Kosciusko County
Circuit and Superior Courts

Local Rules of Practice and Procedure

LOCAL RULES OF PRACTICE AND PROCEDURE OF THE KOSCIUSKO CIRCUIT AND SUPERIOR COURTS

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CRIMINAL RULES

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LR43- CR00-1 Criminal Discovery

In all criminal felony and misdemeanor cases, the reciprocal pretrial discovery shall be available to both the State of Indiana and the Defendant, without formal written request filed with, or Order issued by, the Court, as follows:

(A) State's Required Disclosure

The State shall disclose to the Defense the following material and information within its possession or control on or before thirty (30) days from the date of initial hearing of the Defendant:

(1) The names and last known addresses of persons whom the State may call as witnesses, together with their relevant written or recorded statements, memoranda containing substantially verbatim reports of their oral statements and a list of memoranda reporting or summarizing their oral statements.

(2) Any written or recorded statements and the substance of any oral statements made by the accused or by a codefendants, and a list of witnesses to the making and acknowledgment of such statements.

(3) A transcript of those portions of grand jury minutes containing testimony of persons whom the prosecuting attorney may call as witnesses at the hearing or trial, as designated by the defense after listening to the recording of the testimony.

(4) Any reports or statements of experts, made in connection with the particular case, including the results of physical or mental examinations and of scientific tests, experiments or comparisons.

(5) Any books, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused.

(6) Any record of prior criminal convictions which may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.

(7) Any evidence which tends to negate the guilt of the accused as to the offense charged or which would tend to mitigate the accused's punishment.

(8) Any Evidence Rule 404(b) evidence.

The State may comply with this Order (1) in any manner it and the Defense agree to, or (2) by notifying defense counsel that material and information, described in general terms, may be inspected, obtained, tested, copied, or photographed at specified reasonable times and places.

(B) Defendant's Required Disclosure

The Defense shall disclose to the State the following material and information within its possession or control on or before omnibus date.

(1) The names and addresses of persons whom the defendant may call as witnesses.

(2) Any books, papers, documents, photographs, or tangible objects which are intended to be used at a hearing or trial.

(3) Any medical or scientific reports relating to the defendant or defendant's evidence which may be used at a hearing or trial.

(4) Any defenses, procedural or substantive, which the defendant intends to make at a hearing or a trial.

(C) Objections to Discovery Order

Any objections to the discovery order must be filed within fourteen (14) days prior to omnibus date.

(D) Certificate of Compliance Required, Deadline

The State and the Defendant shall file with the Court Certificate of Compliance with the Order on or before pretrial conference.

(E) Continuing Discovery Required

(1) Discovery is a continuing order through trial.

(2) No written motion is required except to compel discovery, for a protective order, or for an extension of time.

(F) Sanctions

Failure of either side to comply with this Order within fourteen (14) days before trial may result in exclusion of evidence at trial or other appropriate sanction.

LR43-CR2.2-2 INITIAL CASE ASSIGNMENT

Initial case assignments are as follows:

(1) All D and C Felonies

Thirty percent (30%) of D felonies shall be filed in the Kosciusko Circuit Court and should include any cases filed under Title 35, Article 48 (Controlled Substances)
Twenty percent (20%) of D felonies shall be filed in the Kosciusko Superior Court No. 1.
Ten percent (10%) of D felonies shall be filed in the Kosciusko Superior Court No. 2
Forty percent (40%) of D felonies shall be filed in the Kosciusko Superior Court No. 3 and should include any cases involving felonies filed under Title 9 (Traffic) and I.C. 35-46-1-5 through and including I.C. 35-46-1-7.
Fifty percent (50%) of C felonies shall be filed in the Kosciusko Circuit Court and should include any cases filed under Title 35, Article 48 (Controlled Substances).
Thirty percent (30%) of C felonies shall be filed in the Kosciusko Superior Court No. 1.
Twenty percent (20%) of C felonies shall be filed in the Kosciusko Superior Court No. 3 and should include any cases filed under Title 9 (Traffic) and I.C. 35-46-1-5 through and including I.C. 35-46-1-7.

All F6, F5, F4 Felonies

Thirty-five percent (35%) of F6, F5 and F4 felonies shall be filed in the Kosciusko Circuit Court and should include any cases filed under Title 35, Article 48 (Controlled Substances).
Thirty-five percent (35%) of all F6, F5 and F4 felonies shall be filed in the Kosciusko Superior Court No. 1.
Thirty percent (30%) of all F6, F5 and F4 felonies shall be filed in the Kosciusko Superior Court No. 3 and should include any cases involving felonies filed under Title 9 (Traffic) and I.C. 35-46-1-5 through and including I.C. 35-46-1-7.

(2) Felonies under Title 35-42-1 (Homicide) and I.C. 35-48 (Controlled Substances) cases

All felonies filed under Title 35, Article 42, Chapter 1 (Homicide) and those filed under Title 35, Article 48 (Controlled Substances) shall be filed in the Kosciusko Circuit Court. *(Amended effective January 1, 2005)*

(3) All other Felony cases

All other felonies shall be assigned to the Kosciusko Superior Court No. 1 and Kosciusko Circuit Court on an alternating basis.

(4) All Misdemeanor cases

All misdemeanors shall be assigned to the Kosciusko Superior Court No. 2.

(5) All I.C. 31-6-4 (Juvenile) cases

All cases filed under Title 31, Article 6, Chapter 4 (Juvenile) of the Indiana Code shall be initially assigned to Kosciusko Superior Court No. 1. In the event a child is waived into adult court, the case shall be reassigned to the appropriate court in accordance with the proceeding provisions of this rule.

(6) Combination of Felony and Misdemeanor cases

In the event the case charges both felony and misdemeanor offenses, the case shall be considered a felony for the application of this rule.

(Amended effective July 1, 2014)

LR43- CR2.2-3 Transfer of Criminal Cases

The Judge in any Kosciusko Court, by appropriate order entered in the Record of Judgment and Orders, may transfer and reassign to any other court of record in the county with jurisdiction to hear the charged offense any pending cases subject to acceptance by the receiving court.

LR43- CR2.2-4 Refiling and/or Subsequent Filings of Criminal Charges

(1) Dismissal and Subsequent Refiling of Charges

In the event the State of Indiana dismisses a case, any subsequent case filed against such defendant within the next six months shall be assigned to the court from which the dismissal was taken.

(2) Filing of Additional Charges

In the event additional charges are filed against a criminal defendant subsequent to the assignment of the case, all such additional charges to be resolved in conjunction with the pending case shall be assigned to the court of initial assignment.

LR43-CR2.2-5 Reassignment of Criminal Cases

(1) Kosciusko Circuit Court

The following individuals have agreed to serve in the event it becomes necessary to reassign a criminal case in the Kosciusko Circuit Court:

1. The Judge of the Kosciusko Superior Court No. 1
2. The Judge of the Kosciusko Superior Court No. 2
3. The Judge of the Kosciusko Superior Court No. 3

(2) Kosciusko Superior Court No. 1

The following individuals have agreed to serve in the event it becomes necessary to reassign a criminal case in the Kosciusko Superior Court No. 1:

1. The Judge of the Kosciusko Circuit Court
2. The Judge of the Kosciusko Superior Court No. 3
3. The Judge of the Kosciusko Superior Court No. 2

(3) Kosciusko Superior Court No. 2

The following individuals have agreed to serve in the event it becomes necessary to reassign a criminal case in the Kosciusko Superior Court No. 2:

1. The Judge of the Kosciusko Superior Court No. 3
2. The Judge of the Kosciusko Circuit Court
3. The Judge of the Kosciusko Superior Court No. 1

(4) Kosciusko Superior Court No. 3

The following individuals have agreed to serve in the event it becomes necessary to reassign a criminal case in the Kosciusko Superior Court No. 3:

1. The Judge of the Kosciusko Superior Court No. 2
2. The Judge of the Kosciusko Superior Court No. 1
3. The Judge of the Kosciusko Circuit Court

(5) Method of Reassignment of Cases

In the event it becomes necessary to reassign a criminal case in the Kosciusko Circuit Court, Kosciusko Superior Court No. 1, Kosciusko Superior Court No. 2, or Kosciusko Superior Court No. 3, the cases will be reassigned in consecutive order to the above noted judges.

(Amended effective August 1, 2015)

LR43-CR13-6 Appointment of Special Judges

In the event no Kosciusko County judge is available for assignment or reassignment of a felony or misdemeanor case, the Chief Judge of the administrative judicial district of which Kosciusko County is a member, must appoint a special judge first from the other judges within the judicial district and then from judges in contiguous counties not within the judicial district. If the Chief Judge of the administrative judicial district is unable to make the appointment, the district judge who is not a judicial officer in Kosciusko County, with the most time of judicial service, shall make the appointment. In the event the judge presiding in a felony or misdemeanor case concludes that the unique circumstances presented in the proceeding require appointment by the Indiana Supreme Court of a special judge, this presiding judge may request the Indiana Supreme Court for an appointment.

The appointed judge under this local rule must accept the case unless:

a. Disqualified under the Code of Judicial Conduct;
b. Ineligible under the Trial Rules; or
c. Excused by the Indiana Supreme Court.

(Amended effective August 1, 2015)

CIVIL AND ADMINISTRATIVE RULES

LR43-AR1E-1	Civil Case Assignment
LR43-TR79-2	Special Judge Appointment in Civil Cases
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LR43-AR1E-1 CIVIL CASE ASSIGNMENT

(1) All cases which have case classification code MH shall be filed in the Kosciusko Circuit Court.

(2) All cases which have case classification code JC, JD, JS, JP, JM and JT shall be filed in Kosciusko Superior Court No. 1.

(3) All cases which have case classification code PL, CT, RS, AD, AH, ES, EU, GU and TR may be filed in either Kosciusko Circuit Court or Kosciusko Superior Court No. 1.

(4) Seventy-five percent (75%) of MI cases shall be filed in Kosciusko Superior Court No. 3, Twenty-five percent (25%) may be filed in either Kosciusko Circuit Court or Kosciusko Superior Court No. 1; however, attorneys are strongly encouraged to file such cases on an alternating basis in Kosciusko Circuit Court and Kosciusko Superior Court No. 1.

(5) All cases which have case classification code IF shall be filed in Kosciusko Superior Court No. 2.

(6) All cases which have case classification code OV, OE, PO (except PO cases where a JP case in in existence involving the same parties which shall then be filed in the court having the JP case), and SC shall be filed in Kosciusko Superior Court No. 3.

(7) Twenty percent (20%) of dissolution cases shall be filed in Kosciusko Superior Court No. 3.

(8) Thirty-five percent (35%) of dissolution cases shall be filed in Kosciusko Circuit Court.

(9) Twenty percent (20%) of dissolution cases shall be filed in Kosciusko Superior Court No. 1.

(10) Twenty-five percent (25%) of dissolution cases shall be filed in Kosciusko Superior Court No. 2.

(11) Collection (CC) cases shall be filed in Kosciusko Superior Court No. 3 or Kosciusko Superior Court No. 2 with case assignment to be made by the Clerk in order that: three-fourths (3/4) are filed in Kosciusko Superior Court No. 3; one-fourth (1/4) are filed in Kosciusko Superior Court No. 2.

(12) Mortgage foreclosure cases shall be filed in Kosciusko Circuit Court and Kosciusko Superior Court No. 3 with case assignment to be made by the Clerk in order that: one-half (1/2) are filed in Kosciusko Circuit Court; and one-half (1/2) are filed in Kosciusko Superior Court No. 3.

LR43- TR79-2 Special Judge Appointment in Civil Cases

If a judge in Kosciusko County grants a motion for change of judge under TR 76, or recuses or is disqualified under TR 79(C), and the parties are unable to agree to a judge, or the judge agreed upon does not accept the appointment within the time required by TR 79(D), the following local rule applies:

a. If the case is in the Kosciusko Circuit Court, it must be transferred to:
   1. Kosciusko Superior Court No. 1
   2. Kosciusko Superior Court No. 2
   3. Kosciusko Superior Court No. 3

b. If the case is in Kosciusko Superior Court 1, it must be transferred to:
   1. Kosciusko Circuit Court
   2. Kosciusko Superior Court No. 3
   3. Kosciusko Superior Court No. 2

c. If the case is in Kosciusko Superior Court No. 2, it must be transferred to:
   1. Kosciusko Superior Court No. 3
   2. Kosciusko Circuit Court
   3. Kosciusko Superior Court No. 1

d. If the case is in Kosciusko Superior Court 3, it must be transferred to:
   1. Kosciusko Superior Court No. 2
   2. Kosciusko Superior Court No. 1
   3. Kosciusko Circuit Court

If none of the judges of the transferee courts are able to hear the case, the Chief Judge of the administrative judicial district of which Kosciusko County is a member must appoint a special judge from the other judges within the district. If the Chief Judge of the administrative judicial district is unable to make the appointment, the district judge, who is not a judicial officer in Kosciusko County, with the most time of judicial service, shall make the appointment. In the event the judge presiding in a civil case concludes that the unique circumstances presented in the proceeding require appointment by the Indiana Supreme Court of a special judge, the presiding judge may request the Indiana Supreme Court for an appointment.

The appointed judge under this local rule must accept the case unless:

a. Disqualified under the Code of Judicial Conduct;
b. Ineligible under the Trial Rules; or
c. Excused by the Indiana Supreme Court.

(Amended effective August 1, 2015)

LR43–AR15-3 COURT REPORTER SERVICES

(A) **Definitions.** The following definitions shall apply under this local rule:

(1) A **Court Reporter** is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.

(2) **Equipment** means all physical items owned by the court or other governmental entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes, and any other device used for recording and storing, and transcribing electronic data.

(3) **Work space** means that portion of the court's facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.

(4) **Page** means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 7.2.

(5) **Recording** means the electronic, mechanical, stenographic or other recording made as required by Indiana Rule of Trial Procedure 74.

(6) **Regular hours worked** means those hours which the court is regularly scheduled to work during any given work week. Depending on the particular court, these hours may vary from court to court within the county but remain the same for each work week.

(7) **Gap hours worked** means those hours worked that are in excess of the regular hours worked but hours not in excess of forty (40) hours per work week.

(8) **Overtime hours worked** means those hours worked in excess of forty (40) hours per work week.

(9) **Work week** means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year; i.e. Sunday through Saturday, Wednesday through Tuesday, Friday through Thursday.

(10) **Court** means the particular court for which the court reporter performs services. Court may also mean all of the courts in Kosciusko County.

(11) **County indigent transcript** means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court.

(12) **State indigent transcript** means a transcript that is paid for from state funds and is for the use on behalf of a litigant who has been declared indigent by a court.

(13) **Private transcript** means a transcript, including by not limited to a deposition transcript that is paid for by a private party.

(14) **Expedited transcript** means a transcript that is requested to be prepared from within 48 hours to five (5) days, depending upon the size of the transcript.

(B) Salaries and Per Page Fees.

(1) Court Reporters shall be paid an annual salary for time spent working under the control, direction and direct supervision of their supervising court during any regular work hours, gap hours, or overtime hours. The supervising court shall enter into a written agreement with the court reporters which outlines the manner in which the court reporter is to be compensated for gap and overtime hours, i.e. monetary compensation or compensatory time off regular work hours.

(2) The maximum per page fee a court reporter may charge for the preparation of a county indigent transcript shall be $4.00 per page until further order of the Courts. The court reporter shall submit a claim directly to the county for the preparation of any county indigent transcripts.

(3) The maximum per page fee a court reporter may charge for the preparation of a state indigent transcript shall be $4.00 per page until further order of the Courts.

(4) The maximum per page fee a court reporter may charge for the preparation of a private transcript shall be $4.00 per page.

(5) The maximum per page fee a court reporter may charge for the preparation of an expedited transcript is $4.50 per page.

(6) A minimum fee up to $40.00 is permissible.

(7) An additional labor charge approximating the hourly rate based upon the court reporter's annual court compensation may be charged for the time spent binding the transcript and the exhibit binders depending on the size of the transcript.

(8) Each court reporter shall report, at least on an annual basis, all transcript fees received for the preparation of county indigent, state indigent or private transcripts to the Indiana Supreme Court Division of State Court Administration. The reporting shall be made on forms prescribed by the Division of State Court administration.

(C) Private Practice.

(1) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, and the court reporter desires to utilize the court's equipment, work space and supplies, and the court agrees to the use of the court equipment for such purpose, the court and the court reporter shall enter into a written agreement which must, at a minimum, designate the following:

a) the reasonable market rate for the use of equipment, work space and supplies;

b) the method by which records are to be kept for the use of equipment, work space and supplies; and

c) the method by which the court reporter is to reimburse the court for the use of equipment, work space and supplies.

(2) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, all such private practice work shall be conducted outside of regular working hours.

(Amended effective August 1, 2014)

LR43-TR64-4 JUDICIAL SALES OF LAND

(A) In the case of any judicial sale of land, including without limitation mortgage and lien foreclosures, execution sales, sales by receivers, assignees for the benefit of creditors, guardians or trustees, or partition sale, the judgment creditor, person seeking the sale, or officer conducting the sale to procure a qualified title opinion or a title insurance policy from a title insurance company authorized to do business in Indiana with respect to the interest of the person whose land is being sold.

(1) The policy musts be conditioned to cover the purchase price at the sale and may be given with any necessary exclusions.
(2) The opinion or policy shall run to all parties interested in the litigation and to any purchaser or purchasers at the sale.
(3) The opinion or policy or copy thereof shall be available for inspection in the court from which the sale is being conducted or in the office of the court officer conducting the sale at the first notice of sale and shall be made available for inspection at the sale.
(4) Expenses of the opinion or policy shall be taxed as costs like other expenses of the sale and paid fro the first proceeds of the sale.
(5) The opinion or policy shall not cover defects arising in the conduct of the sale.

(B) The Court in its discretion may, in the proper case, on motion duly made grant relief from the strict requirements of this order.

LR43 –FL-5 CHILD CUSTODY ACTION

(A) Each party, who is a parent of a minor child(ren) with the other party in a DR action, shall arrange with the Otis R. Bowen Center, Inc., for enrollment in and attendance at the **TransParenting Program** established between the Court and the Bowen Center. Each party shall pay the $40.00 enrollment fee for participation, and the action will not be scheduled for pretrial conference or final hearing until the Bowen Center certifies to the Court that each of the parties has completed the program.

LR43 –AR-6 COURT FILES

(A) Court files will not be removed from the Kosciusko County Justice Building without the express written consent of the Clerk of the Court and the giving of a receipt for such file if consent is given.

(B) Routine court filings shall be made in the Clerk’s Office and left with the Clerk for delivery to the appropriate Court.

(C) Attorneys may direct filings with the Court; however, the Court file must be secured by the attorney from the Clerk's Office and a sign-out sheet signed by the attorney requesting the file for direct filing. After completing the direct filing, the file will either be left with the Court or in the case of probate filings, personally returned by the attorney to the Probate Clerk.

LR 43-AR-7 KOSCIUSKO COUNTY ALCOHOL AND DRUG PROGRAM FEES

The following fees will be assessed for participants in the Kosciusko County Alcohol and Drug Program (KCADP)

Full Program Fee:	$400.00
Transfer Fee:	$100.00
Referral Fee:	$250.00

(Amended effective December 1, 2015)

LR43-AR-8 KOSCIUSKO COUNTY DRUG COURT FEES

Those persons directed to participate in the Kosciusko County Drug Court may be assessed in accordance with the following SCHEDULE OF FEES pursuant to the authority granted by Indiana Code 33-23-16-23:

1. A Drug Court administration fee of $100.00 per participant payable to the Kosciusko County Probation Department.

2. A Drug Court user fee of $50.00 per month for every month that an individual participant in Drug Court, payable to the Kosciusko County Probation Department.

3. A Drug Court drug testing fee of $20.00 payable to the Kosciusko County Probation Department.

4. A Drug Court transfer fee of $25.00 per participant per transfer, payable to the Kosciusko County Probation Department.

(*Effective October 1, 2013*)