

**LOCAL RULES OF PRACTICE  
FOR THE  
COURTS OF THE  
52<sup>ND</sup> JUDICIAL DISTRICT  
FLOYD COUNTY, INDIANA**

**LOCAL CIVIL RULES OF PRACTICE**  
**FOR THE COURTS**  
**OF THE 52<sup>nd</sup> JUDICIAL CIRCUIT**  
**FLOYD COUNTY, INDIANA**

**Updated March 1, 2022**

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**LR22-TR1-100**  
**APPLICABILITY OF RULES**

**A. SCOPE.** The following local rules of practice and procedure shall apply to cases filed in the Circuit and Superior Courts of Floyd County, Indiana, but shall not apply to criminal cases or cases on the Small Claims Docket unless otherwise indicated.

**B. EFFECTIVE DATE.** These local rules shall be effective January 1, 2009, and shall supersede such rules heretofore enacted by said Courts.

**C. CITATION.** These rules may be cited as Local Rule\_\_\_\_. (LR22-TR00- )

**D. PURPOSE.** These rules are promulgated pursuant to Trial Rule 81 of the Indiana Rules of Trial Procedure and are intended to supplement the Indiana Rules of Trial Procedure.

**LR22-TR3.1-101**  
**WITHDRAWAL OF APPEARANCE**

**A. WITHDRAWAL OF APPEARANCE.** Excepting appearances in estates and guardianships, an attorney desiring to withdraw his appearance in any other proceeding shall file a written motion requesting leave to do so accompanied by a notice of hearing or proof satisfactory to the Court that at least ten [10] days prior written notice has been given to the client and to all other parties of record in advance of the withdrawal date, which date shall be set forth in the written notice. The motion must contain the address and phone number of the client.

**B. WITHDRAWAL IN ESTATE AND GUARDIANSHIP CASES.** An attorney desiring to withdraw his appearance in an estate or guardianship shall file a written motion requesting leave to do so accompanied by a notice of hearing which shall be served at least ten [10] days prior to the hearing upon the personal representative or guardian directing said person to appear at the hearing.

**C. WAIVER OF RULE.** A motion for leave to withdraw an appearance accompanied by a written appearance of successor counsel and, excepting appearances in estate or guardianship matters, a motion to withdraw an appearance accompanied by a written consent of the client shall constitute a waiver of the requirements of this local rule.

**LR22-TR3-102**  
**DUTIES OF ATTORNEYS**  
**PREPARATION OF ENTRIES**

**A. STATUS OF PROCEEDINGS.** Each attorney appearing of record and each party to a proceeding shall at all times keep themselves informed of the status of the proceeding and shall be particularly bound by hearing dates orally set by the Court from the bench in their presence.

**B. PREPARATION OF ENTRY.** When opposing counsel has appeared in a proceeding, the attorney who has agreed to prepare an entry as requested by the Court shall place on the last page of the entry appropriate signature lines indicating "prepared by" and "reviewed by" and shall submit the entry to opposing counsel for examination. Opposing counsel shall promptly examine the entry when submitted, shall sign the entry, and shall submit the entry to

the Court within five [5] days of receiving same. If opposing counsel does not agree with the entry, counsel shall advise the Court and request a conference, telephonic or otherwise.

**C. FAILURE TO SUBMIT ENTRY.** If opposing counsel shall fail or refuse to submit the entry without advising the Court as to objections thereto within five [5] days of receiving the same, the preparing attorney shall submit the entry to the Court advising the Court by letter of opposing counsel's failure or refusal and the Court shall accept the entry without opposing counsel's signature.

**D. FAILURE TO PREPARE ENTRY.** If an attorney agrees or is ordered to prepare an entry and then fails to do so within fifteen [15] working days of the Court's request, opposing counsel may prepare the entry and submit same to the Court advising the Court by letter of the efforts made to gain preparation of the entry. Failure of counsel to prepare an entry as agreed or as ordered may subject counsel to sanctions including the assessment of reasonable attorney fees for counsel who prepared the entry.

**E. ATTORNEYS FILING PLEADINGS WITH MULTIPLE CAUSE NUMBERS.** If an attorney files a pleading with more than one cause number, they shall provide the Court with enough copies for each case for filing. This applies to Motions, Notices, and Orders.

### **LR22-TR3-103 PAYMENT OF FEES**

**A. INITIAL FEES.** Unless the Court has previously entered a written Order waiving the pre-payment of the filing fee in whole or in part, all fees associated with the filing of a case shall be prepaid to the Clerk when the case is filed.

**B. TRANSFER FEES.** All fees and costs associated with the transfer of a case to another county or transfer of a case from the small claims docket to the civil plenary docket shall be paid within twenty [20] days of the Order directing transfer and the failure to pay such costs shall result in the rescinding of the Order directing transfer and jurisdiction of the case shall remain with the Court, or the case shall be transferred back to the small claims docket as applicable, unless the Court has entered a written order waiving the pre-payment of the fee in whole or in part.

**LR22-TR5-104  
PROOF OF SERVICE**

**A. TRIAL RULE 5 REQUIREMENTS.** Proof of service of pleadings or papers required to be served by Trial Rule 5 may be made either by:

[1] a certificate of service signed by an attorney of record which certificate shall identify by name and address the person or persons to whom service is directed; or

[2] an acknowledgment of service signed by the party served or the attorney of record if such party is represented by an attorney.

**B. VERIFYING SERVICE OF PROCESS.** It is the responsibility of counsel and Pro Se parties to verify service of process. Court personnel are not required to review case files to determine if a party has acquired service of process. Counsel and Pro Se parties may access the Chronological Case Summary online or by use of the public access computers located in the office of the Floyd County Clerk to determine if service of process has been acquired. If necessary, Court files may be reviewed to verify service of process.

**LR22-TR10-105  
FORM AND STYLE OF PLEADINGS  
FILING OF PLEADINGS**

**A. SIGNATURE REQUIRED.** Any pleading, motion, brief or paper not signed by an attorney admitted to practice or a party who is acting pro se, shall not be accepted for filing, or, if inadvertently accepted for filing, shall upon discovery be stricken from the record by the Court upon its own motion.

**B. PAPER SIZE.** All pleadings, motions, entries, orders, judgments and other papers shall be filed on letter size [8 1/2 x 11] paper.

**C. FLAT FILING.** The files of the Clerk of the Court shall be kept under the flat filing system. All pleadings presented for filing with the Clerk or the Court shall be flat and unfolded.

**D. ORDERS AND ENTRIES.** Except as required by Local Rule LR22-TR3-102, all proposed orders and entries shall reflect the name of the preparer under the indication "prepared by", shall be submitted in sufficient number for each person entitled to service and shall contain a distribution list identifying by name and address each person entitled to service. The preparer shall provide sufficient pre-stamped pre-addressed envelopes to the court for mailing of the orders or entries.

**TR22-TR16-106**  
**PRE-TRIAL CONFERENCES**  
**ASSIGNMENT OF CASES FOR TRIAL**

**A. COURT CALENDAR.** A calendar of cases assigned for bench trial or jury trial shall be kept by the Court and the Court Reporter shall enter on the calendar at the direction of the Court, the style, cause number, and the time and date the trial is assigned to commence.

**B. REQUIRED PRE-TRIAL CONFERENCE.** No case shall be assigned for jury trial without the Court having conducted a pre-trial conference thereon and any party or attorney of record desirous of acquiring a jury trial shall first file a motion requesting a pre-trial conference accompanied by a proposed order.

**C. OTHER PRE-TRIAL CONFERENCES.** The Court, in its discretion, may require a pre-trial conference on certain cases to be heard at bench trial and the Court shall, sua sponte, set such cases for conference. Any party or attorney of record desirous of having a pre-trial conference for such cases may file a motion requesting same accompanied by a proposed order.

**D. ATTENDANCE AT PRE-TRIAL CONFERENCE.** At least one attorney for each party who is a member of the Indiana Bar and who will participate in the trial shall appear at the pre-trial conference. An attorney who fails to attend a pre-trial conference shall be bound by the trial date set by the Court as well as such other matters as contained in the Court's Pre-Trial Order.

**E. REQUESTS FOR BENCH TRIAL.** The assignment of a case for bench trial may be had by motion duly filed and accompanied by a proposed order. Said motion shall reflect an estimate of the trial time required.

**F. TRIAL ASSIGNMENTS.** The Court may assign a case for trial by jury on a primary and/or secondary basis. Ten [10] days prior to the scheduled trial date, an attorney whose case has been assigned for trial on a primary basis may file a Certificate of Readiness indicating the intention of proceeding to trial as scheduled. The failure to file such Certificate may result in forfeiture of the primary trial date if an attorney whose case has been assigned on a secondary basis files such Certificate and in such event the case assigned on a secondary basis shall be heard.

**G. CERTIFICATE OF READINESS.** If a Certificate of Readiness is filed pursuant to subsection F of this Local Rule, the Certificate shall be served on all parties in a cause and shall contain a certificate of service. The Certificate shall state:

- [1] that the cause is at issue;
  - [2] that discovery has been completed or will be completed by the scheduled trial date;
- and
- [3] that opposing counsel was advised of the party's intention to file the Certificate five (5) days prior to its filing.

**LR22-TR7-107**  
**MOTIONS**

**A. GENERALLY.** Excepting motions made during the course of a recorded proceeding, all motions shall be in writing.

**B. PROPOSED ORDERS REQUIRED.** Proposed orders shall accompany motions or applications in the following matters:

- [1] to enlarge or shorten time
- [2] for setting of hearing, conference or trial
- [3] for continuance
- [4] for default judgment
- [5] to compel discovery
- [6] to withdraw appearance
- [7] for dismissal
- [8] for change of venue
- [9] for restraining order, temporary injunction
- [10] for summary judgment
- [11] for such other orders, judgments or decrees as the Court may direct.

**C. HEARINGS REQUIRED.** Excepting motions to correct error, motions for summary judgment or other motions described in subsection F, subsection G and subsection H of this rule, all motions shall be accompanied by a separate motion requesting a hearing and a proposed order for the scheduling of a hearing date.

**D. NOTICE OF MOTION AND ORDER.** In lieu of the requirement of subsection C of this rule, an attorney may utilize a Notice of Motion and Order for routine matters such as a motion for continuance, motion to amend pleading, motion to shorten time, motion to add parties, motion to compel discovery and the like. The Notice of Motion shall indicate that the Court will rule on the motion and enter its Order beginning at 9:00 A.M. on the Monday which is not less than five [5] working days from the date of the Court's actual receipt of the Notice of Motion.

**E. MOTION TO CORRECT ERROR.** At any time before the Court has ruled upon a Motion to Correct Error, any party may request a hearing on such Motion by filing a written motion requesting a hearing and a proposed order for the scheduling of a hearing date. It shall be discretionary with the Court whether a hearing shall be held on such Motion to Correct Error.

**F. HEARING NOT REQUIRED.** At the time of filing, the following motions shall be summarily granted or denied ex parte unless the Court, in its discretion, determines a hearing on such motion should be scheduled.



- [1] Motion for Enlargement of Time [initial request]
- [2] Motion to Reconsider [denial of]
- [3] Motion for Change of Venue from Judge/County
- [4] Motion for Default Judgment
- [5] Joint Motion for Continuance
- [6] Motion to Dismiss Settled
- [7] Motion to Set Hearing/Pre-trial conference/Bench Trial
- [8] Motion to Withdraw Appearance excepting in Estate, Guardianship or Criminal Matters which are subject to the provisions of [Local Rule LR22-TR3.1-101 and LR22-CR2.1-201]
- [9] Such matters as permitted by statute or Trial Rule.

**G. MOTIONS UNDER TRIAL RULES 12, 24, 42, and 60.** Motions seeking relief under Trial Rules 12, 24, 42, and 60 shall be accompanied by a brief and proof of service upon opposing counsel. An adverse party shall have fifteen [15] days after service of the movant's brief to file an answer brief, and the movant shall have seven [7] days after service to file a reply brief.

Upon expiration of the time provided by the briefing schedule, the proponent of the motion shall file a written request to schedule the matter for hearing.

### **LR22-TR53.5-108 CONTINUANCES**

**A. GENERALLY.** A motion for continuance of a hearing or trial shall be accompanied by an order which shall contain adequate space for insertion of a new time and date for re-scheduling purposes.

**B. CONTENT OF MOTION.** A motion for continuance shall set forth the scheduled date, the reason for continuance, the specific length of time the moving party desires the cause to be delayed, and reference as to whether opposing counsel agrees or disagrees to a continuance of the scheduled hearing or trial. It shall be the duty of the moving party to obtain a mutually acceptable future date if and when the motion is granted.

**C. TIMING OF MOTION.** No continuance shall be granted at the request of a party unless a written motion for same is filed not less than ten [10] days prior to the scheduled hearing or trial, unless it is made to appear by affidavit that the facts which are the basis of the motion did not then exist or were not then known by the moving party.

**D. SANCTIONS.** All delays and continuances of a cause shall be at the cost of the party causing the same, except where otherwise provided by law, and the adverse party may have such costs taxed and judgment rendered therefore upon motion duly made.

**LR22-TR52-109**  
**FINDINGS OF FACT**

In all cases where findings of fact by the Court are requested or required, counsel of record shall submit to the Court proposed findings setting forth all facts claimed to have been established and the conclusions of law thereon. The proposed findings and conclusions shall be submitted to the Court on computer disc or by e-mail in the Court's discretion within such time as directed by the Court.

**LR22-TR26-110**  
**DISCOVERY**

**A. USE OF FORM DISCOVERY.** No "form" discovery shall be served upon a party unless all discovery requests on such forms are consecutively numbered and applicable to the case in which the same are utilized. The intent and purpose of this rule is to prohibit the use of form discovery unless applicable to the case at bar or where the nature of the case or the number of the parties makes the use of such forms necessary and appropriate.

**B. ADMISSIONS FORMAT.** Answers or objections to requests for admissions filed and served pursuant to Trial Rule 36 shall set forth in full the request for admissions being answered or objected to immediately preceding the answer or objection.

**C. MOTIONS FOR DISCOVERY.** The Court shall refuse to rule on any and all motions for discovery concerned with the production of documents or things, permission to enter upon land or other property for inspection and other purposes, for physical or mental examination, or to compel discovery provided in Trial Rules 26 through 37, unless moving counsel shall first advise the Court in writing that after personal consultation and sincere attempts to resolve differences with opposing counsel, they are unable to reach an accord. Such written advisement to the Court shall include a history with the date, time and place and the names of all parties and attorneys with whom the effort has been attempted.

**D. LIMITATION ON INTERROGATORIES.** The number of interrogatories which may be served pursuant to Trial Rule 33 shall be limited so as to require the answering party to make no more than forty [40] answers, each sub-part of an interrogatory counting as one [1] answer. Waiver of this limitation will be granted by order of the Court in cases in which such limitation would work a manifest injustice or would be impractical because of the complexity of the issues of the case. Each motion requesting waiver of this limitation shall contain as an exhibit the interrogatories which the party proposes to serve. This limitation does not mean a limit of forty (40) interrogatories and answers for the entire case but rather to each set of interrogatories propounded.

**LR22-TR32-111**  
**PUBLICATION OF DEPOSITIONS**

The seal on depositions shall be broken and the deposition deemed published upon filing with the Court. When depositions are utilized in support of, or in opposition to, a motion for summary judgment or other matter, the pleadings and/or memoranda filed in support or opposition to such motion shall make specific reference by page and line or question number to those places in such deposition which purport to demonstrate the presence or absence of material fact.

**LR22-TR51-112**  
**JURY INSTRUCTIONS**

Proposed final instructions, special or Indiana Model Civil Jury Instructions, shall be submitted on letter size [8 1/2 x 11] paper, double-spaced, with all designations including indications for the Court's disposition placed on the bottom three [3] inches of the instruction.

The parties shall submit a second set of proposed final instructions containing no designation of who submitted them, or other identifying references, and shall contain only the statement of law. This set of jury instructions may be sent with the jury to the jury room for use during deliberations. These instructions shall also be presented to the court on computer disc or by e-mail in the Court's discretion.

**LR22-AR15-113**  
**PRAECIPES/TRANSCRIPTS**

**A. CONTENT.** All notice of appeal and requests for transcripts shall be in writing and filed with the Clerk of the Court. Such notices and requests for transcripts relating to trials by jury shall not include *voir dire*, opening statements, and closing statements unless specifically requested.

**B. COSTS.** The party requesting a transcript shall obtain an estimate of the cost of the transcript from the Court Reporter and shall pay a deposit equal to one-half of the estimated cost of the transcript before the transcription process is undertaken by the Court Reporter. The remaining estimated cost of the transcript shall be paid upon notification by the Court Reporter to the requesting party that one-half of the transcript has been completed. The actual total cost of the transcripts shall be paid in full before the transcript is released to the requesting party.

**C. COURT REPORTER RULE (Pursuant to Adm. Rule 15) Definitions.**

The following definitions shall apply under this local rule:

- (1) *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 74.12
- (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 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 Floyd 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 but not limited to a deposition transcript that is paid for by a private party.

## **SECTION 2**

**A. Salaries.** 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.

**B. Per Page Fees.** The Court Reporter shall be compensated at the rate of Five Dollars and Fifty Cents (\$5.50) per page for any county indigent, state indigent or private transcripts prepared. The Court Reporter shall submit directly to the county a claim for the preparation of the county indigent transcript as other county claims are submitted.

If the Court Reporter is requested to prepare an expedited transcript, the per page fee shall be Ten Dollars (\$10.00) per page where the transcript must be prepared within twenty-four (24) hours or less and Eight Dollars and Fifty Cents (\$8.50) per page where the transcript of fifty (50) pages or more and is to be prepared in an expedited fashion, the maximum per page fee shall be Eight Dollars and Fifty Cents (\$8.50) per page and shall be prepared within a time frame to be agreed upon between the Court Reporter and the Attorney. Index and Table of Contents will be charged at the same rate as the other pages. 13

Copies shall be made at the rate of Two Dollars and Seventy-five Cents (\$2.75) per page.

**C. Minimum Fee.** A minimum fee of Fifty Dollars (\$50.00) will be charged for transcripts less than ten (10) pages in length.

**D. Binding and Disk Fees.** An additional fee shall be added to the cost of the transcript for:

(1) The time spent binding the transcript and the exhibit and index volumes at an hourly rate based on one and one-half (1 ½) times the Court Reporter's hourly rate.

(2) The costs of office supplies and utilized for finding and transmission of the transcript pursuant to the Indiana Rules of Appellate Procedure 28 and 29. Said costs shall be pursuant to a Schedule of Transcript Supplies established and published annually by the Courts.

**E. Annual Report Requirement.** Each Court Reporter shall report, at least on an annual basis, all transcript fees received for the preparation of either 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.

**F. Private Practice.** If a Court Reporter elects to engage in private practice through the recording of a deposition and/or preparing a deposition transcript, all such private practice work shall be conducted outside regular working hours.

If a Court Reporter engages in such private practice 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:

(1) The reasonable market rate for the use of equipment, work space and supplies.

(2) The method by which records are to be kept for the use of equipment, work space and supplies.

(3) The method by which the Court Report is to reimburse the court for the use of the equipment, work space and supplies.

**G. Disk as Official Record.** Upon the filing of a notice of appeal or written request for transcript or the Court Reporter shall transcribe any court proceeding requested and produce an original paper transcript along with an electronically formatted transcript.

Multiple disks containing the electronically formatted transcript shall be prepared and designated as "Official Record," "Court Reporter's Copy," "Court's Copy" and "Party Copy." Each disk shall be labeled to identify the case number, the names of the parties, the date completed, the Court Reporter's name, and the disk number if more than one disk is required for a complete 14 transcript. The Court's Copy of the electronic transcript shall become the official record of the court proceeding, in lieu of a paper copy of the transcript, and shall be retained in the court where said proceeding was held. The Court Reporter's Copy shall be retained by the Court Reporter. The original paper transcript along with the disk designated as the Official Record shall be forwarded to the Clerk if the transcript was prepared for purposes of appeal. If the transcript was not prepared for purposes of appeal, the original paper transcript shall be delivered to the requested party.

### **SECTION 3**

A. Assembly of the Clerk's Record. Upon the filing of a notice of appeal, the trial court clerk shall assemble the Clerk's Record. The Clerk's Record shall be bound and secured by using any method which is easy to read and permits easy disassembly for copying.

*(Amended effective January 1, 2012)*

**LR22-TR00-114  
EX PARTE ORDERS**

Ex parte proceedings are highly disfavored. In civil cases the Court may enter orders, ex parte, in those matters as set forth in Local Rule LR22-TR7-107(F).

Upon motion of any party adversely affected by any ex parte proceeding not in conformity with this rule, the Court, after notice and opportunity to be heard, may direct that the party or attorney seeking an ex parte order shall pay to the adversely affected party the reasonable attorneys' fees associated with the opposition to the ex parte order.

**LR22-TR00-115  
SANCTIONS**

**A. COURT ACTION.** When a party or counsel for a party fails to comply with any of these Local Rules, the Court, after advising the party of the noncompliance, may direct the Clerk of the Court to refuse to accept the pleadings or papers to be filed, or, if inadvertently accepted for filing, direct that such pleadings or papers be stricken from the record.

**A. COSTS.** In addition to the foregoing, the Court may order the party or counsel for the party failing to comply with these Local Rules to pay reasonable expenses, including attorneys fees, caused by the failure.

**LR22-TR79-RULE 116  
APPOINTMENT OF SPECIAL JUDGES**

**A. SELECTION OF ASSIGNMENT JUDGE.** On or before October 1st of each year, the Judges of the Circuit and Superior Courts of Floyd County shall meet with the presiding judges of Administrative District 23 for the purpose of selecting a judge designated as the assignment judge who shall serve the Administrative District for a period of twelve (12) months.

**B. SECTION H APPOINTMENTS.** In the event it becomes necessary to appoint a special judge under Section H of Trial Rule 79 of the Indiana Rules of Trial Procedure, the judge before whom the case is pending shall send notice of the need of the appointment of a special judge to the Administrative District's assignment judge who shall then make such assignment within five (5) days of receiving said notice.

**C. METHOD OF ASSIGNMENT.** The Administrative District's assignment judge shall select special judges from a roster of the available judges in the Administrative District. The assignments shall be in a sequential order beginning with the name of the judge following the last judge so assigned. If, however, a judge is otherwise disqualified to hear a particular case, that judge shall be deemed to be the next in sequence until assigned a case. The assignment judge shall maintain a record of all assignments and shall issue a summary report of the assignments on a quarterly basis.

**D. ROSTER OF AVAILABLE JUDGES.** The roster of available judges in Administrative District 23 shall be maintained by Court designation in the following sequential order and shall include senior judges as available:

- (1) Clark Circuit #1
- (2) Clark Circuit #2
- (3) Clark Circuit #3
- (4) Clark Circuit #4
- (5) Clark Superior #5
- (6) Clark Superior #6
- (7) Floyd Circuit
- (8) Floyd Superior #1
- (9) Floyd Superior #2
- (10) Floyd Superior #3
- (11) Scott Circuit
- (12) Scott Superior
- (13) Senior Judges and Magistrate Judges who agree to serve as Special Judge

**E. APPOINTMENT ORDER.** Upon selecting a special judge, the assignment judge shall prepare an Order of Appointment and forward said Order to the judge before whom the case is pending and enter an Order of Appointment and forward a copy of the Order to the special judge and the attorneys of record.

**F. ACCEPTANCE OF JURISDICTION.** The Order of Appointment, when entered on the CCS by the judge before whom the case is pending, shall constitute acceptance of jurisdiction by the appointed special judge unless the judge is otherwise disqualified, and no special appearance, oath or additional evidence of acceptance shall be required.

**G. IMPLEMENTATION OF RULE.** In the event a selected judge does not accept an appointment to serve as a special judge under the provisions of Section (D), (E) or (F) of Trial Rule 79 of the Indiana Rules of Trial Procedure, the judge before whom the case is pending shall notify the assignment judge of the need for an appointment of a special judge under this local rule.

**H. CERTIFICATION TO SUPREME COURT.** If, under the provisions of this Rule, no judge is eligible to serve as a special judge in a case, the assignment judge shall notify the judge before whom the case is pending who shall then certify such fact to the Indiana Supreme Court for the appointment of a special judge.

If the judge before whom the case is pending is of the opinion that the particular circumstances of a case warrants selection of a special judge by the Indiana Supreme Court, said judge shall certify such facts to the Indiana Supreme Court for the appointment of a special judge. Under such circumstance this Rule shall not be implemented unless the Indiana Supreme Court declines to appoint a special judge.

**I. FORM OF ORDER.** The Order of Appointment shall be in the following form:

**IN THE \_\_\_\_\_ COURT FOR \_\_\_\_\_ COUNTY**

**STATE OF INDIANA**

(CAPTION)

**ORDER OF APPOINTMENT**

Under the provisions of Trial Rule 79(H) of the Indiana Rules of Trial Procedures, the Honorable \_\_\_\_\_ of the \_\_\_\_\_ Court of \_\_\_\_\_ County is hereby appointed to serve as Special Judge in the above-captioned case.

SO ORDERED AND ASSIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BY THE ASSIGNMENT JUDGE FOR THE 23RD JUDICIAL DISTRICT.

\_\_\_\_\_  
Assignment Judge

*(Amended effective March 1, 2022)*



**LR22-TR00 RULE 117**  
**ASSIGNMENT OF CASES TO EQUALIZE**  
**WORKLOAD BETWEEN COURTS**

**A. Assignment.** The judges of the Circuit and Superior Courts shall meet on or before October 15 of each year to assign cases to review the Caseload Allocation Plan. Different numbers of cases may be assigned to each court based on the caseload statistics received each year from the Office of Court Services.

**B. Transfer.** Transfer between the Floyd Circuit Court and the Floyd Superior Courts shall be accomplished pursuant to IC 33-29-1-9 & 10, which allows the judges to transfer cases between courts with mutual consent and to sit on any case in any court with mutual consent.

**C. Criminal Cases.**

For all crimes committed on or after July 1, 2014:

- (1) As it has been the existing practice of the Floyd County Courts and except as otherwise provided in Sections (3), (5) and (6) of this Rule if a Defendant is charged with a new offense of any Level and has a pending case, or is presently on probation or has a case under advisement or a case which has been diverted in the Circuit Court, Superior Court #1 or Superior Court #3 then such new case shall be filed in the respective Court where the Defendant is on probation or the other case is pending, under advisement or diverted.
- (2) All Murder cases shall be divided equally between the Circuit Court, Superior Court #1 and Superior Court #3.
- (3) All Levels 1 & 2 Felonies, Levels 3 & 4 Felonies, Level 5 Felony, Level 6 Felony and Domestic Battery cases (Misdemeanor and Felony) shall be filed as follows (except as otherwise designated below):
  - (a) Levels 1 & 2 Felonies: 25% shall be filed in the Circuit Court, 50% shall be filed in the Superior Court #1 and 25% shall be filed in the Superior Court #3.
  - (b) Levels 3 & 4 Felonies: 25% shall be filed in the Circuit Court, 50% shall be filed in Superior Court #1, and 25% shall be filed in the Superior Court #3.
  - (c) Level 5 Felonies: 25% shall be filed in the Circuit Court, 50% shall be filed in the Superior Court #1, and 25% shall be filed in the Superior Court #3.
  - (d) Level 6 Felonies: 75% shall be filed in Superior Court #1 and 25% shall be filed On or after July 1, 2017, if a Defendant has a pending felony case in Circuit Court, any new Level 6 Felony filed shall be filed in the Circuit Court.
  - (e) Domestic Battery Cases (Misdemeanor and Level 6 Felonies): 75% shall be filed in Superior Court #1 and 25% shall be filed in Superior Court #3.

- (4) All Traffic Infractions and Ordinance Violations shall be filed in the Superior Court #2.
- (5) All Motor Vehicle Code violations shall be filed in Superior Court #2.
- (6) All Traffic Misdemeanor and Level 6 Felony Traffic cases shall be filed in Superior Court #2 unless the Defendant has a pending case, or is presently on probation, or has a case under advisement, or a case which has been diverted, in the Circuit Court, Superior Court #1, or Superior Court #3. In the event of such occurrence, the new charge shall be filed in the respective Court where the Defendant is on probation or the other case is pending, under advisement or diverted.
- (7) If a Defendant has a pending case or is on probation or has a case under advisement or a case which has been diverted in Superior #2 is charged with a new Level 6 non-traffic Felony, such cases shall be assigned as follows: 75% shall be filed in Superior Court #1 and 25% shall be filed in Superior Court #3.
- (8) All other Misdemeanor offenses cases shall be filed in the Superior Court #2 unless the Defendant has a pending case, or is presently on probation, or has a case under advisement, or a case which has been diverted, in the Circuit Court, Superior Court #1, or Superior Court #3. In the event of such occurrence, the new charge shall be filed in the respective Court where the Defendant is on probation or the other case is pending, under advisement or diverted.

<u>Prior Code</u>	<u>HEA 1006</u>
Murder	Murder
Class A	Levels 1 & 2
Class B	Levels 3 & 4
Class C	Level 5
Class D	Level 6

For all crimes committed prior to July 1, 2014:

- (1) All Murder cases shall be divided equally between the Circuit, Superior #1 and Superior #3 Courts.
- (2) All Class A, Class B, Class C, Class D Felony and Domestic Battery cases (Misdemeanor and Felony) shall be filed as follows (except as otherwise designated below):
  - (a) Class A Felonies: 25% shall be filed in the Circuit Court, 50% shall be filed in the

- Superior Court #1 and 25% shall be filed in the Superior Court #3.
- (b) Class B Felonies: 25% shall be filed in the Circuit Court, 50% shall be filed in Superior Court #1, and 25% shall be filed in the Superior Court #3.
  - (c) Class C Felonies: 25% shall be filed in the Circuit Court, 50% shall be filed in the Superior Court #1, and 25% shall be filed in the Superior Court #3.
  - (d) Class D Felonies: 25% shall be filed in the Circuit Court, 50% shall be filed in the Superior Court #1, and 25% shall be filed in the Superior Court #3.
  - (e) Domestic Battery Cases (Misdemeanor and Felony): 25% shall be filed in the Circuit Court, 50% shall be filed in Superior Court #1, and 25% shall be filed in the Superior Court #3.
- (3) All Traffic Infractions and Ordinance Violations shall be filed in the Superior Court #2.
  - (4) All Motor Vehicle Code violations shall be filed in Superior Court #2.
  - (5) All Traffic Misdemeanor and Class D Felony Traffic cases shall be filed in Superior Court #2 unless the Defendant has a pending case, or is presently on probation, or has a case under advisement, or a case which has been diverted, in the Circuit Court, Superior Court #1, or Superior Court #3. In the event of such occurrence, the new charge shall be filed in the respective Court where the Defendant is on probation or the other case is pending, under advisement or diverted.
  - (6) All other Misdemeanor offenses, excepting Domestic Violence cases shall be filed in the Superior Court #2 unless the Defendant has a pending case, or is presently on probation, or has a case under advisement, or a case which has been diverted, in the Circuit Court, Superior Court #1, or Superior Court #3. In the event of such occurrence, the new charge shall be filed in the respective Court where the Defendant is on probation or the other case is pending, under advisement or diverted.

#### **D. Civil Cases**

- (1) Except as provided by statute, Civil Tort, Civil Plenary, Mortgage Foreclosure, Eviction (commercial) and Miscellaneous cases may be filed on an open basis in the Circuit Court, Superior Court #1, Superior Court #2, or Superior Court #3.
- (2) Civil Collection cases \$2,500 and over shall be filed as follows:
  - (a) 50% in Superior Court #1.
  - (b) 50% in Superior Court #3.
- (3) Civil Collections cases under \$2,500 shall be filed in Superior Court #2.
- (4) TP and TS cases (Application for Judgment and Petitions for Issuance of Tax Deed) shall be filed in Circuit Court.

**E. Protection Order.** All Protection Orders shall be filed in Superior Court #3 (See Local

Rule LR22-FR00-314 regarding transfer of Protection Order cases).

**F. Domestic Relations Cases.** All Pro Se DN and DC cases shall be filed in the Superior Court #3. All non-pro se DN and DC cases may be filed on an open basis in the Circuit Court, Superior Court #1, or Superior Court #3.

**G. Small Claims.** All Small Claims and Eviction (residential) cases shall be filed in Superior Court #2.

**H. Mental Health.** Mental Health cases may be filed in any of the Floyd County Courts.

**I. Juvenile.** All JP, JC, JT and JM (CHINS) cases shall be filed in Circuit Court subject to LR22-TR-00-117B. All JD, JS and JM (Delinquent) cases shall be filed in Circuit Court subject to LR22-TR-00-117B. All JP, JD, JS and JM (Delinquent) shall be heard by the Magistrate unless the Magistrate has a conflict or is unavailable. In such event the elected Circuit Court Judge or a Senior Judge shall hear the case. If the State of Indiana files a Motion to Waive Juvenile Jurisdiction in a JD case, the waiver hearing shall be conducted by the elected Circuit Court Judge.

**J. Adoptions, Guardianships and Estates.** All Adoptions, Guardianships, Trust matters and Estates (supervised, unsupervised and miscellaneous) shall be filed in the Circuit Court.

**K. Adult Problem Solving Court Program(s).**

- (1) Floyd County Problem Solving Court Program(s) shall be established pursuant to IC 33-23-16-11 and in accordance with Floyd County Local Rules to provide specialized services, including: clinical assessment, education, referral for treatment, and service coordination and case management for eligible defendants and probationers, as determined by its written policy and procedures.
- (2) Those persons directed to participate in a Floyd County Problem Solving Court Program shall pay the following fees in accordance with IC 33-23-16-23
  - (a) The program fee, not to exceed one hundred (\$100.00) dollars, per admission for initial problem solving court services regardless of the length of participation;
  - (b) The court service fee, not to exceed fifty (\$50.00) dollars per month beginning in the second month of participation and for each month of participation thereafter for the duration of individual's participation; and
  - (c) The transfer fee, not to exceed twenty-five (\$25.00) dollars, transfer to the problem solving court.
  - (d) Any additional costs associated with recommended treatment, fees, other costs and restitution.
- (3) The clerk of the court shall collect and transmit the program fee within thirty (30) days after the fees are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under IC 33-37-8.

- (4) The day-to-day operation and management of the Veterans Court of Southern Indiana shall be assigned to Floyd Superior Court 3.
- (5) All criminal charges shall be filed as provided for in this rule. However, after a charge has been filed, a judge may refer the defendant to a Problem Solving Court, and if accepted by the Problem Solving Court the Judge may transfer the defendant's case to the Problem Solving Court for admission and disposition in accordance with IC 33-23-16-13, 14 or 15 and the Problem Solving Court policies and procedures.
- (6) A Problem Solving Court may initiate and/or accept transfers of individuals from another court.

**L. Allocation of use of the Magistrate for Purposes of Weighted Caseload Utilization.**

Circuit Court shall be allocated two and three-quarter (2 ¾) days per week for use of the Magistrate. Superior Court #2 shall be allocated one and a quarter (1¼) days per week for use of the Magistrate. Superior Court #1 shall be allocated three-quarters (¾) of a day per week for use of the Magistrate. Superior Court #3 shall be allocated one-quarter (¼) day per week for use of the Magistrate. When reporting quarterly and annual statistics to Indiana Office of Court Services, it shall be the duty of the Court Reporter of each Court to include the Magistrate's allocated time in such quarterly and annual reports.

*(Approved effective March 1, 2020)*

**LR22-TR00-118**

**CONTEMPT/RULE TO SHOW CAUSE/BODY ATTACHMENT**

**A. Contempt.** Upon failure of a party/person to appear as ordered for any Court proceeding a contempt citation may be filed as to said party/person.

**B. Body Attachment.** Body Attachment shall be requested and issued only when the party/person previously ordered to appear for a Court proceeding was personally served with notice of a contempt hearing pursuant to I.C. 34-47-4-1.

**C. Expiration and Recall of Body Attachments.**

(1) **Expiration.** Body Attachments expire one year after issuance.

(2) **Recall.** If during the pendency of a Body Attachment, a party desires to recall said Body Attachment, said party shall file a written notice to recall Body Attachment forthwith stating the reason for the recall.

**APPENDIX**

**Local Civil Forms**

1 **Body Attachment** - (Local Rule: LR22-TR00-118)

**IN THE FLOYD CIRCUIT/SUPERIOR/COUNTY COURT  
STATE OF INDIANA**

\_\_\_\_\_  
PLAINTIFF/PETITIONER

VS

CAUSE NO: \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT/RESPONDENT

**WRIT OF BODY ATTACHMENT**

Expiration Date: \_\_\_\_\_

TO THE SHERIFF OF FLOYD COUNTY, STATE OF INDIANA:

You are hereby commanded to attach the body of:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

DOB: \_\_\_\_\_

SS#: \_\_\_\_\_

pursuant to IC 34-47-4-2, and forthwith bring him/her before the Judge of the Floyd Circuit/Superior Courts to answer for a Contempt of Court for: [state reason].

BAIL: \$ \_\_\_\_\_ COURT CASH OR SURETY

**OR**

ESCROW: \$ \_\_\_\_\_ DEPOSITED WITH THE FLOYD COUNTY CLERK  
[IF CHILD SUPPORT ARREARAGE]

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
JUDGE \_\_\_\_\_  
FLOYD CIRCUIT/SUPERIOR COURT

**LR 22-AR Rule 7-1-119**  
**EVIDENCE HANDLING, RETENTION AND DESTRUCTION**

**Preamble**

In all cases, the court shall proceed pursuant to these Rules unless the court directs a longer retention period after motion by any party or on its own motion.

**(a) Retention Periods for Evidence introduced in Civil Proceedings**

Civil Cases, Including Adoption, Paternity, and Juvenile Proceedings. All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, four (4) months after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for two (2) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later.

The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

**(b) Retention Periods for Evidence Introduced in Criminal Misdemeanor, Class D and Class C Felonies and Attempts.**

*Misdemeanor, Class D and C Felonies and Attempts.* All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence except as otherwise ordered by the court, three (3) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken, If an appeal is taken, all such exhibits shall be retained by the court reporter for three (3) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

**(c) Retention Periods for Evidence Introduced in Criminal Class B and A Felonies and Murder Attempts**

*Class B and A Felonies and Murder and Attempts.* All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, twenty (20) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for twenty (20) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

The court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

The Courts are encouraged to photograph as much evidence as possible. The courts and parties are reminded of the requirements of Appellate Rule 29(B).

**(d) Non-documentary and Oversized Exhibits**

*Non-documentary and Oversized Exhibits.* Non-documentary and oversized exhibits shall not be sent to the Appellate level Court, but shall remain in the custody of the trial court or Administrative Agency during the appeal. Such exhibits shall be briefly identified in the Transcript where they were admitted into evidence. Photographs of any exhibit may be included in the volume of documentary exhibits.

Under no circumstances should drugs, currency, or other dangerous or valuable items be included in appellate records.

**(e) Notification and Disposition**

In all cases, the court shall provide actual notice, by mail, to all attorneys of record and to parties only if unrepresented by counsel, that the evidence will be destroyed by a date certain if not retrieved before that date. Counsel and parties have the duty to keep the court informed of their current addresses and notice to the last current address shall be sufficient. Court reporters should maintain a log of retained evidence and scheduled disposition date and evidence should be held in a secure area. At the time of removal, a detailed receipt shall be given to the court reporter by the party receiving and removing the evidence, the receipt will be made part of the court file.

In all cases, evidence which is not retaken after notice should be disposed of by the sheriff on the court's order. The sheriff should be ordered to destroy evidence if its possession is illegal or if it has negligible value. Evidence of some value should be auctioned by the sheriff with proceeds going to the county general fund. These Rules and their retention periods will take precedence over inconsistent language in statutes I.C. 35-33-5-5(c)(2).



**(f)Biologically Contaminated Evidence**

A party who offers biologically contaminated evidence must file a pretrial notice with the trial court and serve all the parties so that the court can consider the issue and rule appropriately before trial. A party can show contaminated evidence or pass photographs of it to jurors, but no such evidence, however, contained, shall be handled or passed to jurors or sent to the Jury Room.