

**Another World:  
Civil Practice Before Associate Circuit Judges  
and the Differences You Should Know About  
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**1. SCOPE OF MATERIALS**

There are substantial differences in practice between civil cases litigated under the Missouri Rules of Civil Procedure and those heard by associate circuit judges under Chapter 517 RSMo. These materials assume familiarity with the civil procedure rules and focus on the differences practitioners will encounter when proceeding under Chapter 517.

**2. JURISDICTION VS. PROCEDURE**

Long-time practitioners recall a time when associate circuit judges (formerly magistrate judges) had limited jurisdiction, and therefore they tend to frame questions about cases before associate judges in terms of jurisdiction. However, under the current statutory framework, jurisdiction is seldom an issue, and the focus usually is more appropriately placed on the applicable procedures.

Section 478.220 RSMo now provides that "circuit judges and *associate circuit judges may hear and determine all cases and matters within the jurisdiction of their circuit courts*" (emphasis added), subject to restrictions relating to proper assignment to hear certain cases or classes of cases. The former monetary limit on the jurisdiction of associate judges was repealed in 1989. Thus, subject to local orders and rules governing assignment of cases under Sections 478.240 and 478.245 RSMo, associate circuit judges have joint original jurisdiction with circuit judges over all cases in their circuits. If an associate circuit judge hears and determines a case not properly assigned to him or her, the order or judgment is merely voidable, but not void, because Section 478.240.3 RSMo provides that any such order or judgment "*may be set aside*" (emphasis added). In short, Missouri has a unitary trial court system, and there is no separate "Associate Circuit Court," a point thoroughly explained in *Robinson v. Lohman*, 949 S.W.2d 907, 910-12 (Mo.App. S.D. 1997).

Notwithstanding Missouri's unitary trial court system, in a sense associate circuit judges have broader jurisdiction than circuit judges because some statutes give *additional* original jurisdiction to associates--for example, small

claims (Section 482.300 RSMo), rent and possession (Section 535.020 RSMo), unlawful detainer/forcible entry and detainer (Section 534.060 RSMo), and expedited evictions (Sections 441.710-441.880 RSMo).

Given that associate circuit judges have broad original jurisdiction, the more important issue typically facing a practitioner when litigating a case before an associate circuit judge is whether the procedures to be followed are governed by the expedited process set out in Chapter 517 RSMo or whether the case is entirely governed by the Rules of Civil Procedure.

### 3. CASES TO WHICH CHAPTER 517 APPLIES

Seen in the context of all current statutes governing Missouri courts, Chapter 517 RSMo clearly is intended to provide an expedited procedure for handling smaller civil cases and does not speak to jurisdiction *per se*. *Mogley v. Fleming*, 11 S.W.3d 740, 746-47 (Mo.App. E.D. 1999). Section 517.011 specifies that Chapter 517 procedures shall apply to the following types of cases "originally filed before associate circuit judges":

1. Except as otherwise provided by law, all civil actions for recovery of money, whether founded on contract or tort, or upon a bond or undertaking given pursuant to law in any civil action, or for a penalty or forfeiture based on statute, when the amount demanded, exclusive of interest and costs, does not exceed \$25,000. Section 517.011.1(1). [In a case filed under this provision, even a default judgment may not exceed \$25,000. *Spino v. Bhakta*, 174 S.W.3d 702 (Mo.App. W.D. 2005).]

2. Actions against railroad companies to recover damages for killing or injuring horses, mules, cattle or other animals, with no monetary limit. Section 517.011.1(2).

[Note: Under Section 478.250.2 RSMo, a plaintiff has the option of designating that cases in the above two categories be heard pursuant to the Rules of Civil Procedure in counties with unified filing systems in which all cases are filed with the circuit clerk. If such designation is made, the case will be heard by a circuit judge unless an associate circuit judge is assigned.]

3. Cases that a circuit judge can hear in chambers, but only in counties of less than 70,000 population when a circuit judge is absent from the county. Section 517.011.1(4).

4. Cases arising under Chapters 213, 272, 302, 303, 388, 429, 430, 444, 482, 521, 533, 534, 535 and 537 RSMo. Section 517.011.1(3). **Note that there is no monetary limit stated for such cases.** Following is a list of what is covered by the referenced chapters:

a. Chapter 213 covers human rights actions. See Section 213.111 RSMo.

b. Chapter 272 deals with actions to assess damages caused by animals running at large and for compensation to a taker-up of stock. See Sections 272.030 *et seq.* and 272.230 (local option) RSMo.

c. Chapter 302 covers drivers' and commercial drivers' licenses.

d. Chapter 303 is the motor vehicle financial responsibility law.

e. Chapter 388 covers actions by landowners to ascertain damages done to their lands by railroads in taking or depositing materials. See Section 388.420 RSMo.

f. Chapter 429 deals with mechanics liens. See Section 429.350 RSMo.

g. Chapter 430 covers actions to enforce liens for storing vehicles and for work on animals and vehicles, actions to enforce liens for petty repair bills on chattels, and actions to enforce liens for keeping, training and breeding animals, See Sections 430.010 *et seq.*, 430.080 *et seq.* and 430.150 *et seq.*

h. Chapter 444 deals with actions to survey mine workings. See Sections 444.070 *et seq.* RSMo.

i. Chapter 482 covers small claims actions. See Sections 482.300 *et seq.* RSMo.

- j. Chapter 521 deals with attachments.
- k. Chapter 533 covers actions for the replevin of property. See Sections 533.240 and 533.250 RSMo.
- l. Chapter 534 deals with unlawful detainer and forcible entry and detainer actions. See Section 534.060 RSMo.
- m. Chapter 535 covers rent-and-possession actions. See Section 535.020 RSMo.
- n. Chapter 577 deals with public safety offenses.

Other statutes exist that give associate circuit judges authority to hear and determine matters in addition to those listed above. These statutes generally set out procedures to be followed for the particular matters, but there is no guidance as to whether the Rules of Civil Procedure or Chapter 517 will govern if the statutory procedures are silent on a particular issue. The additional statutes include:

- a. Sections 272.240 *et seq.* RSMo covering actions to assess the value of partition fences and to determine repair responsibilities for partition fences.
- b. Sections 419.060 and 419.070 RSMo relating to actions to enforce innkeepers' liens.
- c. Sections 441.710-441.880 RSMo regarding actions by a landlord, prosecuting attorney or neighborhood association for "expedited eviction" of a tenant for illegal drug activity and other specified reasons.
- d. Sections 446.040 *et seq.* RSMo covering actions to establish survey corners.
- e. Sections 447.010-447.110 RSMo relating to actions to gain title to found personal property where the owner is unknown.
- f. Sections 537.300 *et seq.* RSMo regarding actions for damages from the driving away of others' stock by drovers.

#### **4. PROCEDURAL RULES APPLICABLE UNDER CHAPTER 517--GENERAL RULE**

In cases heard by an associate circuit judge under Chapter 517 RSMo, the Rules of Civil Procedure apply "except where otherwise provided by law." Section 517.021 RSMo. See also Rule 41.01(d). The primary source of "otherwise provided by law" procedural rules is Chapter 517 itself. These different rules are discussed below.

#### **5. PLEADING RULES**

The pleading rules under Chapter 517 RSMo are substantially different from those under Rule 55. In general, Chapter 517 pleadings are "informal" unless the judge requires formal pleadings. Section 517.031.1 RSMo. The plaintiff must file a written petition "...containing the facts upon which the claim is founded." *Id.* The statute says that any written instrument or account in support of the petition "should" be attached and filed, but does not make such attachments mandatory. *Id.* There is, however, a tactical evidentiary advantage to attaching written instruments or accounts to the petition because Section 517.132 RSMo provides that when the original instrument or a verified copy is filed with the court, it "shall be admitted in evidence at trial unless the opposing party by responsive pleadings or affidavit shall deny the execution of the instrument, prior to admission of the instrument in evidence."

Alternate and inconsistent pleadings, permitted by Rule 55.10, have been allowed in a Chapter 517 case even though Rule 55 generally does not apply. *Zippay v. Kelleher*, 638 S.W.2d 292 (Mo.App. E.D. 1981). The rule of no formal pleadings "does not require the pleading to adhere to any particular form." The pleading need only be "sufficient to advise the defendant of the nature of the action" and "bar another action thereon by plaintiff." *Kershner v. Hilt Truck Line, Inc.*, 637 S.W.2d 769, 771 (Mo.App. S.D. 1982). Rule 55.33(b), which permits amendment of pleadings to conform to the evidence when issues not raised in the pleadings are tried by the

express or implied consent of the parties, has been found applicable to Chapter 517 cases. *Heritage Roofing, LLC v. Fischer*, 164 S.W.3d 128 (Mo.App. E.D. 2005); *Medve Group v. Sombright*, 163 S.W.3d 453 (Mo.App. E.D. 2005). Rule 55.13, which requires challenging a party's capacity to sue or be sued by specific negative averment with supporting particulars, also has been found applicable under Chapter 517, particularly because of the requirement to plead affirmative defenses. *KMS, Inc. v. Wilson*, 857 S.W.2d 525 (Mo.App. W.D. 1993).

It is important to note that Rule 44.01(d) provides that while Rule 55 is not generally applicable to Chapter 517 cases, Rule 55.03 applies in all cases. Accordingly, those signing pleadings in a Chapter 517 case may be sanctioned if the pleadings were filed for an improper purpose, state claims or defenses not warranted by existing law or by a nonfrivolous argument for changing the law, or make factual statements not having evidentiary support.

Section 517.031.2 RSMo says that responsive pleadings are not required, and if not filed, the statements in a filed petition, affirmative defense, counterclaim or crossclaim are deemed denied (except as provided in Section 517.132 RSMo relating to attachments--see above). However, affirmative defenses, counterclaims and crossclaims must be filed in writing on or before the return date unless the court grants leave to file them at a later date. *Id.* **Thus, even though answers are not required, it is crucial to file affirmative defenses or risk having evidence concerning an unpleaded affirmative defense excluded at trial.** While affirmative defenses must be pleaded, affirmative avoidances thereto need not be pleaded. *Exchange Nat. Bank of Jefferson City v. Wolken*, 819 S.W.2d 45 (Mo. Banc 1991). The compulsory counterclaim rule set out in Rule 55.32(a) does not apply under Chapter 517, and thus what would otherwise be a compulsory counterclaim may be filed as a separate action. *Becker Glove Intern., Inc. v. Jack Dubinsky & Sons*, 41 S.W.3d 885 (Mo. Banc 2001); *Rahman v. Matador Villa Associates*, 821 S.W.2d 102 (Mo. Banc 1991).

Section 517.031.3 RSMo provides that for good cause shown, the court may extend the time for filing any pleading.

## 6. SUMMONS

In cases filed under Chapter 517, Section 517.041.1 RSMo says the process shall be a summons, with a copy of the petition attached, which shall order the defendant to appear in court on a day certain (called the "return date"), not less than 10 nor more than 30 days from the date of service of the summons. However, a rent-and-possession, unlawful detainer, forcible entry and detainer, or expedited eviction lawsuit may be served on a defendant not less than four days before the return date. Sections 534.090, 535.030 and 441.720 RSMo.

The summons shall be directed to the sheriff or other proper person for service on the defendant. Section 517.041.1 RSMo. While a former statute providing for service by a specially appointed process server has been repealed, a special process server may be appointed under Rule 54.03 because the Rules of Civil Procedure apply to service of process under Chapter 517.

While at one time there was debate whether service under the "long arm statute" (Sections 506.500 *et seq.* RSMo) could be had in Chapter 517 cases, it is now generally accepted that such service of process is available because Section 517.021 RSMo makes the issuance and the service of process the same before circuit and associate circuit judges.

## 7. CONTINUANCES

Section 517.071.1 RSMo says a case shall be continued to a date certain upon a party's request made on or before the return date.

Section 517.071.2 RSMo specifies that a case may be continued to a date certain, not exceeding 30 days, upon the court's own motion (parties' consent not required), the agreement of the parties, or upon application by a party for good cause shown.

Section 517.071.3 RSMo says a case may be "continued generally" by written agreement of the parties, when all defendants have not been served with process, or when the judge believes discovery or other trial preparation will

reasonably require more than 30 days. Section 517.071.4 RSMo says that when a case has been continued generally, it may be rescheduled for trial or other proceedings upon 15-day written notice to the parties.

There is no provision for a continuance to a date certain for more than 30 days. However, it is this writer's experience that the 30-day continuance limit is not strictly followed.

Other statutes requiring prompt trials impact on these continuance rules in landlord-tenant lawsuits in which possession of leased premises is at issue. Section 535.040 RSMo specifies that rent-and-possession cases shall be set on the "first available court date." Section 534.090.2 RSMo. says unlawful detainer cases shall be set on the "next available court date." Expedited eviction cases under Sections 441.710-441.880 RSMo are to be tried no later than 15 days after service of summons, and the court is directed not to continue or stay such cases except for compelling and extraordinary reasons. Section 441.720 RSMo.

## **8. DEFAULT JUDGMENTS**

Section 517.131 RSMo says a judgment by default may be entered against a defendant who has been served with process and fails to appear in court or who has appeared in court previously but fails to appear on the new court date. The default judgment may be entered in favor of a claimant when either the claimant appears in person or by an attorney and may be based on a written oath of the claimant or "upon such evidence as may be determined by the judge." *Id.*

Chapter 517 no longer includes provisions for setting aside default judgments. Therefore, Rule 74.05(d) on setting aside default judgments applies under Section 517.021 RSMo. *Parkside Wireworks, L.L.C. v. MDG Management Corp.*, 69 S.W.3d 133 (Mo.App. E.D. 2002).

## **9. DISMISSAL OF CLAIMS**

Under Section 517.101 RSMo, a claim may be dismissed without prejudice at the claimant's cost when either the claimant requests such dismissal before trial is commenced or when a party fails to appear when required.

## **10. CONSENT JUDGMENTS**

Section 517.121 RSMo provides: "A judgment by consent may be entered when there is consent by all parties made after the filing of the petition either in open court or by a written consent filed with the court and signed by each party or the attorney for such party."

## **11. SUMMARY JUDGMENTS**

At least two cases assume without explicitly so holding that summary judgment practice under Rule 74.04 applies to Chapter 517 cases. *Exchange Nat. Bank of Jefferson City v. Wolken*, 819 S.W.2d 45 (Mo. Banc 1991); *Collins v. Narup*, 57 S.W.3d 872 (Mo.App. E.D. 2001).

## **12. TIME TO ENTER JUDGMENT**

Judgments of dismissal, default or consent are to be entered "forthwith." Section 517.111.1 RSMo.

Formerly the statute required a Chapter 517 case to be decided within three days after submission. Now, Section 517.111.2 provides that when a case has been tried to a judge, judgment can be entered at any time within 30 days after submission unless the parties consent to a longer period of time. *Stellwagen v. Gates*, 758 S.W.2d 195 (Mo.App. S.D. 1988), holds that when an associate circuit judge takes a case under submission for more than 30 days without the consent of the parties, the judgment entered is void. The remedy employed by the appellate court was to dismiss the appeal, remand the case to the associate with directions to set a date on which an order would be entered setting aside all entries made on or after the date of the judgment, and to thereafter set aside the judgment and enter a new judgment within 30 days. Accord, *Lorimer v. Robertson*, 800 S.W.2d 154 (Mo.App. S.D. 1990).

When an associate circuit judge hears a case by transfer or assignment, the associate is not proceeding under Chapter 517, and therefore Chapter 517 submission rules do not apply. *Dees v. Hooker Oil Co., Inc.*, 686 S.W.2d 561 (Mo.App. S.D. 1985).

### **13. JUDGMENT TRANSCRIPTION, REAL ESTATE LIEN, AND REVIVAL**

According to Section 517.141 RSMo, judgments of associate circuit judges may be transcribed and filed with the circuit clerk of the same county for recording in the record of circuit court judgments. Section 517.151 RSMo provides that from the filing of the transcript, the associate circuit judgment shall have the same real estate lien effect as the judgment of a circuit judge. Section 511.350.2 RSMo provides that judgments of associate circuit judges shall not be liens on real estate until transcribed and filed with the circuit clerk.

Once transcribed, the judgment may then be recorded in the circuit court of any other Missouri county and thereby create a lien on real estate owned by the judgment debtor in the other county. Under Rule 74.13, this is accomplished by ordering a transcript of the transcribed associate circuit judgment and filing it with the circuit clerk of the other county.

Small claims judgments cannot be transcribed and filed with the circuit clerk and cannot create liens on real estate. Sections 517.151 and 482.365.1 RSMo.

The revival of a judgment entered by an associate circuit judge and transcribed is governed by the same procedures as judgments originally entered by circuit judges. The action to revive such a judgment may be pursued before either a circuit or associate circuit judge. Section 517.151 RSMo. The procedure to revive judgments is set out in Rule 74.09.

### **14. EXECUTION ON JUDGMENTS**

Under Section 517.021 RSMo, executions are issued on judgments of associate circuit judges in the same way and with the same effect as executions on judgments of circuit judges. The notable exception, as mentioned above, is that small claims judgments will not permit execution on real property. Rule 76 outlines the procedure for executions, and Rule 90 contains the procedures for garnishment and sequestration.

### **15. TRIALS DE NOVO AND APPEALS**

In 2004 the Missouri General Assembly made a substantial change in the rules relating to trials *de novo*. Under the current version of Section 512.180.1 RSMo, the only cases now subject to trial *de novo* (without regard to the amount of money involved) and therefore not heard "on the record" are:

- a. Unlawful detainer and forcible entry and detainer cases under Chapter 534 RSMo.
- b. Rent-and-possession cases under Chapter 535 RSMo.
- c. Small claims cases under Chapter 482 RSMo.
- d. Cases tried before a municipal court.

There is no right of direct appeal to an appellate court where the right to a trial *de novo* exists. *Christman v. Richardson*, 818 S.W.2d 307 (Mo.App. E.D. 1991). Even if the parties to a case subject to trial *de novo* agree to a trial on the record with no right of trial *de novo* and with a direct appeal to an appellate court, no direct appeal will lie and the right to trial *de novo* remains. *International Dehydrated Foods, Inc. v. Boatright Trucking, Inc.*, 824 S.W.2d 517 (Mo.App. S.D. 1992). This is for the reason that stipulations in contravention of a statute are not permitted. *Tidwell v. Walker Construction*, 151 S.W.3d 127 (Mo.App. S.D. 2004).

An application for trial *de novo* must be filed within 10 days after entry of judgment. Section 512.190 RSMo. A 1980 case, *State ex rel. Blackwell v. Elrod*, 604 S.W.2d 768 (Mo.App. E.D. 1980), held under now-repealed Section 517.020 RSMo that motions for new trial were not recognized in Chapter 517, and, therefore, the filing of a motion for new trial did not extend the 10-day period to file an application for trial *de novo*. This result

probably is still correct because the 10-day limit in Section 512.190 RSMo is likely an "otherwise provided by law" rule that supersedes the applicability of Rule 78 (governing post-trial motions) to *de novo* cases, but no subsequent cases were found addressing this issue. Section 512.190 RSMo requires the clerk to mail notice of an application for trial *de novo* to the opposing party within 15 days after judgment is entered, but the clerk's failure to do so is not, in itself, sufficient grounds to dismiss the *de novo* proceeding if the application was timely filed. *Thomas v. Frazier*, 626 S.W.2d 682 (Mo.App. W.D. 1981).

Other than the four categories of cases still subject to trial *de novo* as listed above, all other cases tried by an associate circuit judge, whether as a bench trial or as a jury trial, and regardless of the amount of money involved, must be tried "on the record" and appealed to the appropriate appellate court. Section 512.180.2 RSMo. According to *Vogel v. Director of Revenue*, 804 S.W.2d 432, 434-35 (Mo.App. S.D. 1991), if a case should have been heard on the record but was not, a direct appeal can be had only if the parties can agree on a statement of facts; otherwise the case must be reheard with a record being made before an appeal can be prosecuted. *Commercial Union Ins. v. Steel Erectors of Springfield, Inc.*, 913 S.W.2d 371 (Mo.App. S.D. 1996), assumes without explicitly so holding that post-trial motion practice under Rule 78 applies to associate cases subject to direct appeal (but Rule 78 probably does not apply in cases subject to trial *de novo*--see preceding paragraph).

Orders relating to the enforcement of judgments (for example, orders concerning motions to quash executions on judgments) are "special order(s) after final judgment" under Section 512.020 RSMo and must be appealed to the appropriate appellate court--that is, no trial *de novo* lies from such an order--and this is true regardless of whether the judgment itself is subject to a trial *de novo* or appeal under Section 512.180 RSMo. *Holy Temple Homes, Ltd. v. West*, 812 S.W.2d 202 (Mo.App. W.D. 1991).

An application for trial *de novo* does not by itself stay execution of judgment. To stay execution, the applicant for trial *de novo*, or some person on behalf of the applicant, and one or more sureties approved by the associate circuit judge must enter into a bond within 10 days after entry of judgment. Section 512.190.1 RSMo. An approved form for a trial *de novo* bond is set out in Section 512.200 RSMo. If a judgment on the trial *de novo* is against the applicant and if a bond has been posted, the judgment must be entered against both the applicant and the surety. Section 512.320 RSMo.

A trial *de novo* is to be conducted as a completely new trial without regard to the initial proceeding before the associate circuit judge. Section 512.270 RSMo. Only the original cause of action tried before the associate circuit judge may be tried *de novo*, though new parties necessary for complete determination of the case may be added. Section 512.280 RSMo. No setoff or counterclaim not pleaded before the associate circuit judge may be pleaded in the *de novo* proceedings. Section 512.290 RSMo. A plaintiff's petition and a defendant's counterclaim may be amended upon a trial *de novo* only to supply a deficiency or omission and not to allege any new item or cause of action. Section 512.300 RSMo. The *de novo* trial is governed by circuit judge practice, except that the parties may agree to a jury of not fewer than six persons. Section 512.310 RSMo.

There is a lack of uniformity in the appellate cases concerning the effect upon a prior associate judgment of dismissal of a trial *de novo*. Some courts have described the associate judgment as "suspended" pending the outcome of the trial *de novo*, with the result that dismissal of the trial *de novo* "revivifies" the original judgment. Other cases indicate a dismissal of a trial *de novo* results in dismissal of the entire case with the original judgment being vacated. Cases to consult on this issue include: *Estate of Ingram v. Rollins*, 864 S.W.2d 400 (Mo.App. E.D. 1993); *Leonard v. Security Bldg. Co.*, 179 Mo.App. 480, 162 S.W. 685 (E.D. 1913); *McEntire v. Plaza Bank of Commerce*, 560 S.W.2d 52 (Mo.App. W.D. 1977); *Dallavalle v. Berry Grant Co.*, 462 S.W.2d 175 (Mo.App. E.D. 1970); *Pan American Realty Corp. v. Muroff*, 456 S.W.2d 647 (Mo.App. E.D. 1970); *Aubuchon v. Ayers*, 400 S.W.2d 472 (Mo.App. E.D. 1966); *McClellan v. Sam Schwartz Pontiac, Inc.*, 338 S.W.2d 49 (Mo. 1960), and *Pullis v. Pullis Bros. Iron Co.*, 157 Mo. 565, 57 S.W. 1095 (banc 1900).

## **16. CHANGE OF VENUE AND CHANGE OF JUDGE**

Under Section 517.061 RSMo, change of venue and change of judge rules are the same as in circuit judge practice except as to the time requirements. An application for change of venue or change of judge must be filed at least five days before the return date of the summons if the case is tried on the return date. If the case is not tried on the return date and if all the parties are given at least 15 days notice of a trial setting before a particular trial judge, then the application must be made no later than five days before trial.

Formerly it was necessary to allege "bias and prejudice" of the associate circuit judge to obtain a change of judge. This is no longer the case, and, in fact, no cause need be alleged or proved. Rule 51.05(a).

## **17. DISCOVERY**

Because there are no current statutory provisions regarding discovery in Chapter 517 cases, discovery is permissible and is governed by the Rules of Civil Procedure. Section 517.021 RSMo. A former statutory provision requiring certification for reassignment by reason of "excessive discovery" has been repealed.

## **18. CERTIFICATION FOR REASSIGNMENT**

Certification of a case for reassignment by the presiding judge or in accordance with local rules is required by the current version of Section 517.081 RSMo in two circumstances:

- a. When a party files a petition, counterclaim, crossclaim or third-party petition that asserts a claim or claims not triable under Chapter 517. (See also Section 517.041 RSMo stating that a petition stating a claim which "exceeds the jurisdictional limit of the division shall be certified to presiding judge for reassignment.")
- b. When consolidation of cases appears proper, and the consolidation would result in a claim or claims not triable under Chapter 517.

If a case is certified for reassignment, it then proceeds under the Rules of Civil Procedure, regardless of whether it is assigned to a circuit judge or associate circuit judge. *Manor Square, Inc. v. Heartthrob of Kansas City, Inc.*, 854 S.W.2d 38, 42 (Mo.App. W.D. 1993). Under Rule 41.01(d), after certification, the judge may order that specific portions of Rule 55 will apply to the case and allow the parties time to comply with the order.

The concept of "decertification" was raised by *State Farm Fire & Casualty Co. v. Moxley*, 694 S.W.2d 282 (Mo.App. E.D. 1985). In that case a party requested a jury trial, which caused the case to be certified under then-existing rules, but the parties then waived jury trial and agreed that the cause would be tried as an associate circuit case with the right of trial *de novo*. This procedure was approved by the appellate court even though no case or statute provided for it and it was done without an order of the presiding judge. Apparently, the appellate court felt that the consent of the parties was all that was necessary to remand and "decertify" the case to the associate circuit judge.

## **19. JURY TRIALS**

A former statutory provision requiring certification upon demand for jury trial has been repealed. While a local rule might require reassignment for jury trial, under Section 517.091 RSMo an associate circuit judge can proceed to conduct a jury trial on the record without first certifying the case. The statute further allows a jury of fewer than 12 jurors, but no fewer than six, upon agreement of the parties, with verdicts to be rendered by three-fourths of the jury.

Curiously, Section 517.091 RSMo appears to give the associate circuit judge discretion to deny a jury trial unless "good cause" for requesting a jury trial is shown. Further, it specifies that trial by jury is waived unless a written demand for a jury trial is filed at least five days before the return date or at least five days before the trial date if the case is not tried on the return date. Query whether these limitations on the right to trial by jury would survive a challenge on constitutional grounds. To date there are no appellate cases discussing Section 517.091 RSMo.