothing. 1111 1111 1111 1111 1111 1111 1111 1111 1111 1111 11

I just knew that mediators were non-biased individuals who helped the parties come to an agreement about their children and that it kept the cost of a divorce down. 11

I knew about it from my divorce in 1995. 1

That it was required. 1

Attorney Survey – Qualitative Question 2/6

2. What do you like least about the mediation process?

I am a trained mediator. The process is good, but the city lacks trained, experienced mediators with sufficient time to an effective job beyond the simplest cases. Mediation through the court has been ineffectual and a waste of time/money in my cases. Reduce caseloads and use better-trained, qualified mediators. More training. 1 1

Mediators who do not understand their role. 1111 1

I like it least when the Judge asks parties to meet with the mediator on court date and I am left waiting. This only happened to me once and that Judge is no longer in Division 15. 1

Many people do not respect mediation and therefore clients often find it a waste of time. 11

The parties could have more time to more thoroughly explore the best parenting arrangement and to get to a point of willing resolution and agreement.

Mediators are unable to testify to admissions made in mediation. 1

Could be too costly, depending on who is doing it. 1

It is not binding; therefore, could be a waste of time and slow down the divorce process. Also, have danger of parties' making admissions and statements that could be used against them in Court. 1

It's too "touchy-feely". 1

Pre-judging due to gender. Mediator partial to one side. Sometimes clients don't feel safe. 11

Individuals pretend to comply but rarely change their attitude. 1

Depending on the personality of the parties' one party may be "bullied" into a decision. 1111 11

Parties seem to stray from the issues and the process takes too long. 1

Overused. Not for everything!!! 1

Never used the service. 11

I wish the family court offered the range of services it used to. 1

No attorneys involved. I would like to know what my client is doing. 1

It's relegated to only child custody issues. 1

Child custody is the Court's business mediation is social work. 1

Attorney Survey – Qualitative Question 3/6

3. What is the one thing you would like to change about the mediation process?

It should stop if the mediator senses an imbalance between the parties. You need a domestic violence screen. 11.

I wish they were better-trained mediators. Most are MSW and don't have the expertise to counsel or give legal advice and they are placed in role where they are doing both of these things. 11.

Remove it from the system. 1

Do more than custody/visitation. 1

All in all, I think the mediators are doing a great job. 11.

Mediation should be confidential and mediators should not be directing outcome. 11.

More documentation from the mediator about goals, discussions and outcomes. 1

Have attorneys involved in some way. 111.

The mediators should be able to testify. 1

City parenting plan stinks (you should adopt the Supreme Court version) ((*note: the Supreme Court version is the city parenting plan*)) 1

Immediate drug testing in some cases. 1

Need more forceful mediators. 1

The ability for not only the parties but also new spouses to participate all at the same time because those decision affect more than just the parties. 1

“You guys need more staff.” 1

More sessions. 1

People need to understand that Mediation and Special Court Services Unit is an arm of the court and the court can impose its solution to custody. Mediator does not need to be “friend”. 1

Better educate attorneys as to how it can be used successfully and effectively. 1

4. Generally, what is the biggest obstacle in settling child custody cases?

Parents problems with each other that get “tangled-up” with custody. IIII IIII IIII IIII

Neither party is willing to compromise. II

Money. People don’t like paying child support and will often request custody as a means to avoid paying support to the other parent. I

Un or under – represented parties who need advice and reality checks and don’t get that.

Stubbornness of some attorneys to resist reasonable negotiations. Some attorneys need to subordinate their egos and give settlement a chance. IIII I

Readjusting client’s pre-conceived notions, perceptions and beliefs. I

Current spouses, unprepared lawyers, unwillingness of court to look at what are equitable. I

The failure of the court to appropriately appoint Guardian ad litem. I

Judicial bias. I

Do you have different levels of satisfaction associated with the family court services provided by the three respective divisions (i.e., Division 14, 15, and 30)? (Note: 14A is a division that was added in late 2001).

As far as custody goes, no different levels of satisfaction. 1

Yes, but my caseload has been too small to give any meaningful analysis. 1

Yes- Division 15 dockets need to be called on time. Once I had to wait one hour to get a continuance on a pretrial. Too many cases loaded up at the same time. Division 14 cases tend to get placed on a trial docket without there being any meaningful substantive pretrials. Division 14A – Why does an attorney have to appear on a docket to submit an Affidavit for Judgement? Reading case onto the record should not be necessary no other court I am aware of requires this. Division 30 cases are called close to on time. The dockets do not tend to be overloaded. A meaningful substantive discussion of issues usually occurs with this judge. 1

No. IIII IIII IIII 1

No consistency; very little following of rules in 14 & 15 not so much in 30. 1

All the Judges are great. The clerks in some divisions are not courteous and appear to be lazy. 1

Division 15 needs judges familiar with family law! A two-year term would be better, as it takes time to get familiar with the law, the attorneys and standard procedure. 1

Yes. 1

Predictability differs from division to division. 1

No experience with Division 30. Very satisfied with Division 15. Division 14's present judge is arbitrary; parties come away feeling like they've not been heard. 1

Divisions 15 and 14-A are excellent Courts in which to litigate custody matters. 1

All three division provide excellent service. Division 14 does a remarkable job in separating the wheat from the chaff. The judge is very clear to parties and their attorneys. Division 30 handles very difficult cases with great common sense – outcome are very appropriate. 1

Yes, in the year 2000 things were horrible in both 15 and 14. Cases weren't moving and the impression was that these judges were biding their time trying to get out of domestic. It would help if the judges assigned to domestic division have some background in domestic relations. We seem to have to reinvent the wheel every time a new judge come in, with the exception of Judge Frawley, because few members of the bench have expertise in this area. 1

Attorney Survey – Qualitative Questions 6/6

Please provide us with any general comments you have about the mediation.

Better trained mediators.

The mediators seem to deal with the parties very well and very professionally. They are objective – their recommendations are so helpful to the court and to the entire process.

Mediation is a great tool if used properly. If more attorneys would stress the cost-effectiveness and time saving advantages of mediation it might be used more effectively.

The majority of cases I have worked on will need continuing mediation and conflict resolution services over the course of time. It would be preferable that such services could be easily accessible to the parties without having to involve expense of counsel and the court's time.

I do not like the fact that mediation seems forced on the attorneys. Also, the role of the GAL may be somehow diminished in the mediation process.

I think they should be able to get mediation by merely filing a request by either party. I tell people (attorneys and litigants) of benefits with your program. Perhaps make a meeting with the parties and mediator mandatory.

Overall the program is very good. The majority of the cases are handled efficiently and successfully.

III

We need more feedback – or you need to move to confidential mediation.

Need more mediators with more training.

Give the parties an opportunity to make childcare decisions. Mediator should only tell the court successful or unsuccessful.

Client Surveys – Qualitative Questions 1/6

1. What did you like most about the mediation process?

This session only takes care of the custodial parent who is only the mother not the father. 1

It was on time. 1

It allowed me to be treated fairly and to be heard. 111

Focus on problem solving vs. arguments. Structure. Less costly. 1111

I thought the mediator was very intelligent, and able to explain the mediation process. 1111

It was an objective approach. It was a great opportunity. 1111 1111

None of it. I did not like the process. 1111 1111

I got to see my kids without going to court. 111

No lawyers. It was fast. 11

The court saw what was most important. My child. They put his needs first. 1111

Mediation taught us a lot about the court process. We were able to avoid a costly trial.
1111

The opportunity to see both sides of the situation. Good boundaries for people who can't speak to one another. 1111

Due to domestic violence in my home I did not have to meet face to face with my spouse. In spite of that we were able to come to an agreement about our children. 1

Client Surveys – Qualitative Questions 2/6

2. What did you like least about the mediation process?

I live in another state. 1

Location and parking. 1111

Most of it. 1111

I liked it. Everything was fine. 1111 11

I felt that my children's needs were not always being met. 1

The office was too small. I had to sit too close to my spouse. It was frustrating. 11

My spouse lied in the session. So nothing really worked after all. 111

It was sociable. 1

It seemed to be one-sided at times. 1111 111

I did not like having a new mediator. 1

I was treated like a number. 11

It seemed like I was there forever. 1

Taking off work. Evening hours would be great. 1

My spouse never understood why we were there. 11

Just having the court involved in my life. 111

Needed more sessions. 1

I felt pushed. Didn't feel I could say what I wanted. 1

It may be a little too clinical. 1

Not fair to the father. 1

3. What is the one thing you would like to change about the mediation process?

Look at the father's opinion. 11

First see the mediator one on one then together. 111

Nothing. Very educational. 1111 1

Improve the caliber of the mediator. 1

Give the mediators more professional offices. 1111

The mediator seemed to be braced for a battle. We didn't have one!! 1

Not have it. 1111

Just let the lawyers earn their pay. 1

Location. 111

We should be allowed to settle money and property issues there. 1

Addressing the specific concerns that a person has about the other parent. 111

Not being able to express myself completely. 1

I would have liked more than one session. 111

I would like to know everything we are going to talk about before I went to mediation. 11

The staff. 1

Needs to happen more timely. 1

I would like to take home what we agreed to the day of mediation. I don't like waiting. 1

The mediator should have more influence in the outcome. 1

Client Surveys – Qualitative Questions 4/6

4. What was the biggest problem you had when trying to settle your case?

Custody. 111

The whole process. 11

The legal language in the agreement. 1

After going to mediation there were no problems. 1111 11

Agreement on the amount of time we would each have. 1111

The other party. 1111

Communication. 1111 1111

We had to deal with the Division of Family Services. 1

Seeing my children. 1

The grandmother got some visitation rights. It seems unfair. 1

Too many court dates where nothing was done. I only wanted to see my child more. 11

The mediation staff. No one cares we are caseloads. 111

Having so many decisions to make that were so final. I needed more time. 111

My spouse did not take the process seriously. 1111

Attorney dragged out my case. 111

5. What was the outcome of your case?

I lost custody of my child. 1

We had a fair outcome. 1111

Divorce without going to trial. 11

I have custody of our children. 1111 11

A fair agreement that one-year later we still abide by. 1

I have a reasonable visitation schedule. 1111 11

Divorce with visitation. 1111 1111

I didn't get anything. 1111 1111

Joint custody. 11

Livable. 1

We use the custody exchange center and it has made a world of difference. 1

High child support. 11

Case was too long. 111

Visitation schedule is never kept. 11

We have our children 50/50 and that is what we wanted. 1

Just what I wanted it to be. 1

My husband and I reconciled. 1

He was awarded physical and he moved to Montana without the courts or my permission. 1

Client Surveys – Qualitative Questions 5/6

6. What was the outcome of your case?

I lost custody of my child. 1

We had a fair outcome. 1111

Divorce without going to trial. 11

I have custody of our children. 1111 11

A fair agreement that one-year later we still abide by. 1

I have a reasonable visitation schedule. 1111 11

Divorce with visitation. 1111 1111

I didn't get anything. 1111 1111

Joint custody. 11

Livable. 1

We use the custody exchange center and it has made a world of difference. 1

High child support. 11

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We have our children 50/50 and that is what we wanted. 1

Just what I wanted it to be. 1

My husband and I reconciled. 1

He was awarded physical and he moved to Montana without the courts or my permission.

1

APPENDIX J

CLIENT SURVEY DEMOGRAPHICS

Overall information about response sample:

Total responded was 69 but one was deceased so this decreased the sample size to 68.

The minimum age responding was 21 and the maximum age was 63. The average age of the respondents was 39.

40 of the respondents were female and 28 of the respondents were male.

18 respondents were African American

3 of the respondents were Asian

45 of the respondents were Caucasian

1 respondent was Native American

1 respondent indicated “other”

Education level:

9 indicated they had some high school

19 indicated they had completed high school or had a GED

17 indicated they had some college

5 indicated they had an associate’s degree

12 indicated they held a BA/BS

5 indicated they held an MA/MS

1 indicated they held a Ph.D.

Client Survey Constructs

Standard 1.2-Safety, Accessibility and Convenience

Total Number of Questions used to evaluate = 5

1. I felt safe when attending mediation sessions.
2. The location of the mediation sessions was convenient.
3. Parking at Family Court Services was convenient.
4. The times scheduled for my mediation sessions were convenient.
5. Overall, it was convenient for me to attend mediation sessions.

The reliability coefficient for these questions was .85 suggesting that the scale was reliable. That is, the items appeared to “hang together” or be measuring the same construct.

Recall that the neutral point of the scale was “4”. Overall, the average response to these items was 4.97. This was “significantly” above the neutral point.

For these analysis:

mean = 4.97

s.d. = 1.39

n = 61

p<.000

Standard 1.4-Courtesy, responsiveness and respect

This was measured by 1 item:

1. The staff members treated me with courtesy and respect.

n = 64

t = 10.20

mean = 5.78

sd. = 1.40

p = .000

Standard 3.4-Clarity

This was measured by 2 items:

1. I understood the agreements reached at the end of the mediation process.
2. The agreements reached were unclear.

The reliability coefficient was .81 suggesting a reliable scale.

mean = 5.40

n = 62

sd = 1.57

t = 7.10

p<.000

Standard 5.1-Accessibility

This was measured by 2 items:

1. It was easy to find staff members who could answer my questions.
2. The staff members were knowledgeable.

Alpha = .93 suggestions a reliable scale.

mean = 4.83

n = 60
p < .001
t = 3.51

Standard 5.2-Expeditious, fair and reliable court functions.

This was measured by 3 items:

1. The mediator was fair.
2. The agreements reached were fair.
3. The mediation services were provided in a timely manner.

The reliability coefficient for these 3 items = .85

Mean = 4.79
sd = 1.83
t = 3.39
n = 62
p < .000

Here are a few general questions that probably don't fit into the standards but are interesting to look at:

- 1) It would be helpful if mediation sessions could be held in the evenings.

Mean = 4.95
Significant at .000 level
SD = 1.67

- 2) Attending the mediation sessions wasted my time.

Mean = 3.17
Significant at the .003 level
t = 3.104
sd = 2.18

**other notes: no differences in standards if divided by race

[1] Webster's Ninth New Collegiate Dictionary defines satisfaction as the fulfillment of a need or want (1044).

[2] A complete copy of Local Rule 68 is located in appendix A.

[3] Stakeholders are defined as attorneys and clients of the Domestic Relations Divisions of the Twenty-Second Circuit of Missouri – Family Court.

[4] The National Standards for Court-Connected Mediation Programs, 1996, section 3.1 discusses the importance of

bringing all stakeholders on board with changes.

⁵ The survey instrument and copies of cover letters are in appendix B.

⁶ Trial Court Performance Standards Implementation Manual, (1997). Trial Court Performance Standards were initiated in 1987 by the National Center for State Courts and the Bureau of Justice Assistance. The Trial Court Performance Standards and Measurement System is “a common language for describing, classifying, and measuring the performance of trial courts.” (iii). Expedition and timeliness are best defined as “A trial court should meet its responsibilities to everyone affected by it’s actions and activities in a timely and expeditious manner – one that does not cause delay. Unnecessary delay causes injustice and hardship. It is a primary cause of diminished public trust and confidence in the court” (73). Access to justice is defined as “Trial court should be open and accessible. Location, physical structure, procedures, and the responsiveness of personnel affect accessibility”(29). This means that any barrier to service must be removed be it physical, environment, or personnel. The handbook provides validated surveys and measures that can be utilized to assist courts.

⁷ Missouri Judicial Report Supplement, Office of the State Courts Administrator 2000.

⁸ An organizational chart of the Family Court is included in appendix C.

⁹ The ABCs of Family Court: Everything you always wanted to know, but never had the opportunity to ask. Symposium: Jefferson City, Missouri, December 1997.

¹⁰ A copy of the EOJ notice letter is located in appendix D.

[11] The National Standards for Court-Connected Mediation Programs, 1996, section 3.1 discusses the importance of bringing all stakeholders on board with changes.

[12] Mediation and Special Court Services include: mediation of domestic, dependency, and victim/offender matters, child custody investigations, family contracted services for treatment of family and youth under the jurisdiction of the court; and others.

[13] Revised Missouri Statute 452. 452 instructs that domestic divisions shall administer...A copy of RSMO 452 is in appendix E.

[14] One solution was to submit written mediation reports to the court instead of verbal reporting. The mediation report simply informs the court that the parties’ have/have not attended and that a settlement was/was not reached. A copy of the mediation report is in the appendix. If a settlement was reached the date that the parties were mailed the parenting plan is indicated on the report. That is all that is reported from the mediation session. We do not inform which party failed to attend nor do we inform which party is holding up settlement of the case. This policy is in keeping with National Standards for Professional Mediators (e.g. National Mediation Standards of Practice; Florida Mediation Standards of Practice; California Mediation Standards of Practice. Most states that have confidential mediation standards have adopted this form of reporting. A copy can be found in appendix F.

[15] Milne, Ann. (1991). Mediation-A promising Alternative for Family Courts. Juvenile & Family Court Journal. “Mediation reduces hostility by encouraging direct communication...takes the focus off self and back on family...and in a structured setting manages anger and fear.” 61

[16] Benjamin, Robert The Mediation of Business, Family and Divorce Conflicts: Practice Forms and Handbook 1995. Understanding mythology is a means by which people can put ideas, morals, conflict and outcome in a way or format that people and society can more easily understand. “Myths are stories of significance that people tell themselves and each other to make sense of the world around them.” Benjamin informs that four myths in particular must be addressed in the mediation of disputes. “Myth of Justice is that each party to a legally framed dispute believes that a thoughtful and compassionate judge will deliberate and make the right and fair decision. ...In law, the myth perpetuates the belief that there is “a remedy for every wrong”. The legal system is a “big fix-it” machine. ...In virtually every interaction between judges, lawyers, and clients, “fairness” and “rightness” is an implicit or explicit subject of discussion.(2.2).” The truth is that people believe that once the judge has heard their side he will surely rule in their favor. Mediation is a way to explain that in the legal system the

judge may not 'care' because there is no legal basis in which a ruling can be made just because one party has been wronged. There must be a law to support the ruling. Another myth is that of finality. This can best be explained to parties as the belief that once the judge declares them divorced they will magically feel divorced or separate. In reality, they will still feel married for some time. The myth of rationality "that decisions made by judges, arbitrators or other experts are surely logical, and dispassionate (2.3)." The truth is that these people are just humans with thoughts, ideas, bias, political agendas and that all of these can and do color outcome. Finally, there is the myth of objectivity or neutrality. People, especially stressed people, tend to put anyone in an authority position be they a judge, doctor, or mediator in a power position and they want to believe that these authority figures are neutral and only performing in the actors best interest. The fact is that all of these people are players in the same system (2.4)."

[17] For more information about the mediation session please refer to the appendix G.

¹⁸ For a detailed explanation of enforcement of visitation services please refer to appendix H.

[19] Adler, Robert E., Ph.D., 1988. Sharing The Children. Adler and Adler Publishers, Inc.

[20] Pankey, Kenneth, *Alternative Dispute Resolution in Domestic Relations Cases*, National Center for State Courts, Memorandum, November 15, 1990. "A program that is "court operated" or court annexed" is one that is funded and administered by the courts, although its neutrals (mediators, arbitrators, etc.) may be independent of the court. A "court referred" or "court sponsored" program is one that is run independently of the court but depends heavily upon the court the referral of cases. A "private" program has no strong institutional connection to the court."

[21] Milne, Ann (1991). *Mediation A promising Alternative for Family Courts*. *Juvenile & Family Court Journal*. In response to why mediation has become increasingly important Ms. Milne writes that the demise of the extended family in our culture has left a void for reconciliation and mediation within the family of origin. "...the nuclear family provide less of a resource for conflict resolution due to mass urbanization and mobility. As a result, family conflicts have increasingly been directed to external sources for resolution." 62.

[22] Benjamin, *The Mediation of Business, Family and Divorce Conflicts: Practice Forms and Handbook*, (1995) "Mediators are often presented as being "neutrals" which may be misleading. "Neutrality" suggests that the mediator is able to be objective and "above the fray" so-to-speak. That may not be accurate; the mediator to a dispute is more accurately, in systemic terms, part of the system – a participate-observer. The mediator will actively engage with both parties in a balanced manner. Parties may not feel they will be protected by a "neutral" that like an umpire, will merely watch the action below and call points and penalties."

[23] Wallerstein & Blakeslee, *Second Chances*, 1989. "If the goal of the legal system is – and I fully believe that it should be – to minimize the impact of divorce on children and to preserve for children as much as possible of the cont...social, economic, and emotional security that existed while their parents' marriage was intact, then we still have far to go. At a minimum, the variety of supports and services for divorcing families needs to be expanded in scope and over time. These families need education at the time of the divorce about the special problems created by their decision. They need help in making decisions about living arrangements, visiting schedules, and sole or joint custody. And they need help in implementing these decisions over many years – and in modifying them as the children grow and the family changes. Divorcing families need universally available mediation services." 306.

[24] Bautz, B.J., & Hill, R.M. (1991). *Mediating the breakup: Do children win?* *Mediation Quarterly*, 8, 199-210.

[25] Rainey, J., *Plan would streamline domestic litigation*. Los Angeles Times, March 12, 1989. "The Los Angeles Superior Court began mandatory mediation of such disputes (family) in 1978. Mediators last year resolved 64% of the 6,901 cases that came before them, said Hugh McIsaac, the county's director of Family Court Services. The unsettled cases go to court...County Officials said it costs the taxpayers \$3,237 a day to run each of the 27 family law courts, compared to the \$462 a day for each of the 19 mediators and accompanying overhead."

[26] Page, Judge Robert W. is a Family Judge with the Superior Court in Camden County, New Jersey.

[27] Weinstein, Jack B. Reform of Court Rule-Making Procedures. Columbus, Ohio: Ohio State University Press, 1977. Weinstein summarized five reasons rules are important to courts today: increased responsibility given to Courts by the populous; use of “equalizing” bodies like unions; the “habitation” by the public to giving “massive control burdens to courts, requiring exercise of power on a grand scale (13)”; social and technological change; and the expectation placed on courts to solve problems that individuals can not. The complexity of cases brought before the courts today have created the necessity for the creation of detailed rules. Rules by their very nature create order out of chaos. How are rules made? As early as the seventeenth century Lord Bolinbroke’s thesis states that acts of government must conform to the “requirements of a constitution” and that is still true today (p23). In addition, Weinstein informs that district courts may not create rules that are “1) inconsistent with the Federal rules; 2) inconsistent with Federal Statutes; 3) unreasonable; 4) non-uniform and discriminatory (p 120)”.

[28] Weinstein, Jack B. Reform, and Page, Robert W., Conference

[29] Milne, Ann (1991) Mediation-A Promising Alternative for Family Courts... reports that mediation is associated with positive user satisfaction 64.

[30] Koopman, Elizabeth J., Hunt, E. Joan, Favretto, Francine G., Coltri, Laurie S., Britten, Tracy Professional Perspectives on Court-Connected Child Custody Mediation (1991) *Family and Conciliation Courts Review*, 29(3) (304-317).

[31] Greachen, John M., *How Fair, Fast, and Cheap Should Court Be?* May-June 1999. *Judicature* 82(6). The polling process consisted questionnaires that asked respondents, in New Mexico, to report about their thoughts and feelings regarding their perceptions of the judge, the cost of the litigation, and the speed with which their case was disposed. This article discusses that attention in this area increases satisfaction by the customer.

[32] Depner, Charlene E., Cannata, Karen, Ricci, Isolina (1991). Report 4: Mediated agreements on Child Custody and Visitation: 1991 California Family Court Services Snapshot Study. *Family and Conciliation Courts Review*, 33(1) January 1995 87-109 Sage Publications, Inc. The Impact of Case Characteristics and Mediation and Service Models January 1994. California Administrative Office of the Courts.

[33] Campliar, Christopher W., Stolberg, Arnold L., Benefits of Court-Sponsored Divorce Mediation: A study of Outcomes and Influences on Success. 1990. *Mediation Quarterly* 7(3) 199-213. “Mediation couples reached an agreement on one or more unresolved issues 69% of the times. This is consistent with the 50-75% rate of success reported in mandatory and voluntary mediation programs.”

[34] Kibler, S., Sanchez, E., & Baker-Jackson, M. 1994 *Pre-contempt/contemnors group diversion counseling program*: a program to address parental frustration of custody and visitation orders. *Family and Conciliation Courts Review*. 32(1) 62-71. The article describes a program in Los Angeles designed to address the needs of families who are chronically in need of help with enforcing court orders. Like many diversion programs the court is attempting to educate or in some cases re-educate problematic families about the legal ramifications of contempt and the psychological effects on children. The Twenty-Second Circuit recently began a program entitled Focus on Children after Separation (FOCAS). It is an intensive four-session course similar to this program. The program will begin in February, 2001 and is funded by a grant from the Missouri Office of State Courts Administrator - Domestic Relations Resolution Fund.

[35] Dillon, Peter A., M.A., Emery, Robert E., Ph.D., “Divorce Mediation and Resolution of Child Custody Disputes: Long-Term Effects” *American Orthopsychiatric Association*, 66(1). January 1996. 131-140. Bautz, B.J., & Hill, R.M. (1991). Mediating the breakup: Do children win? *Mediation Quarterly*, 8, 199-210 Emery, R. E. (1988) Marriage, Divorce and Children’s Adjustment. Beverly Hills, CA: Sage Adler, Robert E., Ph.D., 1988. Sharing The Children. Adler and Adler Publishers, Inc. In addition to demystifying myths about what is “good” for children. Adler’s focus is on the painful process of future orientation necessary for parents to move on and not the rehash of past events.

[36] Gardner, R. (1987). The parental alienation syndrome and the differentiation between fabricated and genuine child sexual abuse. Creskill, NJ: Creative Therapeutics. Gardner discuss two types of alienation, conscious and unconscious. In conscious alienation the pattern of accusations become increasingly damning. Examples of conscious strategies are: numerous restraining orders; choosing persons other than the father to baby-sit; and not sending the child for visits when sick. Unconscious strategies are: letting the child decide whether or not to visit as if visiting is of no importance; statements like “you have to go or your father will take us back to court”; and calling the child during a visit to “see if they are ok?” giving the impression they aren’t safe. 101

[37] Pearson, Jessica, Anhalt, Jean. “When Parents Complain about Visitation.” *Mediation Quarterly*, 1(2). Winter 1993. The use of custodial vs. non-custodial is used here because the study conducted by Pearson and Anhalt also concluded that there were essentially no difference between fathers as custodial parents and mothers. The complaints were virtually the same. They also argue in the conclusion that time and date specific parenting plans tend to equalize parents and the authority they may feel by being designated the residential or custodial parent.

[38] Ash, Evan. “*Custody is a four-lettered word toward a more humane language in divorce cases*” The Barletter. 13(9) 5-6

[39] A copy of local rule 68.20 is located in the appendix A.

[40] Family Access Motions are authorized by RSMO 452.400. A copy of RSMO 452 is in the appendix E.

[41] Construct is defined as creating groups of questions that “hang together” or be measure the same thing.

[42] The primary function of establishing a reliability coefficient is so that validity can be established. A test is reliable to the extent that it measures what it is suppose to measure.

[43] All qualitative questions and answers have been recorded and placed in appendix I.

[44] Results located in appendix J.

[45] Results located in appendix J.

[46] Britannica Online, vers. 2002, February 2002, Encyclopaedia Britannica, <http://www.eb.com/>. Descriptive statistics are designed to facilitate presentation and interpretation of data. Outliers is best defined: Sometimes data for a variable will include one or more values that appear unusually large or small and out of place when compared with the other data values. These values are known as outliers. The primary function of establishing a reliability coefficient is so that validity can be established. A test is reliable to the extent that it measures what it is suppose to measure.

[47] All computations for statistics are in appendix J.

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[49] Britannica Online, a t-test is defined as a statistical test involving confidence limits for the random variable t of a t distribution and used especially in testing hypotheses about means of normal distributions when the standard deviations are unknown.

[50] Kibler, S., Sanchez, E., & Baker-Jackson, M. Pre-contempt/contemnors group diversion counseling program 62

[51] Missouri Judicial Supplement. (1994,1995,1996,1997,1998,1999,2000). Produced yearly by the Office of State
tateCourtsAdministrator

[52] Ash, Evan. “Custody is a Four-lettered Word Towards a More Humane Language in Divorce Cases” *The Barletter*. 13(9). 5-6. An official publication of the Johnson County Bar Association.

[53] An imbalance could occur for a myriad of reasons from domestic violence to shyness. The mediator must continually assess for these circumstances. For information about domestic violence and mediation please see: National Standards for Court-Connected Mediation Programs section 4.2.; Standard for Practice for California section 3; Standards of Practice for Lawyers who Conduct Divorce and Family Mediation, Standard XI; Gardner, Linda,

Ph.D., Dennis, Donaldson, Crandall, Penny, Maciorowski, Donna May 1998 Workshop presentation entitled: Implementing Domestic Abuse and Custody Mediation Policies and Procedures A Guide for Judges, Court Administrators, and Mediation Program Directors. (324-327); and the Model Code on Domestic and Family Violence prepared by the National Council of Juvenile and Family Court Judges. These are but a few of the numerous articles and model codes.

[\[54\]](#) Copies of this manual are available by contacting The National Center for State Courts 300 Newport Avenue, Williamsburg, VA 23185.