

Kosciusko County Circuit and Superior Courts

Local Rules of Practice and Procedure



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

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CRIMINAL RULES

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LR43- CR00-1 Criminal Discovery

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

(A) State's Required Disclosure

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

- (1) The names and last known addresses of persons whom the State may call as witnesses, together with their relevant written or recorded statements, memoranda containing substantially verbatim reports of their oral statements and a list of memoranda reporting or summarizing their oral statements.
- (2) Any written or recorded statements and the substance of any oral statements made by the accused or by a codefendant(s), and a list of witnesses to the making and acknowledgment of such statements.
- (3) A transcript of those portions of grand jury minutes containing testimony of persons whom the prosecuting attorney may call as witnesses at the hearing or trial, as designated by the defense after listening to the recording of the testimony.
- (4) Any reports or statements of experts, made in connection with the particular case, including the results of physical or mental examinations and of scientific tests, experiments or comparisons.

- (5) Any books, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused.
- (6) Any record of prior criminal convictions which may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.
- (7) Any evidence which tends to negate the guilt of the accused as to the offense charged or which would tend to mitigate the accused's punishment.
- (8) Any Evidence Rule 404(b) evidence.
The State may comply with this Order (1) in any manner it and the Defense agree to, or (2) by notifying defense counsel that material and information, described in general terms, may be inspected, obtained, tested, copied, or photographed at specified reasonable times and places.

(B) Defendant's Required Disclosure

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

- (1) The names and addresses of persons whom the defendant may call as witnesses.
- (2) Any books, papers, documents, photographs, or tangible objects which are intended to be used at a hearing or trial.
- (3) Any medical or scientific reports relating to the defendant or defendant's evidence which may be used at a hearing or trial.
- (4) Any defenses, procedural or substantive, which the defendant intends to make at a hearing or a trial.

(C) Objections to Discovery Order

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

(D) Certificate of Compliance Required, Deadline

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

(E) Continuing Discovery Required

- (1) Discovery is a continuing order through trial.
- (2) No written motion is required except to compel discovery, for a protective order, or for an extension of time.

(F) Sanctions

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

LR43-CR2.2-2

INITIAL CRIMINAL CASE ASSIGNMENT

(1) All D and C Felonies

Thirty percent (30%) of D felonies shall be filed in the Kosciusko Circuit Court and should include cases filed under Title 35, Article 48 (Controlled Substances)

Twenty percent (20%) of D felonies shall be filed in the Kosciusko Superior Court No. 1.

Ten percent (10%) of D felonies shall be filed in the Kosciusko Superior Court No. 2

Forty percent (40%) of D felonies shall be filed in the Kosciusko Superior Court No. 3 and should include cases involving felonies filed under Title 9 (Traffic) and I.C. 35-46-1-5 through and including I.C. 35-46-1-7.

Fifty percent (50%) of C felonies shall be filed in the Kosciusko Circuit Court and should include cases filed under Title 35, Article 48 (Controlled Substances).

Thirty percent (30%) of C felonies shall be filed in the Kosciusko Superior Court No. 1.

Twenty percent (20%) of C felonies shall be filed in the Kosciusko Superior Court No. 3 and should include cases filed under Title 9 (Traffic) and I.C. 35-46-1-5 through and including I.C. 35-46-1-7.

(2) All F6, F5, F4 Felonies

Twenty percent (20%) of F6 and F5 felonies and Fifty percent (50%) of F4 felonies shall be filed in the Kosciusko Circuit Court and should include cases filed under Title 35, Article 48 (Controlled Substances).

Twenty percent (20%) of all F4 felonies and Twenty percent (20%) of all F5 and Twenty percent (20%) of F6 felonies shall be filed in the Kosciusko Superior Court No. 1.

Twenty percent (20%) of all F5 and F6 felonies shall be filed in the Kosciusko Superior Court No. 2.

Thirty percent (30%) of all F4 felonies and Forty percent (40%) of all F5 and F6 felonies shall be filed in the Kosciusko Superior Court No. 3 and should include any cases involving felonies filed under Title 9 (Traffic) and I.C. 35-46-1-5 through and including I.C. 35-46-1-7.

(3) Felonies under Title 35-42-1 (Homicide) cases

All felonies filed under Title 35, Article 42, Chapter 1 (Homicide) shall be filed in the Kosciusko Circuit Court.

(4) All other Felony cases

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

(5) All Misdemeanor cases

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

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

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

(7) Combination of Felony and Misdemeanor cases

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

(8) Post-Conviction Relief Cases

PC cases shall be filed in the court in which the related criminal case was filed.

LR43- CR2.2-3 Transfer of Criminal Cases

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

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

(1) Dismissal and Subsequent Refiling of Charges

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

(2) Filing of Additional Charges

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

LR43-CR2.2-5 Reassignment of Criminal Cases

(1) Kosciusko Circuit Court

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

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

(2) Kosciusko Superior Court No. 1

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

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

(3) Kosciusko Superior Court No. 2

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

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

(4) Kosciusko Superior Court No. 3

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

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

(5) Method of Reassignment of Cases

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

LR43-CR2.2-6 Random Filing of Criminal Cases

All criminal cases shall be filed in a random manner and in the percentages as provided by these rules. The Judges of the Kosciusko Circuit Court and the Kosciusko Superior Courts shall periodically review the filing patterns of criminal cases and the Judges of such Courts reserve the right to transfer cases in the event of a disproportionate distribution of cases in order to balance the caseload and to expedite dispositions of all pending criminal cases.

LR43-CR13-7 Appointment of Special Judges

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

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

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

CIVIL AND ADMINISTRATIVE RULES

LR43-AR1E-1	Civil Case Assignment
LR43-TR79-2	Special Judge Appointment in Civil Cases
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LR43-AR-9	Transfer of Cases
LR43-AR-10	Judge Pro Tempore

LR43-AR1E-1 CIVIL CASE ASSIGNMENT

- (1) MH, TS, and TP cases shall be filed in the Kosciusko Circuit Court.
- (2) JC, JD, JS, JM and JT cases shall be filed in Kosciusko Superior Court No. 1. JP cases shall be filed in Kosciusko Superior Court No. 4.
- (3) PL and CT cases shall be filed Fifty percent (50%) in the Kosciusko Circuit Court and Fifty percent (50%) in the Kosciusko Superior Court No. 4, on an alternating basis, and any such matters on the active docket of the Kosciusko Superior Court No. 1 as of July 1, 2019, are transferred to the active docket of the Kosciusko Superior Court No. 4 as of that date.
- (4) Seventy-five percent (75%) of MI cases shall be filed in Kosciusko Superior Court No. 3 and Twenty-five percent (25%) shall be filed in either Kosciusko Circuit Court or Kosciusko Superior Court No. 1, on an alternating basis.
- (5) IF cases shall be filed in Kosciusko Superior Court No. 3.
- (6) OV, OE, PO (except PO cases where a JP, DC or DN case is in existence involving the same parties, which shall then be filed in the court having the JP, DC or DN case), EV and SC cases shall be filed in Kosciusko Superior Court No. 3.
- (7) Sixty percent (60%) of DC and Ninety percent (90%) of DN cases shall be filed in Kosciusko Superior Court No. 4, and any such matters on the active docket of the Kosciusko Circuit Court, the Superior Court No. 2, and the Superior Court No. 3 as of July 1, 2019, are transferred to the active docket of the Kosciusko Superior Court No. 4 as of that date.

- (8) Ten percent (10%) of DN and Forty percent (40%) of DC cases shall be filed in Kosciusko Superior Court No. 1.
- (9) CC cases shall be filed in Kosciusko Superior Court No. 4, and any such matters on the active docket of the Kosciusko Superior Court No. 2 and Kosciusko Superior Court No. 3 as of July 1, 2019, are transferred to the active docket of the Kosciusko Superior Court No. 4 as of that date.
- (10) ES, EM, EU and TR cases and matters not otherwise described herein, shall be filed Fifty percent (50%) in the Kosciusko Circuit Court and Fifty percent (50%) in the Kosciusko Superior Court No. 1.
- (11) AD cases shall be filed Thirty-Three percent (33%) in the Kosciusko Circuit Court and Sixty-Seven percent (67%) in the Kosciusko Superior Court No. 1.
- (12) GU and GM cases shall be filed Twenty percent (20%) in the Kosciusko Circuit Court and Eighty percent (80%) in the Kosciusko Superior Court No. 1.
- (13) MF cases shall be filed Fifty percent (50%) in the Kosciusko Superior Court No. 4 and Fifty percent (50%) in the Kosciusko Superior Court No. 3, on an alternating basis, and any such matters on the active docket of the Kosciusko Circuit Court as of July 1, 2019, are transferred to the active docket of the Kosciusko Superior Court No. 4 as of that date.
- (14) XP cases may be filed in any court.
- (15) RS cases shall be filed Fifty percent (50%) in the Kosciusko Superior Court No. 1 and Fifty percent (50%) in the Kosciusko Superior Court No. 4, and any such matters on the active docket of the Kosciusko Circuit Court as of July 1, 2019, are transferred to the active docket of the Kosciusko Superior Court No. 4 as of that date.
- (16) All civil cases shall be filed in a random manner and in the percentages as provided by these rules. The Judges of the Kosciusko Circuit Court and the Kosciusko Superior Courts shall periodically review the filing patterns of civil cases and the Judges of such Courts reserve the right to transfer cases in the event of a disproportionate distribution of cases in order to balance the caseload and to expedite dispositions of all pending civil cases.

(Amended effective January 1, 2022)

LR43- TR79-2**Special Judge Appointment in Civil Cases**

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

- a. If the case is in the Kosciusko Circuit Court, it must be transferred to:
 1. Kosciusko Superior Court No. 1
 2. Kosciusko Superior Court No. 2
 3. Kosciusko Superior Court No. 3
 4. Kosciusko Superior Court No. 4

- b. If the case is in Kosciusko Superior Court 1, it must be transferred to:
 1. Kosciusko Circuit Court
 2. Kosciusko Superior Court No. 4
 3. Kosciusko Superior Court No. 2
 4. Kosciusko Superior Court No. 3

- c. If the case is in Kosciusko Superior Court No. 2, it must be transferred to:
 1. Kosciusko Superior Court No. 3
 2. Kosciusko Circuit Court
 3. Kosciusko Superior Court No. 4
 4. Kosciusko Superior Court No. 1

- d. If the case is in Kosciusko Superior Court 3, it must be transferred to:
 1. Kosciusko Superior Court No. 4
 2. Kosciusko Superior Court No. 1
 3. Kosciusko Circuit Court
 4. Kosciusko Superior Court No. 2

- e. If the case is in Kosciusko Superior Court No. 4, it must be transferred to:
 1. Kosciusko Superior Court No. 2
 2. Kosciusko Superior Court No. 3
 3. Kosciusko Superior Court No. 1
 4. Kosciusko Circuit Court

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

proceeding require appointment by the Indiana Supreme Court of a special judge, the presiding judge may request the Indiana Supreme Court for an appointment.

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

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

LR43–AR15-3 COURT REPORTER SERVICES

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

- (1) A **Court Reporter** is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.
- (2) **Equipment** means all physical items owned by the court or other governmental entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes, and any other device used for recording and storing, and transcribing electronic data.
- (3) **Work space** means that portion of the court’s facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.
- (4) **Page** means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 7.2.
- (5) **Recording** means the electronic, mechanical, stenographic or other recording made as required by Indiana Rule of Trial Procedure 74.
- (6) **Regular hours worked** means those hours which the court is regularly scheduled to work during any given work week. Depending on the particular court, these hours may vary from court to court within the county but remain the same for each work week.
- (7) **Gap hours worked** means those hours worked that are in excess of the regular hours worked but hours not in excess of forty (40) hours per work week.
- (8) **Overtime hours worked** means those hours worked in excess of forty (40) hours per work week.
- (9) **Work week** means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year; i.e. Sunday through Saturday, Wednesday through Tuesday, Friday through Thursday.
- (10) **Court** means the particular court for which the court reporter performs services. Court may also mean all of the courts in Kosciusko County.
- (11) **County indigent transcript** means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court.
- (12) **State indigent transcript** means a transcript that is paid for from state funds and is for the use on behalf of a litigant who has been declared indigent by a court.

- (13) **Private transcript** means a transcript, including by not limited to a deposition transcript that is paid for by a private party.
- (14) **Expedited transcript** means a transcript that is requested to be prepared from within 48 hours to five (5) days, depending upon the size of the transcript.

(B) Salaries and Per Page Fees.

- (1) Court Reporters shall be paid an annual salary for time spent working under the control, direction and direct supervision of their supervising court during any regular work hours, gap hours, or overtime hours. The supervising court shall enter into a written agreement with the court reporters which outlines the manner in which the court reporter is to be compensated for gap and overtime hours, i.e. monetary compensation or compensatory time off regular work hours.
- (2) The maximum per page fee a court reporter may charge for the preparation of a county indigent transcript shall be \$5.00 per page until further order of the Courts. The court reporter shall submit a claim directly to the county for the preparation of any county indigent transcripts.
- (3) The maximum per page fee a court reporter may charge for the preparation of a state indigent transcript shall be \$5.00 per page until further order of the Courts.
- (4) The maximum per page fee a court reporter may charge for the preparation of a private transcript shall be \$5.00 per page.
- (5) The maximum per page fee a court reporter may charge for the preparation of an expedited transcript is \$5.50 per page.
- (6) A minimum fee up to \$40.00 is permissible.
- (7) An additional labor charge approximating the hourly rate based upon the court reporter's annual court compensation may be charged for the time spent binding the transcript and the exhibit binders pending on the size of the transcript.
- (8) Each court reporter shall report, at least on an annual basis, all transcript fees received for the preparation of county indigent, state indigent or private transcripts to the Indiana Supreme Court Office of Judicial Administration. The reporting shall be made on forms prescribed by the Office of Judicial Administration.

(C) Private Practice.

- (1) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, and the court reporter desires to utilize the court's equipment, work space and supplies, and the court agrees to the use of the court equipment for such purpose, the court and the court reporter shall enter into a written agreement which must, at a minimum, designate the following:
 - (a) the reasonable market rate for the use of equipment, work space and supplies;
 - (b) the method by which records are to be kept for the use of equipment, work space and supplies; and
 - (c) the method by which the court reporter is to reimburse the court for the use of equipment, work space and supplies.

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

(Amended effective July 1, 2022)

LR43-TR64-4 JUDICIAL SALES OF LAND

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

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

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

LR43 –FL-5 CHILD CUSTODY ACTION

(A) Each party, who is a parent of a minor child(ren) with the other party in a DC action, shall complete the 4-Hour Online Co-Parenting/Divorce Class located at www.onlineparentingprograms.com. Upon completion of the online program, parties are ordered to download the Certificate of Completion and file the same with the court. Each party shall pay the requisite fees for participation.

(B) Each parent in a JP case where the finding of paternity occurs after January 1, 2021, and all cases involving the establishment or enforcement of support shall, within

thirty (30) days of filing of a Petition to Establish Paternity or Petition to Establish or Enforce Support based upon any in-hospital paternity affidavit signed by the parties, OR, within thirty (30) days of the parties' receipt of a genetic testing result which evidence that Father is, in fact, the biological father, shall each:

- (1) Log onto www.uptoparents.org, click the button entitled "Start New Use", complete Step 1 and 2 of the workshop.
- (2) Merge their chosen Commitments into a set of Agreed Commitments (the ones they mutually chose) by trading their usernames from the website; keeping their passwords confidential.
- (3) Complete and print a Certificate of Completion and bring it to and file with the Clerk of the Courts at the next scheduled court hearing.

LR43 –AR-6 COURT FILES

- (A) Court files will not be removed from the Kosciusko County Justice Building without the express written consent of the Clerk of the Court and the giving of a receipt for such file if consent is given.
- (B) Routine court filings shall be made in the Clerk's Office and left with the Clerk for delivery to the appropriate Court.
- (C) Attorneys may direct filings with the Court; however, the Court file must be secured by the attorney from the Clerk's Office and a sign-out sheet signed by the attorney requesting the file for direct filing. After completing the direct filing, the file will either be left with the Court or in the case of probate filings, personally returned by the attorney to the Probate Clerk.

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

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

Full Program Fee:	\$400.00
Transfer Fee:	\$100.00
Referral Fee:	\$350.00
Educational Class Fee	\$ 75.00

LR43-AR-8**KOSCIUSKO COUNTY DRUG COURT FEES**

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

1. A Drug Court administration fee of \$100.00 per participant payable to the Kosciusko County Community Corrections Department.
2. A Drug Court user fee of \$50.00 per month for every month that an individual participates in Drug Court, beginning with the second month of participation. It is payable to the Kosciusko County Community Corrections Department.
3. A Drug Court drug test fee of \$15.00 payable to the Kosciusko County Community Corrections Department.
4. A Drug Court transfer fee of \$25.00 per participant per transfer, payable to the Kosciusko County Community Corrections Department.

LR43-AR-9**TRANSFER OF CASES**

- (A) The judge in any Kosciusko Court, by appropriate Order entered in the Record and Judgment and Orders, may transfer and reassign to any other court of record in the county with jurisdiction to hear the matter any pending civil case, subject to acceptance by the receiving court.

LR43-AR-10**JUDGE PRO TEMPORE**

- (A) The Judge of the Kosciusko Circuit Court or any Kosciusko Superior Court, may, at any time, act as Judge in another Superior Court or the Kosciusko Circuit Court as Judge Pro Tempore, and act in any matter as if the Judge acting as a Pro Tempore was an elected Judge of the Court in which said Judge so acts.