



Question One – Criminal Law

What class of offense is bear wrestling in the State of Missouri?

Phone-a-Friend
Audience

A. Class C misdemeanor	B. Class B misdemeanor
C. Class A misdemeanor	D. Class E felony

C.
Class A misdemeanor

Question Two - Criminal Law
 Assuming there was no financial gain as the result of the crime, what is the maximum fine for a D felony in the State of Missouri?

Phone-a-Friend
Audience

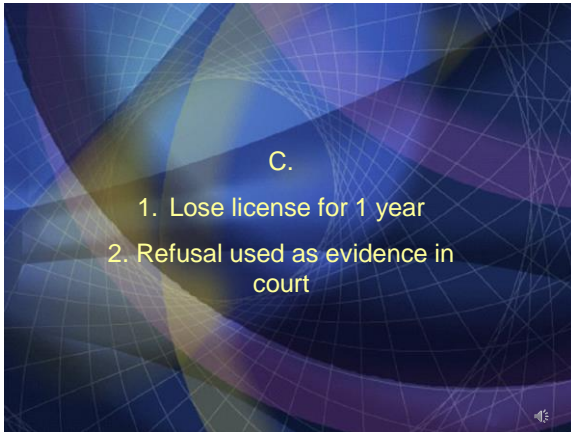
A. \$1,000 B. \$2,000
 C. \$5,000 D. \$10,000

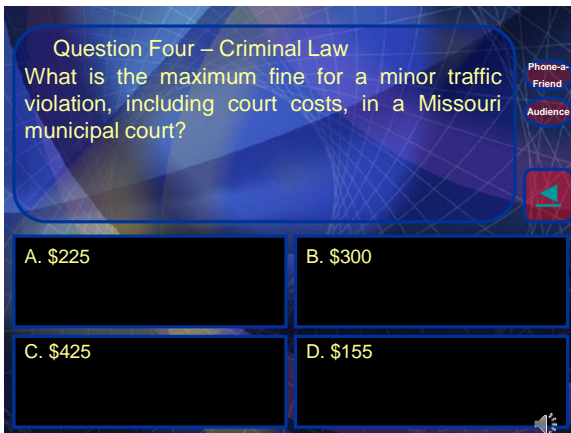
D.
\$10,000

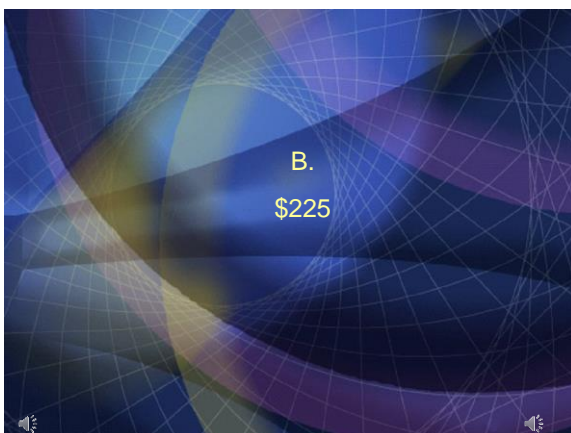
Question Three – Criminal Law
 Under Missouri implied consent, what are the two possible consequences to a driver if he refuses to submit a chemical sample?

Phone-a-Friend
Audience

A. 1. Lose license for 3 years
2. Refusal used as evidence in court
 B. 1. Lose license for 1 year
2. Refusal not used as evidence in court
 C. 1. Lose license for 1 year
2. Refusal used as evidence in court
 D. 1. Keep license forever
2. Refusal not used as evidence in court







Question Five- Criminal Law
Name the elected prosecutor/ district attorney for Jackson County, Missouri.

Phone-a-Friend
Audience

A. Daniel White

B. Jean Peters Baker

C. Mark Dupree

D. Stephen Howe

B.
Jean Peters Baker

Question Six – Civil Law
How does one 'revive a judgment'?

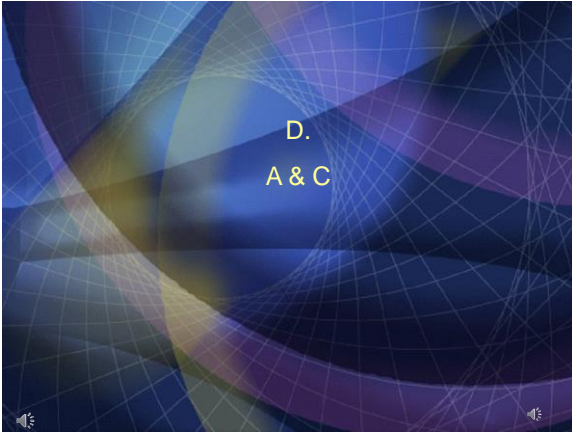
Phone-a-Friend
Audience

A. a payment that has been made on such judgment and entered upon the court record prior to the expiration of ten years from the last payment on the record, or last revival, or when the judgment was entered (whichever is later).

B. No need to revive a judgment, they are good forever.

C. an order of the court for scire facias based on a motion filed within the ten years after the judgment has been rendered, which was personally served (or within ten years of last revival)

D. A & C



Question Seven- Civil Law

Does the 'compulsory counterclaim' rule apply to cases filed pursuant to Chapter 517?

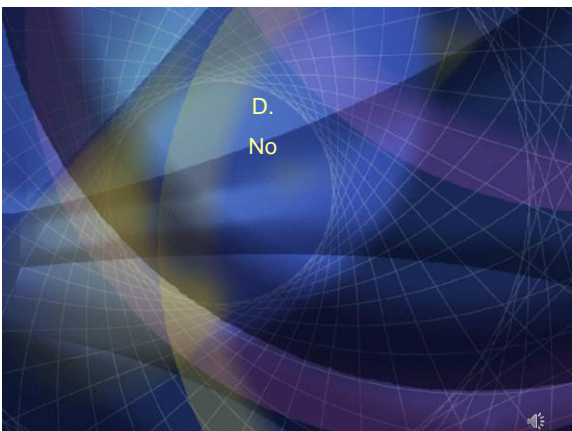
Phone-a-Friend
Audience

A. Yes

B. It depends

C. Maybe

D. No



Question Eight – Civil Law
 What elements are required to be plead in a Motion to Set Aside a Default Judgment?

Phone-a-Friend
Audience

A. A meritorious defense

B. Good cause for the order of default to be set aside

C. All the above

D. None of the above

C.
All the above

Question Nine – Civil Law
 What happens to a Motion to Dismiss (if the Motion to Dismiss is for failure to state a claim upon which relief can be granted) that contains materials, or references to materials that are outside the four corners of the petition?

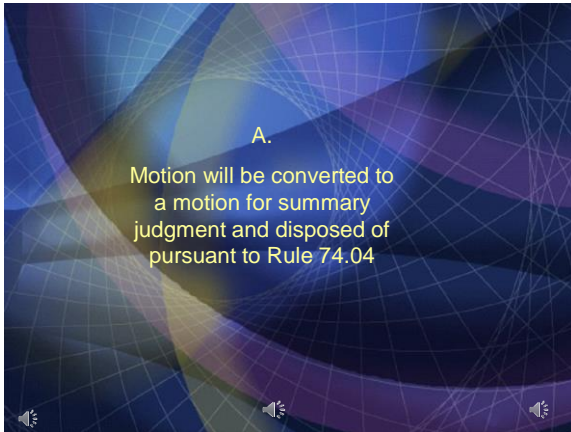
Phone-a-Friend
Audience

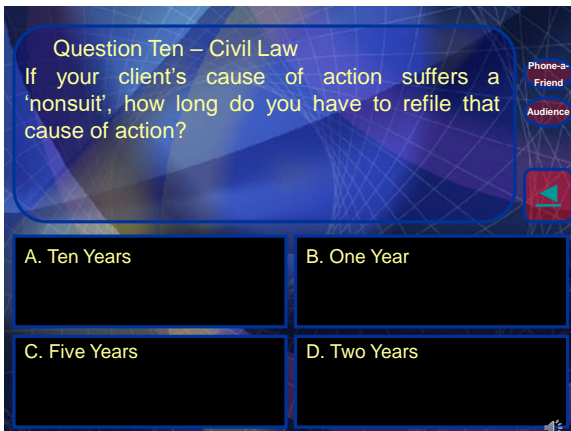
A. Motion will be converted to a motion for summary judgment and disposed of pursuant to Rule 74.04

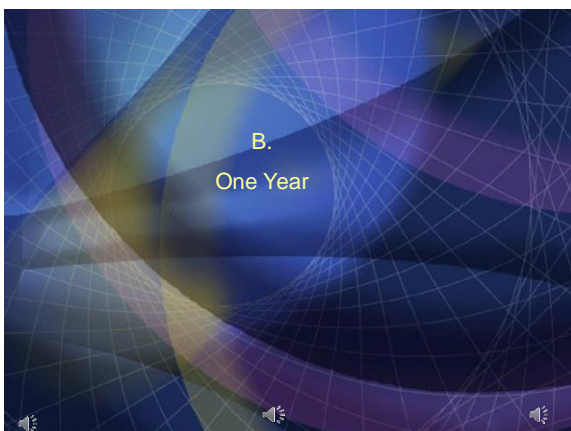
B. Motion to Dismiss will be dismissed.

C. Court will proceed with the Motion to Dismiss as plead.

D. The lawyer gets to pick what happens to the Motion.







Question Eleven – Family Law

In *Wigglesworth v. Wigglesworth* (Mo App No. ED106405) the Court held that in a Motion to Modify information known prior to the last Judgment that was entered:

Phone-a-Friend
Audience

A. Can always be used

B. Can only be used if the Judge had not heard the evidence

C. Cannot be used if both parties knew of the information and did not act on it

D. Cannot be used under any circumstances

B.
Can only be used if the
Judge had not heard the
evidence

Question Twelve – Family Law

In *Dubrovenskiy v. Yakula* (Mo App No ED106756) in awarding maintenance to a spouse the Court must consider:

Phone-a-Friend
Audience

A. The requesting spouse's actual expenses

B. The requesting spouse's reasonable needs

C. The requesting spouse's speculative expenses

D. A and C

B.
The requesting spouse's
reasonable needs

Question Thirteen – Family Law

In *Parciak v. Parciak* (553 SW 3d 446) in regards to the trial Court awarding Wife non-modifiable maintenance the Court held that a maintenance award order providing that is non-modifiable must be:

Phone-a-Friend
Audience

A. Fair and not
unconscionable

B. Just and appropriate

C. Justified by facts and
circumstances

D. Necessary

C.
Justified by facts and
circumstances

Question Fourteen – Family Law
 In *Lollar v. Lollar*, ED 106488, why was the start date of child support an abuse of the Court's discretion?

Phone-a-Friend
Audience

A. The start date predated the filing of Wife's Petition.

B. The start date was set as the first of the month following the entry of the Judgment.

C. The Court did not set a specific start date.

D. The start date was set as the date of the filing of Wife's petition.

A.
 The start date predated the filing of Wife's Petition.

Question Fifteen – Family Law
 When does a judgment in a dissolution of marriage become final as set forth in *Cone v. Kolesiak*, WD 81741?

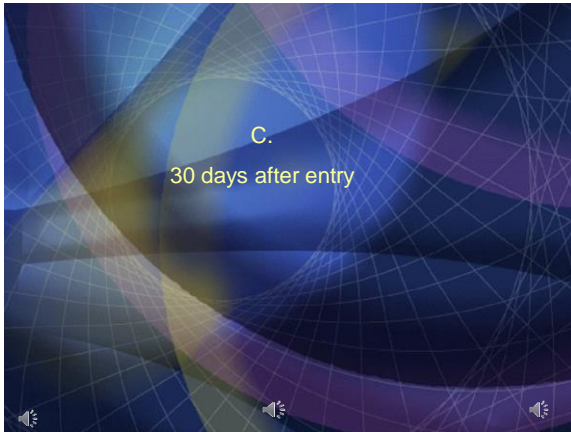
Phone-a-Friend
Audience

A. 35 days after entry

B. There is no timeframe because you have an automatic right to appeal

C. 30 days after entry

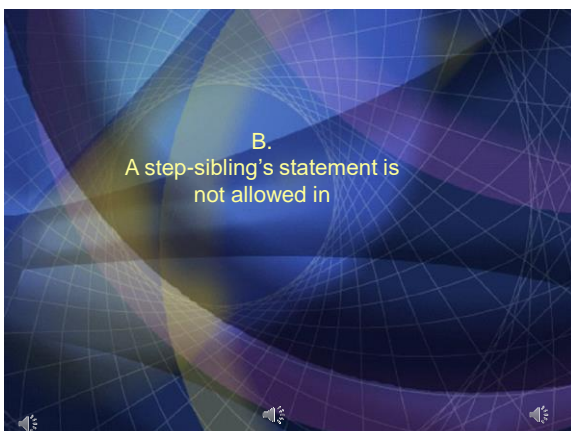
D. 55 days after entry.



Question Sixteen – Family Law
 In *DSH and DMH, DKT v. Greene County Juvenile Officer* in regards to extending the PKA hearsay exception to testimony of a child who is not the victim the Court held:

Phone-a-Friend
Audience

A. A step-sibling's statement is allowed in	B. A step-sibling's statement is not allowed in
C. A step-sibling's statement is allowed in if it is the parent who is testifying about it.	D. A step-sibling's statement is not allowed in unless they saw the abuse occur.



Who wants to be a Millionaire: Legal Knowledge Challenge
KCMBA Bench Bar Conference
May 16, 2019

FAMILY LAW

- ***DSH and DM, DKT v. Greene County Juvenile Officer, Mo.App. 2018:***

Holding: There is no rationale for extending PKA hearsay exception to statements of half sibling as there is no trustworthiness rationale - 1. No parent child relationship between half sibling and alleged abuser, 2. Alleged abuser has no legal right to custody or visitation with half sibling, and 3. Half sibling's best interest are not at issue

Facts: TPR case. Under PKA (725 SW2d 78 Mo.App. 1987) trial court admitted hearsay statements of half siblings detailing abuse by Father of them, not of subject children. Father objected claiming 1. The alleged abuser in PKA was the parent of the declarant child, whereas the alleged abuser is not related to the declarant half-siblings and 2. The best interests of the declarant child was at issue in PKA and the best interest of the declarant half siblings is not at issue here. AJO argued half sibling's statements qualified as any child in the family under 211.447.5. Mo grounds hearsay exceptions in trustworthiness - where there is a substantial basis to believe that the statements of the child are true, courts are justified in hearing them to prevent further abuse of a child. No rationale here, decision based upon hearsay, reserved and remanded for new trial.

- ***Wigglesworth, DE106405:***

Holding: Trial court erred when modifying judgment because its judgment is based upon a changed circumstance that occurred prior to the original judgment and when trial court misconstrues a parent's obligation to act as a willing co-parent as a parent with sole legal custody is authorized to make decisions without input of other parent.

Facts: Divorce in 2011 - joint legal, sole physical to Mother. 2013 modification with allegations of sexual abuse of daughter by father. CD initially substantiated abuse allegations, but CANRB reversed findings of abuse by father on April 21, 2014. On July 22, 2014, Father agreed to modification judgment with sole legal and physical custody to mother and restrictive parenting plan. Father sought modification in November 2016. Court adopted GAL's parenting plan transferring custody of daughter to Father finding little support for restrictive visitation set forth in 2014 judgment, that mother relocated without proper notification, and that mother failed to demonstrate a willingness to co-parent because Mother made decisions for daughter without input from Father (but Mother was acting within judgment). Mother claims res judicata barred trial court from modifying custody of daughter when it found no basis to continue to restrict Father's visitation rights as ordered by the 2014 Judgment as CANRB reversal was prior to entry of 2014 judgment. Because trial court relied on reversal of CANRB finding of abuse and neglect for its changed circumstance, which occurred prior to the entry of the 2014 judgment, and because trial court misconstrued Mother's obligations under 2014 judgment (*ie* mother had sole legal custody and gets to make decisions), reversed and remanded.

- ***Kimball v. Kimball*, SD35518**

Holding: Payments on judgment debt that former wife garnished from former's husband's employer revive judgment debt. Motion to revive judgment must be filed within 10 years of last sum garnished and entered on the record.

- ***Dubrovenskiy v. Yakula*, ED106756**

Holding: It is within the trial court's discretion to award maintenance based upon Wife's reasonable needs, including the rent and utility costs of the marital home, even when Wife is not occupying the home and is living rent free with her parents as 452.355 directs the court to look reasonable needs, not current needs and evidence of the rent and utility payments is direct evidence of the standard of living enjoyed during the marriage and not speculative. *Note wife testified she lived with parents because she could not afford to live elsewhere, court inferred she would move to her own place once awarded maintenance.

- ***Jerry Cullen v. Honorable Kevin Harrell*, SC97008**

Holding: Court did not act in excess of its authority when it sustained Wife's motion to compel Husband to turn over all correspondence regarding his military retirement benefits and to sign an authorization releasing his military records more than one year after the entry of the dissolution judgment as the court was not modifying the judgment but was entering orders necessary to effectuate its dissolution judgment award.

- ***Parciak v Parciak*, ED105648**

Holding: Point 1: Trial court erred in limiting duration of maintenance to certain events (sale of marital residence upon graduation of youngest child from high school and husband's agreement to pay for children's college education) because there is no evidence that those events would allow wife to support herself (*ie* there is no evidence in the record of any substantial impending change in Wife's financial condition which will allow her to meet her reasonable needs without financial support from husband.) "Just as an order terminating maintenance at a definite date in the future must be supported by substantial evidence of an impending change of circumstances, a maintenance order providing that it is non-modifiable must be justified by the facts and circumstances."

Point 2: Trial court did not fail to fully divide all marital debt when it set aside marital residence to Wife, ordered Wife to be responsible for mortgage and hold Husband harmless, ordered husband to quit claim interest but did NOT order Wife to refinance. Tenancy by entirety terminated upon judgment. Although Husband might become obligated to lender in event of Wife's default, court under no obligation to render an advisory opinion based upon a hypothetical.

- ***Lollar v. Lollar*, ED 106488**

Holding: Point 1: Because the child support start date predated the filing of Wife's Petition and purported to alter a separate final judgment, that portion of the trial court's child support order contravened *Section 452.340*, constituted an abuse of discretion, and must be vacated. Although trial courts have discretion under *Section 452.340.1* to award retroactive child support, that discretion extends only to the date the petition for

dissolution was filed, and Missouri courts have determined that an award predating that filing constitutes an abuse of discretion. Section 452.340.1; *Wiest v. Wiest*, 273 S.W.3d 545, 549 (Mo. App. S.D. 2008).

Point 2: There was no abuse of discretion in the distribution of marital property given that there was no evidence presented regarding the value of the retirement account. Wife offered no evidence to establish the actual value of the 401(k) account. The trial court, in turn, explicitly found that no credible evidence as to the account's value had been presented. "The parties have an equal burden to present evidence of the value of marital property." *Cosby v. Cosby*, 291 S.W.3d 795, 799 (Mo. App. E.D. 2009)

- ***Wuebbeling v. Wuebbeling*, ED 106663**

Holding: The trial court erred in finding Mother in contempt of its order requiring family counseling because the directive of which it found Mother in contempt was too vague and indefinite to support such a finding. The trial court also erred when it found Mother in contempt for violating the visitation schedule because for some of the period during which it found Mother in contempt, the family counselor had recommended visitation with Father be suspended, as he was authorized to do under the trial court's order. However, we affirm the trial court's finding Mother in contempt of the visitation schedule before the family counselor made the recommendation to suspend Father's visitation with the minor children. We also affirm the trial court's finding Mother in contempt of the visitation schedule after counseling had terminated and that recommendation was no longer in effect. "To support a charge of contempt for disobedience of a judgment, decree or order, the court's pronouncement may not be expanded by implication in the contempt proceeding and must be so definite and specific as to leave no reasonable basis for doubt of its meaning." *Carter County R-1 School Dist. v. Palmer*, 627 S.W.2d 664, 665 (Mo. App. S.D. 1982). Before a court may impose sanctions on a party for disobeying a court order, the order itself must "precisely advise the individual of what conduct is forbidden." *State ex rel. Girard v. Percich*, 557 S.W.2d 25, 37 (Mo. App. St. L. 1977). Given that a possible sanction for disobeying a court order is imprisonment, clarity in the order itself is essential so the process may "comport with fundamental principles of fairness...." *Id.*

- ***Nguyen v. Nguyen*, ED 107014**

Holding: The trial court erred and misapplied the law by awarding Wife damages instead of ordering the Chippewa properties to be sold and the net proceeds of the sale to be equally divided between the parties. Thus, the trial court's judgment awarding Wife \$9,600 in damages is reversed and the cause is remanded to the trial court so that it can conduct further proceedings in accordance with our opinion and enter an order for the Chippewa properties to be listed for sale and for the net proceeds of the sales to be equally divided between the parties in the manner provided for in the Dissolution Judgment. Under the circumstances of this case, we find it is appropriate for us to exercise our authority to allow and fix the amount of attorney's fees awarded for this appeal rather than remanding the issue to the trial court.

- ***Cone v. Kolesiak*, WD 81741**

Holding: The substance and content of both Kolesiak's and Cone's motions are modification of the trial court's prior decree of legal custody in the Original Judgment. These motions constituted independent proceedings. Accordingly, neither Kolesiak's motion nor Cone's motion was an "authorized after-trial motion" extending the date of the Original Judgment's finality. Cone specified in her notice of appeal that she was appealing from the Original Judgment. As in any other civil action, a judgment in a dissolution of marriage action becomes final thirty days after entry. Accordingly, the Original Judgment became final for purposes of appeal on February 4, 2018. The notice of appeal was due by February 14, 2018, ten days after the judgment became final, but was not filed until May 4, 2018. Timely filing of a notice of appeal is jurisdictional, and if a notice of appeal is untimely, the appellate court is without jurisdiction and must dismiss the appeal. Because Cone failed to timely file her notice of appeal from the Original Judgment, her appeal is dismissed as untimely.

CRIMINAL LAW

- **578.176. Bear wrestling — penalty.**

1. A person commits the offense of bear wrestling if he or she:
 - (1) wrestles a bear;
 - (2) Permits bear wrestling to be done on any premises under his or her charge or control;
 - (3) Promotes, conducts, or stages bear wrestling;
 - (4) Advertises bear wrestling;
 - (5) Collects any admission fee for bear wrestling;
 - (6) Purchases, sells, or possesses a bear which he or she knows will be used for bear wrestling;
 - (7) Trains a bear for bear wrestling;
 - (8) Subjects a bear to surgical alteration for bear wrestling.
2. The offense of bear wrestling is a class A misdemeanor.

- **558.002. Fines for felonies.**

1. Except as otherwise provided for an offense outside this code, a person who has been convicted of an offense may be sentenced to pay a fine which does not exceed:
 - (1) For a class C, D, or E felony, ten thousand dollars;
 - (2) For a class A misdemeanor, two thousand dollars;
 - (3) For a class B misdemeanor, one thousand dollars;
 - (4) For a class C misdemeanor, seven hundred fifty dollars;
 - (5) For a class D misdemeanor, five hundred dollars;
 - (6) For an infraction, four hundred dollars; or

(7) If the person has gained money or property through the commission of the offense, to pay an amount, fixed by the court, not exceeding double the amount of the person's gain from the commission of the offense.

2. A sentence to pay a fine, when imposed on a corporation for an offense defined in this code or for any offense defined outside this code for which no specific corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, which does not exceed:

(1) For a felony, twenty thousand dollars;

(2) For a misdemeanor, ten thousand dollars;

(3) For an infraction, one thousand dollars; or

(4) If the corporation has gained money or property through the commission of the offense, to pay an amount, fixed by the court, not exceeding double the amount of the corporation's gain from the commission of the offense.

3. As used in this section the term "**gain**" means the amount of money or the value of property derived from the commission of the offense. The amount of money or value of property returned to the victim of the offense or seized by or surrendered to lawful authority prior to the time sentence is imposed shall be deducted from the fine. When the court imposes a fine based on gain the court shall make a finding as to the amount of the offender's gain from the crime. If the record does not contain sufficient evidence to support such a finding, the court may conduct a hearing upon the issue

• **577.041. Refusal to submit to chemical test — admissibility — request to include reasons and effect of refusal.**

1. If a person under arrest, or who has been detained pursuant to subdivision (2) of subsection 1 of section 577.020, or stopped pursuant to subdivision (3) or (4) of subsection 1 of section 577.020, refuses upon the request of the officer to submit to any test allowed pursuant to section 577.020, then evidence of the refusal shall be admissible in any proceeding related to the acts resulting in such detention, stop, or arrest.

2. The request of the officer to submit to any chemical test shall include the reasons of the officer for requesting the person to submit to a test and also shall inform the person that evidence of refusal to take the test may be used against such person. If such person was operating a vehicle prior to such detention, stop, or arrest, he or she shall further be informed that his or her license shall be immediately revoked upon refusal to take the test.

3. If a person when requested to submit to any test allowed pursuant to section 577.020 requests to speak to an attorney, the person shall be granted twenty minutes in which to attempt to contact an attorney. If, upon the completion of the twenty-minute period the person continues to refuse to submit to any test, it shall be deemed a refusal.

CIVIL LAW

- **Revival of Judgments**

- See Mo Rev. Stat. 516.350.1; Mo. Rule Civ. Pro. 74.09; *Crockett v. Polen*, 225 S.W.3d 419 (Mo. 2007); *Unifund CCR Partners v. Albright*, 566 S.W.3d. 594 (Mo. 2019)
- **516.350. Judgments presumed to be paid, when — presumption, how rebutted — inclusion in the automated child support system — judgment for unpaid rent, revived by publication.**
 - 1. Every judgment, order or decree of any court of record of the United States, or of this or any other state, territory or country, except for any judgment, order, or decree awarding child support or maintenance or dividing pension, retirement, life insurance, or other employee benefits in connection with a dissolution of marriage, legal separation or annulment which mandates the making of payments over a period of time or payments in the future, shall be presumed to be paid and satisfied after the expiration of ten years from the date of the original rendition thereof, or if the same has been revived upon personal service duly had upon the defendant or defendants therein, then after ten years from and after such revival, or in case a payment has been made on such judgment, order or decree, and duly entered upon the record thereof, after the expiration of ten years from the last payment so made, and after the expiration of ten years from the date of the original rendition or revival upon personal service, or from the date of the last payment, such judgment shall be conclusively presumed to be paid, and no execution, order or process shall issue thereon, nor shall any suit be brought, had or maintained thereon for any purpose whatever. An action to emancipate a child, and any personal service or order rendered thereon, shall not act to revive the support order.
 - 2. In any judgment, order, or decree awarding child support or maintenance, each periodic payment shall be presumed paid and satisfied after the expiration of ten years from the date that periodic payment is due, unless the judgment has been otherwise revived as set out in subsection 1 of this section. This subsection shall take effect as to all such judgments, orders, or decrees which have not been presumed paid pursuant to subsection 1 of this section as of August 31, 1982.
 - 3. In any judgment, order, or decree dividing pension, retirement, life insurance, or other employee benefits in connection with a dissolution of marriage, legal separation or annulment, each periodic payment shall be presumed paid and satisfied after the expiration of ten years from the date that periodic payment is due, unless the judgment has been otherwise revived as set out in subsection 1 of this section. This subsection shall take effect as to all such judgments, orders, or decrees which have not been presumed paid pursuant to subsection 1 of this section as of August 28, 2001.

- 4. In any judgment, order or decree awarding child support or maintenance, payment duly entered on the record as provided in subsection 1 of this section shall include recording of payments or credits in the automated child support system created pursuant to chapter 454 by the family support division or payment center pursuant to chapter 454.
 - 5. Any judgment, order, or decree awarding unpaid rent may be revived upon publication consistent with the publication requirements of section [506.160](#) and need not be personally served on the defendant.
- **Compulsory Counterclaims filed pursuant to Chapter 517**
 - See *Becker Glove Intl. v. Jack Dubinsky Sons*, 41 S.W.3d. 885 (Mo. 2001) (citing *Rahman v. Matadore Villa Assoc.*, 821 S.W.2d. 102 (Mo. 1991)). Due to the informal, simplified nature of cases filed pursuant to Chapter 517, the Court has ruled that it would be “inconsistent with the simplified nature of chapter 517 proceedings to apply the use-it-or-lose-it technicality of the compulsory counterclaim rule.”
- **Motion to Set Aside Default Judgment**
 - See *Brungard v. Risky’s, Inc.* 240 S.W.3d. 685 (Mo. 2007).
 - Mo. Rule Civ. Proc. 74.05(d);
 - **(a) Entry of Default Judgment.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, upon proof of damages or entitlement to other relief, a judgment may be entered against the defaulting party. The entry of an interlocutory order of default is not a condition precedent to the entry of a default judgment.
 - **(b) Entry of Interlocutory Order of Default.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, an interlocutory order of default may be entered against that party. After entry of an interlocutory order of default, a default judgment may be entered. Any party may demand a jury to assess damages. If a jury is not demanded, the court shall assess any damages.
 - **(c) Default Judgment May Include.** A default judgment may include an award of damages, other relief, or both.
 - **(d) When Set Aside.** Upon motion stating facts constituting a meritorious defense and for good cause shown, an interlocutory order of default or a default judgment may be set aside.

The motion shall be made within a reasonable time not to exceed one year after the entry of the default judgment.

"Good cause" includes a mistake or conduct that is not intentionally or recklessly designed to impede the judicial process.

An order setting aside an interlocutory order of default or a default judgment may be conditioned on such terms as are just, including a requirement that the party in default pay reasonable attorney fees and expenses incurred as a result of the default by the party who requested the default.

A motion filed under this Rule 74.05(d), even if filed within 30 days after judgment, is an independent action and not an authorized after-trial motion subject to Rule 78.04, 78.06, or 81.05.

- **Motion to Dismiss (containing materials, or references to materials that are outside the four corners of the petition)**
 - *See Naylor Senior Citizens Housing, LP v. Side Construction Co.*, 423 S.W.3d 238 (Mo. 2014); *Energy Creates Energy, LLC and Genesys Industrial Corp. v. The Heritage Group, et al.*, 504 S.W.3d 142 (W.D. 2016).
 - Mo. Rule Civ. Pro. 55.27
 - **(a) How Presented.** Every defense, in law or fact, to a claim in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:
 - (1) Lack of jurisdiction over the subject matter,
 - (2) Lack of jurisdiction over the person,
 - (3) That plaintiff does not have legal capacity to sue,
 - (4) Insufficiency of process,
 - (5) Insufficiency of service of process,
 - (6) Failure to state a claim upon which relief can be granted,
 - (7) Failure to join a party under [Rule 52.04](#),
 - (8) That plaintiff should furnish security for costs,
 - (9) That there is another action pending between the same parties for the same cause in this state,
 - (10) That several claims have been improperly united,
 - (11) That the counterclaim or cross-claim is one which cannot be properly interposed in this action.
 - A motion making any of these defenses shall be made:
 - (A) Within the time allowed for responding to the opposing party's pleading, or
 - (B) If no responsive pleading is permitted, within thirty days after the service of the last pleading.
 - Motions and pleadings may be filed simultaneously without waiver of the matters contained in either.
 - No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.
 - If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to the claim for relief.
 - If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [Rule 74.04](#). All parties shall be given reasonable opportunity to present all material made pertinent to such a motion by [Rule 74.04](#).

- **(b) Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [Rule 74.04](#), and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by [Rule 74.04](#).
- **(c) Preliminary Hearings.** The defenses specifically enumerated (1)-(11) in subdivision (a) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (b) of this Rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.
- **(d) Motion for More Definite Statement.** A party may move for a more definite statement of any matter contained in a pleading that is not averred with sufficient definiteness or particularity to enable the party properly to prepare responsive pleadings or to prepare generally for trial when a responsive pleading is not required. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order, or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.
- **(e) Motion to Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within thirty days after the service of the pleading upon any party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.
- **(f) Consolidation of Defenses in Motion.** A party who makes a motion under this Rule 55.27 may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this Rule 55.27 but omits therefrom any defense or objection then available that this Rule 55.27 permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in Rule 55.27(g)(2) on any of the grounds there stated.
- **(g) Waiver or Preservation of Certain Defenses.**
 - (1) A defense of:
 - (A) Lack of jurisdiction over the person,
 - (B) Insufficiency of process,
 - (C) Insufficiency of service of process,
 - (D) That plaintiff should furnish security for costs,
 - (E) That plaintiff does not have legal capacity to sue,
 - (F) That there is another action pending between the same parties for the same cause in this state,

- (G) That several claims have been improperly united, or
 - (H) That the counterclaim or cross-claim is one which cannot be properly interposed in this action, is waived if it is:
 - (a) Omitted from a motion in the circumstances described in Rule 55.27(f), or
 - (b) Neither made by motion under this Rule 55.27 nor included in a responsive pleading.
- (2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under [Rule 52.04](#), and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under [Rule 55.01](#) or by motion for judgment on the pleadings.
- (3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.
- Mo. Rule Civ. Proc. 74.04
 - **(a) For Claimant.** At any time after the expiration of thirty days from the commencement of the action or after service of a motion for summary judgment by the adverse party, a party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may move with or without supporting affidavits for a summary judgment upon all or any part of the pending issues.
 - **(b) For Defending Party.** At any time, a party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment as to all or any part of the pending issues.
 - **(c) Motions and Proceedings Thereon.**
 - (1) *Motions for Summary Judgment.* A motion for summary judgment shall summarily state the legal basis for the motion.
 - A statement of uncontroverted material facts shall be attached to the motion. The statement shall state with particularity in separately numbered paragraphs each material fact as to which movant claims there is no genuine issue, with specific references to the pleadings, discovery, exhibits or affidavits that demonstrate the lack of a genuine issue as to such facts. An electronic copy of the statement of uncontroverted material facts in a commonly used medium, such as a diskette, CD-ROM or e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher, shall be served on the party to whom the motion for summary judgment is directed. In addition to the information normally in a certificate of service, the certificate of service shall also

- state the format of the electronic copy and the medium used to transmit the electronic copy to the responding party.
 - Attached to the statement shall be a copy of all discovery, exhibits or affidavits on which the motion relies.
 - Movant shall file a separate legal memorandum explaining why summary judgment should be granted.
- (2) *Responses to Motions for Summary Judgment.* Within 30 days after a motion for summary judgment is served, the adverse party shall serve a response on all parties. The response shall set forth each statement of fact in its original paragraph number and immediately thereunder admit or deny each of movant's factual statements.
 - A denial may not rest upon the mere allegations or denials of the party's pleading. Rather, the response shall support each denial with specific references to the discovery, exhibits or affidavits that demonstrate specific facts showing that there is a genuine issue for trial.
 - Attached to the response shall be a copy of all discovery, exhibits or affidavits on which the response relies.
 - A response that does not comply with this Rule 74.04(c)(2) with respect to any numbered paragraph in movant's statement is an admission of the truth of that numbered paragraph.
 - The response may also set forth additional material facts that remain in dispute, which shall be presented in consecutively numbered paragraphs and supported in the manner prescribed by Rule 74.04(c)(1).
 - An electronic copy of the response shall be served as provided in Rule 74.04(c)(1).
 - The response may include a legal memorandum explaining the legal or factual reasons why summary judgment should not be granted.
- (3) *Replies in Support of Motions for Summary Judgment.* Within 15 days after service of the response, the movant may file a reply memorandum of law explaining why summary judgment should be granted.
 - Within the same time, if the adverse party's response sets forth additional material facts that remain in dispute, movant shall set forth each additional statement of fact in its original paragraph number and immediately thereunder admit or deny each such factual statement. Denials shall be supported in the manner prescribed by Rule 74.04(c)(2).
 - Within the same time, the movant may file a statement of additional material facts as to which movant claims there is no genuine issue. The statement shall be presented in

- consecutively numbered paragraphs and supported in the manner prescribed by Rule 74.04(c)(1).
- An electronic copy of the reply shall be served as provided in Rule 74.04(c)(1).
 - Attached to the supplemental statement shall be a copy of any additional discovery, exhibits or affidavits on which the supplemental statement relies.
 - (4) *Sur-replies in Opposition to Motions for Summary Judgment.* Within 15 days of service, if movant files a statement of additional material facts pursuant to Rule 74.04(c)(3), the adverse party shall file a sur-reply. The sur-reply shall set forth each additional statement of fact in its original paragraph number and immediately thereunder admit or deny each such factual statement. The sur-reply shall be in the form and shall be supported in the manner prescribed by Rule 74.04(c)(2).
 - An electronic copy of the sur-reply shall be served as provided in Rule 74.04(c)(1).
 - Attached to the sur-reply shall be a copy of any additional discovery, exhibits or affidavits on which the sur-reply relies.
 - A sur-reply that does not comply with Rule 74.04(c)(2) with respect to any numbered paragraph in movant's statement of additional material facts is an admission of the truth of that numbered paragraph.
 - If the movant files a statement of additional material facts, the adverse party may file within the same time a sur-reply memorandum of law explaining the legal or factual reasons why summary judgment should not be granted.
 - (5) *Additional papers.* No other papers with respect to the motion for summary judgment shall be filed without leave of court.
 - (6) *Rulings on Motions for Summary Judgment.* After the response, reply and any sur-reply have been filed or the deadlines therefor have expired, the court shall decide the motion.
 - If the motion, the response, the reply and the sur-reply show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, the court shall enter summary judgment forthwith.
 - A summary judgment, interlocutory in character, may be entered on any issue, including the issue of liability alone, although there is a genuine issue as to the amount of the damages.
 - **(d) Case Not Fully Adjudicated on Motion.** If on motion under this Rule 74.04 judgment is not entered upon the whole case or for all the relief asked and a trial is necessary, the court by examining the pleadings and the evidence before it, by interrogating counsel, and by conducting a

hearing, if necessary, shall ascertain, if practicable, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The court shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

- **(e) Form of Affidavit.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.
- **(f) When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that for reasons stated in the affidavits facts essential to justify opposition to the motion cannot be presented in the affidavits, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.
- **(g) Affidavit Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any affidavit presented pursuant to this Rule 74.04 is presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party presenting it to pay to the other party the amount of the reasonable expenses that the filing of the affidavit caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

- **Nonsuit Timeframe**

- “Generally, a nonsuit occurs when a court order terminates a cause of action without prejudice.” *Rickner v. Golfinopoulos*, 271 S.W.3d 32, 34 (Mo.App.2008). “‘The taking of a nonsuit amounts to, and has the effect of, a dismissal of the case as to one or all the defendants. It is not a final disposition of the cause of action on the merits, but is a final termination of the particular suit.’ ” *Rainwater v. Wallace*, 351 Mo. 1044, 174 S.W.2d 835, 838 (1943) (citations omitted). “ ‘[I]t has practically been held that the word “nonsuit” ... means any judgment or discontinuance or dismissal whereby the merits are left untouched[.]’ ” *Turner v. Mo.–Ks.–Tx. R. Co.*, 346 Mo. 28, 142 S.W.2d 455, 459 (1940) (quoting *Wetmore v. Crouch*, 188 Mo. 647, 87 S.W. 954, 955 (1905)). Thus, “a judgment of nonsuit and a judgment of dismissal serve the same purpose, have the same legal effect, and arrive at the same end, and hence should be treated alike and allowed the same office in the everyday administration of the law.” *Wetmore*, 87 S.W. at 956.
- See *Williams v. S. Union Co.*, 364 S.W.3d 228, 232 (Mo. Ct. App. 2011)
- Missouri Statutes § 516.230 provides that the savings statute applies only to “action[s that] shall have been commenced within the times respectively prescribed in sections 516.010 to 516.370.” Therefore, other actions, such as

actions brought under the Federal Employees' Liability Act, cannot be saved by this statute. See *Stine v. Kansas City Terminal Ry. Co.*, 564 S.W.2d 619, 620 (Mo. Ct. App. 1978) (statute to effect that party has right to reinstate suit within one year after original suit is voluntarily nonsuited is not general procedural statute and its application is limited to causes of action, limitations for which are prescribed by statutes as delineated in statute). *See also Davison v. Dairy Farmers of America, Inc.*, 449 S.W.3d 81, 83 (Mo. Ct. App. W.D. 2014) (statute governing application of one-year saving statute did not apply to save former employee's Missouri Human Rights Act (MHRA) claims against former employer; statute governing application of one-year saving statute was limited to prescribed causes of action and their statutes of limitation, which did not include MHRA claims, and while MHRA had its own statute of limitations, it did not contain a saving statute).