PUBLIC NOTICE

June 1, 2006

Hamilton County Circuit and Superior Courts
Proposed Local Court Rule Change

The following proposed additions, amendments and/or deletions to the Hamilton County Local Court Rules which affect case filings are posted for public comment.

a. LR29-AR00-104. Plan for Allocation of Judicial Resources (Amended)
b. LR29-AR00-105. Protective Orders (Amended)
c. LR29-AR00-110. Assignment of Infraction and Ordinance Violation Cases (Added)
d. LR29-TR76-210. Transfer of Small Claims, Infraction and Ordinance Violations Cases and Protective Orders in the Event of Disqualification (Amended)
e. LR29-CR00-301. Criminal Random Filing (Amended)
f. LR29-CR00-302. Clerk Procedures to Accomplish Criminal Random Filing (Amended)
g. LR29-DN02-602. Rules for Trial De Novo Following Civil Judgments (Amended)
h. LR29-DN02-603. Rules for Trial De Novo Following Judgments for Infractions or Ordinance Violations (Amended)
i. LR29-PR00-702. Filing of Pleadings (Amended)

Each of the above rules is on a separate page and, on all such pages, deletions are shown by ~~striking~~ and new text is shown by **bold underlining**.

Comments will be received until July 1, 2006, and should be sent to one of the following addresses:

Administrator of the Courts
Hamilton County Courts
One Hamilton County Square, Suite 313
Noblesville, IN 46060-2232

E-Mail: ops@co.hamilton.in.us

Following a review of the public comments, the Hamilton County courts will adopt, modify, or reject the proposed local rule changes by July 31, 2006.

After the Hamilton County courts have adopted or modified LR29-AR00-104 (Plan for Allocation of Judicial Resources), these rules will be submitted to the Indiana Supreme Court by August 1, 2006, and will not be effective unless and until approved by the Supreme Court. If approved, the effective date for these rules, and all other rule changes not requiring Supreme Court approval, will be January 1, 2007.

LR29-AR00-104. PLAN FOR ALLOCATION OF JUDICIAL RESOURCES

104.10 The Circuit and Superior Courts of Hamilton County have previously adopted various rules ~~and orders~~ concerning the filing of certain types of matters in the Hamilton County Circuit and Superior Courts. **Unless changed by addition, amendment and/or deletion,** ~~T~~those rules ~~and standing orders~~ remain in effect. ~~Concurrently~~ **In conjunction** with the adoption of this **Local Rule and** plan, the **following** Hamilton County ~~Criminal Random Filing Order (LR29-CR00-301) has been amended to reallocates the filing of class D felony cases~~ **Local Rules also affect the allocation of judicial resources: LR29-AR00-105. Protective Orders; LR29-AR00-110. Assignment of Infraction and Ordinance Violation Cases; LR29-TR76-210. Transfer of Small Claims, Infraction and Ordinance Violations Cases and Protective Orders in the Event of Disqualification; LR29-CR00-301. Criminal Random Filing; LR29-CR00-302. Clerk Procedures to Accomplish Criminal Random Filing; LR29-CR00-303. Filing Rule; LR29-CR00-304. Filing Felony Cases Arising From Juvenile Waiver Hearings; LR29-DN01-602. Rules for Trial De Novo Following Civil Judgments; LR29-DN02-603. Rules for Trial De Novo Following Judgments for Infractions or Ordinance Violations; LR29-PR00-702. Filing of Pleadings; and, LR29-JV00-801. Assignment of Juvenile Case Numbers.**

104.20 All requests for a prosecutor subpoena shall be filed in Superior Court No. 4 and Superior Court No. 5 on an alternating basis.

104.30 ~~As needed in order to meet the requirements of the Indiana Supreme Court Order for the Development of Local Caseload Plan adopted July 16, 1969, Circuit Court shall direct that cases with a JC case type are filed in courts other than the Circuit Court. The number of cases per year that Circuit Court will direct to other courts will not exceed 40% of the number of JC cases filed in Circuit Court during the 1998 calendar year. In designating the Court to receive the filing of said JC cases, Circuit Court shall give priority to courts whose utilization percentages (based upon the previous year's Weighted Caseload Measures) are less than the Hamilton County average and the highest priority shall be given to the Court with the lowest caseload utilization percentage. Circuit Court will direct to other courts only the number of JC cases necessary to bring all courts within the range established by the Indiana Supreme Court.~~ **Pursuant to I.C. 33-33-29-8, Superior Courts No. 4, 5, and 6 each have a standard small claims and misdemeanor division. Said courts shall provided for an evening session at least one day of each week.**

104.40 The judges of the Courts of record of Hamilton County shall meet ~~*en banc* in February of each year~~ **at least once annually** for the purpose of reviewing the weighted caseload of each court, and at such other times as may be required **either by the Courts themselves or** to comply with new orders of the Indiana Supreme Court or to comply with the District Plan ~~or any amendments to the District Plan~~.

104.50 The judge of the Circuit Court may with the consent of the judge of a receiving Superior Court, transfer any action either filed and/or docketed in the Circuit Court to the Superior Court to be redocketed and disposed of as if originally filed with the receiving Superior Court. The judge of a Superior Court may, with the consent of the judge of the receiving Circuit Court or other receiving Superior Court, transfer any action either filed and/or docketed in the Superior Court to the Circuit Court or the other Superior Court to be redocketed and disposed of as if originally filed with the receiving Court.

LR29-AR00-105. PROTECTIVE ORDERS UNDER I.C. 5-2-9-2.1

~~Repealed 7/1/02~~

105.10 PROTECTIVE ORDER FILING:

a. All protective orders (PO) shall be filed in Superior Court No. 6.

b. Once the PO has been acted upon, if there is a related dissolution action pending in any other Hamilton County Court, the PO will be transferred to said court and consolidated with said action for hearing purposes.

c. For a change of judge pursuant to Trial Rule 76(B) or 79(C), see LR29-TR76-210.50.

d. From time to time, the Courts may provide orders to assist the Clerk in implementing the Protective Orders Filing procedures.

LR29-AR00-110. ASSIGNMENT OF INFRACTION (IF) AND ORDINANCE VIOLATION (OV) CASE NUMBERS

111.10 The Clerk shall as near equally as possible assign cause numbers for new filings of all IF and OV case types to Hamilton Superior Courts No.s 4, 5, and 6 (i.e., 1/3 in each court).

111.20 The Clerk shall accomplish the above by assigning cause numbers to the courts based upon the first letter of the defendant's or respondent's last name or other method as the judges of said courts shall agree.

LR29-TR76-210. TRANSFER OF SMALL CLAIMS, INFRACTION AND ORDINANCE VIOLATION CASES AND PROTECTIVE ORDERS IN THE EVENT OF DISQUALIFICATION

210.10 For the orderly administration of the small claims, infraction, and ordinance violation dockets of Superior Court No. 4, ~~and~~ Superior Court No. 5, **and Superior Court No. 6**, this Rule shall govern in the event that a judge of a small claims, infraction, or ordinance violation case orders a change of judge pursuant to Trial Rule 76(B) or disqualifies himself or herself pursuant to Trial Rule 79(C).

210.20 In the event that the judge of a small claims, infraction, or ordinance violation case in either Superior Court No. 4, ~~or~~ Superior Court No. 5, **or Superior Court No. 6** orders a change of judge pursuant to Trial Rule 76(B) or disqualifies himself or herself pursuant to Trial Rule 79(C), a special judge shall not be selected. ~~Rather, the judge shall proceed as follows:~~

~~a. The judge of Superior Court No. 4 shall order the Clerk to transfer the case to Superior Court No. 5; or~~

~~b. The judge of Superior Court No. 5 shall order the Clerk to transfer the case to Superior Court No. 4.~~

Rather, the Clerk shall randomly transfer the case to one of the remaining two courts (i.e., either Superior Court No. 4, Superior Court No. 5, or Superior Court No. 6 as applicable).

210.30 After a **small claims, infraction, or ordinance violation** case has been transferred once pursuant to this General Rule, and the new judge subsequently orders a change of judge pursuant to Trial Rule 76(B) or disqualifies himself or herself pursuant to Trial Rule 79(C), then ~~a special judge shall be selected in accordance with Trial Rule 79~~ **the Clerk will transfer the case to the remaining court (i.e., either Superior Court No. 4, Superior Court No. 5, or Superior Court No. 6 as applicable).**

210.40 After a small claims, infraction, or ordinance violation case has been transferred twice pursuant to this General Rule, and the new judge subsequently orders a change of judge pursuant to Trial Rule 76(B) or disqualifies himself or herself pursuant to Trial Rule 79(C), then a special judge shall be selected in accordance with Trial Rule 79.

210.50 PROTECTIVE ORDERS: In the event that the judge of Superior Court No. 6 orders a change of judge pursuant to Trial Rule 76(B) or disqualifies himself or herself pursuant to Trial Rule 79(C), a special judge shall not be selected. Rather, the Clerk shall randomly transfer the case to any of the remaining courts as applicable or other method as the judges of the courts shall agree.

LR29-CR00-301. CRIMINAL RANDOM FILING

301.10 This Random Filing Rule does not apply to either civil cases or juvenile cases.

301.20 All misdemeanors (except those assigned to Superior Court No. 3 pursuant to Section 301.30 below) shall be randomly filed with ~~50%~~ **1/3** in Superior Court No. 4, ~~and with 50%~~ **1/3** in Superior Court No. 5**, and 1/3 in Superior Court No. 6** or other method as the judges of said courts shall agree. All class D Felonies ~~involving driving offenses~~ shall be randomly filed with ~~50%~~ **1/3** in Superior Court No. 4, ~~and with 50%~~ **1/3** in Superior Court No. 5**, and 1/3 in Superior Court No. 6** or other method as the judges of said courts shall agree. Reassignment of these cases shall be achieved by transferring cases originating in Superior Court No. 4 to **either** Superior Court No. 5 **or Superior Court No. 6;** ~~and~~ transferring cases originating in Superior Court No. 5 to **either** Superior Court No. 4 **or Superior Court No. 6; and, transferring cases originating in Superior Court No. 6 to either Superior Court No. 4 or Superior Court No. 5**. In the event a ~~second~~ subsequent reassignment is required **(and neither Superior Court No. 4, nor Superior Court No. 5, nor Superior Court No. 6 is available)** said case assignment shall be achieved by obtaining a new court assignment from all Hamilton County Courts using the Clerk's random assignment procedure.

301.30 Misdemeanor battery offenses and invasion of privacy offenses that do not involve operating while intoxicated (I.C. 9-30-5) offenses shall be filed in Superior Court No. 3. Reassignment of these cases will be achieved by **randomly** transferring said cases to **either** Superior Court No. 4, ~~and~~ Superior Court No. 5**, or Superior Court No. 6, with 1/3 of such transfers going to each of these three courts respectively** ~~alternately~~.

301.40 All Murder (MR Case type), Class A (FA Case Type), Class B (FB Case Type), **and** Class C (FC Case Type)~~, and Class D (FD Case types that do not involve driving)~~ felonies shall be randomly filed per case type with 25% of each case type filed in Circuit Court, Superior Court No. 1, Superior Court No. 2 and Superior Court No. 3. Reassignment of these cases shall be achieved by obtaining a new court assignment using the Clerk's random assignment procedure of the Courts designated to accept this type of case.

301.50 ~~All other criminal cases shall be governed by the same rules as previously in effect.~~

~~**301.60**~~ The Clerk shall use a court-approved procedure which provides a tamper proof method for random assignment consistent with the foregoing paragraphs of this Criminal Rule.

301.~~7~~60 From time to time, the Courts may provide orders to assist the Clerk in implementing the Criminal Random Filing procedures.

301.~~8~~70 Pursuant to Indiana Criminal Rule 2.2(c), if a case is dismissed after filing, upon refiling it shall be assigned to the same court where it was originally assigned.

LR29-CR00-302. CLERK PROCEDURES TO ACCOMPLISH CRIMINAL RANDOM FILING

302.10 The Judges of the Hamilton Circuit Court and Hamilton Superior Courts ~~No. 1, No. 2, No. 3, No. 4, and No. 5~~ approve the following procedures to be used in the Hamilton County Clerk's office to accomplish the Hamilton County Criminal Random Filing Order.

a. Begin with a set number of cases~~, such as 24, 36, or 60,~~ which is evenly divisible by the **applicable** number of Hamilton County Courts.
b. Divide the set number of cases by the percentages for each type of case per Court resulting in the number of each type case for each Court which shall equal the percentages.
c. These cases are then pulled and/or selected for individual case number assignment one by one on an impartial random selection basis.

LR29-DN01-602. RULES FOR TRIAL DE NOVO FOLLOWING CIVIL JUDGMENTS

602.10 Supreme Court Trial De Novo Rule 1 for following civil judgments in city and town courts is incorporated by reference.

602.20 BOND OR OTHER UNDERTAKING:

a. The party filing the request for trial de novo shall file with the Clerk of the Court a surety bond or cash deposit in accordance with Supreme Court Rule 1(C)(1). The bond or cash deposit required by Supreme Court Rule 1(C)(l) shall be in the amount of the judgment entered in the city or town court, plus an amount equaling eight percent (8%) of the total judgment as an allowance for interest. In any case where attorney fees have been awarded as part of the total judgment, the amount of bond shall be increased by 25 percent(25%) of the total judgment as an allowance for additional attorney fees. This bond, however, shall not exceed the jurisdictional limit of the city or town court from which the appeal is taken.

b. If unable to afford a surety bond or cash deposit, the party filing the request may instead file an affidavit of indigency and personal undertaking in accordance with Supreme Court Rule 1(C)(2) on a form prescribed by the Court (Form DN~~00-1~~**01/02-602/03**).

602.30 FILING AND COURT ASSIGNMENT:

a. The Clerk shall not accept for filing or file a request for trial de novo unless it meets the requirement of Supreme Court Rule 1(B)(4). Further, the Clerk shall not accept or file a request for trial de novo supported by an affidavit of indigency and personal undertaking unless the affidavit and personal undertaking are on the form provided by the Courts. If a request for trial de novo supported by an affidavit of indigency and personal undertaking is accepted for filing, it may be ordered stricken from the record if the Court in which it is filed determines that the party filing the request is able to afford to post a surety bond or cash deposit, and the party fails to post the surety bond or cash deposit required within the time set by the Court.

b. The Clerk shall docket the request for trial de novo and the copies of the complaint and any responsive pleadings as a small claims action on the small claims docket of either Superior Court No. 4~~, or~~ Superior Court No. 5**, or Superior Court No. 6** unless the request for trial de novo demands that the trial be by jury, in which case the assignment may be to a Circuit or any Superior Court in the county.

LR29-DN02-603. RULES FOR TRIAL DE NOVO FOLLOWING JUDGMENTS FOR INFRACTIONS OR ORDINANCE VIOLATIONS

603.10 Supreme Court Trial De Novo Rule 2 for infraction or ordinance violation judgments in city or town courts is incorporated by reference.

603.20 BOND OR OTHER UNDERTAKING:

a. The party filing request for trial de novo shall file with the Clerk of the Court a surety or cash deposit in accordance with Supreme Court Rule 2(D)(1).

b. The bond required by Supreme Court Rule 2(D)(1) shall secure the State or municipality's claims, interest, and court costs, undertaking both the litigation of the trial de novo to a final judgment and payment of any judgment entered against a party filing the request by the trial de novo court.

c. The bond shall be in an amount as follows:

"C" infraction and traffic ordinance violations	$ 500.00;
"B" infraction	$1,000.00;
"A" infraction and non-traffic ordinance violations	$1,500.00;

plus the statutory costs in the trial de novo court.

d. If unable to afford a surety bond or cash deposit, the party filing the request may instead file an affidavit of indigency and personal undertaking in accordance with Supreme Court Rule 2(D)(2) on the form prescribed by the Court (Form DN~~00-1~~**01/02-602/03**).

603.30 FILING AND COURT ASSIGNMENT:

a. The Clerk shall not accept for filing nor file any request for trial de novo unless it meets the requirement of Supreme Court Rule 2(B). Further, the Clerk shall not accept or file a request for trial de novo supported by an affidavit of indigency and personal undertaking unless the affidavit and personal undertaking are on the form provided by the Courts. If a request for trial de novo supported by an affidavit of indigency and personal undertaking is accepted for filing, it may be ordered struck from the record if the Court in which it is filed determines that the party filing the request is able to afford to post a surety bond or cash deposit, and the party fails to post the surety bond or cash deposit required within the time set by the Court.

b. The Clerk shall docket and assign the request for trial de novo to the traffic division of either Superior Court No. 4, ~~or~~ Superior Court No. 5**, or Superior Court No. 6** as an infraction or ordinance violation proceeding.

603.40 NOTICE TO PROSECUTOR OR MUNICIPAL COUNSEL OF TRIAL DE NOVO:

a. Promptly after the request for trial de novo is filed and assigned to the appropriate court, the Clerk shall send notice of the request to the prosecuting attorney or the municipal counsel.

b. Upon receiving the notice of request, the Prosecutor or the municipal counsel is ordered to file, within fifteen (15) days, a duplicate infraction or ordinance complaint and summons alleging the infraction or ordinance violation as originally filed with the city or town court, together with any amended complaint alleging additional or amended counts also filed with the city or town court.

c. In the discretion of the prosecuting attorney or municipal counsel, and in lieu of filing such duplicate infraction or ordinance complaint and summons, the prosecuting attorney or the municipal counsel shall file with the Court a notice that no proceeding will be filed, together with a proposed order of dismissal including that the Clerk shall refund to the defendant the entire amount of any payment received from the city or town court. The order of dismissal shall also include a release of the surety bond, cash deposit, or personal undertaking.

LR29-PR00-702. FILING OF PLEADINGS

702.10 When pleadings are filed by mail or left with the Court for filing, a self-addressed, stamped envelope shall be included for return of documents to the attorney.

702.20 ~~Routine pleadings, such as Inventories, Inheritance Tax Schedules and Final Reports, may be filed with the Clerk for transmittal to the Court.~~

~~**702.30**~~ If petitions or motions are filed by electronic facsimile transmission, then such filing must conform with the requirements set forth in the trial rules and LR29-AR-103.

702.4~~3~~0 All ~~attorneys~~ **parties** are required to prepare orders for all proceedings except when expressly directed otherwise by the Court.

702.5~~4~~0 Every ~~pleading, including~~ inventor~~ies~~, ~~petitions~~ and accounting~~s~~ filed in an estate or guardianship will be signed and verified by the fiduciary and signed by the attorney for the fiduciary.

702.6~~5~~0 All pleadings filed shall contain **the parties' name, address and telephone number and/or** the **parties'** attorney's name, address, telephone number and registration number.

702.~~7~~6~~0~~ The initial petition to open an estate or guardianship shall contain the name, address, social security number **(in compliance with Indiana Administrative Rule 9)** and telephone number of the personal representative or guardian, if a person.

702.8~~7~~0 The Instructions to the Personal Representative or Guardian, executed by the fiduciary, must be filed with the Court at the time letters are ordered issued in the proceeding **(Forms PR00-1, PR00-2, PR00-3, PR00-4)**

702.9~~8~~0 The affidavit of compliance with the notice provisions directed to creditors in an estate proceeding shall be timely filed with the Clerk of the Court.

702.90 ASSIGNMENT OF MH PROBATE CASE NUMBERS:

- **a. The Clerk shall assign cause numbers for new filings of all MH case types to Hamilton Superior Court No. 1 and Hamilton Superior Court No. 3.**
- **b. The Clerk shall equally assign such new filings to Superior Court No. 1 and Superior Court No. 3 or other method as the judges of said courts shall agree.**

702.100 ASSIGNMENT OF ES/EU, GU, AND TR PROBATE CASE NUMBERS: As requested by the parties, or directed by the judges, the Clerk shall assign cause numbers for new filings of ES/EU, GU, and TR case types to either Hamilton Superior Court No. 1 and/or Hamilton Superior Court No. 3.