

**LOCAL RULES OF PRACTICE FOR THE DEKALB
CIRCUIT AND SUPERIOR COURTS**

Effective Date March 15, 2020

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LR17-TR 00-1 – Scope of Rules

Except as otherwise provided, these rules govern the procedure and practice in all cases, including criminal, civil, and juvenile, filed or pending in the DeKalb Circuit and Superior Courts.

LR17-TR 3.1-2 Withdrawal of Appearance by Counsel

(A) All withdrawals of appearance of counsel shall be in writing and upon Order of the Court.

Permission to withdraw shall be granted only upon the following circumstances:

- (1) The filing of an appearance by new counsel for said client; *or*
- (2) Upon written motion to withdraw, which motion shall be served on the client at least ten (10) days prior to the date of the filing of the motion.

- (3) Upon other good cause found by the Court.

(B) A motion to withdraw shall include the following:

- (1) The name and address of the Court where the case is filed;
- (2) The last known address of the client and the client's telephone number; and
- (3) Any hearing or trial dates and any pleading, discovery or other pre-trial deadline dates.

Commentary:

It is suggested that an easy to follow rule concerning notice to a client is to append a certificate of service to the filed motion to withdraw stating both the date the motion was served upon the client and the date the motion was served upon all the other parties or counsel to the action. Note that the rule does not state that a "10 day letter" should be sent, nor that a "10 day letter" should be appended to the motion. The rule requires service of the actual motion to withdraw on the client ten days before filing the motion.

The following certification complies with the ten day notice requirement:

"I certify that I served on (client) a true and exact copy of this motion by (method of service) on (date), and a true and exact copy of this motion by (method of service) upon all other parties or their counsel on (date)."

Including client contact information is critical because the court may not have that contact information which is necessary for future notice. In addition, notice of upcoming hearings and deadlines assures the court that the information about these dates and deadlines, which would have been sent to counsel, are now made known to the client.

Motions to withdraw which do not comply with this rule will be summarily denied. The courts expect strict compliance with this rule.

LR17-TR 5-3 – Tender of Orders

All motions or other requests for relief shall be accompanied by a proposed order. Proposed orders for matters that the court has not received evidence on should always contain the options for the court to either grant, deny, or set the matter for hearing upon the motion or request for relief. Proposed orders for matters the court has heard evidence on should track the evidence and reflect any announced instructions of the presiding judge.

Commentary:

Appropriate proposed orders upon matters the court has not heard evidence on may follow this format:

<p>Order/Notice of Hearing</p> <p>(Sample Format)</p> <p><input type="checkbox"/> (Party’s) motion for (xxxxxx) filed on (date) is GRANTED.</p> <p><input type="checkbox"/> (Party’s) motion for (xxxxxx) filed on (date) is DENIED.</p> <p><input type="checkbox"/> (Party’s) motion for (xxxxxx) filed on (date) is set for hearing on _____, at _____ am/pm for a period of _____ minutes/hour(s) upon the court’s record.</p>

LR17-TR 53.5-4 – Continuances

(A) All motions for continuance, unless made on the record during the hearing of the cause or otherwise specifically authorized by the Court, shall be in writing.

(B) Before filing a written continuance, the moving party shall confer with counsel for all other parties and, where practical, with any parties appearing pro se, to determine any objections and to ascertain dates for rescheduling when all parties are available. Such objections and alternative dates (not less than three) shall be reported in or attached to the motion for continuance.

Commentary:

The mere fact that a party is not represented by counsel does not excuse compliance with this rule. Counsel is required to make a good faith attempt to communicate with any self-represented person in regard to any request for continuance.

Motions for continuance that do not state mutually available dates or which do not state the position of the non-moving party may be summarily denied for failure to comply with these rules.

LR17-TR 00-5 - Bail Policy and Schedule

- (A) This rule shall apply to all persons charged with felonies or misdemeanors in the DeKalb Circuit Court or the DeKalb Superior Courts.
- (B) All persons charged with a criminal offense in DeKalb County shall be admitted to bail in the amount, if any, fixed by the Court and endorsed upon the warrants of arrest.
- (C) The current bail schedule for DeKalb County shall be prominently posted on the DeKalb County Courts' website.
- (D) The posted bail schedule is advisory only, and the Judges of DeKalb County retain full discretion to deviate from such schedule as they may deem warranted.

LR17-TR76-1. Initial Request for Change of Judge in Civil Proceedings

Upon a timely filed motion for a change of judge under Indiana Trial Rule 76, the court shall grant the motion.

LR17-TR79-2. Appointment by Clerk

Upon the parties not reaching an agreement or the agreed upon judge not accepting the case under Indiana Trial Rule 79 (D), the appointment of an eligible special judge shall be made by means of the DeKalb County Clerk selecting a name of the next judge eligible from a list of judges from Whitley, Noble, LaGrange and Steuben Counties maintained by the Clerk.

If the judge selected to serve is disqualified or is excused from service, then clerk of the court shall appoint the next judge on the list. If no judge on the list is eligible to serve as special judge or the particular circumstances in the case so warrant, the then presiding judge in the case shall certify the matter to the Indiana Supreme Court for the appointment of a special judge pursuant to TR79(H)(3).

LR17-CR 2.2 -1- Criminal Case Reassignment and Special Judge Selection

Pursuant to Ind. Criminal Rule 2.2(D) and Ind. Criminal Rule 13(C), in the event a change of judge is granted or a disqualification or recusal is entered, the case shall be reassigned as follows:

- (1) Superior Court I: In the event a change of Judge is granted where it becomes necessary to assign another Judge in any felony or misdemeanor proceeding in the DeKalb Superior Court I, the case shall be reassigned to the DeKalb Superior Court II.
- (2) Superior Court II: In the event a change of Judge is granted where it becomes necessary to assign another Judge in any felony or misdemeanor proceeding in the DeKalb Superior Court II, the case shall be reassigned to the DeKalb Superior Court I.
- (3) Alternative: In the event a reassignment cannot be accomplished pursuant to the rules set forth above, then the case will be reassigned on a rotating basis from the following Judges: DeKalb Circuit Court Judge, and the Judges of those counties contiguous to DeKalb County, Indiana.

Pursuant to Ind. Criminal Rule 13(D), in the event no Judge is available for assignment or reassignment of a felony or misdemeanor case, such case shall be certified to the Indiana Supreme Court for the appointment of Special Judge. In the event the Judge presiding in a felony or misdemeanor case concludes that the unique circumstances presented in such proceeding require appointment by the Indiana Supreme Court of a Special Judge, this presiding Judge may request the Indiana Supreme Court for such appointment.

LR17-AR 1-1 Caseload Allocation Plan for DeKalb County Courts

- (A) Cases to be filed exclusively in the DeKalb Circuit Court:

JC*, JD, JS, JP, JM, JT, RS

*JC - When the Judge of DeKalb Circuit Court has a conflict, the case shall be filed in DeKalb Superior Court II.

- (B) Cases to be filed exclusively in the DeKalb Superior Court I:

FD, F6, CM, MC**, IF, OV-based on moving traffic violations, and specialized driving privileges filed as MI cases.

** In the event DeKalb Superior Court I is unable to hear a search warrant when requested, the warrant may be requested of and issued by any of the Judges or Courts.

** Probation transfer cases shall be filed in the same manner as criminal cases, ie, Misdemeanor and FD and F6 probation cases shall be filed in Superior Court I. MR, FA, FB, FC, F1, F2, F3, F4 and F5 probation cases shall be filed on a rotating basis between Superior I and Superior II.

- (C) Cases to be filed exclusively in the DeKalb Superior Court II:

SC, EM, ES, TR

(D) Cases to be filed on a rotating basis between DeKalb Circuit Court and DeKalb Superior Court II:

DN, DC, MH, AD, AH, EU, GU, PO, MI-except specialized driving privilege cases, TP, TS

(E) Cases to be filed on a rotating basis between DeKalb Superior Court I and DeKalb Superior Court II:

MR, FA, FB & FC, PL, CC, MF, CT, OE, OV-other than moving traffic violations
CB***, F1, F2, F3, F4, F5 and XP-except as otherwise required by statute.

*** CB cases involving the appointment of Special, Pro Tem and Senior Judges shall be filed in the Court making the appointment.

Resolutions Spread of Record may be filed in any Court.

When additional criminal charges are filed against a Defendant with a pending MR, FA, FB, FC, F1, F2, F3, F4 or F5 case, the new charges shall be filed in the same Court as the pending case.

When the Judge of DeKalb Superior Court II has a conflict in a criminal case, the case shall be filed in DeKalb Superior Court I. When the Judge of DeKalb Superior Court I has a conflict in a criminal case, the case shall be filed in DeKalb Superior Court II.

In the event of a conflict, and except as otherwise provided by this Plan, the Judge of the Court where originally filed shall transfer the case to either of the other Courts in DeKalb County.

PC - The case to be filed in the court in which the underlying conviction was entered.

After hour search warrants may be requested of and authorized by any of the judges.

This caseload allocation plan shall be effective until modified. The DeKalb County Judges shall meet as necessary to review the caseload allocation. (Amended effective July 1, 2017)

LR17-AR 12-2 – Facsimile Transmission Filings

Facsimile Transmission Filings shall not be accepted. Any such filings shall be deemed stricken from the record pursuant this rule.

LR17 AR 7-3 – Removal of Exhibits

After a case is decided and no appeals are taken, or after all appeals are completed, the Court Reporter for a Court may give notice in writing to the party introducing the exhibit providing a time within which the exhibit shall be removed from the custody of the Court Reporter. If the party notified does not recover the exhibit within the time stated, the Court Reporter may dispose of the same in any reasonable manner deemed appropriate by the Court Reporter.

LR17-AR 15-4 – Court Reporter Services

Court Reporter services shall be governed by the following rules:

(A) Definitions The following definitions shall apply under this 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) WORKSPACE 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 7.2.7

(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 in excess of the regular hours worked but hours not in excess of forty (40) hours per week.

(8) OVERTIME HOURS WORKED means those hours worked in excess of forty (40) hours per work week.

(9) WORKWEEK 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, and 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 DeKalb 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.

(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 working 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 \$5.50; 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 \$5.50.

(4) The maximum per page fee a court reporter may charge for the preparation of a private transcript shall be \$5.50.

(5) If a Court Reporter is requested to prepare an expedited transcript, the maximum fee per page shall be \$6.50 where the transcript must be prepared within five (5) working days.

(6) 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, Office of Judicial Administration. The reporting shall be made on forms prescribed by the Office of Judicial Administration.

(C) Private Practice

A Court Reporter shall not be allowed to use court equipment, work space, or supplies nor regular employment hours, gap hours, or overtime hours to engage in the private practice of recording a deposition and/or preparing a deposition transcript.

(Amended effective March 15, 2020)

LR17-AR 00-5 - Judges Assisting Other Judges

Pursuant to the authority conferred upon Judges to make Local Rules and pursuant to Indiana Code 33-29-1-10 and for the purpose of each of the Judges being able to assist the other:

(A) The Judge of the DeKalb Circuit Court may, with the consent of the Judge of Superior Court I, sit as a Judge of DeKalb Superior Court I in any matter as if the Circuit Court Judge were an elected Judge of DeKalb Superior Court I.

(B) The Judge of the DeKalb Circuit Court may, with the consent of the Judge of the DeKalb Superior Court II, sit as a Judge of DeKalb Superior Court II in any matter as if the Circuit Court Judge were an elected Judge of DeKalb Superior Court II.

(C) The Judge of the DeKalb Superior Court I may, with the consent of the Judge of the DeKalb Circuit Court, sit as the Judge of the DeKalb Circuit Court in any matter as if the Judge of DeKalb Superior I were the elected Judge of the DeKalb Circuit Court.

(D) The Judge of the DeKalb Superior Court II may, with the consent of the Judge of the DeKalb Circuit Court, sit as the Judge of the DeKalb Circuit Court in any matter as if the Judge of DeKalb Superior Court II were the elected Judge of the DeKalb Circuit Court.

(E) The Judge of the DeKalb Superior Court I may, with the consent of the Judge of the DeKalb Superior Court II, sit as Judge of the DeKalb Superior Court II in any matter as if the Judge of DeKalb Superior I were the elected Judge of the DeKalb Superior Court II.

(F) The Judge of the DeKalb Superior Court II may, with the consent of the Judge of the DeKalb Superior Court I, sit as Judge of the DeKalb Superior Court I in any matter as if the Judge of DeKalb Superior Court II were the elected Judge of the DeKalb Superior Court I.

LR17-AR 00-6 PROBLEM-SOLVING COURTS

Those persons directed to participate in DeKalb County Problem Solving Courts, such as Veterans Court, Family Reconciliation Court and Drug Court may be assessed in accordance with the following Schedule of Fees pursuant to the authority granted by the Indiana Problem Solving Courts Statutes (Indiana Code 33-23-16 et.al.) and the Problem-Solving Court Rules as adopted by the Judicial Conference of Indiana:

- A. A Problem-Solving Court administration fee of one hundred dollars (\$100.00) per participant payable to the DeKalb County Community Corrections Department or the DeKalb County Probation Department, at the discretion of the Problem-Solving Court.
- B. A Problem Solving Court user fee of up to fifty dollars (\$50.00) per month, beginning on the second month of participation for every month that an individual participates in Problem Solving Court, payable to the DeKalb County Community Corrections Department or the DeKalb County Probation Department, at the discretion of the Problem Solving Court.
- C. A Problem-Solving Court chemical fee ranging from fifteen dollars (\$15.00) to ninety-five dollars (\$95.00) per test, payable to the DeKalb County Community Corrections Department or the DeKalb County Probation Department, at the discretion of the Problem-Solving Court.

- D. A Problem-Solving Court transfer fee of \$25.00 per participant per transfer, payable to the DeKalb County Community Corrections Department or the DeKalb County Probation Department, at the discretion of the Problem-Solving Court. This fee is waived for participants transferred from any of the DeKalb County Courts.
- E. Substance use disorder services, mental health services, and general health services as set by the providers and payable to the entity providing the service.
- F. Program fees such as Moral Reconciliation Therapy (MRT), thirty dollars (\$30.00), payable to the DeKalb County Community Corrections Department.
- G. Fees due to sanctions, such as home detention/electronic monitoring at a cost of twelve dollars (\$12.00) per day for DeKalb County residents, as well as a seventy-five (\$75.00) administrative fee, payable to the DeKalb County Community Corrections Department.

LR17-FL 00-1- Children and Custody Proceedings

In all Dissolution of Marriage cases involving un-emancipated children, in which an Order of child custody or child parenting time is sought, or in which an Order of modification is sought, both parents shall complete the Court approved program entitled www.UpToParents.org and/or such other program as is Ordered by the Court.

In all paternity cases in which an Order for child custody or child parenting time is sought, or in which a modification is sought, both parents shall complete the Court approved program entitled www.UpToParent.org and/or such other program as is Ordered by the Court.

The attorney representing a party to such a proceeding shall inform the client of this requirement.

A party required to complete a Court Ordered program shall do so within thirty (30) days of the date the proceeding is initiated or prior to the evidentiary hearing on said proceeding, whichever is earlier.

Proof of completion of a required program must be filed with the appropriate Court within ten (10) days of completion.

Failure by a party to complete this requirement may constitute cause for denial of the relief requested. A parent shall not delay the proceeding by failing to complete these requirements.

(Amended effective September 1, 2017)

LR17-FL 00-2 – Hallway, Summary/Expedited Hearings

(A) Due to the demand on Court calendar time, requests for Orders Pendente Lite or for enforcement or modification of existing Orders and Decrees may be first scheduled for a hallway hearing or an expedited or summary hearing. Expedited/Summary hearings will allow parties access to the Court relatively quickly and with less expense.

While summary/expedited hearings are not appropriate for all cases, it is believed such hearings will reduce the time some cases have to wait to be heard.

(B) If a hallway hearing does not result in all issues being resolved, the Court may set such unresolved issues for an expedited/summary hearing.

(C) Each party shall bring to the hallway or summary/expedited hearing evidence sufficient to establish their average weekly gross income and any deduction therefrom including any medical/health insurance benefits attributable to the children of the parties.

(D) At a summary/expedited hearing, the evidence shall be presented in summary fashion by the attorneys, or the parties if not represented by counsel, who shall summarize the evidence in narrative statement. The Court may then question the parties or attorneys and may require the presentation of brief testimony. Documentary evidence may also be received by the Court. Formal rules of evidence or procedure shall not apply, except that the Court shall endeavor to ensure the traditional concepts of trustworthiness of evidence and fundamental fairness are observed.

(E) The Court may, on its own motion, either before or after the expedited hearing, decline to determine any issues on the evidence presented at such hearing and shall thereafter schedule such issues for evidentiary hearing.

Commentary:

Despite this rule, all parties and counsel should be advised that the DeKalb Circuit Court does not conduct evidentiary hearings in summary or expedited fashion. The DeKalb Circuit Court does schedule Hallway Hearings in relation to provisional (pendent lite) order requests.

LR17-FL 00-3 – Dissolution of Marriage Pre-Trial Disclosure

(A) On or before the date and time set for hearing on a Motion for Provisional

Orders, each of the parties shall complete as applicable, file with the Court AND provide the other party:

- (1) The Provisional Hearing Disclosure as set forth in Appendix 1; and
- (2) The Child Support Obligation Worksheet as set forth in Appendix number 2.

(B) Not later than forty (40) days before the date and time set for Final Hearing, Petitioner shall fully complete as applicable, the Final Hearing Disclosure as set forth in Appendix 3, and serve the other party. Thereafter, the following rules apply:

(1) A copy of said form, when served upon the opposing party, if represented by counsel, shall be deemed to be a Request for Admissions by the opposing party that the information contained on said form is true;

(2) The opposing party shall respond to such Request for Admissions by completing such party's respective portion of the disclosure form and filing same with the Court within thirty (30) days from date of service.

The responding party shall make his or her disclosures on a copy of the SAME FORM served by the opposing party so that the copy filed with the Court by the responding party contains both parties' disclosures on the same form;

(3) In the event that the party being served with said Disclosure does not, within thirty (30) days from the date of service, file his or her respective portion of the disclosure form, if represented by counsel, the information contained in the Disclosure then on file shall be deemed to be admitted as fact by all parties.

(C) The parties and their attorneys shall meet prior to the Final Hearing date and in good faith attempt to agree upon resolution of as many of the issues as reasonably possible so that these matters may be stipulated to the Court and also to attempt to agree upon the admissibility of documents.

(D) Unless the Court enters specific orders to the contrary, any order of the Court providing for custody of children shall be deemed to provide, by operation of this rule, for the implementation of parenting time with said child(ren) by the noncustodial parent in accordance with the Indiana Parenting Time Guidelines.

(E) If not previously filed, on or before the date of the Final Hearing on any Petition for Dissolution of Marriage, Petitioner to Establish Paternity or Petition to Modify Child Support, the parties shall submit to the Court a completed copy of the Child Support Obligation Worksheet set forth at Appendix 2. All numbers shall be rounded to the nearest whole dollar.

(F) Within thirty (30) days after counsel for Respondent enters an appearance, both counsel shall voluntarily exchange the following information for their clients:

(1) Federal and state income tax returns, with all supporting schedules, for the preceding three (3) years;

(2) Pay stubs for the preceding four (4) weeks;

(3) Bank statements showing balances in all accounts as of the date the Petition was filed;

(4) Pension valuations showing those benefits which were vested as of the date of marriage, and, which were vested as of the date of filing the Petition;

(5) Copies of all deeds, mortgages, and land contracts;

(6) Copies of all real estate and personal property appraisals done within the preceding five (5) years;

(7) Copies of all financial statements provided to any financial institution within the preceding five (5) years;

(8) A list of all marital debts showing the name of the creditor, whether the debt is joint or individual, monthly payments, and payoff as of date of filing the Petition; and

(9) All other relevant information in the party's possession pertaining to custody, support, parenting time, marital assets or marital debts.

(G) It is the Court's strong preference that all custody and parenting time issues be referred to mediation. This policy shall be implemented as follows:

(1) New Divorces and Paternity Proceedings.

- (i) Unless the Court determines otherwise, the Court shall enter a mediation order in every case except if both counsel advise the Court that the parties are negotiating in good faith and a Settlement Agreement appears eminent, or, it is made to appear to the Court that a party has been the subject of domestic violence and mediation would be counter-productive.
- (ii) Alternative Dispute Resolution Rule 2 shall govern the conduct of the parties and the mediation process.
- (iii) Recognizing that driving long distances can itself present unique problems to successful mediation, the Court will endeavor to make available rooms in the Courthouse within which to conduct the mediation sessions if requested.
- (iv) Once a case is referred to mediation, at the Court's discretion, it shall not be set for contested final hearing until, in addition to all other requirements of these Local Domestic Relation Rules being met, the Court receives a written report from the mediator. The report shall advise the Court what, if any, issues have been successfully resolved through mediation. All issues which have been resolved shall be set forth in writing by the mediator, signed by the parties and their counsel, and, shall serve as stipulation of the parties at any contested Final Hearing.
- (v) As officers of the Court, the attorneys shall explain to their clients the benefits of mediation, all projected costs, including attorney fees, to be anticipated in preparing for and concluding a contested Final Hearing, and, that the agreement which they make concerning the issues in their case could be more satisfactory to them than one fashioned by the Court following a contested final hearing.

(2) Post-Dissolution.

- (i) Unless the Court determines otherwise, all post-dissolution petitions or counter petitions which seek a modification of child custody shall immediately be referred to mediation.

- (ii) Paragraphs G(1)(i, ii, iii, iv, and v) set forth above shall each be applicable to post-dissolution mediation.

(H) No dissolution of marriage settlement agreement, paternity agreement, or post dissolution or paternity agreement involving minor children will be approved by the Court unless accompanied by a child support obligation worksheet and an income withholding order, fully completed, and ready for immediate activation, unless it is made clear to the Court that it would not be in the best interest of the child(ren), or is otherwise not required by law.

(Amended effective September 1, 2017)

LR17-JR4-1- Jury Administrators and Jury Pool

(A) The Clerk of the DeKalb Courts shall serve as the jury administrator.

(B) A two-tier notice and summons, consistent with Jury Rule 4(b), shall be used by the jury administrator.