Marion County Local Court Rules

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MARION SUPERIOR COURT
CRIMINAL DIVISION RULES

* Unless otherwise prescribed by another law or rule, all time computations refer to business days which the Superior Court is open, pursuant to Order of Marion County Circuit Court.

LR49-CR2.2-100 RANDOM ASSIGNMENT OF CRIMINAL CASES

(1) **Random Assignment of Criminal Cases.** The Criminal Division of Marion County is divided into two sub-divisions: Major Felony and Misdemeanor/F6. All criminal cases filed in Marion Superior Court shall be assigned to a Court on a random and equal distribution, utilizing the following guide:

(a) **Major Felony Sub-Division:** Courts D20, D21, D27, D28, D29, D30, D31, and D32 will equally receive all random filings for level 5 felonies, level 4 felonies, level 3 felonies, level 2 felonies, level 1 felonies, murder, class C felonies, class B felonies, and class A felonies.

(b) **Misdemeanor/Level 6 Sub-Division:** Courts D17, D18, D19, D23, D24, D25, D26, D33, D34, D35, and D36 will equally receive all random filings for level 6 felonies, class D felonies, and misdemeanors.

1. Court D22 will receive filings for all Traffic-related misdemeanor, infractions, and ordinance violations not to include offenses of Operating a Vehicle While Intoxicated.

(2) **Case Consolidation.** Cases subject to the policies of case consolidation are exempt from the rule of Random Assignment of Criminal Cases.

(3) **Problem-Solving Dockets.** If a case has been accepted into a problem-solving docket, that case will be transferred to the court overseeing the relevant problem-solving docket.

Amended effective January 1, 2021

LR49-CR2.3-101 CASE CONSOLIDATION

It shall be the policy of the Marion Superior Court, that wherever possible consistent with good case management principles, cases involving the same defendant shall be consolidated into one court for resolution of all of the pending cases.

"Pending" as defined herein means any existing Major Felony, Class D/Level 6 Felony, or Misdemeanor case which is in pre-disposition status.

(a) **Murder, Class A, B and C Felony Cases, and Level 1, 2, 3, 4, and 5 Felony Cases (hereinafter "Major Felony case")**

Any subsequently filed Major Felony case shall be assigned and/or transferred to the Court where the defendant's oldest Major Felony case is pending.

Any subsequently filed Class D/Level 6-Felony or Misdemeanor case shall be assigned and/or transferred to the Court where the defendant's oldest Major Felony case is pending.

In the event the defendant has an open Class D/Level 6 Felony or Misdemeanor case pending in any criminal court and is subsequently charged with a Major Felony case, the pending Class D/Level 6 Felony or Misdemeanor case shall be transferred to the Major Felony Court.

In the event the defendant has an open probation case and/or open community corrections violation pending in any criminal court and is subsequently charged with a Major Felony case, the probation case and/or open community corrections violation shall be transferred to the Major Felony Court, unless the probation case and/or open community corrections violation can be resolved without the resolution of the new Major Felony case.

Cases pending in major felony drug court and in Class D/level 6 felony drug court are exempt from consolidation under this sub-paragraph.

(b**) Class D/Level 6 Felony Cases**

Any subsequently filed Misdemeanor or Class D/Level 6 Felony case shall be assigned and/or transferred to the Court where the defendant's oldest existing Class D/Level 6 Felony case is pending.

In the event the defendant has an open Misdemeanor case in any criminal court and is subsequently charged with a Class D/Level 6 Felony case, the Misdemeanor case shall be transferred to the Class D/Level 6 Felony Court.

In the event the defendant has an open probation case and/or open community corrections violation pending in any Class D/Level 6 Felony or Misdemeanor Court and is subsequently charged with a Class D/Level 6 Felony case, the probation case and/or open community corrections violation shall be transferred to the Class D/Level 6 Felony Court where the new case has been filed, unless the probation case and/or open community corrections violation can be resolved without the resolution of the new Class D/Level 6 Felony case.

"Pending" as defined herein means any existing Class D/Level 6 Felony or Misdemeanor case which is in pre-disposition status.

This rule shall not apply to cases that are linked with a co-defendant. However, if one of the co-defendants is accepted into the PAIR program, the accepted defendant may be severed and transferred to the designated Mental Health Court without the non-accepted co-defendant(s) case(s).

(c) **Misdemeanor Cases**

Subject to the provisions of paragraphs (a) and (b) above, any subsequent Misdemeanor case filed against a defendant shall be assigned and/or transferred to the Court where the defendant's oldest existing Misdemeanor case is pending with the exception that Court

D22 (Traffic Court) shall not receive assignment or transfer of cases when Court D22 has the oldest pending case. However, older Court D22 Traffic cases may be transferred to the Misdemeanor Court with a newer pending case.

In the event the defendant has an open probation case pending in any Misdemeanor Court and is subsequently charged with a new Misdemeanor case, the probation case shall be transferred to the new Misdemeanor Court unless the probation case can be resolved without the resolution of the new Misdemeanor case.

Pending as defined herein means any existing Misdemeanor case which is in pre-disposition status.

This rule shall not apply to cases that are linked with co-defendants. However, if one of the co-defendants is accepted into the PAIR program, the accepted defendant may be severed and transferred to the designated Mental Health Court without the non-accepted co-defendant(s) case(s).

(d) **Mental Health Alternative Court Cases**

A case in any misdemeanor or felony Court involving a defendant who may have mental illness or mental disabilities may be referred to the Mental Health Alternative Court (MHAC) to determine eligibility for admission into that Court. If eligible and provisionally accepted, the case may, at the discretion of the Judicial Officer, be transferred to the Mental Health Alternative Court.

(e) **Change of Venue Cases**

All cases received by the criminal division on change of venue from outside Marion County shall be assigned to a room within the division on a random basis by the same method used to assign cases of original jurisdiction in Marion County.

(f) **Dismissed and Refiled Cases**

When the State of Indiana dismisses a case, and chooses to refile that case, the case shall be refiled in the court where the case was originally docketed. The refiled case must be accompanied with a Notice of Refile including the following information about the previously filed case: 1) cause number; 2) date of arrest; 3) days of incarceration; 4) days on bond; 5) date of dismissal; and 6) whether a request has been made under Criminal Rule 4 for a fast and speedy trial, if so the date the request was made and the time accrual since that date.

(g) **Other Considerations**

It shall be the responsibility of the Prosecutor's Office to provide a listing of all pending cases with the case filing documents to ensure that all case transfers can be made consistent with this rule. It shall also be the responsibility of the Prosecutor's Office to direct file a subsequently filed case into the Court where there is an existing pending case for the same defendant consistent with subsections (a), (b), and (c) of this section. For purposes of this rule an existing pending case includes cases designated as an "MC" case.

Notwithstanding any other provision in these local criminal rules, the Judge of each room of the criminal division, by appropriate order entered of record may transfer and re-assign to any other room of the criminal division any cause pending in that room subject to acceptance by the receiving court. Further the Presiding Judge of the Criminal Division or the Executive Committee may order the transfer of cases from one Court to another if the Presiding Judge or the Executive Committee finds that a transfer and reassignment of cases is necessary to provide for the speedy and fair administration of justice.

Amended effective January 1, 2021

LR49-CR23-102. CLERK'S RECORDS

(a) The Clerk of the Marion County Circuit Court shall keep and maintain all records in accordance with Trial Rule 77. In addition, the criminal division shall enter records of its proceedings and orders issued in the General Division Order Book.

(b) The Clerk of the Marion Circuit Court shall also maintain a grand jury order book in which each impaneling court shall enter all records of proceedings and orders issued pertaining to the regular or special grand jury.

LR49-CR00-103. GRAND JURY

(a) The Judges assigned to preside in the respective rooms of the criminal division with felony jurisdiction shall be in charge of selection, receiving and properly recording indictments and reports of the grand jury, as well as carrying out all other judicial functions relative to the grand jury during the respective quarters to which they have been assigned.

(b) Effective January 1, 1996, the grand jury shall be impaneled by the Judge of Marion Superior Court D27 (formerly Criminal Division, Room I) for January, February, and March of 1996, as provided by law. Thereafter, the grand jury shall be impaneled in numerical sequence by quarters by each of the felony criminal courts. All indictments shall be returned to the impaneling Court, who shall order the indictments filed pursuant to Rule 1.

(c) All requests for judicial action on a grand jury matter shall be directed to the impaneling Court.

Amended effective January 1, 2021

LR49-CR00-104. SPECIAL GRAND JURY

Special grand juries shall be impaneled pursuant to statute and all indictments returned, ordered, or filed by the impaneling Judge pursuant to Rule 1.

LR49-CR00-105. TRIAL RULES

(a) The Judges of the Criminal Division shall from time to time convene to adopt rules of procedure and such other business of court as they may deem necessary, proper and advisable, all subject to the ratification of the Marion Superior Court in a general meeting.

(b) The trial rules of procedure in each room of the criminal division shall be the same as provided for in the Indiana Rules of Trial Procedure and of Criminal Procedure as duly adopted by the Indiana Supreme Court, and as further provided by law.

LR49-CR2.1-106. APPEARANCE AND WITHDRAWAL OF COUNSEL

(a) **Appearance or Withdrawal of Counsel**

Appearance of counsel in all cases shall be made without qualification and in writing in the form designated by Rules of the Indiana Supreme Court. Withdrawals shall be by permission of the court only, and upon written motion of the party wanting to withdraw, showing notification to the client. Upon entering an appearance, the attorney must become familiar with the Rules of the Criminal Division and rules of the court in which an appearance is entered.

(b) **Pro Se Appearance**

A defendant wanting to legally represent himself at trial must direct such request to the Court, in clear and unequivocal terms, at least three (3) days before date of trial. Otherwise, said request may be denied.

LR49-CR00-107. DISCOVERY

1. GENERAL

(a) The Court at initial hearing will automatically order the State to disclose and furnish all relevant items and information under this Rule to the defendant (s) within twenty (20) days from the date of the initial hearing, subject to Constitutional limitations and

protective orders, and the defendant (s) to provide the State with discovery within forty-five (45) days of the initial hearing.

(b) No written motion is required, except:
(1) To compel compliance under this Rule
(2) For additional discovery not covered under this Rule
(3) For a protective order
(4) For an extension of time

(c) All Discovery shall be completed by the omnibus date unless extended for good cause shown.

(d) Although each side has a right to full discovery under this Rule, each side has a corresponding duty to seek out the discovery. Motions for original discovery and compliance with Indiana Rule of Evidence 404(b) are unnecessary and disfavored. Motions for specific discovery are permitted. Failure to file a Motion to Compel may result in the waiver of this right; failure to comply with providing discovery may result in sanctions, including the exclusion of evidence.

2. STATE DISCLOSURE

(a) The State shall disclose the following material and information within its possession or control:

(1) The names and last known addresses of persons whom the State intends to call as witnesses, with their relevant written or recorded statements. The State may refrain from providing a witness' address under this rule if the State in good faith believes the disclosure of the witness' address may jeopardize the safety of the witness or the witness' immediate family. If the State does not disclose the witness' address for the reason stated under this rule then the State shall make the witness available for deposition or interview by defense counsel upon reasonable notice.

Should there be a dispute among the parties concerning the disclosure of a witness' address, counsel shall meet and make a reasonable effort to resolve this dispute before seeking intervention from the court. The party seeking disclosure or a protective order under this rule shall include in the party's motion or request a statement showing that the attorney making the motion or request has made a reasonable effort to reach agreement with opposing counsel concerning the matter set forth in the motion or request. This statement shall recite in addition, the date, time and place of this effort to reach agreement, whether in person or by telephone and the names of all parties and attorneys participation therein. If an attorney for any party advises the court in writing that an opposing attorney has refused or delayed meeting and discussing the issue of witness address disclosure, the Court may take such action as

appropriate.

The Court may deny a discovery motion filed by a party who has failed to comply with the requirements of this subsection.

(2) Any written, oral or recorded statements made by the accused or by a co-defendant, and a list of witnesses to the making and acknowledgement of such statements.

(3) A transcript of those portions of grand jury minutes containing testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

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

(5) Any books, papers, documents, photographs, or tangible objects that 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 that may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.

(7) All evidence required by Indiana Rules of Evidence 404(B), at least thirty (30) days prior to trial, or within two weeks following the request for trial, whichever is later.

(b) The State shall disclose to defense counsel any material or information within its possession or control that tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefore.

(c) The State may perform these obligations in any manner mutually agreeable to the prosecutor and defense counsel.

3. DEFENDANT DISCLOSURE

(a) Defendant's counsel shall furnish the State with the following material and information within his/her possession or control.

(1) Any defense that he/she intends to make at a hearing or trial.

(2) The names and last known addresses of persons whom the defense intends to call as witnesses, with their relevant written or recorded statements and any record of prior criminal convictions known to him/her. The defense may refrain from

providing a witness' address under this rule if the defense in good faith believes the disclosure of the witness' address may jeopardize the safety of the witness or the witness' immediate family. If the defense does not disclose the witness' address for the reason stated under this rule then the defense shall make the witness available for deposition or interview by counsel for the State upon reasonable notice. Should there be a dispute among the parties concerning the disclosure of a witness' address, counsel shall meet and make a reasonable effort to resolve this dispute before seeking intervention from the court. The party seeking disclosure or a protective order under this rule shall include in the party's motion or request a statement showing that the attorney making the motion or request has made a reasonable effort to reach agreement with opposing counsel concerning the matter set forth in the motion or request. This statement shall recite in addition, the date, time and place of this effort to reach agreement, whether in person or by telephone and the names of all parties and attorneys participation therein. If an attorney for any party advises the court in writing that an opposing attorney has refused or delayed meeting and discussing the issue of witness address disclosure, the Court may take such action as is appropriate. The court may deny a discovery motion filed by a party who has failed to comply with the requirements of this subsection.

(3) Any books, papers, documents, photographs, or tangible objects he/she intends to use as evidence.

(4) Medical, scientific, or expert witness evaluations, statements, reports, or testimony that may be used at a hearing or trial.

(5) All Evidence required by Indiana Rules of Evidence 404(B), at least 30 days prior to trial, or within two (2) weeks following the request for trial, whichever is later.

(b) After the formal charge has been filed, upon written motion by the State, the Court may require the accused, among other things, to:

(1) Appear in a line-up.

(2) Speak for identification by witnesses to an offense.

(3) Be fingerprinted.

(4) Pose for photographs not involving re-enactment of a scene.

(5) Try on articles of clothing.

(6) Allow the taking of specimens of material from under his/her fingernails.

(7) Allow the taking of samples of his/her blood, hair, and other materials of his/her body that involve no unreasonable intrusion.

(8) Provide a sample of his/her handwriting.

(9) Submit to a reasonable physical or medical inspection of he/her body.

Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the State to the accused and his/her counsel, who shall have the right to be present. Provision may be made for appearances for such purposes in an order admitting the accused to bail or providing for his/her release.

4. ADDITIONS, LIMITATIONS, AND PROTECTIVE ORDER.

(a) **Discretionary Disclosures.**
Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court, in its discretion, may require disclosure to defense counsel of relevant material and information not covered by this Rule.

(b) **Denial of Disclosure.**
The Court may deny disclosure authorized by this Rule if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure to counsel.

(c) **Matters Not Subject to Disclosure.**

(1) **Work product.** Disclosure hereunder shall not be required of legal research or records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the State or members of its legal or investigative staffs, or of defense counsel or his/her staff.
(2) **Informants.** Disclosure of an informant's identity shall not be required where there is a paramount interest in non-disclosure and a failure to disclose will not infringe the Constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial.

(a) Either side may apply for a protective order for non-disclosure of requested discovery.

(d) **Restrictions on production of discovery.** Upon Motion to the Presiding Judge of the Courtroom pursuant to Trial Rule 26(c), discovery provided to an opposing party containing subject matter that is sensitive in nature, as determined by the Court, may be prevented from duplication or distribution, in any capacity. Upon granting of those Motions, attorneys of record shall be the only people in possession of the copies of the restricted discovery. The defendant may view the discovery in a meeting with their counsel, however they are not permitted to their own copy of the discovery. Should a defendant elect for a pro se representation,

they may view the discovery in a closed hearing, but are not permitted to their own copy of the discovery.

(e) **Sanctions.** Any violation of this rule may result in a sanction deemed appropriate by the Court.

5. DEPOSITIONS

Any sworn tape-recorded interview in which the prosecutor, the defense attorney and the witnesses are present shall be considered a deposition under the Indiana Trial Rules. Deputy prosecutors and public defenders shall cooperate in using such recorded statements instead of formal depositions under any circumstance that will expedite case preparation.

6. FILING REQUIREMENTS

All pleadings, petitions, and motions shall be filed electronically with the Clerk of Courts during filing hours established by the Clerk and the Court and shall be accompanied by a proposed order. Facsimile filing is not permitted.

LR49-CR00-108 BAIL

The bail schedule is set administratively by the Criminal Term. A model of a bail schedule can be located on the Court's website.

Amended effective September 24, 2018

LR49-CR20-109. CONTINUANCES, INITIAL HEARINGS and STATUS OF COUNSEL

(a) **Felonies/misdemeanors.** In order for a party to continue a setting in a felony or misdemeanor case, trial or otherwise, the party shall file a verified written motion stating in detail the reasons why the setting needs to be continued. The motion shall also include the type of hearing, the custody status of the defendant, opposing counsel's position, and three (3) suggested dates that have been agreed upon by the parties for the Court to consider. Such motion shall be filed at least five (5) days before the setting that the party desires the Court to continue unless the time has been modified by the judge presiding over the cause. A written order shall accompany the motion. Until such motion is granted by the court, it shall be deemed denied.

(b) **Misdemeanors.** If a party files a motion for Waiver of Initial Hearing *and the only future court event is scheduled is an initial hearing, or if a party files a motion to add*

a new case event, then the party shall include in the motion the type of future case event requested and shall provide suggested dates, per the Trial Court's scheduling guidelines. Such motion shall be filed at least five (5) days before the date on which the hearing is currently set, unless the time has been modified by the Judge presiding over the cause. A written order shall accompany the motion.

(c) **Status of Counsel.** When an attorney's appearance is filed *and the only future case event scheduled is Status of Counsel*, then the Status of Counsel hearing shall be converted to a Pre Trial Conference, unless an accompanying Motion to Continue is also filed, which would follow the Local Rule for Continuances.

(d) **Infractions/Ordinance Violations.** If a party desires to continue a setting in a case involving only infractions and/or ordinance violations, the party shall file a verified written motion stating in detail the reasons why the setting needs to be continued. Such motion shall be filed at least ten (10) days prior to the setting that the party desires the Court to continue.

(e) **Continuances for In-Custody Defendants.** No Criminal Court shall grant a continuance in excess of fourteen (14) calendar days for in-custody Class D/Level 6 felony and Misdemeanor cases, or in excess of thirty (30) calendar days for in-custody Major Felony Cases, without good cause shown.

LR49-CR10.1-110. REQUEST FOR GUILTY PLEA HEARING

The Court will set a guilty plea hearing only after an oral request on the record or a written pleading, i.e., a petition to enter plea of guilty or a plea agreement is filed.

LR49-TR4.1-111. SERVICE - LAW ENFORCEMENT

Service of a subpoena may be made upon a law enforcement officer, by delivering the subpoena to the officer's place of employment. A copy of the subpoena shall be left with the official in charge of the department. It shall be the duty of the official to immediately deliver the subpoena to the officer being served. Service in this manner shall be deemed service on the officer.

LR49-CR00-112. MANDATORY CONSECUTIVE SENTENCES

Where consecutive sentencing is mandated under I.C. § 35-50-1-2(d), the sentence calling for more restrictive placement shall be served prior to any sentence for less restrictive placement. For purpose of this rule, the following placements are listed in order from most restrictive to least restrictive:

1. Incarceration at the Indiana Department of Corrections
2. Incarceration at the Marion County Jail

3. Commitment to a Work Release Facility
3. Commitment to Marion County Community Corrections, Home Detention Component

If the sentence calling for more restrictive sentencing is entered after the sentence for less restrictive sentencing, the Judge ordering less restrictive placement shall issue an amended abstract ordering such sentence to be served consecutive to the more restrictive placement. The amended abstract shall be issued no more than ten (10) days following notice that a more restrictive sentence has been entered.

Where terms of probation are mandated to run consecutively under I.C. § 35-50-1-2(d), the term calling for the least restrictive conditions shall run consecutive to the term(s) calling for more restrictive conditions. The Marion Superior Probation Department shall make the determination as to which term of probation is most restrictive, and as to which term shall be served first.

The Chair of the Criminal Division is authorized to issue any orders necessary to enforce the provisions of this rule.

LR49-CR00-113. TRANSFER OF PRISONERS TO THE INDIANA DEPARTMENT OF CORRECTIONS

Unless otherwise ordered by the Court, any defendant sentenced for a felony offense, other than Level 6 Felonies, shall be sentenced to the Indiana Department of Corrections.

A defendant sentenced for a Level 6 felony offense with the earliest possible release date in excess of 366 days shall be sentenced to the Indiana Department of Corrections unless otherwise ordered by the Court.

In cases where a defendant has been sentenced to the Indiana Department of Corrections and has another case pending in Marion County, the Marion County Sheriff's Office may not transfer the defendant to the Department of Corrections without first providing seven (7) days' notice to the Court with jurisdiction over the pending case. Either party may petition the Court to have a defendant or prisoner held in the Marion County Jail. The Court shall promptly notify counsel in the pending case of the defendant's proposed transfer to the Department of Corrections. After seven (7) days, the defendant shall be transferred to the Department of Corrections unless the Court issues an Order for good cause shown to hold the defendant in the Marion county jail. The Marion County Sheriff's Office shall then notify the Court with jurisdiction over the defendant's pending case, that the defendant has been transferred to the Indiana Department of Corrections. Notification under this rule should be by facsimile or electronic mail.

LR49-CR00-114. CASE MANAGEMENT GUIDELINES

(a) Case Disposition Guidelines. Unless there is good cause shown, as determined by the Presiding Judge of the Courtroom, all criminal matters with a jailed defendant shall be tried, plead or dismissed as follows:

(a) **Case Disposition Guidelines.** Unless there is good cause shown, as determined by the Presiding Judge of the Courtroom, all criminal matters with a jailed defendant shall be tried, plead or dismissed as follows:

Misdemeanors	Class A	90 days
	Classes B & C	60 days
Felonies	Murder	365 days
	Class A/Levels 1 & 2	270 days
	Class B/Levels 3 & 4	180 days
	Class C/Level 5	120 days
	Class D/Level 6	90 days

(b) **Initial Discovery.** Initial Discovery is to be provided within the following timeframe:

Murder	30 days after the Initial Hearing
Classes A & B/Levels 1,2,3, & 4 Felonies	20 days after the Initial Hearing
Class C/Level 5 Felonies	20 days after the Initial Hearing
Class D/Level 6 Felonies	at the Initial Hearing
Misdemeanors	at the Initial Hearing

(c) **State's Notice of Intended Witnesses & Exhibits**. The State of Indiana is to file Notice of Intended Witnesses & Exhibits within the following timeframe:

Murder	30 days after the initial discovery filing
Classes A & B/Levels 1,2,3, & 4 Felonies	20 days after the initial discovery filing
Class C/Level 5 Felonies	20 days after the initial discovery filing
Class D/Level 6 Felonies	30 days prior to the first trial setting
Misdemeanors	30 days prior to the first trial setting

(d) **Defendant's Notice of Intended Witnesses & Exhibits.** In all criminal cases, the defendant is to file a Notice of Intended Witnesses & Exhibits within five (5) days after receipt of the State's Notice of Intended Witnesses & Exhibits.

(e) **Depositions.** Depositions are to be scheduled within the following timeframe following the receipt of the Notice of Intended Witnesses & Exhibits

Murder	60 days
Classes A & B/Levels 1,2,3, & 4 Felonies	45 days
Classes C & D/Levels 5 & 6 Felonies	30 days
Misdemeanors	30 days

Counsel seeking depositions are to confer with opposing counsel to determine dates that are mutually convenient to all counsel and the potential deponent.

(f) **Substantive Motions.** Substantive motions for which deadlines are not otherwise established by statute or rule, including but not limited to Motions to Suppress, Indiana Rules of Evidence 404(b), and Indiana Rules of Evidence 702, are to be filed within 30 days after receipt of Notice of Witnesses & Exhibits for all criminal cases.

(g) **Final Witness List, Final Exhibit List, and Motion(s) in Limine.**

Misdemeanors	5 days prior to the scheduled Final Pre-Trial Conference
Class D/Level 6 Felonies	5 days prior to the scheduled Final Pre-Trial Conference
Class C/Level 5 Felonies	15 days prior to the scheduled trial date
Classes A & B/Levels 1,2,3, & 4 Felonies	30 days prior to the scheduled trial date
Murder	30 days prior to the scheduled trial date

(h) **Objections/Responses to Motion(s) in Limine.** For all criminal cases, objections and responses to Motions in Limine must be filed within two (2) days after receiving said Motion in Limine.

(i) **Proposed Preliminary Instructions.** For all criminal cases, Proposed Preliminary Instructions must be filed no later than five (5) days before the trial date.

j) **Sanctions**. Failure to comply with the provisions of this rule may result in sanction including exclusion of witnesses or exhibits, continuance of a trial charged to the party necessitating the continuance, issuance of an order compelling or prohibiting discovery, or any other remedy deemed appropriate by the Court.

LR49-CR00-115. FEES

(a) **Alcohol and Drug Services Program Fee**

1. The Marion Superior Court has established a court operated Alcohol and Drug Services Program pursuant to IC § 12-23-14, administered by the Marion Superior Court Probation Department.

2. In any criminal case where substance is alleged to have been a contributing factor, the person convicted shall be ordered to pay a substance abuse fee of $400.00. This fee includes substance abuse assessment; client intake and orientation; referral to treatment, if required; client monitoring; case management; and compliance monitoring until discharge.

3. The substance abuse fee may be waived by the Court if the person is actively involved in a substance abuse treatment program at the time of sentencing, has

successfully completed a substance abuse treatment program as a result of the charge for which the person is currently being sentenced, or is determined to be indigent.

4. Should the case be transferred to another court program a client may be charged a transfer fee by the program of up to $100. The receiving program may then charge the difference between the transfer fee and the statutory user fee cap.

(b) In addition to costs as set by I.C 33-37-4-1 whenever an individual is placed on probation, or without placing a person on probation the following fees and costs shall be imposed under the Probation Court or Probation Order unless the sentencing Judge specifically modifies the Order. The fees and costs collected under the Court or Probation Order shall be applied in this following descending order of priority:

Administrative fee
Probation User fee
Alcohol and Drug Service fee (33-37-5-8)
Court Costs (I.C 33-37-4-1)
Restitution (35-50-5-3)
Public Defender Reimbursement * (35-33-7-6)
Safe School fee (I.C. 33-37-5-18)
Child Abuse Prevention fee (I.C. 33-37-5-12)
Drug Interdiction fee (I.C. 33-37-5-9)
Alcohol Countermeasures fee (I.C. 33-37-5-10)
Domestic Violence fee (33-37-5-13)
(*Fee imposed only after judicial determination of ability to pay)

In the event that these specific fees, or any other court ordered fees, are not paid, the Court may enter judgment against the individual and may seek appropriate steps to collect the judgment owed.

(c) Whenever a Judicial Officer orders a person to be drug tested an appropriate fee shall be paid at the time of testing, unless the Judicial Officer determines the person is eligible to pay a reduced fee, or is indigent.

If a confirmatory test is requested by an individual, an appropriate fee shall be paid at the time of testing.

(d) All Marion County Courts certified as Problem-Solving Courts under I.C. 33-23-16 may assess costs pursuant to statute.

1. Drug Court. The Judge may impose on those persons directed to participate in the Marion County Drug Court Program a $100 administrative fee as well as a problem-solving court services fee of $25 for each month of problem-solving court participation in accordance with I.C. 33-23-16-23. The monthly fee shall not exceed $600 in total assessment. The clerk of the court

shall collect and transmit these fees within thirty (30) days after the fees are collected, for deposit by the auditor or fiscal officer in the county user fee fund established under I.C. 33-37-8.

2. Re-Entry Court. The Judge may impose on those persons directed to participate in the Marion County Re-Entry Court Program a $100 administrative fee as well as a problem-solving court services fee of $25 for each month of problem-solving court participation in accordance with I.C. 33-23-16-23. The monthly fee shall not exceed $600 in total assessment. The clerk of the court shall collect and transmit these fees within thirty (30) days after the fees are collected, for deposit by the auditor or fiscal officer in the county user fee fund established under I.C. 33-37-8.

LR49-CR13-116 SPECIAL JUDGE ASSIGNMENTS

In the event a change of judge is granted, or an order of disqualification or recusal is entered, in any Felony or Misdemeanor case pending in a Marion County Superior Court, Criminal Division, the Marion County Clerk shall assign the case to another Marion County Judge in the same manner as the initial Judge. If this process does not result in the selection of a successor judge, then the Clerk shall appoint a special judge from a list of full-time judicial officers from contiguous counties on a rotating basis.

The Clerk shall maintain the list of these contiguous county judges, and shall select from the list on a rotating basis when appointment under this local rule is required. If a judge is selected, the Judge shall not be used again until all other contiguous county judges have served under this rule. If a judge is skipped in the rotation because of ineligibility or disqualification, the Judge shall be selected first for the next eligible case.

Adopted effective April 29, 2016

LR49-CR00-117. SEARCH WARRANT REQUESTS

All requests for a search warrant must be made electronically in accordance with IC § 35-33-5-8(a)(4) and (h), unless it is a request made concerning an investigation of the grand jury.

Marion Circuit And Superior Court

Civil Division Rules

LR49-TR3-200	**RANDOM FILING OF CIVIL CASES**
LR49-TR3.1-201	**WITHDRAWAL OF APPEARANCE**
LR49-TR4.12-202	**WRIT OF ATTACHMENT: PROCEDURE**
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APPENDIX

EXHIBIT A **MARION SUPERIOR COURT COMMITMENT TO RESPECT AND CIVILITY**

EXHIBIT B **APPEARANCE FORM**

EXHIBIT C **NOTICE AND ORDER FOR SETTLEMENT CONFERENCE**

EXHIBIT D **BORROWER FINANCIAL INFORMATION**

EXHIBIT E **DEFENDANT(S) CONFIRMATION OF ATTENDANCE AT SETTLEMENT CONFERENCE**

LR49-TR3-200 RANDOM FILING OF CIVIL CASES

A. All civil cases filed with the Marion County Clerk's Office designated by statute or rule as being required to be filed in certain named Courts shall be so assigned.

B. Cases involving a petition for specialized driving privileges pursuant to I.C. § 9-30-16 in which the suspension of the driving privileges was not imposed by or recommended by a court imposing a sentence in a criminal case, and was not based upon delinquent child support or the person's status as a student under I.C. § 9-24-2, shall be filed in the Marion Circuit Court; all other petitions or requests for specialized driving privileges shall be filed in the court in which the charges are pending or in which the sentence was imposed, in the court in which the issue of child support is docketed, or in Marion Superior Court, Family Division Courts D09 and D15 if the suspension was based upon the person's status as a student under I.C. § 9-24-2.

C. Civil Plenary (PL), Mortgage Foreclosure (MF), Civil Collections (CC), Civil Torts (CT), and Domestic Relations (DR) cases shall be allocated at follows:

1. Civil Plenary (CP/PL) cases

   a. 1% shall be randomly filed in Circuit Court, and
   b. 99% shall be filed in Superior Court, divided randomly and evenly among Courts D01, D02, D03, D04, D05, D06, D07, D11, D12, and D13.

2. Mortgage Foreclosure (MF) cases

   a. 5% shall be randomly filed in Circuit Court, and

   b. 95% shall be filed in Superior Court, divided randomly and evenly among Courts D01, D02, D03, D04, D05, D06, D07, D11, D12, and D13.

3. Civil Collections (CC) cases

   a. 1% shall be randomly filed in Circuit Court, and

   b. 99% shall be filed in Superior Court, divided randomly and evenly among Courts D01, D02, D03, D04, D05, D06, D07, D11, D12, and D13.

4. Civil Torts (CT)

   Shall be assigned to Superior Court, divided randomly and evenly among Courts D01, D02, D03, D04, D05, D06, D07, D11, D12, and D13.

5. Protective Order (PO) cases that do not involve a relationship as defined by IC 35-31.5-2-128 shall be assigned to Superior Court, divided randomly and evenly among Courts D01, D02, D03, D04, D05, D06, D07, D11, D12, and D13.

5. Family Cases

a. DC and DN cases shall be assigned to the Marion Superior Court, Family Division Courts D09, D10, D14, D15, and D16.

b. JP cases shall be assigned in the following manner:

1. 30% of JP filings, not initiated by the Prosecutor's Office shall be assigned to the Marion Superior Court, Family Division Courts D09, D10, D14, D15, and D16.

2. JP filings initiated in conjunction with an existing juvenile case shall be assigned to the Court that houses the accompanying juvenile case.

3. All other JP filings shall be assigned to the Marion Circuit Court.

c. Juvenile case types, with the exception of those detailed in paragraph (b)(3) of this rule shall be assigned to the Marion Superior Court, Family Division Courts D09, D10, D14, D15, and D16.

d. Protective order cases that are domestic in nature (those that involve a relationship as defined by IC 35-31.5-2-128) shall be divided and randomly assigned to Courts D10, D14, and D16.

1. When there is an existing DN, DR, DC, or JP case, any related PO filing shall be assigned to the same court as the existing family case.

D. Marion Superior Court, Civil Division D13 shall be assigned the following case filings:

1. Any civil case where the environment is involved as the lead issue or where a decision of an environmental administrative agency is being appealed;

2. Any civil action that includes a count based upon or involving Indiana Code Title 13/ Environment or Title 14/ Natural and Cultural Resources;

3. Any civil action requiring judicial review from final agency action involving an environmental matter;

4. Department of Revenue UST and solid waste fee tax warrants;

5. Common law theories of recovery such as toxic torts, property contamination cases alleging nuisance, trespass, negligence and environmental cleanup and contribution actions;

6. Open Door and Public Record suits or appeals related to IDEM, DNR, ISHD, State Fire Marshall or the Fire Prevention and Building Safety Commission; and

7. Contract or other disputes involving a substantive environmental issue.

E. Civil cases involving judicial review of a zoning decision pursuant to IC 36-7-4-1601 et seq. shall be assigned to Court D07.

F. Civil cases requiring judicial review of a final State Agency decision under Article 21.5 of the Indiana Administrative Orders and Procedures Act (I.C. 4-21.5 et seq.) shall be randomly assigned.

G. Civil cases requiring judicial review of an administrative decision of the Bureau of Motor Vehicles pursuant to I.C. § 9-30-10 shall be filed in the Marion Circuit Court.

H. Civil cases requiring judicial review of an administrative decision of the Bureau of Motor Vehicles pursuant to I.C. § 9-24-2 shall be filed in Marion Superior Court, Family Division Courts D09 and D15.

I. Cases involving a petition for change of name filed under I.C. § 34-28-2 shall be filed in the Marion Circuit Court.

All civil cases other than those listed above filed with the Marion County Clerk's Office for the Marion Superior Court shall be assigned to an individual courtroom on a random basis. The process for the random assignment shall be done through the Court and Clerk's automated case management system.

Effective March 26, 2021

LR49-TR3.1-201. WITHDRAWAL OF APPEARANCE

All withdrawals of appearances shall be in writing and by leave of Court. Permission to withdraw shall be given only after the withdrawing attorney has given his client ten days written notice of his intention to withdraw, has filed a copy of such with the Court; and has provided the Court with the party's last known address; or upon a simultaneous entering of appearance by new counsel for said client. The letter of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client's case or a default judgment may be entered against him, whichever is appropriate, and other pertinent information such as trial setting date or any other hearing date. The Court will not grant a request for withdrawal of appearance unless the same has been filed with the Court at least ten days prior to trial date, except for good cause shown.

LR49-TR4.12-202 WRIT OF ATTACHMENT: PROCEDURE

A. Writ of Attachment Upon failure of a judgment defendant or garnishee to appear as ordered for a scheduled hearing when either copy or personal service has been obtained and unless otherwise directed by the Court, the judgment creditor may schedule a hearing on a Rule to Show Cause as to said individual. If the individual is personally served with the Order to Appear on the Rule to Show Cause and subsequently fails to appear, the Court may make the matter eligible for a writ of attachment of the individual. The Presiding Judge in the Court has the discretion to grant the request for the writ of attachment.

The submission of a writ of attachment shall be made within 30 (thirty) days of the date of eligibility. The judgment creditor shall provide any identifying information available to assist in the enforcement of the attachment and shall provide properly completed forms as may be required by the Court. These forms include:

1. A proposed writ of attachment in which the Court sets the appropriate cash bail (IC 34-49-1-1(b) requires a minimum cash bail in the amount of $100.00)
2. All identifying information available to the Judgment Creditor, including but not limited to the following:
    a. Cause No.
    b. Name
    c. Address
    d. SSN
    e. Date of Birth
    f. Race
    g. Sex
    h. Height
    i. Weight
    j. Hair Color
    k. Eye Color
    l. Employer
3. Any telephone numbers at which the Court may notify the judgment creditor or attorney of the individual's attachment

B. Writ of Attachment-Law Enforcement During Business Hours. Any law enforcement officer may attach any individual named in the writ of attachment. Once the individual is taken into custody, the individual is to be brought directly to the issuing Court to handle.

C. After-Hours Protocol. Should a law enforcement officer serve a writ of attachment outside of business hours, they shall bring that individual to the Initial Hearing Court. The court staff from the Initial Hearing Court shall require the individual fill out a "Notice of Return on Writ of Attachment" in lieu of conducting a hearing. The "Notice of Return on Writ of Attachment" will require the individual provide their current contact information and employment information under penalties of perjury. The judicial officer on duty shall issue an order to appear for a hearing on the next available Pro Supp Docket to be served upon the individual. The bailiff will recall the writ.

D. Writ of Attachment-Calendaring, Expiration and Recall. A writ of attachment expires 120 (one hundred and twenty) days after the date of issuance. Upon issuance of a writ, the Court staff shall use the electronic case management system to calendar the writ to ensure its immediate recall upon expiration. The judgment creditor may petition for recall of the writ at any time prior to the expiration date upon written motion which shall state the reason for the recall. Upon recall of a writ of attachment, the proceedings supplemental shall be dismissed by the Court.

Amended effective October 23, 2018

LR49-TR5-203. REQUIREMENTS FOR MOTIONS

A. Notice. When a motion requires notice, the serving of the copy of the motion upon the other parties in the cause shall constitute notice of filing. If the motion requires a hearing or oral

argument, the Court shall set the time and place of hearing or argument on the motion. Except for initial motions made pursuant to subsection D herein, all motions filed with the court shall include a brief statement indicating whether opposing party(ies) object to or approve of the granting of said motion.

B. Response. If the statement regarding the position of the opposing party(ies) required under subsection A herein indicates that objection to the granting of said motion may ensue, said objecting a party shall have 15 days from the date of filing to file a response to said motion.

C. Oral Arguments on Motions and Other Pleadings. When an oral argument is requested, the request shall be by separate instrument and filed with the pleading to be argued. Any such oral argument requested may be heard at the discretion of the Court, except for motions for summary judgment which shall be set for hearing upon request of any party.

D. Enlargement of Time. Initial written motion for enlargement of time pursuant to Rule TR 6(B)(1) to respond to a claim shall be automatically allowed for an additional 30 days from the original due date without a written order of the Court. Any motion filed pursuant to this rule shall state the date when such a response is due and the date to which time is enlarged. The motion must be filed on or before the original due date or this rule shall be inapplicable. All subsequent Motions shall be so designated and will be granted only for good cause shown.

E. Tender of Orders. All motions must be accompanied by a proposed order. When a non-party is the subject of the proposed order's distribution list, the filing party must tender to the Court stamped envelopes addressed to that non-party.

Amended effective August 17, 2017

LR49-TR8-204. PREPARATION OF PLEADINGS, MOTIONS AND OTHER PAPERS

All pleadings, motions and other papers shall be prepared in accordance with the provisions of the Indiana Rules of Procedure. For the purpose of uniformity and convenience, the following requirements shall also be observed.

A. Production. Pleadings, motions and other papers may be either printed or typewritten and filed electronically. If typewritten, the lines shall be double spaced, except for quotations, which shall be indented and single spaced. Script type shall not be used.

B. Caption. Every pleading shall contain a caption setting forth the name of the Court, the Division and Room Number, the title of the action and the file number.

C. Titles. Titles on all pleadings shall delineate each topic included in the pleading e.g. where a pleading contains an Answer, a Motion to Strike or Dismiss, or a Jury Request each shall be set forth in the title.

D. Margins. Margins shall be one inch.

E. **Signature**. All pleadings and motions shall contain the original or authorized signature of the attorney, the name of the attorney in typed or printed form, the name of the law firm if a member of a firm, the attorney's address, identification number, e-mail address, telephone number, fax number, and the designation as to the party for whom he appears. The following form is recommended:

John Doe
Attorney Identification Number
DOE, ROWE, and SMITH
Suite 35 Blackacre Building
Indianapolis, Indiana 46204
John.doe@DRSlaw.com
939-3000 Fax: 233-1744
Attorney for Defendant
(Name)

Amended effective August 17, 2017

LR49-TR5-205. FILING OF PLEADINGS, MOTIONS AND OTHER PAPERS

A. **Room Clerk**. All pleadings, petitions and motions are electronically filed with the Clerk designated by the Court at any time during office hours established by the Clerk and the Court.

B. **Facsimile**. Facsimile filing is not permitted in the Marion Circuit and Superior Court.

C. **Counsel to Furnish Pleadings to Special Judge.** When a Special Judge who is not a Marion County Judge is selected, all parties or attorneys shall furnish such Judge with copies of all filings prior to the qualification of such Special Judge. Thereafter, copies of all filings shall be delivered in person, by mail or by facsimile to the office of the Special Judge with certificate of forwarding same made a part of the filing.

D. **Number.** Counsel shall file with the court an original and one copy of all briefs, and memoranda of law filed in support of a motion.

E. **Appearance Form.** Pursuant to Trial Rule 3.1(A), an appearance form shall be filed by the initiating party at the time an action commenced.

Amended effective August 17, 2017

LR49-TR11-206. SIGNING AND VERIFICATION OF PLEADINGS, MOTIONS AND OTHER PAPERS-SERVICE ON OPPOSING PARTY

In all cases where any pleading or other document is required to be served upon opposing counsel, proof of such service may be made either by:

(1) a certificate of service signed by counsel of record for the serving party and the certificate shall specify by name and address all counsel upon whom the pleading or document was served or

(2) an acknowledgment of service signed by the party served or counsel of record.

LR49-TR16-207. CASE MANAGEMENT

A. Case Management Conference. Plaintiff shall arrange a meeting of all parties within 90 days after the filing of a complaint for the following purposes:

1. *List of Witnesses.* Exchange lists of witnesses known to have knowledge of the facts supporting the pleadings. The parties shall thereafter be under a continuing obligation to advise opposing parties of other witnesses as they become known.

2. *Documents.* Exchange all documents which are contemplated to be used in support of the pleadings. Documents later shown to have been reasonably available to a party and not exchanged may be subject to exclusion at time of trial.

3. *Other Evidence.* Exchange any other evidence reasonably available to obviate the filing of unnecessary discovery motions.

4. *Settlement.* Discuss settlement of the action.

5. *Discovery Schedule.* Agree upon a preliminary schedule for all discovery.

6. *Complicated Case.* Discuss whether the action is sufficiently complicated so that additional conferences may be required.

B. Case Management Order. Within ten (10) days after meeting those attending are to file a joint Case Management Order setting forth:

1. the likelihood of mediation and settlement;

2. a detailed schedule of discovery for each party;

3. a limitation on the time to join additional parties and to amend the pleadings;

4. a limitation on the time to file all pre-trial motions;

5. any other matters which the parties want to address;

6. a preliminary estimate of the time required for trial; and

7. the date by which the parties expect the matter to be ready for trial.

LR49-TR16-208. PRE-TRIAL CONFERENCE

A. Pre-trial Conference Mandatory. A pre-trial conference shall be held in every civil jury action. Each party shall be represented at the pre-trial conference by the attorney who will conduct the trial.

B. Pre-trial Stipulation Must Be Filed. Counsel for the plaintiff shall see that a pre-trial stipulation is prepared, executed by counsel for all parties, and filed with the Court no later than five days prior to the pre-trial conference. The pre-trial stipulation shall contain the following statements in separate numbered paragraphs as indicated:

1. the nature of the action.

2. the basis of jurisdiction.

3. the pleadings raising the issues.

4. a list of all motions or other matters requiring action by the Court.

5. a concise statement of stipulated facts, with reservations, if any.

6. a statement of issues of fact which remain to be litigated at trial.

7. a concise statement of issues of law on which there is agreement.

8. a concise statement of issues of law which remain for determination by the Court.

9. each party's numbered list of trial exhibits, other than impeachment exhibits, with objections, if any, to each exhibit. The list of exhibits shall be on separate schedules attached to the stipulation.

10. each party's numbered list of trial witnesses, with their addresses. Impeachment witnesses need not be listed. Expert witnesses shall be so designated.

11. estimated trial time.

C. Unilateral Filing of Pre-trial Stipulation Where Counsel Do Not Agree. If for any reason the pre-trial stipulation is not executed by all counsel, each counsel shall file a proposed pre-trial stipulation not later than five days prior to the pre-trial conference with a statement why no agreement was reached.

D. Memoranda of Law. Counsel shall file memoranda treating any unusual questions of law involved in the trial no later than five days prior to the pre-trial conference.

E. **Proposed Jury Instructions**. Seven days prior to trial, counsel shall submit proposed jury instructions to the Court, with copies to all other counsel. Instructions covering matters occurring at the trial which could not reasonably be anticipated may be substituted at the conclusion of the testimony. Each instruction shall be accompanied by citations of authority.

F. **Objections to Proposed Jury Instructions**. Written objections to proposed jury instructions shall be submitted to the Court on or before the first day of trial. Written objections shall be numbered and shall specify distinctly the objectionable matter in the proposed instruction. Each objection shall be accompanied by citations of authority.

LR49-ADR2-209. ALTERNATIVE DISPUTE RESOLUTION – MEDIATION PROCEDURE

A. Case selection shall be governed by A.D.R. Rule 2.2.

B. Mediator selection shall be governed by A.D.R. Rule 2.4. Mediators approved by the Indiana Supreme Court Commission for Continuing Legal Education shall be entered into the Court's computer system. If the parties are unable to select a mediator by agreement pursuant to A.D.R. Rule 2.4, the Court will generate a list of three mediators by random selection through the computer.

C. The parties shall have ten days to strike from the panel of mediators named by the Court. The party that initiated the cause of action shall strike first. If the parties fail to strike within ten days, the Court shall select a mediator. Upon selection of the mediator, counsel for the party that initiated the litigation shall submit a proposed order appointing the mediator selected in the case.

D. During the entire mediation process, the lawsuit shall remain on the Court's docket.

E. Absent an agreement by the parties or unless otherwise ordered by the Court the fees and expenses associated with the mediation shall be shared equally by the parties unless good cause can be shown by a party why an equal division of the fees should not be ordered. In the case of team mediation, the fee is to be split between the mediators as the co-mediators are to be treated as a unit.

F. The mediator and the parties shall make a good faith effort to complete the mediation process within sixty (60) days from the date of the Order to engage in mediation. In the event that the mediation process is not completed within this time, the mediator shall file a status report with the Court setting forth the projected date of completion.

G. Within 24 hours prior to the scheduled mediation conference or such other time as the mediator declares, the parties shall submit to the mediator a Confidential Mediation Statement. Such statement shall include, without limitation, a brief recitation of: (a) the facts relevant to the dispute; (b) the amount in controversy or other relief requested; (c) the progress of the litigation

to date; (d) the status of negotiations; and (e) the factors, including factual and legal contentions as to both liability and damages, which have been considered or relied upon in arriving at the current settlement posture.

H. All parties, attorneys with settlement authority, representatives with settlement authority, and other necessary individuals shall be present at each mediation conference to facilitate settlement of a dispute unless excused by the court or by stipulation of the parties.

I. After the conclusion of the mediation, the mediator will have fifteen days to prepare and send his or her bill to the parties. The parties shall have 15 days thereafter to pay the mediator. If the mediator's bill is not paid within 30 days after the close of mediation, the mediator may file a bill with the Court and it shall be reduced to judgment unless objected to by one of the parties within ten days after the filing of the bill with the Court.

Mandatory Mediation

A. **Civil Jury Trials.** All cases where a timely demand for jury trial is made, mediation pursuant to A.D.R. Rule 2 and subsection A herein is mandatory. Mediation is to be completed 60 days prior to trial, unless the mediation referral is vacated for good cause shown. Objections to mediation may be made within 15 days of the completion of the case management conference required by Rule 16.1(A).

B. **Post-Decree Domestic Litigation.** Parties must submit post-decree child related issues to mediation prior to presenting such issues to the Court for hearing, unless this rule is waived for good cause shown.

C. **Pro Bono Mediation Services.** All mediators maintained on the Court's approved Civil and Domestic Mediation list shall, upon request from any Judge of this Court, serve as a pro bono mediator for at least one (1) case per calendar year.

D. Any litigant affected by this mandatory mediation order may qualify for pro bono mediation services upon good cause shown, pursuant to criteria established by the Presiding Judges of the Court.

LR49-ADR3-210. ALTERNATIVE DISPUTE RESOLUTION – ARBITRATION PROCEDURE

A. Arbitration procedures shall be governed by A.D.R. Rule 3.

B. Attorneys wishing to serve as arbitrators in the Marion Circuit or Superior Court shall file written notice with the Marion Superior Court Administrator indicating a desire to serve as an arbitrator for cases in Marion County.

LR49-ARD1-211. GENERAL PROVISIONS

A. These rules are designed to clarify and supplement the Rules for Alternative Dispute Resolution promulgated by the Indiana Supreme Court on January 1, 1992, as amended from

time to time. The rules promulgated by the Indiana Supreme Court shall be followed in every way by the parties and shall govern the various forms of Alternative Dispute Resolution stated therein.

B. The failure to comply any with any Court Order regarding Alternative Dispute Resolution may result in appropriate sanctions being levied by the Court.

LR49-TR32-212. VIDEO TAPE DEPOSITIONS

All video tape depositions filed with the Court shall be accompanied by a transcript of the testimony.

LR49-TR33-213. INTERROGATORIES

A. Number Limited. Interrogatories shall be limited to a total of 25 including subparts and shall be used solely for the purpose of discovery and shall not be used as a substitute for the taking of a deposition. For good cause shown and upon leave of Court additional interrogatories may be propounded.

B. Answers and Objections. Answers or objections to interrogatories under Rule TR 31 or 33 shall set forth in full the interrogatories being answered or objected to immediately preceding the answer or objection.

C. Duplicated Forms. No duplicated forms containing interrogatories shall be filed or served upon a party unless all interrogatories on such forms are consecutively numbered and applicable to the cause in which the same are filed and served.

LR49-TR40-214. SETTING CASES FOR TRIAL

A. Setting Cases for Trial. Litigants desiring their cause of action to be set for trial shall file a written Praecipe for Trial which indicates whether a jury or court trial is requested. No trial date will be set unless a Case Management Order pursuant to Rule 16.1(B) has been filed. The Praecipe shall state the number of days needed to try the case.

B. Notice in Dissolution and Paternity Matters. In all dissolution or paternity matters, the Moving party or their counsel shall give notice of the time and place of the hearing or trial by subpoena, notice of hearing or letter, served upon the adverse party at least seven days prior to the trial date and file a copy of said notice with the Court on or prior to the trial date.

LR49-TR53.5-215. MOTIONS FOR CONTINUANCE

Motions for Continuance are discouraged. Neither side is entitled to an automatic continuance as a matter of right.

A. **Motion**. A Motion for Continuance, unless made during the hearing of the cause, shall be in writing, state whether opposing counsel objects to the motion and whether prior continuances have been requested by the moving party. The Court may require any written Motion for Continuance to be signed by the party requesting the continuance.

B. **Time for Filing**. Motions for Continuance must be filed as soon after the cause for continuance or delay is discovered by the party seeking same, and no later than seven days before the date assigned for trial, unless the reason therefor is shown by affidavit to have occurred within the seven day period.

C. **Title of Motion**. A Motion for Continuance, whether it is plaintiff's or defendant's motion, shall denominate whether it is the First, Second, Third, etc. Motion for Continuance filed by plaintiff or defendant.

D. **Dispositive Motions**. The filing of a dispositive motion shall not constitute good cause for a Motion for Continuance of a trial if the time requirements governing such motion will not allow for the resolution of the motion prior to the date of trial.

LR49-TR55-216. AFFIDAVIT OF DEBT/ATTORNEY FEES IN DEFAULT JUDGMENTS

On all default judgments relating to commercial cases plaintiff or his counsel must submit an affidavit of debt signed by the plaintiff and an affidavit in support of attorney fees requested by counsel, signed by plaintiff's counsel. The affidavit for attorney fees shall set forth the number of hours spent on the case and the hourly charge.

LR49-TR58-217. DUTIES OF ATTORNEYS ON ENTRIES OF JUDGMENTS

A. **Attorneys to Prepare Documents Requiring Court's Signature.** It shall be the duty of attorneys to prepare decrees of all final judgments and of such interlocutory and other orders as may be required by the Court, including Pre-Trial Orders, Findings of Fact and Conclusions of Law.

B. **Decrees and Entries Prepared by One Attorney to Be Submitted to Other Attorneys Interested in Cause**. Where there are several attorneys interested in a decree, order, entry or judgment to be entered in a cause and one or more of them desires such document entered, he or they, shall submit such document to the other attorneys who may be interested in the cause, and obtain an endorsement thereon of "Inspected", provided that this rule shall not apply when the attorneys of all parties are in court when the judgment or decree is proffered.

C. **Obligation to Keep Themselves Informed of Case Status**. Counsel and parties to a suit should keep themselves informed of all steps taken in all matters pending before the Court, and are bound by the Court's actions, including but not limited to rulings, notice of trial date settings, and current position of cases on jury trial calendar, all without special or additional oral or written notice by the Court.

D. **Duty of Attorney to State Time Required for Hearing**. It is the duty of counsel to determine the amount of time required by both sides for the hearing. No hearing will be scheduled until such time is stated, and it will be limited to the time requested.

LR49-TR59-218. SERVICE UPON JUDICIAL OFFICERS

In addition to serving the judge with a separate copy of motion to correct error pursuant to Ind.Trial Rule 59(C), parties filing motion to correct errors shall also serve the Magistrate or Commissioner with a copy of the motion to correct error if a Magistrate or Commissioner recommended and signed the final judgment or appealable final order at issue. Non-compliance with this Rule shall not be grounds for forfeiture of any post-trial, post-judgment or appellate rights.

LR49-TR63-219. WHEN OTHER JUDGES TO PRESIDE

Whenever the Judge who presides in the Marion Circuit or Superior Court is absent or cannot, for any reason, hear any cause pending in such court, or issue any emergency orders in connection herewith, any other Judge of such Marion Circuit or Superior Court may preside in that court.

LR49-TR00-220. EXHIBITS

All models, diagrams, documents, depositions, or material placed in the custody of the Court Reporter as exhibits shall be removed by the parties offering them in evidence, except as otherwise ordered by the Court, four months after the case is decided unless an appeal is taken. At the time of removal, a detailed receipt shall be given to the Court Reporter and filed with the cause. If not removed after four months, the Court Reporter may dispose of them without notice.

LR49-TR76-221. TRANSFER OR CONSOLIDATION OF CASES

No case filed in the Circuit Court or the Marion Superior Court, Civil Division, may be transferred or consolidated to another room or court except upon written motion accompanied by written order for the signature of the forwarding Court. The order shall not be approved and signed by the forwarding Judge unless such order is consented to in writing by the Judge of the receiving Court.

LR49-TR79-223. INITIAL REQUEST FOR CHANGE OF JUDGE

Upon a timely filed motion for a change of judge under Indiana Trial Rule 79, the court shall grant the motion. Within seven (7) days of the notation of the order in the Chronological Case Summary, the parties may agree upon an eligible special judge.
(Amended effective July 31, 2015)

LR49-TR79-224. APPOINTMENT BY CLERK

Upon the parties not reaching an agreement or the agreed upon judge not accepting the case under Local Rule 225, the appointment of an eligible special judge shall be made by means of the Marion County Clerk selecting a name of the next judge from lists of judges from Marion County maintained by the Clerk. A separate list shall be kept for domestic and juvenile cases.

All judges of the Marion Circuit and Superior Court Civil Division are eligible persons under this rule except as follows: the judge of the Marion Circuit Court shall not be named on the list

for domestic relation cases; the judges of the Family Division shall be the only judges on the lists for domestic relations and juvenile cases.

Should the next judge on the list be disqualified pursuant to the *Code of Judicial Conduct*, ineligible for service under this rule, or excused from service by the Indiana Supreme Court, the clerk shall continue down the list until all judges on the list have been exhausted. Upon exhaustion of the list, the judge from whom the change of judge was taken, or who is ineligible or disqualified, shall certify the case to the Indiana Supreme Court for the appointment of a special judge by the Court. Further, the judge may certify a case directly to the Indiana Supreme Court where the particular circumstances of the case warrant selection by the Court without reference to the clerk for selection from a list.

Amended effective March 26, 2021

LR49-TR79-225. ACCEPTANCE

A judge appointed to serve as special judge under this Local Rule must accept jurisdiction in the case unless the appointed special judge is disqualified pursuant to the *Code of Judicial Conduct*, ineligible for service under this rule, or must be excused from service by the Indiana Supreme Court. The order of appointment under this Local Rule shall constitute acceptance. An oath or additional evidence of acceptance of jurisdiction is not required.
(Amended effective August 12, 2013)

LR49-TR79.1-226. MARION COUNTY SMALL CLAIMS COURT CASES

A. Issues. A cause of action which comes to the Marion Superior Court from the Small Claims Courts of Marion County for either jury trial or appeal shall be replead in its entirety commencing with the plaintiff below filing a new Complaint in compliance with the Indiana Rules of Trial Procedure. The new Complaint shall be filed within 20 days of the date the case is docketed and filed in the Marion Superior Court or as otherwise ordered by the Court. Failure to comply with this Rule shall result in the Court imposing sanctions which may include dismissal or default where appropriate.

B. Procedure and Evidence. Any pleadings, motions or other procedural matters which are filed after the filing of the Complaint in the Marion Circuit and Superior Court will be governed by the Indiana Rules of Trial Procedure and the Marion Circuit and Superior Court Rules. Evidentiary questions will be ruled on in the same manner as any other cases originally filed in the Marion Circuit and Superior Court.

C. Appeals from Marion County Small Claims Courts. The following rules shall govern all appeals from the Marion County Small Claims Courts to the Marion Superior Court.

(1) Any party may appeal from the judgment of the Marion County Small Claims Court to the Marion Superior Court, within 60 days from its entry; and when there are two or more plaintiffs or defendants, one or more of such plaintiffs or defendants may appeal without joining the others in such appeal or plaintiff may add new parties at the time he repleads his Complaint in accordance with the Indiana Rules of Trial Procedure.

(2) The Small Claims Court Judge shall certify a completed transcript of all the proceedings had before said Judge and transmit the same, together with all other papers in the cause, to the Marion County Clerk, within 20 days.

(3) Appeals may be authorized by the Marion Superior Court after the expiration of Sixty (60) days, when the party seeking the appeal has been prevented from taking the same by circumstances not under his control.

LR49-81-228. JOINT SESSION OF CIRCUIT AND MARION SUPERIOR COURTS

The Judges of the Marion Circuit and Superior Courts may meet in joint session to consider matters of mutual interest.

LR 49-TR 85 Rule 229 MANDATORY SETTLEMENT CONFERENCES IN MORTGAGE

1. Findings
   A. In order to avoid confusion as to rights and procedures concerning settlement agreements in residential mortgage foreclosures, the Marion Circuit and Superior Courts find that LR 231 should be amended.

   B. The Courts further find that prohibiting the filing of dispositive motions until settlement discussions have been completed is necessary for the full utilization of the Foreclosure Prevention Agreements for Residential Mortgages Act IN Code 32-30-10.5-1 et seq. (Act), conservation of judicial resources and avoidance of unnecessary legal expenses.
   C. The Courts find that this Rule will promote the purposes of the Act as set forth at IN Code 32-30-10.5-1.

2. Upon the filing of a foreclosure action covered by the Act, the plaintiff may not file a Motion of Default Judgment or for Summary Judgment against the debtor until the expiration of the time for requesting a settlement conference; or in the event of a timely request for a settlement conference; until the creditor files a notice with the Court as required by either section 10 (e) or 10 (f) of the Act, provided that the creditor may file such motions if the settlement conference is not scheduled or is vacated by the court pursuant to section 9 (b) of the Act.

3. Upon the debtor's request for a settlement conference, the Court will automatically enlarge debtor's time to file a responsive pleading until twenty (20) days after the creditor files a notice as required by either section 10 (e) or (f). In the event that the court vacates the settlement conference pursuant to section 9(b) of the Act, the period of enlargement will be modified to twenty (20) days after the date the conference was vacated.

4. This rule shall be applied prospectively to actions filed after October 5, 2009.

MARION SUPERIOR COURT

COMMITMENT TO RESPECT AND CIVILITY

I will maintain the highest level of professional integrity and personal courtesy in all dealings with parties, counsel, witnesses and courts.

I will advise clients that I am bound by the responsibilities and restrictions set forth in the Rules of Professional Conduct in all matters relating to the handling of their cases.

I will pursue the advancement of clients' legitimate objectives, but I will not participate in litigation based upon vengeance or other inappropriate emotions.

I will use legal procedures for the fullest benefit of clients without misusing or abusing the legal process.

I will not intentionally speak or act in an abrasive, hostile, offensive or acrimonious manner toward parties, counsel or courts.

I will not knowingly misstate, mischaracterize or fail to disclose relevant facts or legal authority.

I will familiarize myself with and comply with all requirements of the common law, the trial rules, the local rules, and the court policy and procedure.

I will endeavor to have clients fully disclose assets and liabilities, informally exchange information and confer with opposing counsel to discuss settlement, stipulate undisputed matters, and identify issues prior to scheduled hearings.

I will strive to reach agreements on procedural and preliminary matters consistent with clients' legitimate objectives.

I will honor promises and commitments in an effort to raise the level of professionalism and civility.

I will, whenever possible, encourage clients to reach amicable settlement of all issues after careful review of statutes and reasonable consideration of the risks, costs, delay and emotional trauma of trial.

I will not seek judicial intervention in matters that can be resolved through cooperation and communication between counsel and parties.

I will not resort to ex parte proceedings in the absence of extreme emergency, as the interests of justice and fair play mandate notice to the opposing party.

I will not abuse time limitations set by courts, will be punctual and prepared for all court appearances and I will notify the court promptly when a case has been settled or must be continued.

I will prepare clients and witnesses for court appearances and advise them of the conduct required of them in order to promote the prompt and efficient administration of justice and to avoid conduct that brings disorder, disruption and disrespect upon the courts.

_____ _____

Date Signature

IN THE MARION SUPERIOR COURT

APPEARANCE FORM
Initiating / Responding Party / Intervening Party

(Caption) *)* *Cause No.* _____

) (To be supplied by Clerk when case is filed.)

)

☐ Check if *Pro Se*

1. _____
   Name of party

2. Attorney information (as applicable for service of process): **(Pro Se litigants must complete this)**

   Name: _____ Atty. Number:_____
   Address: _____ Phone: _____
   _____ FAX: _____
   _____ Email Address:_____

3. Will accept Fax service: Yes _____ No _____

4. Are there now or have there been within the last twelve months pending related cases?
   Yes _____ No _____ If yes, list case and cause number below:

   If the caption has a name other than that of the parties, please explain.

   Caption _____ Cause No. _____

   Status_____

   Caption _____ Cause No. _____

   Status_____

   Caption _____ Cause No. _____

   Status_____

5. Additional information required by state or local rule:
   _____

   _____

   _____

6. This appearance form has been served on all parties and/or counsel.

7. I have reviewed and discussed the **Commitment to Respect and Civility** with my client and agree to aspire to its goals.

_____
Attorney or Pro Se Signature

_____
Printed

Pursuant to Trial Rule 3.1, this form shall be filed upon the first appearance in the case. In emergencies, the requested information shall be supplied when it becomes available. Parties shall advise the court of change in information previously provided to the court. The Division of State Court Administration has approved this format.

PURSUANT TO TRIAL RULE 3.1(E), THIS APPEARANCE FORM SHALL BE UPDATED PROMPTLY SHOULD THERE BE ANY CHANGE IN OR SUPPLEMENT TO THE INFORMATION PREVIOUSLY SUPPLIED TO THE COURT

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	CIVIL DIVISION, ROOM ____
COUNTY OF MARION	)	CAUSE NO. _____

_____	)
	)
_____	)
	)
Plaintiff(s),	)
	)
VS.	)
	)
_____	)
	)
_____	)
	)
Defendant(s).	)

NOTICE AND ORDER FOR SETTLEMENT CONFERENCE

This matter, having come before the Court on Plaintiff's Complaint for Decree of Foreclosure, and the Court, being duly advised in the premises, now finds that it is appropriate to schedule this matter for a settlement conference.

IT IS THEREFORE ORDERED BY THE COURT:

1. That this matter is scheduled for a settlement conference to be held on the _____ day of _____, 2009 at _____ a.m./p.m. Defendant(s), _____, is/are to appear in this Court, in person and, if represented by counsel, with said counsel. Plaintiff(s) _____ is/are to appear, by counsel and by an authorized officer of Plaintiff(s), either in person or by telephone on the above-referenced date and time. If Plaintiff(s) elects to be available by telephone only, Plaintiff(s) shall call the Court at the appropriate time and at the following telephone number: (317) _____. The Defendant(s) shall execute the enclosed Confirmation of Attendance form and return said confirmation to the Court office within fifteen (15) days following receipt of this Notice.

Failure to execute the Confirmation of Attendance within fifteen (15) days will result in cancellation of the settlement conference. If the parties choose to conduct the Settlement Conference at an alternate location, date and time, Plaintiff's counsel is to notify the Court in writing.

2. To adequately assess the loss mitigation options available, the homeowner or primary borrower shall mail copies of the following documents to the Court and to the lender's attorney at least 7 days prior to the settlement conference.
   (a) two (2) most recent pay stubs;
   (b) two (2) most recent bank statements;
   (c) two (2) most recent tax returns;
   (d) a worksheet containing the Defendant(s) monthly expenditures (sample attached).
   (e) **Financial documents must be provided to Plaintiff's attorney seven (7) days prior to the settlement conference**.
3. During the course of the settlement conference, Plaintiff(s), by counsel, and through the corporate representative, shall convey and explain, as necessary, any and all loss mitigation options which may be available to the Defendant(s). Those options may include one or more of the following:
   (a) Repayment Plan: The amount past due on your loan would be spread out over a certain time period.
   (b) Modification: A loan modification is a written agreement between you and the lender that permanently changes the terms of the loan.
   (c) Deed in Lieu of Foreclosure: You would transfer ownership of your home to the lender. You would be given a short period of time to move from your home. You would receive a full release of your debt, or a substantial reduction of the debt.
   (d) Reinstatement of Your Loan: You would pay the total amount past due in one lump sum
   (e) Sell Your Property: This means that your property would be sold by you prior to the foreclosure. Approval is required if your sale does not pay off your lender in full.

4. The settlement conference shall be an informal process. No evidence will be taken at the settlement conference nor any findings be made as to the allegations of Plaintiff's Complaint or any responses thereto filed by or on behalf of the Defendant(s). The parties hereto shall be prepared to negotiate, in good faith, an amicable resolution of the pending matter and shall have the authority to enter into a binding agreement at the conclusion of the settlement conference.

SO ORDERED this _____ day of _____, 2009.

_____

JUDGE, MARION SUPERIOR COURT

DISTRIBUTION:

Attorney(s) of Record
Defendant(s)

BORROWER		CO-BORROWER	
BORROWER'S NAME		CO-BORROWER'S NAME	
SOCIAL SECURITY NUMBER	DATE OF BIRTH	SOCIAL SECURITY NUMBER	DATE OF BIRTH
HOME PHONE NUMBER WITH AREA CODE (Best Number to reach borrower)		HOME PHONE NUMBER WITH AREA CODE (Best Number to reach borrower)	
WORK PHONE NUMBER WITH AREA CODE (BEST TIME TO CALL)		WORK PHONE NUMBER WITH AREA CODE (BEST TIME TO CALL)	
CELL PHONE NUMBER WITH AREA CODE (BEST TIME TO CALL)		CELL PHONE NUMBER WITH AREA CODE (BEST TIME TO CALL)	
MAILING ADDRESS (If different from property address)			
PROPERTY ADDRESS			EMAIL ADDRESS
Number of Dependants:	Do you occupy the property? Yes ☐ No ☐	Is it a Rental? Yes ☐ No ☐ Is it leased? Yes ☐ No ☐ If you have a lease agreement, please provide a copy.	
Is this a mobile home? Yes ☐ No ☐			

Is the property listed for sale? Yes ☐ No ☐
If yes, please provide a copy of the listing agreement.

Agent's Name:
Agent's Phone Number:

Have you contacted a credit-counseling agency for help? Yes ☐ No ☐
If yes, please provide a copy of the listing agreement.

Counselor's Name:
Counselor's Phone Number:

Do you pay Real Estate Taxes outside of your mortgage? Yes ☐ No ☐
If you pay it, please provide a copy of your tax statement. Are the taxes current? Yes ☐ No ☐

Have you filed for bankruptcy? Yes ☐ No ☐ If yes: Chapter 7 ☐ Chapter 13 ☐ Filing Date:
Has your bankruptcy been discharged? Yes ☐ No ☐ If yes, please provide a copy of the discharge paper.

INVOLUNTARY INABILITY TO PAY

I (We), _____, am/are requesting that the Federal Home Loan Mortgage Corporation (Freddie Mac) review my/our financial situation to determine if I/we qualify for a workout option.

I am having difficulty making my monthly payment because of financial difficulties created by *(Please check all that apply):*

☐ Abandonment of Property	☐ Excessive Obligations	☐ Military Service	Other
☐ Business Failure	☐ Fraud	☐ Payment Adjustment	
☐ Casualty Loss	☐ Illness in Family	☐ Payment Dispute	
☐ Curtailment of Income	☐ Illness of Mortgagor	☐ Property Problems	
☐ Death in Family	☐ Inability to Rent Property	☐ Title Problems	
☐ Death of Mortgagor	☐ Incarceration	☐ Transferring Property	
☐ Distant Employment Transfer	☐ Marital Difficulties	☐ Unemployment	

I believe that my situation is: ☐ Short term (under 6 months) ☐ Long term (over 6 months) Permanent

I want to: ☐ Keep my house ☐ Sell my house

Please provide a detailed explanation of the hardship on a separate sheet of paper.

If there are additional Liens/Mortgages or Judgments on this property, please name the person(s), company or firm and their respective telephone numbers.

Lien Holder's Name	$ Balance / Interest Rate	Phone Number (WITH AREA CODE)
Lien Holder's Name	$ Balance / Interest Rate	Phone Number (WITH AREA CODE)

Borrower's Signature	**Date**	**Co-Borrower's Signature**	**Date**

EMPLOYMENT (see paystubs, if attached)

BORROWER-EMPLOYER'S ADDRESS & PHONE #	HOW LONG?	CO-BORROWER-EMPLOYER'S ADDRESS & PHONE #	HOW LONG?

Monthly Income -Borrower		**Monthly Income -Co-Borrower**	
Wages	$	Wages	$
Unemployment Income	$	Unemployment Income	$
Child Support / Alimony	$	Child Support / Alimony	$
Disability Income	$	Disability Income	$
Rents Received	$	Rents Received	$
Other	$	Other	$
Less: Federal and State Tax, FICA	$	Less: Federal and State Tax, FICA	$
Less: Other Deductions (401K, etc.)	$	Less: Other Deductions (401K, etc.)	$
Commissions, bonus and self-employed income	$	Commissions, bonus and self-employed income	$

A L L I N C O M E N E E D S T O B E D O C U M E N T E D * * * * * * Pay stub must be most recent date with year to date information.

Total (Net income)	**$**	**Total (Net income)**	**$**

Monthly Expenses		**Assets**		
Other Mortgages / Liens	$	**Type**		**Estimated Value**
Auto Loan(s)	**$**	Checking Account(s)		$
Auto Expenses / Insurance	$	Saving /Money Market		$
Credit Cards / Installment Loan(s) (total minimum payment for both per month)	$	Stocks / Bonds / CDs		$
Health Insurance (not withheld from pay)	$	IRA / Keogh Accounts		$
Medical (Co-pays and Rx)	$	401k/! ESPO Accounts		$
Child Care / Support / Alimony	$	Home		$
Food / Spending Money	$	Other Real Estate	#	$
Water / Sewer / Utilities / Phone	$	Cars	#	$
HOA/Condo Fees/Property Maintenance	$	Life Insurance (Whole Life not Term)		$
Life Insurance Payments (not withheld from pay)	$	Other		$
Total	**$**	**Total**		**$**

"I agree as follows: My lender may discuss, obtain and share information about my mortgage and personal financial situation with third parties such as purchasers, real estate brokers, insurers, financial institutions, creditors and credit bureaus. Discussions and negotiations of a possible foreclosure alternative will not constitute a waiver of or defense to my lender's right to commence or continue any foreclosure or other collection action, and an alternative to foreclosure will be provided only if an agreement has been approved in writing by my lender. The information herein is an accurate statement of my financial status."

Submitted this_____ day of _____ ,20_____

By _____

Signature of Borrower

By _____

Signature of Co-Borrower

Before mailing, make sure you have signed and dated the form and attached appropriate documentation.

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION, ROOM_____
CASE NO. _____

Plaintiff(s),)

VS.)

Defendant(s).)

DEFENDANT(S) CONFIRMATION OF ATTENDANCE

AT SETTLEMENT CONFERENCE

The Defendant(s), _____

in the above-captioned cause, confirm that they _____ will_____ will not be attending _____ in person or _____by telephone, the Settlement Conference scheduled to take place in this Court on the _____ day of _____, 2009 at _____a.m./p.m.

This Confirmation is to be filed with the Court within fifteen (15) days of receiving the Notice and Order for Settlement Conference from this Court.

If the Defendant(s) will not be attending the Settlement Conference, please state the reason:

_____

_____

Dated: _____

Signature of Defendant(s):

_____

_____

MARION SUPERIOR COURT

ADMINISTRATIVE RULES

LR49-AR00-300	**EXECUTIVE COMMITTEE**
LR49-AR00-301	**ADMINISTRATIVE MANAGEMENT**
LR49-AR1(E)-302	**RULES ON CASELOAD ALLOCATION**
LR49-AR00-303	**COURT ADMINISTRATOR**
LR49-TR78-304	**JUDICIAL OFFICERS**
LR49-AR00-305	**BUDGETARY PROCEDURES**
LR49-AR00-306	**AMENDMENT OF ADMINISTRATIVE RULES**
LR49-AR15-307	**COURT REPORTER SERVICES**
LR49-AR00-308	**PURCHASES MADE WITH FEDERAL GRANT FUNDS**
LR49-AR00-309	**EX PARTE COMMUNICATION IN PROBLEM SOLVING COURTS**
LR49-AR00-310	**LATE FEES**
LR49-AR16-311	**ELECTRONIC FILING**

LR49-AR00-300. Executive Committee

A. Creation. An Executive Committee comprised of four judges: one Presiding Judge and three Associate Presiding Judges, shall exercise the power of the Court. The Executive Committee shall be elected to a two-year term of office by a two-thirds (2/3) vote of the total number of judges sitting on the Court. No more than two members of the Executive Committee may be members of the same political party.

B. Qualifications. The candidates for the Executive Committee should possess management, administrative and leadership skills, and a capacity to work effectively with other branches of government.

C. Election. The Court shall hold an election for the Executive Committee on the third Tuesday in January, 1997. The Court shall thereafter hold elections for the Executive Committee on the third Tuesday in January, every two years. Election shall be held by secret ballot.

1. Statement of Candidacy. Any qualified judge wishing to be a candidate for the Executive Committee must notify the Executive Committee in writing not less than 30 days prior to the election. The Executive Committee shall be responsible for adopting and distributing Statement of Candidacy forms. Nominations from the floor will not be accepted unless there are an insufficient number of qualified candidates on the date of the election.

2. Election. The election shall be held at a time and place to be announced by the Executive Committee. The Court Administrator shall serve as clerk of the election (hereinafter "Clerk"). The Clerk shall prepare ballots listing in alphabetical order the name and political party of each candidate for the Executive Committee. Each judge eligible to vote shall receive a ballot. Each judge shall vote in person or by absentee ballot for four candidates, no more than two of whom are members of the same political party. Any ballot, which is cast for more than four candidates or more than two candidates from the same party, shall be void and not counted.

A qualified judge may vote by absentee ballot on the form provided by the Executive Committee not less than three days prior to the election in the Court Administrator's office. **An absentee ballot is only valid for the first ballot.**

3. Process. The Executive Committee shall be elected in the following manner:

On the first ballot, each judge shall cast a ballot for four candidates no more than two of whom are members of the same political party.

On a second and subsequent ballot, each judge shall cast a ballot for the total number of vacancies remaining on the Executive Committee after the previous ballot but in no event shall the Executive Committee have more than two members of the same political party.

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1 Revised 12/04/2000

If, on the first ballot, four candidates receive a two-thirds (2/3) vote of the total number of judges sitting on the court, and no more than two are from the same political party they will comprise the Executive Committee.

If fewer than four judges receive a two-thirds (2/3) vote on the first ballot, then that judge or those judges receiving a two-thirds (2/3) vote, shall be members of the Executive Committee and other ballots shall be taken to fill the vacancy on the Executive Committee.

If a second ballot is required to complete the Executive Committee because fewer than four judges received a two-thirds (2/3) vote, all subsequent ballots shall be determined by a two-thirds (2/3) vote of those sitting judges voting in person at the time of the subsequent ballot.
If fewer than the candidates necessary to complete the Executive Committee receive a two-thirds (2/3) vote of those voting, then subsequent ballots shall be taken at which time the judge with the lowest number of votes on the previous ballot shall be dropped from the ballot and a vote taken until the Executive Committee is selected.

4. Results. The Clerk shall count the ballots and announce the vote totals. The ballots shall be retained by the Clerk for 60 days after the election and then destroyed.

5. Term. Members of the Executive Committee shall be elected to serve a two-year term and shall not be prohibited from serving additional terms.

6. Presiding Judge. The Presiding Judge of the Executive Committee shall be elected from the four members of the Executive Committee by a majority vote of the total number of judges present and voting. The remaining three members of the Executive Committee shall serve as Associate Presiding Judges.

7. Executive Committee Vacancy. Any vacancy created during the two-year term of the Executive Committee shall be filled in the following manner:

A vote to fill the position for the remainder of the term shall be taken within 30 days after the vacancy is created.

The Presiding Judge of the Executive Committee shall set a date for the election to fill the vacant position of the Executive Committee.

Any qualified judge wishing to be a candidate for the vacancy on the Executive Committee must notify the Executive Committee in writing not less than ten days prior to the election. A qualified judge shall be a judge from the same political party as the judge whose position on the Executive Committee is being filled.

The Court Administrator shall serve as the Clerk of the election, and shall prepare ballots listing in alphabetical order the name and political party of each candidate for the vacancy of the Executive Committee.

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1 Revised 12/04/2000

The election to fill a vacancy on the Executive Committee shall be filled by a vote as set out in LR49-AR00-300(C).

A judge who is elected to fill a vacancy shall serve the remainder of the term of the judge he or she is replacing.

If the vacancy is the position of Presiding Judge, when the vacancy is filled, a second ballot shall be taken with respect to the four judges comprising the Executive Committee, and the judge receiving the most votes shall become the Presiding Judge.

If the vacancy is not the position of Presiding Judge, the Presiding Judge shall continue to serve in that capacity until the end of his or her term.

If the vacancy that occurs is not the position of the Presiding Judge, the Presiding Judge shall set the date for the election and send notice to all superior court judges. The date of the election shall not be less than 30 days from the date when notice is issued.

If the vacancy that occurs is the position of Presiding Judge, the three Associate Presiding Judges shall determine the date of the election and shall serve notice in accordance with paragraph i.

Any qualified judge who wishes to run for a position on the Executive Committee shall send written notice to the Court Administrator not less than ten days prior to the scheduled election. Any notice received after the tenth day preceding the election shall be void and the judge's name shall not be added to the ballot. All notices shall be date stamped by the Court Administrator on the day received.

D. Authority. The Executive Committee is responsible for the operation and conduct of the Court. Each member of the Executive Committee shall have an equal vote in all matters pertaining to the operation of the Court. In the event of a tie, the Presiding Judge's vote shall be the tiebreaking vote. Beginning with the election of the Executive Committee in 2007, no Presiding Judge may be elected from the same political party as the Presiding Judge who served the previous term. Action may be taken upon a majority vote of the Executive Committee, except for the reassignment of a judge to a different courtroom which shall require a unanimous vote.

E. Duties. The Executive Committee shall have the following duties, which are subject to the review process as outlined in LR49-AR00-300(F):

1. Initiate policy concerning the Court's internal operations and its position on external matters affecting the Court;

2. Represent the Court in its relations with other agencies of government, the bar, the general public, the news media, and in ceremonial functions;

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1 Revised 12/04/2000

3. Counsel and assist other judges in the performance of their responsibilities in the administration of the Court;

4. Assign judges and judicial officers in the interest of speedy, economical and uniform disposition of cases;

5. Establish policies concerning such matters as personnel management, case flow management, and other areas of concern that effect the management of the Court.

6. Be responsible for the fiscal operations of the Court;

7. Appoint a magistrate under Ind. Code § 33-4-7;

8. Appoint the Court Administrator and the Chief Probation Officer; and other personnel necessary to maintain the efficient operation of the Court;

9. Review and take any action necessary concerning the performance of the Court Administrator and the Court Services Agency; and

10. Report all actions and proposed actions to the General Term through minutes or otherwise.

F. Review. With the exception of subsections (1) and (2) below, any judge affected by a decision of the Executive Committee may call for a vote to override the decision, at the first General Term Meeting following the decision. However, if there are fewer than ten days between the date of the decision and the next scheduled General Term Meeting, the vote shall be taken at the second meeting following the announcement of the decision. A decision of the Executive Committee may be overruled by a two-thirds (2/3) vote of the total number of judges sitting on the Court. A call to override a decision of the Executive Committee shall be filed in writing with the Presiding Judge with copy service to all judges sitting on the Marion Superior Court.

Re-assignment of Judges. Decisions of the Executive Committee, which re-assign a judge to a different courtroom or a substantially different type of caseload without the written consent of the affected judge, will not be effective until approved by a two-thirds (2/3) vote of the total number of judges sitting on the Court.

Staffing. Decisions of the Executive Committee, concerning staffing levels or transfer of staff employees for the Court without the written consent of the affected judge, will not be effective until approved by a two-thirds (2/3) vote of the total number of judges sitting on the Court.

G. Meetings. The Executive Committee shall meet regularly as it deems necessary. The Presiding Judge shall call and preside over meetings of the Executive Committee and other meetings of the Court.

H. Committees. The Executive Committee may establish such committees to be appointed by the Presiding Judge, as may be useful to establish policy and to consult with the Executive Committee.

LR49-AR00-301. Administrative Management

A. The Executive Committee shall, by Rules of the Court, divide the work of the Court into various divisions, including but not limited to the following:

1. Civil Division;
2. Criminal Division; and
3. Family Division

The Executive Committee shall appoint a chair for each division for a period of two years. The chairs of the divisions shall alternate between parties unless there is only one judge in a division.

B. The Executive Committee shall determine the assignment of judges following a general election as follows:

1. An incumbent judge shall be allowed the option of remaining in a particular division or room.

2. The expertise and abilities of the judge shall be given consideration.

3. Seniority shall be a primary consideration, but not the sole determinant factor. Seniority is defined as length of service as a judge on the Marion Superior or former Marion Municipal Courts

4. The desire of the particular judge regarding his or her assignment shall be given consideration.

5. The political balance of each division shall be considered along with the desire to maintain racial and gender diversity within each division. All appointments shall reflect the bipartisan composition of the Court, whenever possible.

6. Reassignment of a sitting judge to a different courtroom requires a unanimous vote of the Executive Committee.

C. The Executive Committee shall fill a vacancy on the Court in the following manner:

1. Any qualified judge wishing to be a candidate for the vacancy on the Court shall notify the Executive Committee in writing not more than ten days after the vacancy is created.
2. The Executive Committee may interview any qualified judge interested in

reassignment to fill a vacancy

3. The Executive Committee shall consider the criteria used for assignment of judges following an election in determining who shall fill a vacancy.

4. The Executive Committee shall fill the vacancy within 30 days after the vacancy is created or as soon as possible.

D. The Executive Committee shall assign cases, offices and courtrooms for judges or reassignment of newly filed cases in the interests of the speedy, economical and uniform disposition of cases.

E. Pursuant to LR49-AR00-300(G), the Executive Committee shall determine the number of hearing judges, commissioners, referees, bail commissioners, court reporters, probation officers, and other personnel required to efficiently serve the Court. The salaries of the personnel shall be fixed and paid as provided by law.

F. The Executive Committee shall prepare and administer a budget for the Court so that the Court is provided with supplies and sufficient personnel. Each judge shall appoint the judge's bailiffs, clerks, court reporters and secretary.

G. On the first Monday of each month, unless otherwise designated, the Presiding Judge of the Executive Committee shall preside over a General Term Meeting of the judges. A special order book shall be kept for the Court in which shall be entered all appropriate records, rules, orders and assignments of the Court.

1. **Voting:** Judges may cast their votes in person or by written proxy at any duly constituted meeting of the Marion Superior Court. All votes shall be by voice vote unless any judge present shall request a written ballot. Proxies may only be given to another member of the court to be exercised as directed.

2. **Special Meetings:** The presiding judge may call a special meeting upon proper notice given and shall call a special meeting at the request of at least three of the judges of the Marion Superior Court.

3. **Notice:** Notice of any special meeting shall be given in writing to each judge at least 24 hours before such scheduled special meeting.

4. **Quorum:** The presence of one-third (1/3) of the judges shall constitute a quorum for any meeting of the Marion Superior Court. Proxies shall be included in determining whether a quorum exists.

Amended effective March 26, 2021

LR49-AR1(E)-302. Rules on Caseload Allocation.

A. Purpose. Caseload allocations shall allow the judges of the Marion Superior Court to

make thoughtful, timely, reasonable and just decisions.

B. Procedure. The Executive Committee shall at least annually:

1. Review and assess literature on case flow management from any source with a view toward the improvement of the Court's case flow from filing to disposition;

2. Review and consider suggestions made by members of the bar, the public and other interested parties; and

3. Review and analyze the statistics or current workload and case flow within the Court.

   a. Civil cases shall be assigned in accordance with LR49-TR3-200 Random Filing of Civil Cases. Criminal cases shall be filed in accordance with LR49-CR 2.2-100 Random Assignment of Criminal Cases and LR49-CR 2.3-101 Case Consolidation.

   b. Any change involving caseloads, whether it is type of case or number of cases, shall require a majority vote of the Executive Committee and is subject to review under LR49-AR00-300(F)(2).

   c. In deciding changes, the Executive Committee shall give due weight to the expertise and abilities of each judge, the stress associated with the types of cases and caseloads, and the goal of keeping each judge competent in the various areas of the law. Seniority shall be a consideration, but not the determinant factor for caseload allocation or courtroom assignment.

   d. As new judges are appointed or elected to the Court, the Executive Committee shall assign them to courtrooms using the same criteria.

C. Implementation. The Clerk of the Court shall maintain systems as required to implement orders of the Court relating to case allocation.

D. Record Keeping. All matters of statistics and case flow management shall be collected and maintained by personnel in the office of Marion County Court Administration. All judges and their staffs shall be responsible for the collection and preparation of these statistics in a form and manner directed by the Executive Committee.

(*Effective January 1, 2020)*

LR49-AR00-303 Court Administrator

The Court Administrator shall have the following duties:

A. Coordinate preparation of a budget for the Court.

B. Supervise expenditures of the Court, including but not limited to the following:

1. Jury meals, lodging and *per diem* expenses;
2. Witness fees;
3. Pauper transcripts;
4. Contractual legal services;
5. Contractual professional services;
6. Maintenance agreements; and
7. Any other claims designated by the judges of the Court.

C. Report expenditures of the Court not less than quarterly to the Executive Committee.

D. Hire administrative officers for the Court Services Agency, the Domestic Relations Counseling Bureau, the Jury Pool, the Marion County Law Library, and other personnel necessary to maintain the efficient operation of the Court.

E. Supervise the management of the Court Services Agency, Domestic Relations Counseling Bureau, the General Term Reporter, and the Marion County Law Library in accordance with rules and guidelines established by the Executive Committee.

F. Provide orientation and continuing education programs for judicial officers and other Court personnel.

G. Coordinate support services to handle purchasing and explore the advantages of group purchasing for the Court.

H. Coordinate the maximum utilization of available courtrooms.

I. Develop and implement uniform personnel classifications and guidelines to comply the Fair Labor Standards Act.

J. Review and analyze the statistics of the Court and file quarterly reports with the office of the State Court Administrator.

K. Any other duties established by the Executive Committee.

LR49-TR78-304 Judicial Officers

The Court may employ judicial officers, including magistrates and commissioners, to perform limited judicial functions under the authority of the Court and subject to judicial approval. The judge or judges to whom they are assigned may recommend commissioners.

A. Qualifications. Judicial officers shall be residents of Marion County in good standing as members of the Indiana bar, be admitted to practice of law at least five years, and possess any other qualifications required by statute or rule of court.

B. Duties. Judicial officers shall assist the Court by performing such functions as conducting preliminary and interlocutory hearings in criminal and civil cases, presiding over disputed discovery proceedings, receiving testimony as referees or masters, and hearing other causes and motions, all of which are subject to judicial approval.

C. Selection. The Executive Committee may advertise notice of prospective appointments of judicial officers publicly to encourage applications for consideration. Applicants may be interviewed with regard to their potential proficiency as judicial officers. The Executive Committee may appoint a screening committee to review the applicants and make recommendations on their qualifications.

Where the application is for a Commissioner, the judge or judges to whom they are assigned shall select the applicant to be appointed by the Executive Committee. If the judges are unable to agree, the applicant shall be selected and appointed by the Executive Committee.

Appointments shall require ratification by a majority vote by secret ballot of the total number of judges sitting on the Court. The Executive Committee shall make the appointments. All appointments shall reflect the bipartisan composition of the Court, whenever possible.

D. Term. Judicial officers shall serve at the discretion of the Executive Committee. The Executive Committee shall assign magistrates. Supervising judges may recommend termination of the employment of their commissioners. If both judges agree, employment shall be terminated. If one of the supervising judges does not agree, the Executive Committee shall determine the issue of continued employment.

E. Annual Evaluation. Magistrates and Commissioners shall be evaluated annually.

LR49-AR00-305 Budgetary Procedures

A. Budgets. The Executive Committee shall prepare and submit a unified budget for the Court to be funded upon approval of the City-County Council.

B. Annual Procedure. Each year the Executive Committee shall establish a schedule for the Court and its divisions to submit a proposed budget for budget preparation, review and submission by the Executive Committee with the goal of providing for the effective functioning of the Court, as follows:

1. Each judge and administrative officer shall submit written budget requests to the Court Administrator.

2. The Executive Committee shall meet to review the budget requests and may request further information from the judges and administrative officers or any other source.

3. The Executive Committee shall establish and set budget priorities and direct the Court Administrator to prepare the budget proposal for submission to the City-County Council.

C. Allocation of Resources. The Executive Committee shall establish guidelines for allocation of individual line items in the yearly budget approved by the City-County Council. Each judge shall be allocated an adequate amount at the beginning of the year for office expenses, including supplies, stationery, equipment, association dues, disciplinary fees and travel.

D. Claims. All claims shall be submitted to the Court Administrator for review to determine compliance with budgetary policies and guidelines approved by the Executive Committee. The Court Administrator shall then forward all approved claims consistent with the Executive Committee's policies and guidelines to the Marion County Auditor for payment. Any claim or expenditures exceeding or otherwise inconsistent with budgetary policies or guidelines must be submitted to the Executive Committee for approval prior to incurring any such expense. No judge may individually approve any claim or expenditure, which exceeds the amount allocated to each judge.

E. Transfers within Budget Character. If the Court Administrator, with the approval of the judge, or a judge, determines that a transfer is necessary within budget characters and within division, they shall have the authority to sign off on that transfer for submittal to the Marion County Auditor.

F. Transfers between Budget Characters. If the Court Administrator, with the approval of the judge, or a judge, determines that a transfer between budget characters is necessary, a written proposal with explanation shall be submitted to the Executive Committee for approval. Upon approval, determination will be made if a transfer is possible. This action requires the approval of both division heads, and action by the City-County Council. If no transfer is possible, a “Request for Fiscal Ordinance” will then be presented to the Marion County Auditor for submission to the City-County Council.

G. Additional Appropriation. If the Court Administrator, with the approval of the judge, or a judge, determines that an additional appropriation is necessary, a written proposal shall be submitted to the Executive Committee for approval. Upon approval, determination will be made if a transfer is possible. This action also requires the approval of both division heads. If no transfer is possible, a “Request for Fiscal Ordinance” will be presented to the Marion County Auditor for submission to the City-County Council.

H. Mandate. The Executive Committee shall exercise all mandates for the adequate provision of court services, personnel or other expenditures.

I. Compliance with Laws. The Executive Committee and the Court Administrator shall closely monitor all budget submissions, claims, expenditures and other financial records to assure strict compliance with all laws, rules and regulations.

LR49-AR00-306 Amendment of Administrative Rules

A. The Administrative Rules of the Marion Superior Court may be amended by a majority vote of all qualified judges.

B. Any judge who wishes to propose an amendment to the Administrative Rules shall submit the proposed amendment to the Presiding Judge.

C. After receiving a proposed amendment, the Presiding Judge shall distribute copies of the proposed amendment to all judges and schedule a meeting not less than 30 days later to discuss and vote on the amendment.

LR49-AR15-307 Court Reporter Services: Model One

Application of Rule. All courts of record in Marion County, Indiana hereby adopt the following local rule by which all Court Reporter services shall be governed.

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 28A. A *page* does not include an Exhibit Page.

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 are 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 workweek.

9. *Compensatory Time* means that time off to which an employee may be entitled by reason of the employee having worked gap hours and/or overtime hours as defined herein, and for which an employee would otherwise be entitled to receive regular pay and/ or overtime pay. An employee's compensatory time off for gap hours worked shall be computed at an hour for hour basis. Compensatory time off for overtime hours worked shall be computed at a rate of one and one half compensatory time for each hour of overtime hours accrued. An employee shall receive compensatory time off for gap hours and/or overtime hours in lieu of gap and/or overtime pay.

10. *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.

11. *Court* means the particular court for which the court reporter performs services. In Marion County, pursuant to LR49-AR00 Rule 301, the Courts are broadly grouped into divisions. The divisions are as follows: Civil Division, Criminal Division, and Family Division.

12. *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.

13. *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.

14. *Private transcript* means a transcript, including but not limited to a deposition transcript that is paid for by a private party.

15. *Expedited Transcript* means a transcript that is to be completed within seven (7) days of the request for the transcript.

16. *Schedule of Transcript Supplies* means those supplies and or services necessary for the binding of the transcript and exhibit binders pursuant to Appellate Rules 28 and 29. Transcript supplies shall include, but not be limited to CD ROM disks, software disks, tabs and binders.

17. *Minimum Transcript Fee* means the minimum fee charged for the preparation of a transcript or any portion thereof.

18. *Exhibit Page* means all documentary, non-documentary and oversized exhibits and includes an index of exhibits pursuant to Appellate Rule 29.

19. *Court Reporter Agreement* means a contractual agreement between Marion County Circuit and Superior Courts, by and through its Executive Committee and Supervising Judge with the Court Reporter outlining and defining the reporter's terms of employment.

20. *Government transcript* is a transcript requested by an agent of the county or state on behalf of an indigent party, or by a prosecutor.

21. *Indigent transcript* means any transcript the Court has ordered to be prepared at no cost. (See also Appellate Rule 40.)

B. The Court Reporter shall type all transcripts outside of regular work hours and receive payment via the Court's approved transcript ordering site by the ordering party for all transcripts completed at the per page rate, with the exception of those transcripts prepared pursuant to paragraph B(9) below. Work on transcripts shall be considered and treated as private practice, except the Court Reporter shall advise the Judge when they receive a transcript request.

A Court Reporter Agreement shall be entered addressing the following topics and any other terms of employment:

1. Court Reporters shall be paid an annual salary for time spent working under the control, direction, and direct supervision of the Court during any regular work hours, gap hours, or overtime hours.

2. The annual salary paid to the court reporter shall be based upon 37.5 working hours per week.

3. The amount of the annual salary shall be set by the Marion Superior Court salary classification schedule.

4. Court Reporters shall not type any transcripts during regular work hours, except for indigent transcripts. The Court Reporter will receive payment directly from the ordering party for transcripts, except for indigent transcripts, pursuant to the per page fee schedule.

5. A Court Reporter shall be entitled to additional compensation beyond regular salary if the court reporter works beyond the regular work hours of the court, but not for preparing transcripts, except for indigent transcripts. Additional work shall be compensated under one of the two options set forth as follows:

(a) Gap hours shall be paid in the amount equal to the hourly rate of the annual salary and overtime hours shall be paid in the amount of one and one-half (1 ½) times the hourly rate of the annual salary OR

(b) Compensatory time off from regular work hours shall be given in the amount equal to the number of gap hours worked; and compensatory time off from regular work hours shall be given in the amount of one and one-half (1 ½) times the number of overtime hours worked.

6. The Marion Circuit Court through its Circuit Court Judge and the Marion Superior Court, by and through its Executive Committee and the Supervising Judge shall determine which of the preceding two (2) options listed in paragraph 5 shall be utilized.

7. If a Court Reporter elects to engage in private practice through recording a deposition and/or preparing a deposition transcript, such private practice shall be conducted outside of regular working hours.

8. If a Court Reporter elects to engage in private practice through recording a deposition and/or preparing of a deposition transcript, then the Court may agree to the use of court equipment for such purposes. The Court Reporter Agreement 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;

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

9. A Court Reporter shall prepare all indigent transcripts, as ordered by the Court, during regular working hours. There shall be no per page charge to the Court for preparation of indigent transcripts.

C. Per Page Fees: For preparation of a transcript of any proceeding in the Marion Circuit and Superior courts, the following fees shall be charged to the requester:

1. For the preparation of a county indigent transcript --- Three Dollars ($3.00).
   For the preparation of a county indigent transcript --- Three Dollars and Fifty Cents ($3.50). *Effective January 1, 2020.*
   For the preparation of a county indigent transcript --- Four Dollars ($4.00). *Effective January 1, 2021*
   For the preparation of a county indigent transcript --- Four Dollars and Fifty Cents ($4.50). *Effective January 1, 2022.*

2. For the preparation of a state indigent transcript --- Three Dollars and Fifty Cents ($3.50).

For the preparation of a state indigent transcript --- Four Dollars ($4.00). *Effective January 1, 2020.*

For the preparation of a state indigent transcript --- Four Dollars and Fifty Cents ($4.50). *Effective January 1, 2021.*

3. For the preparation of a transcript for the County Prosecuting Attorney --- Four Dollars ($4.00).

For the preparation of a transcript for the County Prosecuting Attorney transcript --- Four Dollars and Fifty Cents ($4.50). *Effective January 1, 2020*

4. For the preparation of a private transcript --- Four Dollars and Fifty Cents ($4.50).

5. For all expedited transcripts, (those to be completed within seven (7) days of the date of the request) --- Five Dollars and Fifty Cents ($5.50).

6. For the preparation of all daily transcripts, (those to be completed within 24 hours of the request) --- Eight Dollars ($8.00). A Court Reporter may charge a minimum transcript fee of Fifty Dollars ($50.00).

7. The Court Reporter's time spent assembling the transcript and exhibit binders shall be set forth and charged at the Court Reporter's regular hourly rate based upon the court reporter's annual compensation.

8. The maximum fee for copies of any transcript shall be One Dollar ($1.00) per page.

9. The maximum fee for preparing a compact disc recording of a proceeding is one dollar ($1.00), which should be paid to the Court.

10. The transcript supplies used in the preparation and assembly of the transcript and exhibit binders shall be itemized and charged in accordance with the fee schedule set out in the Schedule of Transcript Supplies and Fees on file in the Court Administrator's office.

11. Each Court Reporter shall, on an annual basis, file a written report with the Indiana Supreme Court, Office of State Court Administration disclosing all transcript fees received by the Court Reporter for the preparation of County indigent, State indigent or private transcripts. The report shall be made on forms prescribed by the Division of State Court Administration and timely filed with that office.

Amended effective March 26, 2021

LR49-AR00-308 Purchases Made with Federal Grant Funds

The Court may, from time to time, receive federal funds through grant programs or other initiatives. Pursuant to federal regulations *(including the Office of Management and Budget's*

Circular A-102, United States Department of Justice Common Rule 28CFR 66.36 and any other agency common rules associated with procurement) on sub-awards and procurement that restrict certain activities with entities that have been debarred or suspended from federal funding, the Court adopts the following rule.

A. Purchases *using Federal Funds*. Purchase orders through City Purchasing shall be required for all *grant funded purchases*. These purchases would include without limitation equipment and supplies.

B. Contractual Agreements. Services purchased from any entity with federal grant dollars shall require a contract executed by the Executive Committee. All such contracts shall then be forwarded to the City Purchasing Department, and purchase orders would then be issued for services to be performed under the terms of the contract.

C. Other Expenditure of Federal Funds. Any expenditure of federal funds other than salaries shall be subject to the procedures and requirements of the City Purchasing Department.

D. With the exception of federal fund expenditures provided for in this rule, other expenditures and purchasing procedures followed by the court are not subject to the procedures and requirements of the City Purchasing Department, except as otherwise required by statute.

LR49-AR00-309 Ex Parte Communication in Problem Solving Courts

In order to effectively monitor participant progress, a judge may initiate, permit, or consider ex parte communications when serving on therapeutic or problem-solving courts, mental health court, or drug treatment court. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others. All such communication will be promptly disclosed to all parties.

LR49-AR00-310 Late Fees

In accordance with IC 33-37-5-22 the Marion Superior Court may impose a late payment fee of $25.00 for failing to pay costs, fines or civil penalties.

MARION COUNTY LOCAL PROBATE RULES

LR49-PR00 Rule 400. TITLE, AUTHORITY, PURPOSE, SCOPE, APPLICATION AND ADDITIONAL RULES

400.1 Title. These rules shall be known as the "Marion Superior Court Probate Rules" ("Rules") and may be cited as "MSCPR" followed by the Rule number.

400.2 Authority. These Rules are adopted pursuant to the authority granted by I.C. 29-1-1-7 and are intended to supplement the provisions of the Indiana Probate Code and the Indiana Trust Code.

400.3 Purpose. The purpose of these Rules and the MSCPR forms referenced herein is to facilitate the timely, orderly and uniform resolution of probate matters by providing guidance as well as emphasizing certain applicable Indiana statutory requirements.

400.4 Scope. These Rules shall be considered as standing Orders of the Marion Superior Court 8, Probate Division ("Court") applicable in all probate matters filed in the Marion Circuit and Superior Courts, and compliance is required without further written Order of the Court.

400.5 Application of Rules of Procedure. As supplemented by these Rules and except as otherwise provided in the Probate Code or other applicable rule of law, the Indiana Rules of Trial Procedure shall apply to trial procedures in any probate matter.

400.6 Application of Local Rules. These Rules are in addition to and are not intended to replace the Marion Circuit and Superior Court Civil Rules, which rules shall apply to probate proceedings. In the event of a conflict in a probate matter, the Marion Superior Court Probate Rules shall apply.

400.7 Adoption of Additional Rules. If in any proceeding before the Court, a situation arises which is not provided for by these Rules or by any statute or rule of procedure, the Court may formulate and declare a rule of procedure for that particular case.

400.8 Effect of Amendments to Statutes. If an Indiana statute applicable to decedents' estates, guardianships, protective proceedings, or adoptions is amended or adopted by the Indiana General Assembly after the adoption of these Rules and if that new or amended statute is in conflict with these Rules, these Rules must be treated as amended to the extent necessary to make them consistent with that new or amended statute.

LR49-PR00 Rule 401. PLEADINGS AND ORDERS

401.1 Petition and Application for Appointment of Fiduciary. A petition for appointment of a fiduciary shall contain the requirements under I.C. §§ 29-1-7-5and 29-3-5-1, a proposed personal representative or proposed guardian (including a proposed co-fiduciary) shall also file an application form (MSCPR Form 401.1-Aor 401.1-B) for his or her appointment, containing

information as to the proposed fiduciary's qualification to serve as such fiduciary. The application shall include the following information regarding the proposed fiduciary's qualifications to serve:

1. current residence address if an individual and business address if a corporate fiduciary;

2. educational background;

3. the proposed fiduciary's current employment or a statement that he or she is retired or is a homemaker or stay-at-home spouse or partner;

4. all prior experience in financial management, including investments and checkbook management;

5. a statement of the proposed fiduciary's prior felony convictions, if any;

6. a statement that the Petitioner has attained the age of majority and is not incapable of performing the required fiduciary duties by reason of physical or mental illness, impairment, or infirmity.

7. a statement providing the name, office address, attorney number, telephone number, fax number and email address of the attorney for the proposed fiduciary.

8. a statement that:

a. the attorney for the proposed fiduciary has been provided with the proposed fiduciary's Social Security Number and Date of Birth; and,

b. authorizes the attorney to release the same to the Court in the event of breach of any legal or fiduciary duty.

9. As required by I.C. 29-1-10-1, if the proposed fiduciary is a nonresident individual or a corporate fiduciary, the petition must also include the following:

a. a statement that the proposed fiduciary accepts the appointment as fiduciary;

b. a statement providing the name, address and telephone number of the resident agent appointed by the proposed fiduciary to accept service of process, notices, and other documents in the fiduciary proceeding;

c. a statement that the Petitioner has agreed to submit personally to the jurisdiction of the Court in any proceeding that relates to the estate of the decedent or protected person.

401.2 Original Will or Affidavit Required.

A. All petitions to probate a Will with administration or to Spread the Will of Record must be accompanied by the original Will.

B. When an original will is offered for probate electronically then MSCPR Form 401.2, *Affidavit Regarding Original Will Offered for Probate Electronically*, must accompany the petition.

C. When a petition to probate a Will with administration is filed the party offering the Will electronically shall retain or deposit with the attorney for the Personal Representative the original of the electronically filed Will until the Decedent's estate is closed and the Personal Representative is released from liability.

D. When a petition to Spread the Will of Record is filed the party offering the Will electronically will retain or deposit with their attorney the original of the electronically filed Will until the expiration of the time for filing a will contest.

E. In the event that only a copy of the Will can be located, the copy of the Will and Proof of Lost Will and Affidavit, substantially in accordance with MSCPR Form 401.3, must accompany the petition.

401.3 When Petitions Are Required. Parties may file motions to request relief or action by the Court where motions are permitted under a generally applicable Rule of Court (such as the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence) or for purely administrative, ministerial, or scheduling matters. All other requests for relief or action by the Court shall be made by the appropriate written petition filed with the Court.

401.4 Citation to Authority. All petitions requesting relief or action by the Court should, where applicable, contain reference to the appropriate statute or rule authorizing such relief or action.

401.5 Requirement of Verification. All motions, petitions, inventories and accounts in estates or guardianships shall be notarized or verified with the statement, "I verify under the penalties for perjury that the above statements are true."

401.6 Attorney Contact Information.

A. All pleadings, motions, inventories and accounts in estates and guardianships shall contain the name, attorney number, office address, telephone number, fax number and email address of the attorney for the fiduciary.

B. All claims, motions, and pleadings filed by or on behalf of creditors or other interested persons who are not fiduciaries shall contain the name, attorney number, office address, telephone number, fax number and email address of the attorney for the creditor or other interested person.

401.7 Proposed Orders Required. A moving party shall provide proposed orders for rulings. Proposed Letters Testamentary, Letters of Administration or Letters of Guardianship shall be filed with the Petition for Appointment.

LR49-PR00 RULE 402. REPRESENTATION OF FIDUCIARIES BY ATTORNEY

402.1 Representation Required. Every personal representative and guardian of an estate must be represented at all times by an attorney of record.

402.2 Fee Agreements. If a disagreement arises with regard to attorneys' fees, the Court will consider a written contract or countersigned engagement letter as evidence of the fee agreement between the parties. All fiduciaries in supervised estates and guardianships shall be informed by counsel that fees to the attorney and fiduciary are subject to final court approval prior to payment.

402.3 Supervision and Guidance. An attorney for a fiduciary is required to reasonably supervise and guide the actions of the fiduciary unless and until said attorney is permitted by order of the Court to withdraw from representation of the fiduciary.

402.4 Attorney Notice of Possible Non-Compliance. An attorney for a fiduciary is required to notify the Court in the event the fiduciary is improperly performing his or her fiduciary duties to the protected person, creditors and beneficiaries of the estate. The notice and required proposed Order shall be substantially in accordance with the form of **MSCPR Form 402.4.** By the required signing of the Court's Instructions as provided in MSCPR 412, the fiduciary shall be deemed to have given his or her informed consent to waive the attorney-client privilege as to the filing of the notice and no other Order of the Court regarding such waiver shall be required or issued by the Court. Upon receipt of the notice, the Court will set the matter for hearing and require the fiduciary to personally appear and account to the Court for all actions taken or not taken by the fiduciary. At the hearing, the attorney shall not be required to testify as to the actions of the fiduciary unless the attorney believes that the fiduciary has committed perjury. In the event of an occurrence within the scope of the first sentence of this MSCPR 402.4, the Court deems that Rule 1.6 (b) of the Indiana Rules of Professional Conduct requires the attorney to testify as the Court directs.

402.5 Fiduciary Notice of Possible Non-Compliance. A fiduciary is required to notify the Court in writing in the event the attorney for the fiduciary is not timely performing or improperly performing his or her duties to reasonably supervise and guide the actions of the fiduciary. Upon receipt of the notice, the Court will set the matter for hearing and require the attorney for the fiduciary to personally appear and account to the Court for all actions taken or not taken by the attorney. The Court reserves the right to require the attorney to undertake certain actions and to take the performance of the attorney on behalf of the estate into consideration in ruling upon any request by the attorney for fees and expenses.

402.6 Liability Unaltered. Nothing stated in these Rules shall be considered as altering the liability imposed on the personal representative by I.C. 29-1-16-1.

LR49-PR00 Rule 403. ATTENDANCE OF PROPOSED FIDUCIARIES

403.1 The court may require that the proposed personal representatives and guardians appear before the Court to qualify.

LR49-PR00 Rule 404. CHANGE IN ADDRESS OR INFORMATION

A personal representative or guardian who changes address shall immediately advise the Court and his or her counsel of the new address. A personal representative or guardian is under a continuing order of the Court to personally advise the Court and the attorney of record in writing as to any change in the information provided in compliance with MSCPR 401.

LR49-PR00 Rule 405. NOTICE

405.1 Whenever notice of any hearing or trial is given, it is the responsibility of the moving party to submit proof of service. If the Court issues an order or notice on its own motion to schedule a hearing or trial, the Court will choose the appropriate means of making and confirming service, and the preceding sentence will not apply.

405.2 Copies of the subject motion or petition must be served with all notices of hearing.

405.3 Whenever any estate or guardianship account (including a final account in a supervised estate) is set for hearing, copies of the account must be served with notice of hearing.

LR49-PR00 Rule 406. UNSUPERVISED ADMINISTRATION OF DECEDENTS' ESTATES

406.1 Statutory Requirements. A Petition for administration of a decedent's estate without court supervision, filed in compliance with MSCPR 401 and accompanied (where applicable) by an Application under paragraphs 10 or 11 of MSCPR 401.1, may be granted if the requirements of I.C. §§29-1-7.5-2(a) or 29-1-7.5-2(b) are satisfied. Once a petition for administration without court supervision has been granted pursuant to such statute, a personal representative's authority shall not be subject to any requirement of Court approval or confirmation or be open to collateral attack on account of any defect or irregularity in the proceedings resulting in issuance of the order of no supervision.

406.2 Supervised Estate Required - Minor Children. Notwithstanding a provision in a Will specifically authorizing unsupervised administration, if there are minor distributees, the Court may order supervised administration or in the alternative may appoint a guardian *ad litem* to represent the interests of the minor distributees.

406.3 Instructions to Personal Representatives. *See* MSCPR 412.3.

406.4 Surety Bond. *See* MSCPR 407.1.

406.5 Inventory. In all unsupervised estates, the personal representative shall, within two (2) months of appointment either:

A. file an inventory conforming with the requirements of I.C. §29-1-7.5-3.2 (b) and forthwith serve a copy of the inventory on all known heirs, beneficiaries or distributees, or,

B. file a verified certification that an inventory conforming with the requirements of I.C. §29-1-7.5-3.2 has been prepared, that it is available to be furnished to distributees on request and that notice of preparation of the inventory and its availability has been forthwith served on all known heirs, beneficiaries or distributees.

406.6 Orders and Matters Considered in Unsupervised Estates. In the administration of an unsupervised estate, the Court's involvement shall in most cases be limited to the opening and closing of the estate and the determination of Indiana inheritance tax due. Unless revocation of unsupervised administration occurs pursuant to the provisions of MSCPR 406.8, invocation of the Court's jurisdiction on any other matter presented for its determination shall not convert the estate to supervised administration.

406.7 Orders and Sales of Property. In unsupervised estates, the Court will not issue an order approving closing statements or an order discharging the fiduciary. The sale of personal property or real estate in unsupervised estate administration may be accomplished without approval of the Court.

406.8 Revocation of Unsupervised Administration. Pursuant to I.C. §29-1-7.5-2 (d), the Court may, on its own motion or the motion of an interested person, revoke an order of unsupervised administration and require an administration on terms and conditions which the Court specifies, if the Court finds that such a revocation is in the best interests of the estate, creditors, taxing authorities, heirs, legatees, or devisees. If the estate is converted to a supervised estate, the unsupervised cause number originally assigned to the estate shall remain the same.

406.10 Time for Closing. *See* MSCPR 415.4.

406.11 Costs and Claims Paid. All Court costs shall be paid and all claims satisfied and released on or before the date of the filing of the closing statement.

406.12 Insolvent Estates. An insolvent unsupervised estate may be closed as an unsupervised estate or may, upon the petition of the personal representative or any interested person, be converted to a supervised estate and closed as such.

LR49-PR00 Rule 407. BONDS IN ESTATES AND WILL CONTESTS

407.1 Except as hereinafter provided, in every unsupervised and supervised estate the personal representative shall file a corporate surety bond in an amount determined by the Court to be adequate to protect distributees, creditors and taxing authorities.
407.2 Except as provided in MSCPR 407.7, no surety bond is required where a corporate banking fiduciary qualified by law to serve as such is either the fiduciary or one of several co-fiduciaries.

407.3 No surety bond is required in a solvent estate where the decedent's spouse serves as personal representative and is the sole distributee.

407.4 Where a Will provides that bond be dispensed with, the Court shall nonetheless fix a bond in an amount adequate to protect creditors and taxing authorities.

407.5 Where the personal representative is a distributee, the bond may be reduced by the personal representative's estimated net distributive share, but the Court will fix a bond adequate to protect other distributees (if any), creditors and taxing authorities.

407.6 Where all distributees consent in writing that the personal representative serve without bond, the Court will nonetheless determine whether to require a bond in an amount adequate to protect creditors and taxing authorities.

407.7 As required by I.C. §29-1-10-1, if the petitioner is a nonresident individual or corporate fiduciary, or if an appointed fiduciary becomes a nonresident of Indiana, the petitioner must file a bond in an amount: (A) not less than: (i) the probable value of the estate's personal property; plus (ii) the estimated rents and profits to be derived from the property in the estate during the probate period; and (B) not greater than the probable gross value of the estate.

407.8 Bond in Will Contests. Upon the initiation of a Will Contest, the plaintiff(s) must file a bond conditioned for the due prosecution of the proceedings and for the payment of all costs if in the proceedings judgment is rendered against the plaintiff. Since in Indiana, "costs" is a term of art with specific legal meaning including only filing fees and statutory witness fees and since I.C. §33-37-10-3 provides that witness fees are five dollars ($5.00) per day, unless circumstances presented to the Court dictate otherwise, plaintiffs will be required to deposit with the Clerk of the Court the sum of five hundred dollars ($500) as the required bond, or, alternatively, may file a corporate surety bond in the amount of five hundred dollars ($500).

LR49-PR00 Rule 408. INVENTORY IN ESTATES

408.1 In all supervised estates, the personal representative shall file an inventory conforming to the requirements of IC §29-1-12-1 within two (2) months of appointment and shall forthwith serve a copy of the inventory on all known heirs, beneficiaries or distributees.

408.2 In all unsupervised estates, the personal representative shall comply with MSCPR 406.5.

408.3 Inventory Sealed. Upon written application by the personal representative, and only after a hearing conducted under Administrative Rule 9(H) upon notice to all interested persons, the Court may, in its discretion, order an inventory, or any supplement or amendment to it, to be sealed. If so ordered, it may not be opened without an order of the Court, after notice to the personal representative and an opportunity for hearing. In the event a supplement or an

amendment to an inventory is filed, all such subsequent inventories must contain a recapitulation of prior inventories.

LR49-PR00 Rule 409. BONDS IN GUARDIANSHIPS

409.1 Except as otherwise determined by the Court, in every guardianship, the guardian shall post a corporate surety bond in an amount determined by the Court to be adequate to protect the assets of the protected person.

409.2 Subject to the discretion of the Court, the guardian shall not be required to post a surety bond if:

(a) a resident corporate banking fiduciary qualified by law to serve as such is either the fiduciary or one of several co-fiduciaries, or,

(b) the Court determines that the guardianship assets are of such insufficient amount as to not justify the cost of the bond.

409.3 Subject to the discretion of the Court, in lieu of a bond otherwise required by law or by the Court, a Guardian may restrict transfer of all or part of the liquid assets of a Guardianship by placing those assets in a federally-insured financial institution or in a brokerage account (or any combination of the two) with the following restriction placed on the face of each account or document creating or evidencing the account:

NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT WRITTEN ORDER OF THE MARION SUPERIOR COURT 8, PROBATE DIVISION.

409.4 At the time the Court authorizes the creation of the account in lieu of a bond, the fiduciary and his or her attorney shall execute the Court's attorney's undertaking making the attorney personally responsible for the deposit of the funds in a restricted account. The attorney’s undertaking shall be substantially in accordance with the form of **MSCPR Form 409.4**.

409.5. Within thirty (30) days after an Order authorizing the creation of the account or investment, a certificate by an officer of the institution at which the account or investment has been created shall be filed with the Court which affirms that the account or investment is restricted as required by Court order. The certification shall be substantially in accordance with the form of **MSCPR Form 409.5.**

409.6 The guardian and the financial institution shall both promptly notify the Court in writing in the event that any principal or interest is withdrawn from the account without Court authorization.

LR49-PR00 Rule 410. INVENTORY IN GUARDIANSHIPS

410.1 Inventory. An inventory and appraisement shall be prepared by the guardian and filed with the Court within ninety (90) days after appointment as permanent guardian or within thirty (30) days after appointment of temporary guardian.

410.2 Petitions to Sever Jointly Owned Property. If a guardian seeks under I.C. §29-3-8-6.5 to sever title to title to property jointly owned by the protected person and another, the guardian shall file a petition with the Court, with notice to all co-owners of the jointly held property interest. The Court may approve any petition under this MSCPR 410.2 without a hearing, and upon a showing by the guardian that the total value of the jointly-titled property to be severed is nominal or is *de minimis* in comparison to the time and cost of a petition or providing notice to all co-owners, the Court may waive the requirements of the preceding sentence regarding an advance petition or notice to co-owners or both.

410.3 Inventory Sealed.] Upon written application by the guardian, and only after a hearing conducted under Administrative Rule 9(H) upon notice to all interested persons, the Court may, in its discretion, order an inventory, or any supplement or amendment to it, to be sealed. If so ordered, it may not be opened without an order of the Court, after notice to the guardian and an opportunity for hearing. In the event a supplement or an amendment to an inventory is filed, all such subsequent inventories must contain a recapitulation of prior inventories.

LR49-PR00 Rule 411. ACCOUNTINGS PROCEDURES AND REPORTS

411.1 Statutory Format for Accountings. In any guardianship or supervised estate, the personal representative or the guardian of the property must file each accounting in the three-schedule format required by I.C. §29-1-16-4. Informal, handwritten or transactional accountings will not be accepted. Each disbursement (expenditure or distribution) must appear as a separate line item and must include the following information:

(a) Date of the disbursement;

(b) Check number or other identifying number for the method of payment used;

(c) The payee's name;

(d) The amount of the disbursement; and

(e) If the purpose or reason for the disbursement is not apparent from the information presented under (a) through (d), a brief description of the purpose or reason that is sufficient to show that the disbursement was made in the course of the proper administration of the estate or, in a guardianship, was made for the support or benefit of the incapacitated person or minor.

The following example of a disbursement line item contains sufficient detail to comply with this MSCPR 411.1:

01-27-2011 ck 205 Brown and Smith CPAs Decedent's 2011 Form 1040 prep. 800.00

An Indiana inheritance tax exemption affidavit described in I.C. §6-4.1-4.0.5 is not required to be filed with the Court, but the Court will accept a copy of such an exemption affidavit as a supplement to an estate accounting under this Rule, provided that the filer complies with Administrative Rule 9(G) by redacting the decedent's social security number and any full account numbers from the copy filed.

411.2 Satisfying "Voucher" Requirement. I.C. §29-1-16-4 requires a fiduciary to file "receipts for disbursements of assets," or "vouchers," and authorizes the Court to permit other methods of substantiating the amounts and purposes of disbursements. Only a corporate fiduciary (bank or trust company) may submit an affidavit confirming that all disbursements have been made as reported in the accounting, instead of filing receipts or vouchers. In order to satisfy the receipt or voucher requirement, a fiduciary who is an individual must file, with each accounting, one of the following types of proof for each disbursement reported in that accounting:

(a) A copy of the front of a canceled (paid) check;

(b) A digital image of the check as paid by the financial institution holding the estate's account, reproduced from the institution's records or from a periodic account statement;

(c) For distributions, a receipt signed by the distributee, confirming the payee's identity and the amount and approximate date of the distribution;

(d) For disbursements (other than distributions) to third-party creditors or providers of goods and services, a receipt signed by the payee or its authorized agent, bearing the payee's name and business address, and stating the amount, the purpose, and the date of the disbursement;

(e) For electronic fund transfers, wire transfers, or debit card transactions, a copy of the digital or paper record confirming the payee's identity and the date and amount of the disbursement; or

(f) In the court's discretion, other satisfactory proof showing the identity of the payee and the date and amount of the disbursement.

Documents described in (a), (b), (c), or (e) are prima facie evidence of payment.

411.3 Reimbursements to the Personal Representative. If the personal representative of a supervised or unsupervised estate uses his or her personal funds to pay funeral and burial or cremation expenses or administration expenses after the decedent's death, then without the approval of the Court or the advance consent of the distributees, that personal representative may reimburse himself or herself with estate funds for:

(a) Funeral, burial or cremation expenses paid by the personal representative out of personal funds and reimbursed out of estate funds within the statutory period under I.C. §29-1-14-1(a) for filing creditor claims, and

(b) Administration expenses paid by the personal representative out of personal funds and reimbursed out of estate funds at any time before administration is concluded,

provided that the personal representative fully and accurately documents the payment of and reimbursement for each such expenditure in the accounting filed or issued under I.C. 29-1-16 or 29-1-7.5-4(a)(6). All reimbursements permitted under the preceding sentence remain subject to objection by distributees and other persons whose interests are affected and subject to the approval or disapproval of the Court. This MSCPR 411.3 does not apply to claims by the personal representative against the decedent that arose before the decedent's death, and which are governed by I.C. §§29-1-14-2 and 29-1-14-17 and MSCPR 414.3.

411.4 Disbursements to the Guardian. In guardianships and without the advance approval of the Court, the guardian may reimburse himself or herself out of guardianship for all reasonable expenditures made from the guardian's personal funds for the benefit of the minor or protected person or for the preservation of guardianship property, *provided* that the guardian fully and accurately documents the original payment of and the reimbursement for each such expenditure in the guardian's next accounting. All reimbursements permitted under this MSCPR 411.4 remain subject to the later approval or disapproval of the Court.

411.5 Accountings in Guardianships. Within thirty (30) days after the second anniversary of his or her appointment as guardian of the property of a minor or incapacitated adult, and every two years thereafter, the guardian must file with the Court a verified accounting that complies with MSCPR 411.1 and 411.2, except that a guardian need not file bank account statements as support for an accounting other than a final accounting unless ordered to do so by the Court. Nothing in these Rules or in the guardianship statutes prohibits a guardian of the property from filing and seeking approval of accountings and allowances of guardian compensation and attorney fees on an annual basis, or at a time other than an anniversary date because of some change in the health, needs, or circumstances of the minor or incapacitated adult.

411.6 Public or Pension Benefits. If a guardian receives Social Security benefits, public benefits (such as food stamps, SSI, etc.), pension distributions, or annuity or IRA distributions on behalf of the incapacitated person or minor, the guardian must account fully for each such benefit or distribution so received, unless (a) the Court determines that the incapacitated person's incapacity is limited enough to permit him or her to live with some independence and less supervision (consistent with I.C. §29-3-8-3(4)) and to have direct access to some funds from Social Security, public benefits, other distributions, or wages from supervised employment, or (b) the Court has previously granted approval to allow such benefits or distributions to be paid to a residential or health care facility that has physical custody of the minor or incapacitated person.

411.7 After Acquired Assets. Unless an amended inventory is filed, estate or guardianship assets acquired or discovered after the filing of the inventory or most recent previous accounting must be identified by the following information in the next accounting filed, as to each new item of income or principal: (a) a description of the property; (b) the amount received or the value of the property; (c) the approximate date of receipt; and (d) if the property received is classifiable as income, identification of the asset (e.g., shares of stock or a specific mutual fund) that was the source of the income.

411.8 Sales or Changes in Asset Value. If a sale, exchange, redemption, change in investment, or increase or loss in market value (capital change) occurs with respect to a guardianship or estate asset, the fiduciary must include the following information in the accounting: (a) the description of the asset sold, redeemed, exchanged, or lost, or with respect to which the market value changed; (b) the last value previously reported for the asset in the inventory or previous accounting; (c) the amount of gain, loss, or change of value; and (d) if a sale, exchange or redemption occurred, the date of the transaction and a description of the sales proceeds or other property received in the transaction. The fiduciary may report all such capital changes in a separate section of the accounting.

411.9 After Accrued Expenses. Expenses accrued after the filing of the inventory or most recent accounting shall be accounted for in an amended inventory or the next accounting pursuant to MSCPR 411.1.

411.10 Property at the End of an Accounting Period. When a personal representative or guardian files an accounting under MSCPR 411.1 or MSCPR 411.5, he or she must include, in the last schedule of the accounting, the following information with respect to the money or property that is on hand in the estate or the guardianship estate as of the ending date of the accounting period: (a) a description of each asset or investment, such as the name and partial account number of each account held with a financial institution, securities broker, or mutual fund; (b) the value or closing balance of each such asset or investment as of the ending date (market values as of the last statement date are sufficient for publicly-traded investments); and (c) for real property or tangible personal property, the cost basis or inventory value of such property, as most recently revised (if at all) in a schedule of capital changes under MSCPR 411.9. With each accounting, the personal representative or guardian must file copies of pages from bank account statements, brokerage or mutual fund statements, etc. for the months in which the beginning and ending dates of the accounting period fall, in order to confirm that the beginning and ending asset balances for the estate or guardianship estate agree with the opening and closing total mounts shown in the accounting.

411.11 Sale or Transfer of Real Property

A. *Documentation of Value*. In all supervised estates and guardianships in which real property is to be sold, a written appraisal or market analysis by a qualified real estate professional shall be filed with the Petition for Sale, unless such document was previously filed with the Inventory. Such written appraisal or market analysis shall include the following information: (a) a brief description of the property interest being appraised or valued, including the full legal description thereof; (b) purpose or objective of the appraisal or valuation; (c) date for which Fair Market Value is determined; (d) if valuation is established through the comparable method of valuation, identification of the comparable sales used to value the subject property as well as identification of all adjustments made to the comparable sale to determine the fair market value of the subject property; (e) if valuation is established through another method of valuation, all data and reasoning that supports the Fair Market Value; (f) the Fair Market Value determined; (g) a statement of assumption and special or limiting conditions; (h) the qualification and background of the real estate professional; (i) certification of disinterest in the real property; (j) signature of the real estate professional.

B. *Limitations Period for Valuation.* The appraisal or market analysis shall be made within one (1) year of the date of the Petition for Sale.

C. *Deeds.* The Court does not approve the form of deeds for the sale of real property in an estate or guardianship.

D. *Will Contains Specific Power to Sell.* If the decedent's probated Will expressly gives the personal representative the specific power to sell "property of the estate" or "real property" "without order of court," "without court approval or supervision," or in words with substantially the same effect, the personal representative of a supervised estate need not comply with the petition and appraisal or valuation requirements of this MSCPR 411.11**.**

411.12 Sale of Personal Property.

A. *Documentation of Value.* In all supervised estates and guardianships in which personal property is to be sold, a written basis for valuation shall be filed with the Court with the Petition for Sale, unless such document was previously filed with the Inventory. The written basis for valuation shall include the following information: (a) brief description of the property to be sold; (b) the date and basis of valuation; (c) the qualifications of the person providing the valuation or the authoritative nature of the source from which the valuation was obtained, including authoritative sources accessed by electronic media; (d) factors which would affect the value of the subject property.

B. *Limitations Period for Valuation.* Written basis for valuation shall be made within one (1) year of the date of the Petition for Sale.

C. *Written Valuation Not Required.* No written appraisal shall be required for the sale of assets which are traded in a market and the value of which is readily ascertainable. Such assets include, but are not limited to, stocks, bonds, mutual funds, commodities, precious metals and items sold at public auction. In addition, upon a showing that non-publicly-traded personal property has a value that is small in comparison to the cost of obtaining a written appraisal, the Court may waive the appraisal requirement under this MSCPR 411.2.

D. *Will Contains Specific Power to Sell.* If the decedent's probated Will expressly gives the personal representative the specific power to sell "property of the estate" or "personal property" "without order of court," "without court approval or supervision," or in words with substantially the same effect, the personal representative of a supervised estate need not comply with the petition and appraisal or valuation requirements of this MSCPR 411.12**.**

411.13 Guardian's Current Reports. Current reports filed by a guardian of the person shall state the present residence of the incapacitated person and a statement of the incapacitated person's current condition and general welfare. If the incapacitated person is an adult, a report of a treating physician shall be filed with the current report verifying that the incapacity of the person remains unchanged since the date the guardianship was established or the date of the last current report.

411.14 Guardian's Bond. If a Guardian's bond is required, the guardian shall submit to the Court proof of payment of current premiums due on said bond. Failure to comply with this section may result in removal of the guardian.

411.15 Transfer Tax Closing Letters. When a Final Report (Closing Statement) is filed in an unsupervised estate or when a Supplemental Report of Distribution is filed in a supervised estate, the personal representative must attach copies of the following documents to the Court's original copy of the Report:

(a) The federal estate tax closing letter, if any;

(b) The Indiana inheritance tax closing letter (unless the Report recites that an inheritance tax exemption affidavit has been filed or recorded under I.C. §6-4.1-4-0.5); and

(c) The Treasurer's official receipt showing full payment of the Indiana inheritance tax and estate tax (if any) that was due.

The personal representative must block out the decedent's social security number on the copies that are attached to or filed with the Report under this MSCPR 411.5. The personal representative may (but is not required to) file the copies of any or all of the documents described in (a), (b), and (c) on light green paper, consistent with Admin. Rule 9(G) and Trial Rule 5(G).

411.16 Petitions to Determine No Inheritance Tax Due. In a petition under I.C. §6-4.1-5-7 to request an order determining that no Indiana inheritance tax is due, the personal representative or trustee who files the petition must state sufficient information to show that no transferee (distributee or beneficiary) has received or will receive assets with a total value exceeding his or her inheritance tax exemption. Such required information includes but is not limited to a statement of the total value of the decedent's property transfers that would be reported on an inheritance tax return if one were filed. A copy of an inheritance tax exemption affidavit described in I.C. §6-4.1-4-0.5 may be filed with the Court, provided that the decedent's social security number is redacted from the affidavit, and the filer of a petition under I.C. §6-4.1-5-7 may cite and rely on that filed affidavit. If the petition (and any attached or accompanying documents) contain information sufficient to show that no inheritance tax is or will be due, then in the absence of any objection by interested persons, the Court will enter an order under I.C. §6-4.1-5-8 without holding a hearing.

LR49-PR00 Rule 412. INSTRUCTIONS TO FIDUCIARIES

412.1 Instructions to Guardians. The Court's Instructions to the guardian, executed by the guardian and his or her attorney, must be filed with the Court prior to Court appointment and the issuance of letters. These Instructions are to be considered as direct Orders of the Court. Instructions to Guardian **MSCPR Form 412.0** (when the guardianship will be of the person only) or **MSCPR Form 412.1** (when the guardianship will apply to the minor's or incapacitated adult's property) must be completed and filed with the Court. No substitute form will be accepted by the Court.

412.2 Instructions to Personal Representatives of Supervised Estates. The Court's Instructions to the personal representative of a supervised estate, executed by the personal representative and his or her attorney, must be filed with the Court prior to Court appointment and the issuance of letters. These Instructions are to be considered as direct Orders of the Court. Instructions to Personal Representatives of Supervised Estates **MSCPR Form 412.2** must be completed and filed with the Court. No substitute form will be accepted by the Court.

412.3 Instructions to Personal Representatives of Unsupervised Estates. The Court's Instructions to the personal representative of an unsupervised estate, executed by the personal representative and his or her attorney, must be filed with the Court prior to Court appointment and the issuance of letters. These Instructions are to be considered as direct Orders of the Court. Instructions to Personal Representatives of Supervised Estates **MSCPR Form 412.3** must be completed and filed with the Court. No substitute form will be accepted by the Court.

LR49-PR00 Rule 413. GUARDIANSHIPS

413.1 Presence of Incapacitated Person. In all guardianship or protective proceedings seeking to declare an adult incapacitated, either the person alleged to be incapacitated shall be present at the hearing, or the petitioner shall present sufficient medical evidence to establish that a court appearance would result in injury to the person's health or safety. An opinion that the person would have difficulty in understanding the procedure or might say something inappropriate is not sufficient reason alone for absence.

413.2 Physician's Report. In all guardianship proceedings seeking to declare an adult incapacitated, a Physician's Report by the doctor treating the alleged incapacitated person, or such additional evidence as the Court may require, shall be presented to the Court at the time the petition is filed or on the date of the hearing. The Physician's Report shall substantially comply with MSCPR Form 413.3. No determination will be made without a supporting medical report or testimony at hearing. In the event the guardianship proceeding is contested, the Physician's Report shall be considered as hearsay unless the parties stipulate to its admissibility.

413.3 Notice. Consistent with I.C. § 29-3-3-4(a) and (b), no guardian of an adult shall be appointed or protective order entered without notice to the alleged incapacitated person or to his duly appointed attorney-in-fact (if known), except upon verified allegations that delay may result in immediate and irreparable injury to the alleged incapacitated person or loss or damage to property. The petitioner shall certify to the Court in writing the efforts, if any, that have been made to give notice and the reasons supporting the petitioner's claim that advance notice should not be required.

413.4 Appointment of Guardian *Ad Litem* or Attorney. The Court may in its discretion determine that the alleged incapacitated person should have a guardian *ad litem* or attorney appointed to represent his or her interests, and the hearing for appointment of a guardian for the alleged incapacitated person may be continued by the Court for that purpose. A guardian *ad litem* will be paid reasonable compensation, considering the needs of the alleged incompetent

person, the nature and relative difficulty of the services provided, local custom, the availability or limitations of resources of the alleged incompetent person's estate, and, in the discretion of the Court, any other considerations deemed relevant under the circumstances of the case.

413.5 Petition For Guardianship of A Minor. In every petition for the appointment of a guardian of the person of a minor child, in addition to the statements required by I.C. § 29-3-5-1(a) and MSCPR 401.1, the following information shall also be contained in the petition:

1. The present address of the child.

2. The places where the child has resided during the past two years, and the names and present addresses of the persons with whom the child has lived during that period. If such information is not available, the petition should state the reason for such unavailability.

3. Whether, to petitioner's knowledge, any other litigation is pending in this state or in any other state concerning the custody of the child.

4. Whether, to petitioner's knowledge, any person not a party to the guardianship proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child.

The Court may, in its discretion, initiate such further investigation, and obtain a report by the Indiana Department of Child Services, pursuant to I.C. § 29-3-9-11.

413.6 Hearings. Hearing shall be held by the Court on any petition seeking guardianship over an adult alleged to be an incapacitated person. The court reserves the right to require and to hold a hearing on any petition seeking a guardianship over a child's person or property, but the Court may waive the necessity for a hearing based on all the material facts and circumstances, including but not limited to a showing that all interested persons entitled to notice under I.C. § 29-3-6-1 have given written waivers notice of a hearing or the necessity for a hearing.

413.7 Restricted Accounts.

1. In guardianships over the estate of a minor, unless otherwise authorized by the Court, funds shall be placed in a restricted account designating that no principal or interest may be withdrawn without written order of the Court.

2. Prior to the issuance of letters in a guardianship over a minor's estate or the compromise of a minor's claim, the guardian and attorney shall execute the Court's attorney's undertaking making the attorney personally responsible for the deposit of the funds in a restricted account. The attorney's undertaking in a guardianship shall be substantially in accordance with the form of MSCPR Form 409.4. With respect to compromise of a minor's claim, *see* MSCPR 418.6 and MSCPR Form 418.6(A).

3. Within thirty (30) days after the Order authorizing the creation of the account, a certification by a financial institution that a properly restricted account has been created in accordance with

this MSCPR 413.8 shall be filed. The certification shall be substantially in accordance with the form of **MSCPR Form 409.5**.

4. The guardian and the financial institution shall both promptly notify the Court in writing in the event that any principal or interest is withdrawn from the account without Court authorization.

413.8 Power of Attorney. An appointment of a guardian over an estate shall not operate to terminate a power of attorney, unless the power of attorney instrument provides for termination upon the incapacity of the principal. A guardian shall not have power over property or health decisions that are subject to a valid power of attorney, and cannot revoke or amend a power of attorney on behalf of a principal. A guardian seeking to revoke a valid power of attorney must obtain Court approval which can be granted only after hearing and notice to the attorney in fact.

413.9 Rules of the Veteran's Administration. Nothing contained in these rules shall amend or supersede the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States, and every guardian appointed by the Court or the attorney for such guardian shall comply with those Rules and Regulations, if applicable.

LR49-PR00 Rule 414. CLAIMS AGAINST ESTATES

414.1 Except as hereinafter supplemented, all claims filed against an estate shall comply with and be governed by the provisions of I.C. 29-1-14.

414.2 If a claim is disallowed or neither allowed or disallowed by the personal representative within three (3) months and fifteen (15) days after the date of first published notice to creditors, the claimant shall pay to the Clerk of the Court the fee for filing a new cause of action and the claim will be assigned a new cause number in the Court and tried pursuant to the Indiana Rules of Trial Procedure. Failure of the claimant to pay the filing fee subjects the claim to dismissal pursuant to T.R. 41.

414.3 Personal Representative Claim. Pursuant to I.C. §29-1-14-17, if a personal representative files a claim against the estate which the personal representative represents accrued before the death of the decedent, with the affidavit of the claimant attached, the claim shall not be acted upon by the personal representative unless all interested persons who would be affected by the allowance of the claim consent in writing to it. If the personal representative determines, either before or after filing the claim, that all interested persons do not consent to the allowance and payment of the claim, the personal representative shall promptly report that fact to the Court and shall ask the Court to appoint a special personal representative, who shall then represent the estate with respect to that claim. Failure to comply with this MSCPR 414.3 shall be grounds for automatic dismissal of the claim with prejudice.

LR49-PR00 Rule 415. TIME FOR CLOSING ESTATES

415.1 Personal representatives shall comply with I.C. §29-1-16-2, which provides as follows: "Every personal representative shall close the estate as promptly as possible. Unless for good cause shown, the time for filing the final account in the estate shall not exceed one (1) year from the appointment of a personal representative."

415.2 Good cause for not closing a supervised estate within one (1) year may be shown by filing an intermediate account within thirty (30) days after the expiration of one (1) year. Such accounting shall comply with the provision of I.C. §§29-1-16-4 and I.C. 29-1-16-6.

415.3 The intermediate account shall be accompanied by the personal representative's Petition for Extension of Time which shall include the following: (a) a statement of facts showing why the estate cannot be closed; (b) estimated date of closing; (c) a proposal for partial distribution of the estate to the extent that partial distribution can be made without prejudice to distributees and claimants.

415.4 A closing statement shall be filed within one (1) year after opening an unsupervised estate. In the event the estate cannot be closed within that time period, the personal representative shall file a Petition for Extension of Time which shall include the following: (a) a statement of facts showing why the estate cannot be closed; (b) estimated date of closing; (c) a proposal for partial distribution of the estate to the extent that partial distribution can be made without prejudice to distributees and claimants.

415.5 Failure to close within one (1) year or show cause why estate cannot be closed may be grounds for removal of the personal representative, pursuant to I.C. §29-1-10-6, and for reduction or forfeiture of personal representative fees and attorney fees.

LR49-PR00 Rule 416. WRONGFUL DEATH ESTATES

416.1 All proposed wrongful death settlements must be approved by the Court, whether the estate is supervised, unsupervised, or a special administration for the sole purpose of prosecuting the wrongful death claim.

416.2 When an estate remains open one (1) year, the personal representative shall file a Petition for Extension of Time which shall include the following: (a) a statement of facts showing why the estate cannot be closed; (b) estimated date of closing; (c) if an action is pending, the cause number and the court.

416.3 When a judgment has been paid or a petition for approval of settlement is filed in any estate, a petition shall be filed showing proposed distribution, in accordance with I.C. §§34-23-1-1, 34-23-1-2 and 34-23-2-1. Such petition must set out the proposed distribution to the appropriate statutory damage distributees, such as:

1. Expenses of administration;
2. Providers of funeral and burial expenses;
3. Providers of medical expenses in connection with last illness of decedent;

4. Surviving spouse;
5. Dependent children;
6. Dependent next of kin (if there is no surviving spouse or dependent children).

A proposed order shall be presented to the Court, ordering distribution in accordance with the above cited statutory provisions and requiring that a final account as to the wrongful death proceeds be filed within thirty (30) days.

LR49-PR00 Rule 417. ADOPTIONS

417.1 Final Hearings. Except for good cause shown, no final hearings in adoption proceedings shall take place until the adopting couple (including birth parent and adopting stepparent, cohabitating couples, and same sex couples) have been married or cohabitated for at least one (1) year.

LR49-PR00 Rule 418. MINOR'S SETTLEMENTS

418.1 Guardian *Ad Litem*. In accordance with the Indiana Code, a guardian *ad litem* may be appointed to protect the best interest of the minor and investigate the proposed settlement.

418.2 Evidentiary Hearing. The Court will hold a hearing on a proposed settlement of a minor's claim if a hearing is requested by the petitioner, by the guardian ad litem (if any), or by any other interested person, and the Court may schedule and hold an evidentiary hearing on its own motion after receiving and reviewing the Petition and the terms of the proposed settlement, in order to satisfy the Court that the requested settlement fully protects the minor's rights and interests. Unless the preceding sentence applies, the Court will normally consider and rule upon proposed minor's settlements in chambers and without an evidentiary hearing.

418.3 Minor's Consent to Settlement. If the minor is at least fourteen (14) years of age, the proposed settlement shall be accompanied by a written consent to settlement by the minor.

418.4 Attendance at Hearings. If an evidentiary hearing is ordered under MSCPR 418.2, the following persons must be present at the hearing: (a) the custodial parent or the guardian; (b) a minor who is at least the age of fourteen (14) years; and (c) at the discretion of the Court, minors younger than fourteen (14) years of age. Further, unless a written waiver and consent is provided to the Court, a non-custodial parent of the minor has the right to attend the hearing and must be provided with notice of the hearing.

418.5 Limited Settlements or Administration.

1. If the funds originating from a minor's settlement are less than the amount requiring establishment of guardianship under the Indiana Code or if a guardian of a minor's estate is appointed for the limited purpose of administration of the minor's settlement, the Court will accept the deposit of the minor's settlement in a restricted account at a federally insured financial institution or in another Court-approved investment in lieu of any other requirement for inventory and

accounting, subject to affirmation in each biennial accounting that the funds remain on deposit.

2. The sole beneficiary named on the account so created must be "The Guardianship (or Guardianship Estate) of _____" [name of minor].

3. Any such restricted account must provide that no principal or interest may be withdrawn from the account without a written order of the Court, and with the following restriction placed on the face of the account or in the investment document:

NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT WRITTEN ORDER OF THE MARION SUPERIOR COURT 8, PROBATE DIVISION

418.6 Attorney's Undertaking and Certification.

1. At the time the settlement is approved by the Court, the fiduciary and his or her attorney shall execute the Court's attorney's undertaking making the attorney personally responsible for the deposit of the funds in a restricted account. The attorney's undertaking shall be substantially in accordance with the form of **MSCPR Form 418.6 (A)**.

2. Within thirty (30) days after an Order authorizing the creation of the account or investment, a certificate by an officer of the institution at which the account or investment has been created shall be filed with the Court which affirms that the account or investment is restricted as required by Court order and is in compliance with this MSCPR 418.6. The certification shall be substantially in accordance with the form of **MSCPR Form 418.6 (B)**.

3. The fiduciary and the financial institution shall both promptly notify the Court in writing in the event that any principal or interest is withdrawn from the account without Court authorization.

418.7 Application of Guardianship Law. Minors' settlements shall otherwise be subject to the requirements for guardianship, including the filing of inventory and accounting in guardianships.

418.8 Attorney Fees. Attorney fees for representing a minor in settlement of a claim for personal injuries are subject to Court approval. If the entire attorney fee is to be paid at the same time a structured settlement is approved, the amount of the fee must be based on the present value of the settlement.

LR49-PR00 Rule 419. TRUSTS

419.1 A Petition to Docket Trust shall be forthwith served upon the current Trustee of the trust, and the Petitioner shall certify that such service has been made.

419.2 All challenges to a trust shall be filed in the cause in which the trust is docketed.

419.3 No later than fifteen (15) days after receipt of the Petition to Docket Trust, the Trustee shall file with the Court written notice of the name and address of each beneficiary of the trust known to the Trustee and shall serve the Petitioner with the notice at that same time.

419.4 All additional pleadings and any notice of hearing shall be served upon all beneficiaries of the trust, whether the nature of the interest is present, future, vested, or contingent, unless such beneficiaries have signed in advance or are bound by a proper written waiver of service, a written waiver of notice of hearing, a written waiver of necessity for a hearing, or a written consent to the relief requested.

LR49-PR00 Rule 420. FEES IN SUPERVISED ESTATES AND GUARDIANSHIPS

420.1 No fees for personal representatives, guardians or attorneys shall be paid from the assets of any guardianship or supervised estate without prior written order of the Court. In guardianships and supervised estates, fees deposited with an attorney as advancement against future fees, sometimes known as a retainer, are not to be paid from the estate of the protected person or deceased person without prior Court approval.

420.2 Fees shall be in the amount determined by the Court to be reasonable, irrespective of whether a fee agreement requires payment from estate assets of fees in excess of that amount.

420.3 A petition for fees must be signed or approved in writing by the personal representative or guardian.

420.4 Partial fees in a supervised estate may be requested when:

1. An intermediate accounting has been approved, or
2. The Court finds upon petition that a tax advantage will result from payment of partial fees.

420.5 In all other cases, payment of fees in supervised estates shall be authorized as follows:

1. One-half upon the filing of an inheritance tax return or upon a Court determination of no taxes due: and
2. The remaining one-half upon approval of the final account.

420.6 A guardian or guardian's attorney may petition for fees at the time of filing an inventory. Other than as provided hereafter, no further petition for fees may be filed until a biennial, annual, or final accounting has been filed. When unusual circumstances require substantial work in a guardianship, the Court may award fees prior to the approval of an account.

420.7 All petitions for fees for personal representatives, guardians or attorneys shall specifically set forth all services performed in detail as well as the amount of the fee requested and how it has been calculated.

420.8 Unjustified delays in carrying out duties by the personal representative, guardian or attorney will result in a reduction of fees.

420.9 The Court has no jurisdiction to rule on fee petitions when there is a guardianship over the person only.

INDEX OF MARION COUNTY PROBATE FORMS

The forms listed below are referred to in the Local Rules of the Marion Superior Court, Probate Division ("MSCPR"), and are numbered in correspondence with the pertinent Rule.

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Form 401.1	**Petition to Appoint Personal Representative**
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Marion County Probate Form 401.1-A Application for Appointment of Personal Representative

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	PROBATE DIVISION
COUNTY OF MARION	)	CAUSE NO: 49D08 _____

IN THE MATTER OF THE)
UNSUPERVISED / SUPERVISED) [*choose one*]
ESTATE OF _____)

APPLICATION FOR APPOINTMENT OF PERSONAL REPRESENTATIVE

[If there are Co-Personal Representatives, then
complete one form for each personal representative]

CONTACT INFORMATION:

Name of Petitioner: _____

Address of Petitioner: _____

[Including street

number, city, zip] _____

Home Phone Number: _____

Cell Phone Number: _____

E-Mail: _____

EDUCATIONAL BACKGROUND:

Do you have a High School Education? Yes ____ No ____

If you do not have a High School

Education, do you have a GDI? Yes ____ No ____

Do you have a college education? Yes ____ No ____

If so, please list college, number of years attended, and the year you obtained a degree, and the type of degree you obtained.

_____

_____

_____

Do you have a post graduate or professional degree? Yes ____ No ____

If so, please identify educational institution, the year you obtained that degree, and the degree you obtained.

_____

_____

_____

EMPLOYMENT:

Name of Employer: _____

Address of Employer: _____

Length of Employment: _____

If you are not currently employed, please state whether you are retired, or a homemaker, or a surviving spouse or surviving partner of the deceased person, and please describe your most occupation or work experience before your retirement or before you stopped working outside your home.

_____

_____

FINANCIAL EXPERTISE:

Please list all prior experience in financial management, including investments and checkbook management:

_____

_____

_____

FELONY CONVICTIONS:

Do you have any prior felony convictions Yes ____ No ____
If so, list date of conviction and type of felony.

_____

_____

_____

AFFIRMATION OF PETITIONER:

As Petitioner requesting my appointment as Personal Representative of the Estate of _____, I hereby state as follows:

1. That I have a attained 18 years of age and I am not incapacitated in any manner that would interfere with my administration of the decedent's estate.

2. That my attorney is _____,

with offices located at _____

_____.

That my attorney's Phone Number is: _____

That my attorney's Fax Number is: _____

That my attorney's E-Mail address is: _____

3. That I have provided my attorney with my Social Security Number and the date of my birth.

4. That I accept my appointment as fiduciary.

5. That I agree to submit personally to the Jurisdiction of this Court in any proceeding that relates to the estate of the decedent.

AFFIRMATION AND VERIFICATION:

I affirm under the Penalties of perjury that the foregoing information is true and correct. That as a condition of my appointment as fiduciary in this matter, I hereby waive the privilege associated with this information and authorize my attorney to disclose this information to the Court, upon Court order, in the event of my failure to render an account as required by law or other determination of a breach of my fiduciary duty.

Dated: This _____ day of _____, 20____.

_____
Signature of Petitioner

Marion County Probate Form 401.1-B Application for Appointment of Guardian

STATE OF INDIANA)
SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT)
PROBATE DIVISION
CAUSE NO: 49D08 _____

IN THE MATTER OF THE GUARDIANSHIP)
OF THE _____ OF _____)

APPLICATION FOR APPOINTMENT OF GUARDIAN
[If there are Co-Guardians, then complete one form for each Co-Guardian]

CONTACT INFORMATION:

Name of Petitioner: _____
Address of Petitioner: _____
[Including street number, _____
city, zip] _____
Home Phone Number: _____
Cell Phone Number: _____
E-Mail: _____

EDUCATIONAL BACKGROUND:

Do you have a High School Education? Yes ____ No ____
If you do not have a High School Education,
do you have a GDI? Yes ____ No ____
Do you have a college education? Yes ____ No ____
If so, please list college, number of years attended, and the year you obtained a degree, and the type of degree you obtained.
_____
_____
_____

Do you have a post graduate or professional degree Yes ____ No ____

If so, please identify educational institution, the year you obtained that degree, and the degree you obtained.
_____
_____

EMPLOYMENT:

Name of Employer: _____
Address of Employer: _____
Length of Employment: _____
If you are not currently employed, please state whether you are retired, or a homemaker, or a surviving spouse or surviving partner of the deceased person, and please describe your most occupation or work experience before your retirement or before you stopped working outside your home.
_____
_____

FINANCIAL EXPERTISE:

Please list all prior experience in financial management, including investments and checkbook management:
_____
_____
_____

FELONY CONVICTIONS:

Do you have any prior felony convictions Yes ____ No ____

If so, list date of conviction and type of felony.
_____
_____

AFFIRMATIONS OF PETITIONER:

As Petitioner requesting my appointment as Guardian of the Estate of _____, I hereby state as follows:

1. That I have a attained 18 years of age and I am not incapacitated in any manner that would interfere with my administration of the estate (property) of the minor or incapacitated adult.
2. That my attorney is _____, with offices located at _____ _____.

That my attorney's Phone Number is: _____
That my attorney's Fax Number is: _____
That my attorney's E-Mail address is: _____

3. That I have provided my attorney with my Social Security Number and the date of my birth.
4. That I accept my appointment as fiduciary.
5. That I agree to submit personally to the Jurisdiction of this Court in any proceeding that relates to the estate of the minor or incapacitated adult.

AFFIRMATION AND VERIFICATION:

I affirm under the Penalties of perjury that the foregoing information is true and correct. That as a condition of my appointment as fiduciary in this matter, I hereby waive the privilege associated with this information and authorize my attorney to disclose this information to the Court, upon Court order, in the event of my failure to render an account as required by law or other determination of a breach of my fiduciary duty.

Dated: This _____ day of _____, 20____.

_____

Signature of Petitioner

Marion County Probate Form 401.1. Petition to Appoint Personal Representative

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: PROBATE DIVISION
COUNTY OF MARION) CAUSE NO. 49D08_____

IN THE MATTER OF THE)
UNSUPERVISED / SUPERVISED) [choose one]
ESTATE OF _____)

PETITION TO APPOINT PERSONAL REPRESENTATIVE,
FOR PROBATE OF WILL, AND FOR ISSUANCE OF LETTERS

Comes now _____, the Petitioner, [*delete or modify the next clause depending on whether the Petitioner is appearing in person in Court or whether he or she is a non-resident whose attorney is appearing alone*]in person and by counsel / by counsel, and respectfully request the Court to appoint h__ as Personal Representative of the Estate of _____, deceased, and in support thereof, states the following:

1. _____ ("the Decedent"), a__ ___married ___male, age ____, having been born on _____, died testate on _____, while domiciled at _____ _____ in Marion County, Indiana.

2. On _____, Decedent properly executed h___ Last Will and Testament by executing an acknowledgment of said will and verification of its execution by _____ and _____, witnesses thereto. **The original of said Last Will is attached hereto or submitted with this Petition.**

3. The Petitioner herein, _____, is a person qualified to serve as Personal Representative of the Estate of the Decedent in that: In Item _____ of h___ Will, the Decedent nominated _____ to serve as her personal representative and as hereinafter set forth and in the accompanying Application, is otherwise suitable qualified to serve as a fiduciary.

4. The Petitioner's current residence address [*if an individual*] business address [*if a corporate fiduciary*] is as follows: _____[

5. The Petitioner is at least eighteen (18) years old and is not incapacitated by mental or physical health impairment, or infirmity, in any manner which would interfere with the ability to serve as a fiduciary.

6. The name, office address, attorney number, telephone number, fax number and e-mail address of the attorney for the Petitioner are as follows:

7. [*As required by I.C. §29-1-10-1, if the Petitioner is a nonresident individual or corporate fiduciary, the petition must also include the following*:

a. a statement that the Petitioner accepts the appointment as fiduciary;

b. a statement providing the name, address and telephone number of the resident agent appointed by the Petitioner to accept service of process, notices, and other documents in the fiduciary proceeding;

c. a statement that the Petitioner has agreed to submit personally to the jurisdiction of the Court in any proceeding that relates to the estate of the decedent or protected person.]

8. The name, residence address, and relationship to the Decedent of each person entitled to receive a devise, bequest, or distributive share from the Decedent's estate are as follows: [*insert list or table*]

9. To the Petitioner's best knowledge, the Decedent's estate is believed to be solvent and to consist of the following assets with the following approximate market value:

A.	Real Property:	$ _____
B.	Motor Vehicles:	_____
C.	Household Goods:	_____
D..	Other Tangible Personal Property:	_____
E.	Intangible Personal Property:	_____

10. That the names and addresses of Decedent's known creditors are as follows:

11. [*Delete if not* applicable] Item ____ of the Decedent's Last Will specifically authorizes the administration of h__ estate to be unsupervised.

12. [*Alternative to* ¶ 11] As shown by the attached signed consents, all persons who are named beneficiaries in the Decedent's Last Will consent to the Court opening the estate under unsupervised administration; consent to _____ being appointed as personal representative of the estate; and consent that the Court should require no bond, or a minimum bond, to secure h___ performance as personal representative.

WHEREFORE, the Petitioner prays the Court for an order appointing _____as Personal Representative of the Estate of _____, decedent, directing Letters [*Testamentary / of Administration*] be issued upon the taking of an oath, and that said Petitioner be authorized to proceed with the unsupervised administration of the decedent's estate; that bond not be required but if it is so required it be established in the minimum amount; and for all other relief which is proper in the premises.

I _____ hereby affirm under the penalties for perjury that the statements in this Petition are true and correct.

_____[*signature*]
_____[*printed name*], Petitioner

_____[*attorney signature*]
Printed name of Attorney and Atty. I.D. number
Law firm name [*if any*]
Attorney's mailing address
Attorney's telephone number
Attorney's fax number and e-mail address

Marion County Probate Form 401.2.

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	PROBATE DIVISION
COUNTY OF MARION	)	CAUSE NO. 49D08\

IN THE MATTER OF):

THE ESTATE OF)

AFFIDAVIT REGARDING ORIGINAL WILL OFFERED FOR PROBATE ELECTRONICALLY

The undersigned hereby alleges and represents as follows:

1. Affiant concurrently is filing a petition for probate of the Last Will and Testament of the above named Decedent and for appointment as the Personal Representative of the estate

2. Affiant possesses Decedent's original Last Will and Testament and the copy submitted for probate herewith is a true and accurate copy of the Will.

3. Decedent gave no indication to Affiant or anyone else, to Affiant's knowledge, of any intention to revoke this Will.

4. Affiant will retain or deposit with the attorney for the Personal Representative the original of the electronically filed Will until the Decedent’s estate is closed and the Personal Representative is released from liability. If the Will is offered only to Spread the Will of Record Affiant will retain or deposit with their attorney the original of the electronically filed Will until the expiration of the time for filing a will contest.

5. Upon the Court's request, or as otherwise required by statute the original Last Will and Testament will be delivered to the Court.

Further Affiant sayeth not.

I affirm under penalties of perjury that the foregoing representations are true.

_____

Affiant

Before me, a Notary Public in and for said County and State, personally appeared _____ who acknowledged the execution of the foregoing affidavit and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this ____ day of _____, ____.

_____

, Notary Public

Printed

County of Residence: My Commission Expires: _____

Marion County Probate Form 401.3 Proof of Lost Will and Affidavit

STATE OF INDIANA	)		IN THE MARION SUPERIOR COURT
	)	SS:	PROBATE DIVISION
COUNTY OF MARION	)		CAUSE NO. 49D08

IN THE MATTER OF:	)	
	)	
THE ESTATE OF	)	CAUSE NO. 49D08 _____

PROOF OF LOST WILL AND AFFIDAVIT REGARDING
WHETHER ORIGINAL WILL DESTROYED WITH INTENT TO REVOKE

The undersigned hereby alleges and represents as follows:
1. Affiant is acquainted with the affairs of the above-entitled Decedent.
2. While Affiant has not located Decedent's original Last Will and Testament, Affiant believes that the copy submitted for probate herewith is a true and accurate copy of Decedent's said Will as executed.
3. Decedent gave no indication to Affiant or anyone else, to Affiant's knowledge of any intention to revoke said Will.
4. Affiant believes that Decedent did not destroy said original Will with the intent to revoke.
Further Affiant sayeth not.
I affirm under penalties of perjury that the foregoing representations are true.

_____
Affiant
Before me, a Notary Public in and for said County and State, personally appeared _____ who acknowledged the execution of the foregoing affidavit and who, having been duly sworn, stated that any representations therein contained are true.
Witness my hand and Notarial Seal this ____ day of _____, ____.

_____
,Notary Public
Printed
County of Residence: My Commission Expires: _____

Marion County Probate Form 402.2. Suggested Form of Attorney Fee Agreement

The following suggested form of engagement letter does not necessarily address all issues (regarding the scope of the attorney's work, the attorney-client relationship with the fiduciary, or the determination, billing and payment of the attorney's fee) that should be addressed with respect to a particular estate or guardianship.

Date

Petitioner Address	Co-Petitioner (if any) Address

RE: Estate of _____

Dear _____:

I am pleased that you have chosen me and my law firm to represent your interests with respect to the matters involving the estate of _____ (deceased) (protected person). Under the Indiana Rules of Professional Conduct, it is advisable that we confirm in writing the terms and conditions under which this law firm will provide services to you so that both we and you can concentrate on the provision of the services you require.

You have agreed to pay for the legal services provided by me at the rate of $_____ an hour. From time to time, it may be necessary to also utilize the services of other professional members of the firm in order to properly provide appropriate representation for you. Our fees for legal services will be billed on an hourly basis according to the billing rates charged by each attorney or paralegal of our firm. These rates currently range from $_____ per hour for beginning associates to $_____ per hour for more senior associates and to $_____ per hour for partners. Paralegal time is charged at $_____ per hour. These billing rates are subject to adjustment at the beginning of a calendar year.

In matters involving supervised probate estates and guardianship estates, the Court will determine the amount of attorneys' fees, expenses and fees to you and our firm that it will permit the estate to pay as costs of administration. In the event the Court authorizes fees in an amount less than you agree to in this agreement, you (agree) (do not agree) to personally pay the difference. Almost always, the fees and expenses we collect are in the amount authorized by the Court but given unforeseen circumstances that may apply to this case, I cannot make that commitment at the outset.

Our fees are not contingent in any way upon the outcome of your case, but will reflect the uniqueness, complexity and the difficulty of obtaining the resolution of the matters at issue. Due

to the many variables which affect the time needed to provide the services you have requested, I am unable to provide you with an estimate of your total fees.

I have requested advancement against attorney fees and expenses of _____ ($). In the event of a supervised estate or guardianship, this advancement and all future advancements, if any, may not be paid from the assets of the estate without order of the Court. That amount will be placed into my trust account for your credit towards payment of the future fees and expenses of this law firm. You agree to keep that amount current in my trust account so that I will always have money in the trust account to pay on your behalf the attorney fees and expenses as they are incurred.

The following are firm billing policies which you should know. We will provide you with invoices on a monthly basis. The invoices will describe our services and itemize our expenses in accordance with our standard firm policies. These invoices reflect attorney services rendered during the month, the incurrence of litigation expenses and the current balance of your amount in our trust account. If the statement reflects an amount due you are expected to pay the amount upon receipt of the bill and replenish the retainer as set forth above. The bill for services rendered represents our time devoted to your case and our expenditures made on your behalf during the preceding month. Therefore, the services and costs may have been rendered up to thirty days or more prior to your receipt of the bill. Expenses which you agree to pay include such items as: _____
_____.
If we anticipate that certain major expenses will be incurred, we may request that you pay these expenses directly in advance of when they are incurred.

Payment of each invoice is due upon receipt. Subject to any limitations imposed by the Indiana Rules of Professional Conduct, our firm will be entitled to cease work on any aspect of this representation if any invoices are not paid within thirty (30) days after the invoice is mailed. If any attorney fees or expenses remain unpaid by the time the bills are prepared for the following month, we reserve the right to assess a one percent late fee on all unpaid balances. If we are required to resort to collection proceedings to recover any amounts from you, we will also be entitled to recover all costs incurred concerning such collection proceedings including reasonable attorneys' fees incurred either by us or separate counsel.

You shall have the right at any time to terminate our services and representation upon written notice to the firm. Such termination shall not, however, relieve you of the obligation to pay for all services rendered and costs or expenses incurred on your behalf prior to the date of such termination. As permitted by law, we reserve the right to retain your files until all invoices have been paid in full.

We reserve the right to ask the Court's permission to withdraw from your representation if, among other things, you fail to honor the terms of this engagement letter, you fail to cooperate or follow our advice on a material matter, or any fact or circumstances would, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw from your representation, you agree to take all steps necessary to free us of any obligation to perform further, including the execution of any documents reasonably necessary to complete our withdrawal, and

we will be entitled to be paid for all services rendered and costs and expenses incurred on your behalf through the date of withdrawal.

During the course of our representation of you, I encourage you to call to discuss any questions or concerns that you may have. I have found that communication is the best means available for avoiding misunderstanding or undue anxiety regarding a pending case. You will find that I may not always be available to speak with you over the telephone. Commitments to other clients, regularly scheduled court appearances, depositions and other responsibilities both within and outside my office sometimes precludes my availability to speak with a client when such calls are received. I have given you all of my telephone numbers and want you to feel free to try to reach me after normal business hours.

By signing this letter, you agree with the terms of this engagement letter. I have enclosed an additional original of this letter for your signature. Please sign in the appropriate space and return it to me in the enclosed self-addressed, stamped envelope.

Again, I welcome the opportunity to represent you in this case. Please keep a copy of this letter for your files.

Sincerely,

LAW FIRM

Attorney

The undersigned acknowledges that she and he have read this letter and agree to all of the terms set forth herein.

_____	_____
Date	Name
_____	_____
Date	Name

Marion County Probate Form 402.4 Notice to Court and Order Setting Hearing

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: PROBATE DIVISION
COUNTY OF MARION) CAUSE NO. 49D08_____

IN THE MATTER OF:)
)
THE ESTATE/GUARDIANSHIP OF)
)
_____)

NOTICE OF POSSIBLE NON-COMPLIANCE

Comes now _____, attorney for _____ [fiduciary] heretofore appointed as [guardian / personal representative] on _____by the Court to serve in such capacity, and, pursuant to MCPR 402.4, hereby notifies the Court that __he is concerned that said fiduciary is not timely performing or improperly performing h___ fiduciary duties to the [protected person or creditors and beneficiaries of the estate].

Wherefore, the Court is requested to set the matter for hearing and require the fiduciary to personally appear and account to the Court for all actions taken or not taken by the fiduciary.

Respectfully submitted,

LAW FIRM
Attorneys for the Fiduciary

_____
Attorney, #_____

Attorney Contact Information

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following by first class, United States mail, postage prepaid, this _____day of _____, 2_____:

Fiduciary
Address

Beneficiary
Address

Creditor
Address

_____
Attorney

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: PROBATE DIVISION
COUNTY OF MARION) CAUSE NO. 49D08_____

IN THE MATTER OF:)
)
THE ESTATE/GUARDIANSHIP OF)
)
_____)

ORDER TO APPEAR FOR COMPLIANCE HEARING

This matter came before the Court on a Notice of Possible Non-Compliance filed by the attorney for the personal representative/guardian heretofore appointed to serve by the Court in this cause.

AND THE COURT being duly advised in the premises, hereby issues an Order that the personal representative/guardian _____ and their counsel _____ shall appear in this Court on the _____ day of _____, 20____, at _____ o'clock ____.m. to report to the Court on the actions of the personal representative/guardian in this matter.

The Clerk is hereby directed to mail a copy of this Order to the personal representative/guardian, their attorney, the protected person and all heirs/beneficiaries and creditors.

ALL OF WHICH IS ORDERED this _____ day of _____, 20_____.

_____
Steven R. Eichholtz, Judge, Marion Superior Court
Probate Division

SERVE PERSONAL REPRESENTATIVE/GUARDIAN AT:
_____
_____

SERVE ATTONEY FOR PERSONAL REPRESENTATIVE/GUARDIAN AT:
_____
_____
_____

SERVE PROTECTED PERSON/HEIR/BENEFICIARY AT:
_____
_____
_____

SERVE CREDITOR AT:
_____
_____
_____

Marion County Probate Form 409.4. Attorney's Undertaking in Guardianship

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	PROBATE DIVISION
COUNTY OF MARION	)	CAUSE NO. 49D08_____
IN THE MATTER OF:	)	
	)	
THE GUARDIANSHIP OF	)	
	)	
_____	)	

DATE OF BIRTH_____

ATTORNEY'S UNDERTAKING AND OBLIGATION IN GUARDIANSHIP

I, the undersigned guardian, having been appointed by the Probate Court of Marion County on this date, hereby authorize attorney, _____, to deposit all of the next guardianship assets, in the amount of $ _____, in a bank account or brokerage account in my name as guardian with the restriction that withdrawal of principal or income may be made **ONLY** on written order of this Court.

Date: _____ _____
Guardian

_____
Co-Guardian

I, the undersigned, as an officer of this Court, hereby assume and undertake personal responsibility to the above-named incapacitated person and to the Court to make the restricted deposit designated above and to deliver a copy of the **Depository Institution's Acceptance Of Restrictions On Guardianship Account** in accordance with **Marion County Probate Form 413.8 (A)** evidencing such restricted deposit to the Court within thirty (30) days from date or to refund all of said funds to the Court forthwith upon demand.

Date:_____ _____
Attorney

Marion County Probate Form 409.5. Acceptance of Restrictions on Guardianship Account

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	PROBATE DIVISION
COUNTY OF MARION	)	CAUSE No. 49D08_____

IN THE MATTER OF:	)
THE ESTATE/GUARDIANSHIP OF	)
_____	)

DEPOSITORY INSTITUTION'S ACCEPTANCE OF RESTRICTIONS ON GUARDIANSHIP ACCOUNT

The undersigned hereby certifies that he or she is an authorized officer or employee of a financial institution or brokerage firm ("Undersigned Institution") whose name appears below and further certifies that the following account has been opened:

Type of account: _____

Account number: _____

Amount deposited: _____

Account opened in name of: _____

Authorized signer on account: _____

The Undersigned Institution further certifies and agrees that:

1. The terms of such account include a restriction that **withdrawal of principal or interest may be made only on written order of the Marion Superior Court, Probate Division** and that the Undersigned Institution agrees to comply with said restriction and to retain a copy of the court's order restricting the account.

2. No funds shall be released by the Undersigned Institution unless a certified order is tendered to the Undersigned Institution, bearing the signature of the Judge of the Court and the seal of the Marion Superior Court 8, Probate Division.

3. If the Undersigned Institution is uncertain as to whether funds should be released, it shall telephone the Probate Court at (317) 327-5063 with its request for instructions.

4. If a fiduciary attempts to withdraw funds without a certified court order, the Undersigned Institution shall promptly notify the Court in writing as to the fiduciary's attempt to withdraw funds without a certified court order.

Date:_____

_____
(Name of Financial Institution)

_____
(Signature)

_____
(Printed)

Marion County Probate Form 412.0. Instructions to Guardian of the Person with Sample Annual Report

MARION SUPERIOR COURT – PROBATE DIVISION

GUARDIANSHIP OF _____

CAUSE NUMBER_____

COURT'S INSTRUCTIONS TO GUARDIAN OF THE PERSON

Please read carefully before you date and sign. One copy of this form must be filed with the Court before your appointment as guardian is confirmed by the Court. Keep a copy for your records.

You have been appointed as the guardian of an individual who is unable to care for his or her own personal affairs. It is important that you fully realize your duties and responsibilities. Listed below are some of your duties.

You should be represented at all times by an attorney of record. Your attorney is required to notify the Court if you are not properly performing your duties to the protected person. By signing these Instructions you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice it will set the matter for hearing and require you to personally appear and account to the Court for all actions taken or not taken by you as guardian.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. The Court appreciates your efforts on behalf of the protected person.

Steven R. Eichholtz,
Judge, Marion Superior Court
Probate Division

As Guardian of the person, you have the following duties and authority:

1. You must be or become sufficiently acquainted with the protected person and maintain sufficient contact with the protected person to know his or her capabilities, disabilities, limitations, needs, opportunities, and physical and mental health.
2. You are responsible to make sure the protected person has an adequate place to live that is appropriate for the protected person's needs. You can decide where the protected person will live. You must obtain approval of the Court before you move the protected person to another residence or health facility that is more than fifty miles away.
3. You are responsible to make sure that the protected person receives needed and appropriate medical care. You can consent to medical or other professional care and treatment for the protected person's health and welfare. You can consent to the protected person's admission to a health care facility.
4. You shall, to the extent possible, encourage and promote the self-reliance and independence of the protected person.

5. You can, to the extent that the protected person is able, delegate to the protected person certain responsibilities for decisions affecting the protected person's well-being.

6. You or your attorney must notify the Court if your address changes.

7. You must file a report with the Court at least every two years. The report must state the present residence of the protected person and a statement of the protected person's current condition and general welfare. A sample report form is attached. Failure to file the report may result in your removal as guardian.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or am improperly performing my duties to the protected person even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this _____day of _____, 20 _____.

_____	_____
Signature, Guardian	Signature, Guardian
_____	_____
Print, Guardian	Print, Guardian

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a guardian of the estate.

_____	_____
Signature, Attorney	Signature, Attorney
_____	_____
Print, Attorney	Print, Attorney

MARION SUPERIOR COURT – PROBATE DIVISION

GUARDIANSHIP OF _____

CAUSE NUMBER_____

REPORT OF GUARDIAN OF PERSON

The undersigned, _____, as guardian of the person of _____ [*name of protected person*], respectfully reports:

1. List the protected person's current address: _____

2. What type of residence is this? [*House, apartment, nursing home, etc*.] _____

3. What is the protected person's current condition and health? _____

   _____

4. When did you, the Guardian, last personally see the protected person? _____

   _____

5. Does the guardianship of the person of the protected person need to remain in effect?

   _____ If not, why not? _____

I affirm, under the penalties of perjury, that the above statements are true.

Dated: _____

_____
Signature of Guardian

_____
Printed Name of Guardian

_____
Guardian's Address

_____

_____
Guardian's Telephone Number

Marion County Probate Form 412.1. Instructions to Guardian of Estate

MARION SUPERIOR COURT – PROBATE DIVISION

GUARDIANSHIP OF _____

CAUSE NUMBER_____

COURT'S INSTRUCTIONS TO GUARDIAN OF ESTATE

Please read carefully before you date and sign. One copy of this form must be filed with the Court before your appointment as guardian is confirmed by the Court. Keep one copy for your records.

Introduction:

You have been appointed as the guardian of an individual who is unable to care for his or her own financial affairs. It is important that you fully realize your duties and responsibilities. Listed below are some of your duties, but not all of them.

You must be represented at all times by an attorney of record. Your attorney is required to reasonably supervise and guide your actions as guardian unless and until that attorney is permitted by order of the Court to withdraw from representing you.

Your attorney is required to notify the Court in the event that you are not timely performing or improperly performing your fiduciary duties to the protected person, and by signing these Instructions you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice, it will set the matter for hearing and will require you to personally appear and account to the Court for all actions taken or not taken by you as guardian. You are required to notify the Court in writing in the event that your attorney is not timely performing or improperly performing his or her duties to reasonably supervise and guide your actions as guardian. Upon receipt of the notice, the Court will set the matter for hearing and require you and your attorney to personally appear and account to the Court for all actions taken or not taken by the attorney.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, the ultimate responsibility to see that all accounts and other documents are accurately prepared and filed, rests with you and you can be found personally liable should you not properly perform.

The Court appreciates your efforts on behalf of the protected person.

Steven R. Eichholtz,
Judge, Marion Superior Court
Probate Division

As Guardian you are required to:

1. Locate, collect and maintain all property owned by the protected person. Keep motor vehicles and real estate insured and protected.

2. Have your attorney file with the Court, within ninety (90) days after your appointment, a verified inventory and appraisal of all the property belonging to the protected person, with values as of the date you were appointed. You must provide a copy of the inventory to the protected person (if over fourteen (14) years of age) and to certain other persons as set out in Indiana Code §29-3-9-5.

3. Have your attorney file with the Court a verified current account of all the income and expenditures of the guardianship every two (2) years after your appointment, consisting of three schedules. The first schedule must include all assets listed on the inventory or on the last current account along with any additions or adjustments to the inventory. The second schedule must be an itemized list of expenditures, supported by attached cancelled checks or facsimiles of paid checks as evidence of payment. The third schedule must be a recapitulation indicating the remaining property after subtracting expenditures.

4. Pay bond premiums as they become due.

5. File and pay taxes on the protected person's income and assets.

6. Have your attorney file a final accounting with the Court upon the termination of the guardianship, whether due to the death of the protected person, or for any other reason.

7. Keep all of the assets of the protected person separate from your own. Guardianship funds should **never be co-mingled** with personal funds. Unauthorized use of the guardianship funds will result in personal liability.

8. Open a guardianship checking account in your name "as guardian of **(the protected person)**" This account **shall** be used for all payments or disbursements on behalf of the protected person. The account should be in the protected person's Social Security number, not yours. It cannot be a joint account. Make sure that the financial institution you are utilizing will provide you with cancelled checks or images of paid checks and evidence of payments made from the account..

9. Real estate, automobiles and other accounts and investments should be held in the name of the protected person.

10. All investment accounts and other bank account holdings should be retitled as follows: "John Smith Guardianship, Mary Jones Guardian."

11. Obtain approval from the Court to use guardianship assets, other than for normal bills.

12. Do not self-deal. Do not buy anything from or sell anything to the protected person. Do not borrow anything from the protected person.

13. If applicable, timely qualify the protected person for Medicaid or other public assistance.

14. It is the duty of the guardian to protect and preserve the protected person's property, to account for the use of the property faithfully, and to perform all the duties required by law of a guardian.

15. The guardian has the same duties and responsibilities concerning the protected person whether or not the protected person is a relative of the guardian.

16. **NEVER** pay attorney fees or compensation to yourself from assets of the guardianship without first obtaining the advance written approval of the Court.

17. If any questions arise during the guardianship, immediately consult with your attorney.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or improperly performing my fiduciary duties to the protected person even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this _____day of _____, 20 _____.

_____	_____
Signature, Guardian	Signature, Guardian
_____	_____
Print, Guardian	Print, Guardian

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a guardian of the estate.

_____	_____
Signature, Attorney	Signature, Attorney
_____	_____
Print, Attorney	Print, Attorney

Marion County Probate Form 412.2. Instructions to Personal Representative of Supervised Estate

MARION SUPERIOR COURT – PROBATE DIVISION

SUPERVISED ESTATE OF _____

CAUSE NUMBER_____

COURT'S INSTRUCTIONS TO PERSONAL REPRESENTATIVE OF SUPERVISED ESTATE

Please read carefully before you date and sign. One copy of this form must be filed with the Court before your appointment as personal representative is confirmed by the Court. Keep one copy for your records.

Introduction:

You have been appointed as the personal representative of the estate of a deceased person. By your appointment, the Court has placed in you the highest trust that you will perform your duties in the best interests of all beneficiaries and creditors of the estate. It is important that you fully realize your duties and responsibilities. Listed below are some, but not all of them.

You must be represented at all times by an attorney of record. Your attorney is required to reasonably supervise and guide your actions as personal representative unless and until that attorney is permitted by order of the Court to withdraw from representing you.

Your attorney is required to notify the Court in the event that you are not timely performing or improperly performing your fiduciary duties to the beneficiaries and creditors of the estate and by signing these Instructions, you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice, it will set the matter for hearing and require you to personally appear and account to the Court for all actions taken or not taken by you as personal representative. You are required to notify the Court in writing in the event that your attorney is not timely performing or improperly performing his or her duties to reasonably supervise and guide your actions as personal representative. Upon receipt of the notice, the Court will set the matter for hearing and require you and your attorney to personally appear and account to the Court for all actions taken or not taken by the attorney.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, you, as personal representative, are ultimately responsible to see that the estate is properly and promptly administered, and you are personally liable for incorrect distributions, payments, or acts, as well as any unpaid taxes or costs of administration. The Court appreciates your efforts on behalf of the estate.

Steven R. Eichholtz
Judge, Marion Superior Court
Probate Division

As Personal Representative, you are required to:

1. Locate, collect and maintain all property owned by the decedent.
2. Keep motor vehicles and real estate insured and protected.
3. Immediately fill out a change of address at the post office to have the decedent's mail forwarded to you.

4. No later than two (2) months after your appointment, have your attorney file in this Court an inventory describing all property belonging to the estate, with date of death values, and forthwith serve a copy of the inventory on all known heirs, beneficiaries or distributees of the estate.

5. **Estate Checking Account.**

A. Open a separate checking account in your name "as personal representative for the estate of (the decedent)." Obtain a federal tax I.D. number for the checking account. Do not use your Social Security number or decedent's Social Security number.

B. **DO NOT** put any of your funds or anyone else's funds in this account.

C. Always pay for estate expenses by checks from this account. Do not pay any expenses with cash.

D. Make sure that the bank is willing to return cancelled checks or electronic versions of the checks to you.

E. Keep records of all deposits including the identity of the person or entity paying the money into the estate.

6. Determine all debts that the decedent owed. Look through decedent's tax returns and other papers. Talk to anyone who knew decedent's business. Consult your attorney as to payment of debts, costs of administration, bond premiums, and funeral bills. Some debts may be unenforceable. Some may have priority over others.

7. Have your attorney provide written notice of the administration of the estate to all known creditors of the estate.

8. If the decedent owned a business or was involved in contracts which were not yet fully performed, have your attorney obtain directions from the Court as to those matters.

9. **DO NOT MAKE** any distribution of personal property or real estate to an heir or devisee without prior Court order.

10. **NEVER** borrow estate property or put it to your own personal use.

11. Prepare and file income tax returns for the tax year in which the decedent died and any returns for prior years if needed. Timely prepare and file any estate, inheritance or fiduciary tax returns and pay taxes as they come due.

12. **Accounting.** Indiana law requires the estate to be closed within one (1) year of your appointment as personal representative. Before the estate can be closed, you must file with the Court a final accounting of your actions as personal representative.

A. Have your attorney file your final accounting, consisting of three (3) schedules, after the administration of the estate has been completed.

B. The first schedule must include all assets listed on the inventory, any income and additional assets obtained during administration, and any adjustments to the inventory.

C. The second schedule must be an itemized list of expenditures. Documentation for each expense shall include: (a) the payee; (b) check number or other identifying number on the instrument; (c) the amount disbursed; and, (d) if the reason for disbursement is not apparent from the description of the payee, a description of the reason for the disbursement sufficient to substantiate the reason for the disbursement as part of the administration of the estate. Cancelled checks or facsimile copies of paid checks for each expenditure must be attached as evidence of payment.

D. The third schedule must be a recapitulation indicating the remaining estate property after subtracting expenditures. A proposed distribution must be furnished to all interested parties, including heirs.

13. After the Court approves your final account, make distribution to the proper people and file a supplemental report with the Court, attaching receipts.

14. Notify the Court and your attorney of any change in your address or telephone number.

15. **NEVER** pay yourself or your attorney any fees from assets of the estate without a prior Court Order, unless your attorney confirms to you that the law or local court rules allow you to reimburse yourself from estate assets for necessary expenses that you previously paid with your personal funds.

16. Keep a record of the time you spend working on the estate. You are entitled to a reasonable fee, unless you waive a fee. Time records will help the Court determine your fee.

17. Always contact your attorney for advice if you are unsure as to any act as personal representative. Have your attorney counsel you in relation to the estate and explain anything that you do not fully understand.

18. Do not sell an estate asset without prior Court Order unless the Will, in very specific terms, authorizes sale without court order. Consult your attorney about this.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or improperly performing my fiduciary duties to the beneficiaries and creditors of the estate even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this _____day of _____, 20 _____.

_____	_____
Signature, Personal Representative	Signature, Personal Representative
_____	_____
Print, Personal Representative	Print, Personal Representative

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a personal representative of a supervised estate.

_____	_____
Signature, Attorney	Signature, Attorney
_____	_____
Print, Attorney	Print, Attorney

Marion County Probate Form 412.3. Instructions to Personal Representative of Unsupervised Estate

MARION SUPERIOR COURT – PROBATE DIVISION

SUPERVISED ESTATE OF _____

CAUSE NUMBER_____

COURT'S INSTRUCTIONS TO PERSONAL REPRESENTATIVE OF UNSUPERVISED ESTATE

Please read carefully before you date and sign. One copy of this form must be filed with the Court before your appointment as personal representative is confirmed by the Court. Keep one copy for your records.

Introduction:

You have been appointed as the personal representative of the estate of a deceased person. By your appointment, the Court has placed in you the highest trust that you will perform your duties in the best interests of all beneficiaries and creditors of the estate. It is important that you fully realize your duties and responsibilities. Listed below are some, but not all of them.

You must be represented at all times by an attorney of record approved to so act by written order of the Court. Your attorney is required to reasonably supervise and guide your actions as personal representative unless and until that attorney is permitted by order of the Court to withdraw from representing you.

Your attorney is required to notify the Court in the event that you are not timely performing or improperly performing your fiduciary duties to the beneficiaries and creditors of the estate and by signing these Instructions you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice it will set the matter for hearing and require you to personally appear and account to the Court for all actions taken or not taken by you as personal representative. You are required to notify the Court in writing in the event that your attorney is not timely performing or improperly performing their duties to reasonably supervise and guide your actions as personal representative. Upon receipt of the notice, the Court will set the matter for hearing and require you and your attorney to personally appear and account to the Court for all actions taken or not taken by the attorney.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, you, as personal representative, are ultimately responsible to see that the estate is properly and promptly administered, and you are personally liable for incorrect distributions, payments, or acts, as well as any unpaid taxes or costs of administration.

The Court appreciates your efforts on behalf of the estate.

Steven R. Eichholtz
Judge, Marion Superior Court
Probate Division

<u>As personal representative, you are required to:</u>

1. Locate, collect and maintain all property owned by the decedent.

2. Keep motor vehicles and real estate insured and protected.

3. Immediately fill out a change of address at the post office to have the decedent's mail forwarded to you.

4. Within two (2) months of your appointment you must either:

A. file with the Court an inventory conforming with the requirements of I.C. 29-1-7.5-3.2 (b) and forthwith serve a copy of the inventory on all known heirs, beneficiaries or distributees of the estate, or,

B. file with the Court a verified certification that an inventory conforming with the requirements of I.C. 29-1-7.5-3.2 has been prepared, that it is available to be furnished to distributees on request and that notice of preparation of the inventory and its availability has been forthwith served on all known heirs, beneficiaries or distributees.

5. **Estate Checking Account.**

A. Open a separate checking account in your name "as personal representative for the estate of (the decedent)." Obtain a federal tax I.D. number for the checking account. Do not use your Social Security number or decedent's Social Security number.

B. DO NOT put any of your funds or anyone else's funds in this account.

C. Always pay for estate expenses by checks from this account. DO NOT pay any expenses with cash..

D. Make sure that the bank is willing to return cancelled checks or electronic copies or digital images of the paid checks to you.

E. Keep records of all deposits, including the identity of each person or entity paying the money into the estate.

6. Determine all debts that the decedent owed. Look through decedent's tax returns and other papers. Talk to anyone who knew decedent's business. Consult your attorney as to payment of debts, costs of administration, bond premiums, and funeral bills. Some debts may be unenforceable. Some may have priority over others.

7. Have your attorney provide written notice of the administration of the estate to all known creditors of the estate.

8. **NEVER** borrow estate property or put it to your own personal use.

9. DO NOT distribute any estate assets until assets (including personal property) are appraised, and consult with your attorney prior to making any distribution.

10. Prepare and file income tax returns for the tax year in which the decedent died and any returns for prior years if needed. Timely prepare and file any estate, inheritance or fiduciary tax returns and pay taxes as they come due.

11. After you fully complete the estate administration, you must file a closing statement with the Court verifying that all proper claims, expenses and taxes have been paid, that all assets have been properly distributed, and that a copy of the closing statement has been sent to all distributes, fully accounting for all assets, expenses and distributions made to the heirs.

12. Notify the Court and your attorney of any change in your address or telephone number.

13. Keep a record of the time you spend working on the estate. You are entitled to a reasonable fee, unless you waive a fee. Time records will help the Court determine your fee.

14. Always contact your attorney for advice if you are unsure as to any act as personal representative. Have your attorney counsel you in relation to the estate and explain anything that you do not fully understand.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or improperly performing my fiduciary duties to the beneficiaries and creditors of the estate even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this _____day of _____, 20 _____.

_____	_____
Signature, Personal Representative	Signature, Personal Representative
_____	_____
Print, Personal Representative	Print, Personal Representative

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a personal representative of a supervised estate.

_____	_____
Signature, Attorney	Signature, Attorney
_____	_____
Print, Attorney	Print, Attorney

Marion County Probate Form 413.3. Physician's Report

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	PROBATE DIVISION
COUNTY OF MARION	)	CAUSE NO. 49D08_____

IN THE MATTER OF:	)
	)
THE GUARDIANSHIP OF	)
	)
_____	)

PHYSICIAN'S REPORT

Dr. _____, a physician licensed to practice medicine in all its branches in the State of Indiana, submits the following Report on _____, the alleged incapacitated person ("Person") named above, based on an examination of said person conducted within the last three (3) months, on the ___ day of _____, 20___.

1. The nature and type of the Person's disability or other incapacity is:

_____
_____
_____

2. The Person's mental and physical condition, and, when appropriate, their educational condition, adaptive behavior and social skills are:

_____
_____

3. In my opinion, the Person is [ ] totally or [ ] only partially incapable of making personal and financial decisions.

A. The kinds of decisions which the Person can and cannot make are:

_____
_____
_____

B. The facts and/or reasons supporting this opinion are: _____

_____
_____
_____
_____

4. In my opinion, the most appropriate living arrangement for the Person is:

_____
_____
_____

A. The most appropriate treatment or rehabilitation plan for the Person is:

_____
_____
_____

B. The facts and / or reasons supporting this opinion are: _____
_____
_____
_____

5. The Person [ ] can [ ] cannot appear in Court without creating a threat to his or her health or safety.

Explain the specific risk to the Person's health or safety if he or she appears in Court.

_____
_____
_____
_____

The report must be signed by a physician. If the description of the Person's mental, physical and educational condition, adaptive behavior or social skills is based on evaluations by other professionals, all professionals preparing or contributing evaluations must sign the report. Evaluations on which the report is based must been performed within three (3) months of the date of the filing of the petition.

I/We affirm under the penalties of perjury that the foregoing representations are true.

Physician:

Name: _____ Signature: _____

Street Address:_____

City: _____ State: _____ Zip: _____ Phone: _____

Other professionals who performed evaluations upon which this report is based:

Name: _____ Signature: _____

Profession: _____

Street Address:_____

City: _____ State: _____ Zip: _____ Phone: _____

Other professionals who performed evaluations upon which this report is based (continued)

Name: _____ Signature: _____

Profession: _____

Street Address:_____

City: _____ State: _____ Zip: _____ Phone: _____

Name: _____

Signature: _____

Profession: _____

Street Address:_____

City: _____ State: _____ Zip: _____ Phone: _____

Marion County Probate Form 413.4. Attorney's Affidavit Regarding Notice

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	PROBATE DIVISION
COUNTY OF MARION	)	CAUSE NO. 49D08_____

IN THE MATTER OF:	)
	)
THE GUARDIANSHIP OF	)
	)
_____	)

ATTORNEY'S AFFIDAVIT CERTIFYING COMPLIANCE WITH REQUIREMENTS FOR NOTICE REGARDING TEMPORARY GUARDIANSHIP PETITION

Comes now _____, as attorney for the petitioner in this proceeding, and being first duly sworn, certifies the following facts under I.C. §29-3-3-4(b):

1. Before the filing of the petition for appointment of a temporary guardian in this proceeding, the undersigned attorney has made the following efforts to give notice to the alleged incapacitated person or minor named above or to his or her attorney, and to all other interested persons described in I.C. §29-3-6-1(a)(3) or (a)(4), as applicable:

   _____

   _____

   _____

   _____

   _____

2. The reasons why advance notice cannot or should not be given to one or more interested persons are as follows:

   _____

   _____

   _____

   _____

I certify, under the penalties for perjury, that the foregoing statements are true and accurate to the best of my knowledge.

_____
Signature of Attorney for Petitioner

_____
Printed Name of Attorney for Petitioner

NOTE: The purpose of this form is to comply with requirements stated in ***In Re Anonymous***, 729 N.E.2d 566 (Ind. 2000) and ***In the Matter of Anonymous***, 786 N.E.2d 1185 (Ind. 2003), as well as Trial Rule 65(B) and the Rules and Canons prohibiting improper *ex parte* contacts with the Court. *See also* subsection (b) of I.C. §29-3-3-4 as added by P.L. 178-2011, section 3.

Marion County Probate Form 418.6 (A). Attorney's Undertaking in Minor's Settlement

STATE OF INDIANA	**)**	**IN THE MARION SUPERIOR COURT**
	) SS:	PROBATE DIVISION
COUNTY OF MARION	)	CAUSE NO. 49D08_____

IN THE MATTER OF:)
)
THE MINOR'S SETTLEMENT OF)
)
_____)

ATTORNEY'S UNDERTAKING AND OBLIGATION
REGARDING MINOR'S SETTLEMENT AND
BANK OR BROKERAGE ACCOUNT

I, the undersigned parent of the above-named minor, hereby authorize attorney _____, to deposit all of the net settlement funds, in the amount of $_____, in a bank account or brokerage account in the minor's sole name with the restriction that withdrawal of principal or interest may be made **ONLY** on written order of this Court.

Date:_____ _____

Parent

I, the undersigned, as an officer of this Court, hereby assume and undertake personal responsibility to the above-named minor and to the Court to make the restricted deposit designated above and to deliver a copy of the **Depository Institution's Acceptance Of Restrictions On Minor's Settlement Account in accordance with Marion County Probate Form 418.6 (B)** evidencing such restricted deposit to the Court within thirty (30) days from date or to refund all of said funds to the Court forthwith upon demand.

Date:_____ _____

Attorney

Marion County Probate Form 418.6 (B). Acceptance of Restrictions on Minor's Settlement Account

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	PROBATE DIVISION
COUNTY OF MARION	)	CAUSE NO. 49D08_____

IN THE MATTER OF:)
THE MINOR'S SETTLEMENT OF)
_____)

DEPOSITORY INSTITUTION'S ACCEPTANCE OF RESTRICTIONS ON MINOR'S SETTLEMENT ACCOUNT

The undersigned hereby certifies that he or she is an authorized officer or employee of the financial institution or brokerage firm ("Undersigned Institution") whose name appears below and further certifies that the following account has been opened:

Type of account: _____

Account number: _____

Amount deposited: _____

Account opened in name of: _____

Name of Account Beneficiary: _____

The Undersigned Institution further certifies and agrees that:

1. The terms of such account include a restriction that **withdrawal of principal or interest may be made only on written order of the Marion Superior Court, Probate Division; that the Undersigned Institution retain a copy of the Court's Order restricting account;** and that the financial institution or brokerage firm agrees to comply with said restriction.

2. **Funds shall not be released** by the Undersigned Institution unless a certified order is tendered to the financial institution or brokerage firm bearing the signature of the Judge of the Court and the seal of the Marion Superior Court 8, Probate Division.

3. If the Undersigned Institution is uncertain as to whether funds should be released, it shall telephone the Probate Court at (317) 327-5063 with its request for instructions.

4. If a fiduciary attempts to withdraw funds without a certified court order, the Undersigned Institution shall promptly notify the Court in writing as to the fiduciary's attempt to withdraw funds without a certified court order.

Date:_____

_____
(Name of Financial Institution)

_____
(Signature)

_____
(Printed Name and Title of Authorized Signer)

Marion County Probate Form 421.1 Affidavit for Transfer of Assets Without Administration

NOTE: This affidavit need not be filed with the Court unless the person signing the affidavit wants to request a Court order under I.C. 29-1-8-4.5. If this affidavit is not filed with the Court, omit the text "In the Marion Superior Court, Probate Division" and the Cause number from the caption below.

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	PROBATE DIVISION
COUNTY OF MARION	)	CAUSE NO: 49D08 _____

IN THE MATTER OF:)
)
THE ESTATE OF _____)

AFFIDAVIT FOR TRANSFER OF ASSETS WITHOUT ADMINISTRATION

The undersigned, being duly sworn, states that:

1. The above decedent died on the ____ of _____, 20__, (testate) (intestate) while domiciled in Marion County, Indiana.

2. No petition for the appointment of a personal representative of the decedent's estate is pending or has been granted in any jurisdiction.

3. At least forty-five (45) days have elapsed since the death of said decedent.

4. The value of the gross probate estate of the decedent, wherever located, less liens and encumbrances, does not exceed $50,000.00.

5. The person or persons set forth in paragraph 6 below are entitled to the property as set forth after their names, by reason of:

A. Being a beneficiary under the Will of the decedent, which was admitted to probate without administration in the Marion Superior Court 8, Probate Division, under Cause No. _____ in Marion County, Indiana, as recorded in the office of the Clerk of the Court on the ___day of _____, 20___, **a copy of which probated Will is attached as Exhibit "A".**

B. Being the surviving spouse, dependent child or children of the decedent.

C. Other reasons:

_____

_____.

6. The following person or persons are entitled to receive, without Administration, the following listed property from the person, firm or Corporation shown after the property, subject to liens and encumbrances:

Name and Address of Person Entitled to Property	Share of the Property the Person is Entitled to	Description of the Property	Lien or Encumbrance (if any)	Name and Address of Person or Entity Holding the Property
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

7. The undersigned affiant, as claimant, has notified each person identified in the previous Paragraph of the claimant's intention to present an affidavit pursuant to IC 29-1-8-1.

8. The undersigned affiant, as claimant, is entitled to payment or delivery of the property on behalf of each person identified in this affidavit.

9. This affidavit is made for the purpose of inducing the above-named holder(s) of the decedent's above-described property to turn the property over to the persons indicated in Paragraph 7 or to the undersigned affiant on behalf of such persons, as provided by law. (See I.C. §§ 29-1-8-1 and 29-1-8-2)

I affirm under the penalties for perjury that the foregoing representations are true.

Date: _____

_____
Signature of Affiant

_____
Printed Name of Affiant

_____
Affiant's Address

_____

_____
Affiant's Telephone Number

MARION CIRCUIT AND SUPERIOR COURT

FAMILY LAW RULES

LR49-FR00-500. **FAMILY LAW COMMITMENT TO RESPECT AND CIVILITY**

LR49-FR00-501. **TITLE AND SCOPE**

LR49-FR00-502. **ADMINISTRATIVE PROCEDURES**

LR49-FR00-503. **NOTICE AND SPECIAL DISCLOSURE REQUIREMENTS**

LR49-FR00-504. **FINANCIAL DECLARATION FORM**

LR49-FR00-505. **CHILD SUPPORT GUIDELINES**

LR49-FR00-506. **SUBMISSION OF AGREED MATTERS**

LR49-FR00-507. **TEMPORARY RESTRAINING ORDERS**

LR49-FR00-508. **CHILD CUSTODY AND VISITATION: REFERRALS FOR INVESTIGATION AND REPORT**

LR49-FR00-509. **ATTORNEY FEES**

LR49-FR00-510. **PARENTING TIME ORDERS**

LR49-FR00-511. **CASE MANAGEMENT CONFERENCES**

LR49-FR00-512. **TERMINATION OF REPRESENTATIVE CAPACITY**

APPENDIX A **SUMMONS AND APPEARANCE FORM**

APPENDIX B **CHILD SUPPORT INFORMATION FORM**

LR49-FR00-500. FAMILY LAW COMMITMENT TO RESPECT AND CIVILITY

PREAMBLE

The Members of the Family Law Section of the Indianapolis Bar Association, recognizing the high degree of conflict and the volatile nature of domestic disputes, their impact on children and the need for direction in balancing the duty to represent the client with the obligation to rational, peaceful and efficient administration of justice, now make this pledge to promote the highest degree of respect and civility in conduct with parties, attorneys and courts.

GUIDELINES

I will maintain the highest level of professional integrity and personal courtesy in all dealings with parties, counsel, witnesses and courts.

I will advise clients that I am bound by the responsibilities and restrictions set forth in the Rules of Professional Conduct in all matters relating to the handling of their cases.

I will pursue the advancement of clients' legitimate objectives, but I will not participate in litigation based upon vengeance or other inappropriate emotions.

I will use legal procedures for the fullest benefit of clients without misusing or abusing the legal process.

I will not intentionally speak or act in an abrasive, hostile, offensive or acrimonious manner toward parties, counsel or courts.

I will not knowingly misstate, mischaracterize or fail to disclose relevant facts or legal authority.

I will familiarize myself with and comply with all requirements of the common law, the trial rules, the local rules, and the court policy and procedure.

I will endeavor to have clients fully disclose assets and liabilities, informally exchange information and confer with opposing counsel to discuss settlement, stipulate undisputed matters, and identify issues prior to scheduled hearings.

I will strive to reach agreements on procedural and preliminary matters consistent with clients' legitimate objectives.

I will honor promises and commitments in an effort to raise the level of professionalism and civility in domestic matters.

I will advise clients of the legal standards by which courts decide family law issues including the rebuttable presumption of an equal division of the marital estate and application of the best interest standard when determining custody of the children.

I will, whenever possible, encourage clients to reach amicable settlement of all issues after careful

review of statutes and reasonable consideration of the risks, costs, delay and emotional trauma of trial.

I will not seek judicial intervention in matters that can be resolved through cooperation and communication between counsel and parties.

I will not resort to ex parte proceedings in the absence of extreme emergency, as the interests of justice and fair play mandate notice to the opposing party.

I will not abuse time limitations set by courts, will be punctual and prepared for all court appearances and I will notify the court promptly when a case has been settled or must be continued.

I will prepare clients and witnesses for court appearances and advise them of the conduct required of them in order to promote the prompt and efficient administration of justice and to avoid conduct that brings disorder, disruption and disrespect upon the courts.

LR49-FR00-501. TITLE AND SCOPE

A. Title. These Rules shall be known as the Marion Circuit and Superior Court Family Law Rules.

B. Scope. These Rules are in addition to the Marion Circuit and Superior Court Civil Division Rules. In the event of a conflict between the Civil Division and Family Law Rules, these Rules shall control. The Indiana Trial Rules and Indiana Rules of Evidence also apply in all family law matters.

LR49-FR00-502. ADMINISTRATIVE PROCEDURES

A. Provisional Orders. A request for provisional orders may be made a part of the petition for dissolution of marriage, legal separation or paternity, in which case the petition shall be titled "Petition for Dissolution of Marriage [Legal Separation] [Paternity] and for Provisional Orders".

B. Time Required. In all contested family law matters, the moving party shall advise the court of the time required for hearing and contested issues to be considered in the text of a petition or praecipe for hearing. Parties should petition for time necessary for hearing with the expectation that each side will be allotted one-half of the total time allocated. The court normally allows 15 minutes for preliminary hearings and contempt petitions.

C. Summary Presentation. By agreement of the parties, all issues and evidence relevant to a domestic relations case may be presented in summary fashion by counsel.

D. Bench Warrant. In order to obtain a bench warrant from the court, a party must have personal service on the adverse party and complete a bench warrant information sheet. The court may issue a bench warrant on copy service with sworn testimony confirming actual notice to the adverse party.

E. Summons and Appearance. In all family law matters, the petitioner shall use the form of summons and appearance form set forth in Appendix A and shall attach the Verified Financial Declaration Form. Only the last 4 digits of a social security number should appear on the appearance form.

F. Verification. Verification language where required shall be in the form as stated in Indiana Trial Rule 11(B): I affirm, under the penalties for perjury, that the foregoing representations are true.

G. Mandatory Mediation. Parties must submit all contested final hearing issues requiring two hours or more of court time and all non-contempt post-decree child related issues to mediation prior to presenting the issues to the court for hearing, unless this rule is waived for good cause shown after written request by a party. The court may in its discretion assign matters to mediation at any stage of the proceeding.

H. Negotiations. Parties and counsel shall exchange documents, negotiate pending issues prior to scheduled hearing time and report to the Court.

(Amended effective August 17, 2017)

LR49-FR00-503. NOTICE AND SPECIAL DISCLOSURE REQUIREMENTS

A. **Notice.** In all relevant family law matters, the moving party shall give notice of the time, place of the hearing or trial and that matters may be heard and determined in a party's absence, by summons, subpoena, order to appear, notice of hearing, served upon the adverse party at least seven days prior to the hearing or trial and file a copy of the notice with the Court. Proof of service by certified mail or sheriff is generally required.

B. **Other Pending Legal Proceedings.** In all family matters, the moving party shall provide the court with written notice of all other pending legal proceedings in which either party is involved. The written notice shall include the cause number, name and location of the court, names of parties involved and nature of the legal proceeding, per the appearance form in Appendix A.

C. ***Ex Parte* Proceedings.** The Court in its discretion shall decline to issue an order on any *ex parte* petition for emergency relief absent a showing the moving party has complied with Trial Rule 65 and Indiana case law.

D. **Parent Education Class.** Within thirty (30) days of filing a dissolution involving minor children or paternity proceeding, the parties shall attend and ensure that the court is provided with written certification that the parties have completed a Court-approved parent education class, unless waived by the Court. A list of Court-approved providers is on the Court's website.

E. **Child Support Account Information Form.** In all family law matters, the parties shall use the Child Support Account Information Form set forth in Appendix B. Anytime the court signs an order creating, modifying or terminating a child support obligation, the parties shall complete and submit a Child Support Account Information Form to the Clerk of the Marion Circuit and Superior Courts.

(Effective October 16, 2020)

LR49-FR00-504. FINANCIAL DECLARATION FORM

A. Requirement. In all family law matters, the initiating party shall complete, serve and file a Financial Declaration Form within 30 days of filing a Petition for Dissolution of Marriage, Legal Separation or to Establish Paternity or a Petition for Modification of Child Support or at least seven

days prior to any hearing, whichever is sooner. A blank form shall be served upon the responding party with the summons or order to appear instructing the respondent to complete, serve and file the form within 30 days of receipt or at least seven days prior to any hearing, whichever is sooner. Failure by any party to submit the Verified Financial Declaration Form as required shall preclude him or her from presenting evidence as to those matters contained in the Verified Financial Declaration Form, except for good cause shown. These time limits may be amended by court order for good cause shown.

B. Exceptions. The Financial Declaration Form need not be exchanged if:

1. The parties have obtained leave of court; or

2. The parties have a signed agreement; or

3. The proceeding is one in which the service is by publication and there is no response; or

4. The proceeding is post-decree and concerns issues without financial implications. Provided, however, when the proceeding is post-decree and concerns only a child support arrearage, the alleged delinquent party shall complete the entire Form, while the support recipient need complete merely that portion thereof which requires specification of the basis of the arrearage calculation.

C. Admissibility. Subject to specific evidentiary challenges, the Financial Declaration shall be admissible into evidence upon filing.

D. Supporting Documents. For the purpose of providing a full and complete verification of income, assets, liabilities and values, each party shall attach to the Financial Declaration Form all information reasonably required and reasonably available. At the minimum this shall include current wage records, income tax returns and supporting documentation. "Reasonably available" means that material which may be obtained by letter accompanied with an authorization, but does not mean material that must be subpoenaed or is in the possession of the other party. The court may require either party to supplement the Financial Declaration Form with appraisals, bank records, and other supporting documentation. Such supporting documentation shall not be attached to the Financial Declaration filed with the court, or , if attached, shall have all information redacted as necessary to comply with Indiana Trial Rule 5 (G). Supporting documentation, if relevant, may be admitted into evidence at a hearing as an exhibit subject to the Rules of Evidence.

E. Financial Declaration Forms -- Mandatory Discovery. The exchange of Financial Declaration Forms constitutes mandatory discovery and Indiana Trial Rule 37 sanctions apply. The Forms shall be supplemented if additional material becomes available pursuant to Indiana Trial Rule 26(E)(2).

LR49-FR00-505. CHILD SUPPORT GUIDELINES

A. Child Support Worksheet Required. In all proceedings involving child support or educational expenses, a Child Support Worksheet shall be provided with any settlement agreement, final decree, or at the time of any hearing or trial.

B. Deviation from the Child Support Guidelines. If an agreement concerning child support provides any deviation from the Child Support Guidelines, the parties shall provide the court a written explanation for the deviation.

C. Income Withholding Order Required. In all proceedings involving child support, absent other court order, an Income Withholding Order providing for payment through the state collection agency, shall be submitted with any settlement agreement, final decree, or modification.

LR49-FR00-506. SUBMISSION OF AGREED MATTERS

A. Written Agreement Required. No agreed matter shall be submitted unless accompanied with a signed agreement and other appropriate documents such as a Decree. However, if the parties reach a settlement just prior to hearing or trial and there is insufficient time for the attorneys to prepare a typewritten agreement, then the court may accept evidence of that settlement in handwritten form and on the record. If the agreement is entered orally on the record, counsel shall submit an order setting forth the agreement for approval by the court within ten (10) days or such additional time as the court may allow.

B. Petition for Modification Required. A verified Petition for Modification shall be included with any Agreed Entry pursuant to Indiana Trial Rule 7(B).

LR49-FR00-507. TEMPORARY RESTRAINING ORDERS

Subject to the provisions of Indiana Trial Rule 65 and Indiana case law, in all family law matters, the court may issue a Temporary Restraining Order without hearing or security, if either party files a verified petition with specific allegations that irreparable harm or injury would result to the moving party if no immediate order were issued, or as otherwise as delineated in this Rule.

A. Joint Order. If the court finds that an order shall be entered, the court may enjoin both parties from:

1. Transferring, encumbering, concealing, selling or otherwise disposing of any joint property of the parties or asset of the marriage without the written consent of parties or the permission of the court;

2. Removing any child of the parties then residing in the State of Indiana from the State with the intent to deprive the court of jurisdiction over such child without the prior written consent of all parties or the permission of the court.

B. Separate Order Required. In the event a party seeks to enjoin the non-moving party from abusing, harassing or disturbing the peace, of the moving party or any child or step-child of the parties, or exclude the non-moving party from the marital residence, the petition must allege specific facts indicating more than a generalized fear of an adverse action; contain evidence of actual or threatened physical or emotional abuse sufficient to find a risk of imminent danger; in the case of an eviction or custody request also show that the moving party is physically available to testify unless there is a showing of exceptional circumstances; and in all cases for restraining order, certify to the court the reasons supporting the claim that notice cannot be given. A joint or mutual restraining or protective order shall not be issued. If both parties allege injury, they shall do so by separate petitions. The court shall review each petition separately and rule on each with separate orders.

C. Confidential Form. The moving party shall provide the court with a completed Confidential Form concerning the non-moving party.

D. Notice of Termination. When a court issues a Temporary Restraining Order under Indiana Code § 31-15-4-3 and a protective order exists for the parties under Indiana Code § 34-26-2 et seq., a Notice of Termination of the protective order shall be completed pursuant to Indiana Code § 34-26-2-13. A Notice of Termination shall be completed when a Temporary Restraining Order is dissolved by the entry of a decree or court order.

E. Notice of Extension or Modification. When a Temporary Restraining Order is extended or modified by the entry of a decree or court order, a Notice of Extension or Modification shall be completed.

F. Protective Orders. When a court has issued a protective order prior to the filing of a Petition for Dissolution or initiation of a paternity proceeding, and a dissolution or paternity proceeding is later filed, pursuant to Ind. Code § 34-26-5-6(4), the court that issued the protective order may, on it own motion, or upon petition and order, transfer the protective order file to the court handling the dissolution or paternity case. If there is a pending family law matter, the court where the family law cause is pending shall hear the emergency protective order request, unless otherwise impractical. The Clerk shall file a new protective order proceeding in the court where the family law case is pending. An emergency request relating to a previously disposed cause involving a family with children or paternity shall be filed in the court where the case originated.

LR49-FR00-508 CHILD CUSTODY AND VISITATION: REFERRALS FOR INVESTIGATION AND REPORT

On motion of either party with the approval of the court, or on the court's own motion, contested matters involving child custody and parenting time shall be referred to the Domestic Relations Counseling Bureau or to other sources for investigation and submission of a report to the court.

A. Domestic Relations Counseling Bureau. The DRCB shall conduct an investigation and report to the court on all contested matters referred to its attention, including written notice to the court when the evaluation has been conducted and the anticipated date a report will be submitted. In addition, the Bureau shall file a written report to the court if an investigation or evaluation is not conducted and the reason it was not completed.

B. Domestic Relations Counseling Bureau Fees. DRCB services shall be assessed as detailed below. Fees for DRCB services may be reduced or suspended upon a showing of good cause by the party and a written determination by the Court.

Intake: $150.00 per person
Limited Issue Evaluation: $250.00 per issue
Site visit: $250.00
Full Evaluation: $1,500.00

Each party will be assessed a $50.00 fee for each missed appointment with the DRCB.

C. Scope. This Rule shall apply to disputes involving child custody or parenting time that may exist either before or after the entry of a Final Decree of Dissolution of Marriage or an Entry of Paternity.

The parties to contested matters shall meet and cooperate with the Domestic Relations Counseling Bureau as required.

D. Continuance. It shall be grounds for a continuance that a court ordered custody/parenting time evaluation or report has not been submitted to the court within seven days prior to the hearing date.

E. Admissibility. A court ordered custody/parenting time evaluation or report shall be admissible into evidence on the motion of either party without the evaluator needing to be present at the hearing. No part of this Rule is intended to supplant the right of either party to compel the attendance of the evaluator or other witnesses as set out in Indiana Trial Rule 45.

F. Release of Custody/Parenting Time Evaluation or Report. Upon written request, a court ordered custody/parenting time evaluation or report that was submitted only to the Court may be released to all parties.

G. Physical and Mental Examinations. In all contested family law matters involving child custody or parenting time, the provisions of Indiana Trial Rule 35 providing for physical or mental examinations by a physician shall be extended to include examinations and evaluations by a psychologist, therapist or other qualified evaluator upon order of the court.

H. Non-disclosure of Report. Regardless of whether or not the evaluation/report was court-ordered, was conducted by the DRCB, or was a private evaluation, the content of the evaluation/ report shall not be discussed with or in the presence of any minor child of the parties. Violation of this rule may result in a contempt of court proceeding. This provision regarding contempt applies even if the information is not provided to the minor child directly by the party, if the party has allowed, directly or indirectly, any other individual to have access to the evaluation/report, and that individual then discusses the matter with the child.

Amended effective August 17, 2017

LR49-FR00-509. ATTORNEY FEES

A. Preliminary Attorney Fees. Attorney fees may be awarded based on evidence presented by affidavit or oral testimony at a preliminary hearing. Affidavits shall be admissible subject to cross-examination. The following factors may be considered:

1. The number and the complexity of the issues;

2. The nature and extent of discovery;

3. The time reasonably necessary for the preparation and conduct of contested hearings;

4. The attorney's hourly rate; and

5. The amount counsel has received from all sources.

B. Preliminary Appraisal and Accountant Fees. Appraisal or accounting fees may be awarded based on evidence presented by affidavit or oral testimony at a preliminary hearing. The following factors may be considered:

1. An itemized list of property to be appraised or valued; and

2. An estimate of the cost of the appraisals and the retainer required

C. Contempt Citation Attorney Fees. There shall be a rebuttable presumption that attorney fees will be awarded to the prevailing party in all matters involving a contempt citation. An attorney may submit the requested fee by affidavit or oral testimony, which may be accompanied by an itemized statement.

LR49-FR00-510. PARENTING TIME ORDERS

A. Reasonable Parenting Time. Except for specific deviations as approved by the Court, the phrase "reasonable parenting time" shall be presumed to be those rights and obligations provided for in the Indiana Parenting Time Guidelines, including the commentary, in effect at the time of the court-approved agreement or order, unless the agreement or order provides that parenting time shall be according to the guidelines as amended from time to time.

B. Reasonable Visitation. For cases involving visitation orders entered prior to March 31, 2001, and not modified thereafter, unless otherwise defined by court-approved agreement or order, the phrase "reasonable visitation" shall be defined as those rights and obligations provided for in the Marion County Visitation Guidelines, in their entirety, including the commentary, in effect at the time of the court-approved agreement or order, unless the agreement or order provides that visitation shall be according to the Guidelines as amended from time to time.

C. Acknowledgment. If the parties acknowledge in writing that they have received a copy of the Indiana Parenting Time Guidelines and adopt the Guidelines as written or otherwise explain any deviation from the Guidelines in a settlement agreement or final decree, it will not be necessary that a copy of the Guidelines be attached to the agreement or decree.

LR49-FR00-511. CASE MANAGEMENT CONFERENCES

A case management conference shall be held in every contested family law matter requiring one day or more of trial time, or as ordered by the Court. Marion Circuit and Superior Court Civil Division Rule 16.1 shall apply in all respects. In addition, the case management order shall set forth stipulated and contested issues to be considered. The joint case management order shall be submitted at least 60 days prior to the hearing, unless an extension is granted after request by the parties. If there is no case management order timely filed, the hearing may be vacated by the Court

LR49-FR00-5123. TERMINATION OF REPRESENTATIVE CAPACITY

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3 Amended 9/20/2004; Effective 1/1/2005

A. Upon the entry of a Final Decree of Dissolution of Marriage, Legal Separation or Paternity Judgment or a permanent modification of any custody, support or parenting time order, or the expiration of the appeal time thereon, all attorneys shall terminate their representative capacity by filing a Motion to Withdraw pursuant to Marion County Local Rule 2.

B. Service of process of any post dissolution or paternity decree pleadings shall be made upon the party pursuant to Indiana Rules of Trial Procedure.

C. Any copy served upon prior counsel who has properly withdrawn in compliance with this Rule, shall be deemed to be a matter of professional courtesy only.

D. Counsel for both initiating and responding parties shall be required to file a new appearance in any post dissolution or paternity decree action.

MARION COUNTY, INDIANA

MASS TORT LOCAL RULES

Amended effective December 9, 2019

PREAMBLE

The Indiana Supreme Court has recognized the advent of multiple claims by large numbers of individual plaintiffs present the courts with the need to administer groups of cases involving common questions of law or fact. (*In re: Marion County Mass Tort Litigation*, Supreme Court No. 49S00-0410-SJ-460, Order Denying Petition and Remanding to Trial Court.) Such "mass tort" cases present the trial court and parties with unique concerns and issues, and require unique rules to ensure the efficient administration of justice. The following Marion County Mass Tort Local Rules have been implemented to meet the needs of the court and parties in administrating the mass tort cases filed in Marion County.

LR49-TR3 Rule 600
CAUSE NUMBER ASSIGNMENT, CASE INITIATION, SERVICE AND RULE APPLICATION

A. Application of Rules. These Rules apply to all filings on the Marion County Mass Tort Litigation Docket. The Mass Tort Litigation Docket consists of those cases assigned to the docket by the Executive Committee of the Marion Superior Court. These Rules are to be construed together with the Indiana Rules of Court and the Marion County Civil Court Local Rules. When two or more of these Rules apply to a given situation, the more docket-specific or document-specific provision shall control.

B. Filing. Documents filed prior to October 28, 2016, are stored within each case or the master docket on File & ServeXpress. Documents filed after October 28, 2016, must be filed using the Indiana E-Filing System ("IEFS"). Parties may use any E-Filing Service Provider ("EFSP") certified to participate in IEFS.

C. Service. The Indiana Supreme Court through its Office of Judicial Administration has authorized Parties to continue to use File & ServeXpress for electronic service and storage of documents. Using File & ServeXpress for service of filed documents will maintain complete case histories for each case as well as the master and deposition dockets. Parties should select "Serve Only – Public" to serve documents on File & ServeXpress.

LR49-TR3.1 Rule 601
SUBSTITUTION OF COUNSEL

For substitutions of appearance, counsel shall file with the Court both a Notice of substitution and the new attorney's appearance form for each affected case. The appearance may be filed as a supporting document to the main document, Notice of Substitution.

LR49-TR4 Rule 602

FILE & SERVEXPRESS INITIAL NOTICE SHEET

The following Notice shall be served with each Summons and Complaint in all cases assigned to the Marion County Mass Tort Litigation Docket:

********** NOTICE **********

DOCKET ASSIGNMENT: The enclosed Complaint has been filed in Marion Superior Court, Civil Division, in the State of Indiana and has been assigned to the Mass Tort Litigation Docket. Therefore, several Local Rules, including required Electronic Service procedures, govern the case. You are directed to provide this sheet to any counsel you retain for the defense of this case.

ELECTRONIC FILING: Documents filed prior to October 28, 2016, are stored within each case or the master docket on File & ServeXpress. Documents filed after October 28, 2016, must be filed using the Indiana E-Filing System ("IEFS"). Parties may use any E-Filing Service Provider ("EFSP") certified to participate in IEFS. Parties must comply with the requirements of Ind. Trial Rule 86.

ELECTRONIC SERVICE: The Indiana Supreme Court Office of Judicial Administration has authorized that all service required by Ind. Trial Rule 5 and other required documents may be served using File & ServeXpress. File & ServeXpress is an electronic, web-based service system. Counsel must contact File & ServeXpress to establish an administrator who will register and receive user names and passwords for appearing counsel and their staff. All counsel must have Internet connectivity and an e-mail account. A File & ServeXpress user name and password is necessary to serve pleadings or other documents, as well as receive electronic notice of documents served. To sign up for File & ServeXpress, contact Customer Service at 888.529.7587.

ELECTRONIC DEPOSITORIES: The active Marion County Mass Tort Master Docket is maintained on File & ServeXpress and is assigned the case number 95-000. The Master Docket contains Plaintiff Master Complaints, Master Discovery, Defendant Master Answers, Defendant Master Discovery Responses, Trial Setting Orders and Agenda Postings relevant to all cases assigned to the Mass Tort Docket. Every attorney who files an appearance in a case must also add themselves to the Master Docket (95-000) service list.

The Marion Country Mass Tort Deposition Docket is maintained on File & ServeXpress and is assigned the case number 98-000. When citing to depositions which are already served in this depository, parties shall cite to the TID number assigned to the served deposition. If the deposition to which a party intends to cite does not appear in the 98 -000 depository, parties shall serve the new deposition to the depository first then cite appropriately to the TID newly assigned to the deposition.

LOCAL RULES: The Marion County Local Rules governing the Marion County Mass Tort Litigation Docket are available on the Indiana Judicial Website, the Marion County Clerk's

Website, and through File & ServeXpress after counsel obtains a user name and password. File & ServeXpress will provide all technical information and instructions necessary to use File & ServeXpress and will identify those Local Rules applicable to Marion County Mass Tort Litigation Docket. The Local Rules have been adopted pursuant to T.R. 81 and compliance is mandatory.

COURT CONTACT: Contact the Marion County Clerk's Office at 317.327.4740 or marioncounty-efiling@indy.gov with filing questions or for failure to receive Court notices.

LR49-TR5 Rule 603
FILING, TITLING AND SERVICE

A. Depositions. Publication of depositions, pursuant to T.R. 5(E)(5), shall be made, without Motion, on the File & ServeXpress Deposition Docket (98-000) only.

B. Previously Served Documents. Any document already served using File & ServeXpress should not be attached to new documents or re-served to File & ServeXpress. Reference shall be made to the File & ServeXpress TID, the Document Title, the cause number, and the date submitted.

C. Certificate of Service. All filed documents must include a Certificate of Service referencing the service stamp and the manner of service. The Certificate of Service shall be in the following format:

CERTIFICATE OF SERVICE

> I hereby certify that a copy of the foregoing was electronically served on all counsel of record on the date shown on the service stamp on the first page of this document, by using File & ServeXpress.

The document, before the Certificate of Service, must include the filing attorney's name, party for whom appearing, attorney number, firm, address, telephone number, and e-mail address of the authorizing attorney or the designated e-mail address for the attorney's firm.

D. Exhibits. To prevent the file stamp from obscuring information on an exhibit, a cover page shall be filed with exhibits and sufficiently identify the exhibit by number, letter or Bates Stamp, as designated and cited in the briefing.

E. Rules for Titling Documents. For Marion County Mass Tort Cases, a two-step method of filing and service is used. Prior to uploading a document to File & ServeXpress, the following rules shall be implemented to titling the file:

1. The Indiana E-Filing System provides limited space for document titles. Parties shall use Court Document abbreviations contained in a current edition of a Uniform System of Citation (Bluebook). http://www.personal.psu.edu/dhk3/research/Bluebook/T-08-17.htm. Party type and party name(s) must be the first word(s) of document description. Use abbreviations as necessary.

2. Service of all court filings, discovery, or other case materials or communications may be served using File & ServeXpress as authorized by the Supreme Court. Documents filed not for public access pursuant to Administrative Rule 9 must be served using the "Serve Only – Private" option. All other documents must be served using the "Serve Only – Public" option.

a. Filings, excluding Appearances and Proposed Orders. Documents filed with the Court shall be titled in the following format: [Party Type] + [Name of Party] + [Title of Document] + [Title of document to which the new document relates or responds, if applicable]. The following are examples of how to title documents:

    1. Plaintiff John Doe's Complaint; Pl. John Doe's Compl.
    2. Defendant XYZ Corporation's Motion to Dismiss Plaintiffs' Complaint; Def. XYZ Corp.'s Mot. to Dismiss Pl.'s Compl.
    3. Plaintiffs John Doe's and Jane Doe's Response in Opposition to Defendant XYZ Corporation's Motion to Dismiss on the Basis of the Statute of Limitations.
    4. Plaintiff John Doe's Exhibit A to Designation of Evidence to collective Response to Defendants' Motion for Summary judgment.
    5. Deposition of Phil Physician, January 1, 2005, Vol. 2.
    6. Defendant XYZ Corporation's Response to Plaintiff's Supplemental Interrogatories.

b. Letters or Notices. Letters or other document forms served on File & ServeXpress shall be titled in the following format: ["Letter" or Other Document Form] + "From" + [Name of Sending Party] + "to" + [Name of Recipient Party] + [Subject Matter]. The following are examples of how to title these documents:

    1. Letter from XYZ Corporation to Plaintiffs Concerning Case Management Order Conference Schedule
    2. Notice From XYZ Corporation to All Counsel of Record of John Doe's Availability for Deposition

c. *Cancellations*. Documents intended to cancel previously scheduled events must use the document type "CANCELLATION" and be titled on File & ServeXpress in the following format: ["CANCELLATION:"] + [Party Type] + [Party Name] + [Description of Canceled Event]. Example: "CANCELLATION: Defendant ABC Company, Inc.'s Notice of Canceling John Doe's Deposition scheduled for January 1, 2012."

d. Main and Supporting Documents. Each distinct document should be served on File & ServeXpress separately, as a main or supporting document. "Main" is the default setting for the first document served on File & ServeXpress in each transaction. "Supporting" documents may be served, but are restricted to only those documents that relate to the main document served in the transaction. File & ServeXpress does not restrict the number of supporting documents. For example, when filing a Motion for Summary Judgment, Designation of Evidence, Brief in Support, Exhibits and Proposed Order, each document type should be

served separately and properly titled. The motion for summary judgment is the main document and all others are supporting documents.

e. Tombstoning.

1. Definition and application. "Tombstoning" is the procedure by which all documents within a transaction are removed from the File & ServeXpress docket. This procedure is only to protect privileged or confidential information and is not for removal of merely incorrectly filed documents. A record of the transaction will remain in a user's mailbox, but the document will no longer be able to be viewed.

2. Procedure. In the event that privileged or confidential information is inadvertently served on File & ServeXpress, counsel shall contact support@fileandserve.com.

LR49-TR5 Rule 604
MOTION PRACTICE

A. Motions for Enlargement of Time.

1. *Plaintiffs*. Plaintiffs shall not seek consent of opposing counsel before filing a motion for enlargement of time, but shall file a motion for enlargement of time. Defendants shall have five days, including days when the Court is not open, after the filing of plaintiffs' motion to file an objection.

2. *Defendants*. Defendants shall determine whether opposing counsel objects to a motion for enlargement of time before filing. The motion shall specify which opposing counsel was contacted and whether opposing counsel objected to the motion.

a. Plaintiff does not object. If opposing counsel does not object, only a "Notice of Agreed Enlargement of Time" needs to be filed and the name of the counsel consenting to the enlargement shall be specified. Such notice shall not include a proposed order.

b. Contents of all motions for enlargement. The contents of a motion for enlargement of time or notice of agreed enlargement of time shall include:

1. Whether the case is currently set for trial, and, if so, when.

2. The filing to be submitted, the time period that is sought to be extended, and the time period that triggered it.

3. The specific due date requested.

Any motion not satisfying these requirements may be summarily denied.

Such notices are not required for agreed extensions of deadlines related to master or case-specific discovery responses.

B. Time for Response to All Motions. Notwithstanding LR49-TR5-203, any party objecting to a motion shall have 10 days from the date of filing to file a response, except for motions filed pursuant to Indiana Trial Rule 41, or as otherwise provided by Mass Tort Local Rule or Court order. The party filing the motion or any other interested party in the case may file a reply thereto within seven days of the responsive filing.

The Court will not await a response before ruling on the following motions: defendants' motions to enlarge time, to file an oversize brief, or to withdraw an appearance.

C. Joinder in Motions. Any party wishing to join in a filed motion shall file a notice of joinder within seven days of the filing of the motion.

D. Proposed Order Required. Motions must be accompanied by a proposed order with a date and signature line.

LR49-TR5 Rule 605
MASTER DOCKET

An active Master Docket is used for serving items of general applicability such as Trial Calendars, Case Management Order proposals and Case Management Orders, Notices of Depositions if not case specific, Agenda Items, Committee Reports, Requests for Local Rules or amendments, Master Pleadings, Master Discovery and similar documents. The Master Docket is the only method of service for Court notifications relating to non-case specific mass tort matters. Parties must first obtain leave of Court before filing any other documents on the Master Docket. No documents may be filed on the archived Master Dockets.

A. Asbestos. The Asbestos Master Docket can be found on File & ServeXpress and has two archived and one active S-2, 95-000 Master Docket.

B. **Chemical Flavoring.** The Chemical Flavoring Master Docket can be found at 49D13-1904-MI-014403 and is maintained by the Clerk of Court under the style *"In re Chemical Flavoring Litigation."*

LR49-TR8(C) Rule 606
NONPARTY PRACTICE

When a party identifies a nonparty through written notice or pleading, that identification sufficiently amends the Answers of all parties by interlineation, regardless of whether the party first naming the nonparty is subsequently dismissed from the case.

LR49-TR 12(B)(6) Rule 607
GRANT OF TRIAL RULE 12 MOTIONS

A party shall have 30 days following the grant of a T.R. 12(B) motion within which to replead. All Proposed Orders for motions to dismiss must indicate the 30-day repleading period. Proposed Orders for motions to dismiss must specify that the motion is granted "without prejudice" in the Relief Requested paragraph. An example is: "IT IS THEREFORE ORDERED that Defendant XYZ Corp.'s Motion to Dismiss Plaintiffs' Complaint on the basis of the Statute of Limitations is GRANTED without prejudice. Plaintiffs have thirty (30) days within which to replead their claims against Defendant XYZ Corporation." If Plaintiff fails to replead, parties may move for entry of final judgment.

LR49-TR26 Rule 608
DISCOVERY

A. Joint Defense Privilege. All communications, in any form whether oral, written, or transcribed by any means, among defense counsel in the Marion County Mass Tort Litigation cases are hereby deemed privileged. Plaintiffs and their attorneys are prohibited from discovering such information in such filed cases.

B. Effect of Trial Rule 12 and Rule 706 motions. The filing of a motion under T.R. 12 tolls pending discovery deadlines for the filing party.

C. No Local Limits. The limitation on the number of interrogatories and requests for production in the Marion County Local Rules shall not apply.

LR49-TR41 Rule 609
PLAINTIFFS' DISMISSALS

A. Dismissal of Defendants. When plaintiff has resolved the claims with all the defendants named or no longer wishes to pursue claims against the remaining defendants, plaintiff shall file, "Plaintiff's Motion to Dismiss Remaining Defendants," together with a proposed order dismissing with or without prejudice all remaining defendants who have not settled for consideration. The filing of this motion does not divest this Court of jurisdiction with regard to enforcement of settlements or other agreements. After an order dismissing all defendants has been entered, the Court may administratively designate the case as closed. For cases dismissed without prejudice, defendants may file motions for entry of final judgment.

B. Final Dismissal. When the plaintiff has filed the final signed Stipulation of Dismissal and there remains no further need for enforcement jurisdiction, the plaintiff shall file a "Notice of Final Dismissal of Pending Claims." The filing of this Notice closes the case statistically.

LR49-TR56 Rule 610
MOTIONS FOR SUMMARY JUDGMENT

A. Party Filing Motion for Summary Judgment. A party filing a motion for summary judgment shall:

1. File a motion, supporting brief not to exceed 15 pages, and designation of any evidence upon which the party relies.

2. The designation of evidence may be made in the motion or by a separate document, and shall contain specific and appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or attached as an exhibit to the designation or brief.

3. The supporting brief must include a separate section labeled "Statement of Undisputed Material Facts" listing, in separately numbered paragraphs, the individual undisputed facts that are potentially determinative of the motion as to which the moving party contends there is no genuine issue that contain specific and appropriate citations to admissible evidence already in the record or attached as an exhibit to the brief. The Statement of Undisputed Material Facts should not contain mere background facts which put the case in perspective or the party's argument which should be in the argument portion of the brief.

B. Party Responding to Motion for Summary Judgment.

1. 30 days after service of the motion, a party opposing the motion shall file:

   a. A response brief not to exceed 15 pages. However this brief may be a consolidated response brief addressing multiple motions for summary judgment and may exceed traditional page limitations if addressing more than one motion for summary judgment, and;

   b. A designation of evidence that is specific and separate as to each movant and that designates evidence that the respondent asserts creates a disputed fact or a genuine issue. Respondents' designation shall contain specific and appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or attached as an exhibit to the designation or brief.

2. The response brief shall contain a separate section labeled "Statement of Material Facts in Dispute and Genuine Issues," which shall contain a separate subsection as to each movant, listing in separately numbered paragraphs, the individual disputed facts and/or genuine issues as to that movant. Each subsection shall contain at least one of the following two separate parts:

   a. The disputed material facts which preclude summary judgment; and/or

   b. The material facts which are not in dispute, but which respondent asserts create a genuine issue and preclude summary judgment.

3. The asserted material facts and genuine issues shall be supported by specific and appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or attached as an exhibit to the brief.

4. The non-movant's Statement of Material Facts in Dispute and Genuine Issues should not contain mere background facts which put the case in perspective or the party's argument which should be in the argument portion of the brief.

5. The response brief shall contain a separate argument section as to each movant, unless the entire argument is identical as to each movant.

6. Citation to documents previously served on File & ServeXpress shall be by document name, date document was served on File & ServeXpress, and TID number, and if possible, page and line, paragraph number or similar specific reference.

C. Reply Brief. A party filing a motion for summary judgment may file a reply brief, not to exceed 8 pages in length, 10 days after service of the opposing party's submissions.

D. Surreply. If, in reply, the moving party relies upon evidence not previously cited or objects to the admissibility of the non-moving party's evidence, the non-moving party may file a surreply brief, not to exceed 8 pages in length, limited to such new evidence and objections, five days after service of the reply brief.

E. Designated Documents. With respect to documents designated in support of or in opposition to motions for summary judgment:

1. Counsel shall attach as supporting documents to the motion any designated documents not previously served on File & ServeXpress, other than deposition transcripts.

2. Counsel shall serve any deposition transcripts, not previously served on File & ServeXpress, but relied upon for purposes of summary judgment, in their entirety on the Deposition Docket, as provided in Rule 603(A).

3. Counsel need not serve copies of designated documents already served on File & ServeXpress unless they have been altered and such alteration is relevant to the designation.

4. Counsel need not attach as an exhibit any designated document already served on File & ServeXpress, but rather, citation to the document as described above shall be sufficient.

5. "Specific and appropriate citations" throughout this Rule shall mean case name and shortened cause number, document title, date document was served on File & ServeXpress, TID number, and if possible, page and line, paragraph number or similar specific reference.

F. Hearings. Pursuant to Rule 611, the Court schedules summary judgment hearings for each trial setting on Motions Day between 110-90 days prior to trial. This scheduled hearing will be vacated, unless a party files a request for hearing in accordance with Ind. T.R. 56(C) at least 10 days before the scheduled summary judgment hearing date. The request for hearing shall be made

in a separate document from any other filing, but it may be submitted as a main or supporting document. The document type shall be "Request for Hearing," and the request shall be titled,

> [Party type] [Party name]'s Request for Hearing on [(party name)'s or "Its"] Motion for Summary Judgment for the [month] [year] Summary Judgment Settings.

G. Outlines. At the time of the hearing, counsel must provide three copies of an outline summarizing the brief submitted to the Court in support of or opposing the motion for summary judgment. Two copies must be provided to the Court and opposing counsel shall receive one.

LR49-TR73 Rule 611
COURT HEARINGS, STATUS CONFERENCES AND MOTION DAYS

A. Agenda Item Proposals. Any party that wishes to address any pending motion or general issue at status conferences or on monthly motion days must submit a written notice containing proposed agenda items. Proposed agendas must be filed on the Master Docket no less than 7 days prior to the scheduled motion days or status conference. Parties must describe proposed agenda items with particularity, including the cases, dates, titles, and File & ServeXpress TID numbers for all written submissions relating to each item proposed in the agenda.

B. Motions Must Be Fully Briefed. Only motions that are fully briefed and at issue at least seven days before the hearing will be considered by the Court, absent leave of court.

C. Failure to Submit Items. If no proposed agendas are submitted to the Court by the aforementioned deadline, the motions day or status conference may be vacated.

LR49-AD3 Rule 612
CONDUCT OF ATTORNEYS *PRO HAC VICE*

Local Counsel must appear on behalf of his client when an attorney admitted *pro hac vice* plans to participate at a hearing or trial. Trial counsel admitted *pro hac vice* and Local Counsel are required to attend any Final Pre-Trial Conferences scheduled for cases to which they have been admitted, unless the trial counsel admitted *pro hac vice* has received leave of Court not to attend the final pre-trial conference.

LR49-TR01-ASB-700
SCOPE OF MARION COUNTY MASS TORT ASBESTOS LITIGATION DOCKET AND LOCAL RULES

Pursuant to the Order of the Marion Superior Court Executive Committee and this Rule, the Marion County Clerk of the Courts is directed to file all asbestos-related personal injury, wrongful death, or survival action cases in Marion Superior Court Thirteen, Civil Division, the Marion County Mass Tort Asbestos Litigation Docket.

Any Local Rule in the 700 Series shall apply to the asbestos division only. The Mass Tort Litigation Rules, Series 600 *et seq*., govern litigation in the asbestos personal injury division.

The Master Docket for the Asbestos Division is 95-000.

Amended effective January 1, 2021

LR49-TR8 Rule 701
MASTER COMPLAINTS

A. All plaintiffs' counsel who intend to file cases under the Master Docket shall file Master Complaints that shall set forth all allegations required by statute and case law for a personal injury lawsuit alleging exposure to asbestos.

B. There shall be a master complaint form filed for each form of filing anticipated by counsel (e.g., single plaintiff, married plaintiff, and deceased plaintiff).

C. Master Complaints shall be identified as "[Firm Name]'s [Single/Married/Deceased] Plaintiff Master [A/B/C] Complaint." The Firm Name may be shortened for ease of application.

D. Plaintiffs' counsel shall file their Master Complaints under the Master Docket and they shall be available for use and incorporation into new case filings by referencing the TID number.

E. In the event of a change in the name of the Plaintiffs' counsel's firm, Plaintiffs' counsel shall re-file each form of Master Complaint on the Master Docket, making sure that each Master Complaint contains the firm's proper and current name.

LR49-TR8 Rule 702
CASE-SPECIFIC COMPLAINTS

A. At the time a specific Plaintiff's case is filed, the content of the case-specific Complaint shall include the following:

1. Plaintiff's full name;
2. Defendants' identities and the capacity in which the Defendant is being sued (e.g., product manufacturer);
3. Statement that jurisdiction and venue are proper;
4. The asbestos-related disease allegedly suffered by the plaintiff or by plaintiff's decedent;
5. Date of diagnosis of the alleged asbestos-related disease;
6. Date of death of the plaintiff's decedent, if applicable;
7. Decedent's alleged cause of death, if applicable;
8. Statement indicating which Master Complaint plaintiff's counsel incorporates; and,
9. Any other specific information required by law or the case.

B. Any Plaintiff filing a case-specific Complaint, must accompany their filing with a *Notice Identifying Mass Tort Docket Case*, as set forth below.

MARION COUNTY MASS TORT DOCKET

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO. 49D13-_____
Plaintiff,	)	
	)	**IDENTIFYING NOTICE**
	)	
vs.	)	
	)	
Defendant.	)	

Notice Identifying Mass Tort Docket Case

The undersigned states that this case is a Mass Tort Docket Asbestos Case.

Pursuant to Marion County Mass Tort Litigation Rules, Local Rule LR49-TR3- Rule 600 the undersigned requests the Clerk of Court assign this case to Civil 13, the Mass Tort Docket.

_____
Attorney for _____
Attorney Block

Amended effective January 1, 2021

LR49-TR8 Rule 703
RESPONSIVE PLEADINGS/ANSWERS

A. Time for filing. The obligation of defendants to respond to a Plaintiff's Complaint is not triggered until 30 days after Plaintiff files a Verified Initial Disclosure Statement or 30 days after the defendant is served with summons in the case, whichever time is later. No T.R. 12 motions or other responsive pleadings may be filed until the time for Plaintiff to file his Verified Initial Disclosure Statement ("VIDS") has expired. LR49-TR5 Rule 203(D) shall not apply in Asbestos Section cases.

B. Master Answers. Defendants may file Master Answers in response to Master Complaints. Any Master Answers shall be identified as "Defendant [Party Name]'s Master Answer to [Firm Name]'s [Single/Married/Deceased] Plaintiff Master [A/B/C] Complaint." If a defendant has filed a Master Answer, the defendant's case-specific answer shall refer to the defendant's applicable Master Answer by TID number, if any, and may add any additional responses or defenses.

C. Additional Defendants. In cases where the plaintiff has been granted leave only to join additional defendants, the plaintiff shall limit the amendments to allegations pertaining to the new defendants or to correct originally named parties. The original defendants need not respond to the amended complaint, and the filing of the amended complaint only to join additional defendants does not toll or vacate any existing deadlines under these rules as to the original defendants.

D. Denial of Trial Rule 12 and Rule 706 Motions. A defendant shall not be required to file an Answer while it has a T.R. 12 or Rule 706 motion pending, but rather shall file its Answer no later than 10 days after denial of its T.R. 12 or Rule 706 motion, if applicable.

LR49-TR12 Rule 704
VERIFIED INITIAL DISCLOSURE STATEMENTS ("VIDS")

A. Verified Initial Disclosure Statements

1. Plaintiff's VIDS shall be signed under oath.

2. Plaintiff's VIDS shall be considered part of the Complaint and constitute a pleading pursuant to the Trial Rules.

3. Plaintiff's VIDS may be used consistent with the Indiana Rules of Trial Procedure and Indiana Rules of Evidence.

B. Timing

1. In an exigent case, a plaintiff shall file the VIDS no later than 30 days after filing the Motion for Expedited Trial Setting in accordance with Rule 711(G).

2. In a non-exigent case, a plaintiff shall file the VIDS no later than 90 days after filing the Complaint.

3. A plaintiff will not be required to respond to any discovery, including interrogatories, requests for productions, requests for admissions, or deposition requests propounded by defendants until after plaintiff has filed his VIDS, except for good cause shown by defendants, or as allowed by Rule 709.

Amended effective January 1, 2021

LR49-TR12 Rule 705
PLAINTIFFS' VIDS: CONTENT

Each plaintiff shall file a separate Verified Initial Disclosure Statement ("VIDS") that shall contain the following information correlated for each alleged exposure:

A. "Who":

1. The identity of the Plaintiff/Worker, including his or her full name, all other names by which he or she has been known, his or her trade or craft, current or last address, and, if applicable, place and date of death. The SSN and birth date shall be verified and mailed under separate cover to the joint defense records gathering service. Plaintiff shall state in his VIDS that he has transmitted this information to the joint defense records gathering service and the joint defense records gathering service shall release this information upon request to defense counsel who appear in the case.

2. The identity of the Plaintiff/Worker's employer at the time of each and every exposure to asbestos, or period of exposure to asbestos, setting forth the name and last known address for each employer, as well as the beginning and ending dates for each employment (e.g., "for the alleged exposure of April 14-18, 1956: ABC General Contractors, 1234 Main Street, Connersville, Indiana 46703, Employed from November 1, 1952 to July 15, 1961.").

3. The identities of those working with the products of asbestos-containing materials as described in 2, below, at the time of each such alleged exposure. State the identity of these persons, their trade, and their employer(s) (e.g., "Joe Smith, insulator, employee of XYZ Corporation.").

B. "What": The name or type of the asbestos-containing product or item the Plaintiff/Worker used or to which he or she was allegedly exposed, stating the manufacturer's company name (e.g., "Allbrand 85% magnesia pipe covering"), being as particular as possible. If Plaintiff cannot remember the name of the product he alleges he used or to which he alleges he was exposed, he shall provide a detailed description of the product.

C. "When": The dates during which the Plaintiff/Worker was allegedly exposed to asbestos at each jobsite, setting forth the beginning and ending dates for each exposure period, including date, month and year.

D. "Where": The location of each alleged exposure to asbestos, setting forth the address of the premises as well as the specific area on each premises where the claimed exposure occurred (e.g., "boiler room #3 of Generic plant on East Ohio Street in Indianapolis"), and;

E. "How": The circumstances of the alleged exposure to asbestos, including a description of what the Plaintiff/Worker was doing on the premises, and what, if anything, was occurring in the specific area on each premises where and when the claimed exposure occurred, including a description of work performed by both the Plaintiff/Worker at that time and by any third-party working with asbestos or asbestos-containing materials.

F. Foreign law. To the extent known at the time of filing, Plaintiff shall reference all foreign law plaintiff alleges applies in the case, and the specific defendants to which plaintiff alleges the foreign law applies.

G. Required Medical Information.

1. A description or name of all illnesses or injuries from which the Plaintiff/Worker allegedly suffers as a result of exposure to asbestos;

2. The date each such illness or injury was diagnosed;

3. The name and address of each person who made such diagnosis;

4. A list of all symptoms experienced by Plaintiff/Worker which were allegedly asbestos-related, including a description of each symptom;

5. If Plaintiff/Worker uses or has used tobacco products, the quantity and duration of tobacco usage during his or her lifetime, and the brand name of the products or a description of the items used; and,

6. A list of all health care providers who have treated Plaintiff/Worker for each illness or injury allegedly caused by exposure to asbestos or any other airborne contaminants along with their current or last known addresses.

7. Any medical or employment records of the plaintiff in the possession of Plaintiff or his counsel.

If Plaintiff is not able to provide the information provided above, Plaintiff shall specify the unsuccessful efforts to obtain the information and a date when the information will be provided to defendants.

LR49-TR12 Rule 706
TRIAL RULE 12 MOTIONS

Trial Rule 12 motions must be filed within 30 days of the filing of VIDS. Plaintiff's response to any motion to dismiss will be due 30 days after the motion was filed. Any reply shall be filed within 10 days after the response is filed.

LR49-TR26 Rule 707
PLAINTIFF'S DISCOVERY PROPOUNDED TO DEFENDANTS

A. Service. A plaintiff may serve upon any defendant a Master Set of Interrogatories and Production Requests tailored appropriately to the type of defendant being served. Plaintiff may serve the Master Set of Interrogatories and/or Production Requests by letter, which must specifically reference the File & ServeXpress TID number assigned to the document containing the discovery requests being served. A single service letter to all defendants may be served and applies to all defendants, regardless of time of filing their appearance. If plaintiff serves all defendants by letter prior to the appearance of a defendant, the discovery shall be deemed served on the defendant.

B. Time for responding. In a non-exigent case, defendants shall respond to Plaintiff's Master Set of Interrogatories and Production Requests within 120 days after the date of service or the filing of an Answer, whichever is later. In an exigent case, defendants shall respond to Plaintiff's Master Set of Interrogatories and Production Requests or any other discovery within 60 days after the date that the Motion for Expedited Trial Setting was filed, the date of service of the discovery, or the filing of its Answer, whichever is later. Responses to any other case-specific discovery shall be due 60 days after the date of service of the discovery requests, including requests

for admission. A defendant will not be required to respond to any discovery until after the defendant has filed its Answer, except for good cause shown by plaintiff.

C. Master Responses. Defendants may serve a Master Set of Answers to Plaintiffs' Master Set of Interrogatories and Production Requests on the Master Docket and incorporate those answers into responses to discovery requests in individual cases.

D. Case-specific Discovery. Plaintiffs may serve case-specific discovery that is not duplicative of any master discovery.

LR49-TR26 Rule 708
DEFENDANTS' DISCOVERY PROPOUNDED TO PLAINTIFFS

A. Time for responding. In a non-exigent case, a plaintiff shall respond to Defendants' Master Set of Interrogatories and Requests for Production no later than 120 days after the VIDS was filed or the service of the discovery, whichever is later. In an exigent case, a plaintiff shall respond to Defendants' Master Set of Interrogatories and Requests for Production no later than 30 days after the date that the Motion for Expedited Trial Setting was filed, the filing of the VIDS, or service of the discovery, whichever is later. Responses to any other case-specific discovery shall be due 60 days after the date of service of the discovery requests, including requests for admission. Defendants may serve Master Discovery by letter, which must specifically reference the TID number assigned to the document containing the discovery requests being served.

B. Case-specific discovery. Individual defendants may serve additional written discovery in individual cases that is not duplicative of the Master Set of Interrogatories and Requests for Production or of other defendants' case-specific discovery in the individual case.

C. Effect of Service. Defendants shall not serve duplicative discovery. All Master Interrogatories or Master Requests for Production of Documents served by one defendant in a particular case shall be deemed to have been served on behalf of all defendants, and any defendant may rely on a plaintiff's answers or responses to the Master Discovery regardless of whether that defendant actually served the Master Discovery or when the defendant appeared in the case. Likewise, any defendant may seek to compel responses or otherwise enforce Master Discovery Requests.

Any other discovery served by one defendant in a particular case shall be deemed to have been served on behalf of all defendants who file a notice of joinder in the discovery within 10 days of the service of the discovery on Plaintiff. Any defendant who joins in the discovery may rely on a plaintiff's answers or responses to discovery regardless of which defendant actually served the written discovery or when the defendant appears in the case. Accordingly, any defendant who filed a joinder may seek to compel responses or otherwise enforce the case specific discovery requests.

D. Required Records or Materials. A plaintiff shall provide to the joint defense records gathering service copies of the following documents if in plaintiff's or his counsel's possession, or signed and dated authorizations to obtain the same:

1. Plaintiff/Worker's medical and hospital records, and diagnosing and treating physician's records in the possession of the plaintiff, plaintiff's counsel or their agents, including

any written reports relating to any alleged diagnosis or alleged confirmation of any diagnosis of an asbestos-related disease or disease process or any other disease allegedly caused by airborne contaminants;

2. Pension records and all related information;

3. Social Security Administration Work Histories (Form SSA-7050);

4. X-ray films, CT scans, and/or pathologies which are in the possession of the plaintiff, plaintiff's counsel and/or their agents, or in the alternative, specifically identify the person or entity in possession of these materials;

5. Federal Income Tax Returns (Form 1040 or 1040A for the prior seven years, or in the case of a decedent, for the seven years preceding his or her death);

6. Any and all forms, claims, or other documents submitted to any trust or other entity on plaintiff's behalf related to any injury plaintiff claims is a result of alleged asbestos exposure;

7. Any and all documents generated by any health and/or disease screening in which the plaintiff participated;

8. A list of all previous lawsuits in which the plaintiff was involved, identifying them by name, location, cause number, filing date, and current status;

9. Signed and undated releases, compliant with the Health Insurance Portability and Accountability Act, authorizing such Defendants' designee to obtain complete copies of Plaintiff/Worker's:

a. Medical, hospital and other health care records;

b. Radiology and/or pathology materials, which shall be addressed individually to the "Department of Radiology" and the "Department of Pathology;"

c. Employment records;

d. Pension records and information;

e. Social Security Administration work histories (Form SSA-7050);

f. Federal income tax returns (Form 1040 or 1040A) for the prior seven (7) years, or in the case of a decedent, for the seven years preceding his or her death;

g. Forms, claims, or other documents submitted to any trust or other entity on plaintiff's behalf related to any injury plaintiff claims is a result of alleged asbestos exposure; and

h. Records of any screenings in which Plaintiff participated.

10. A list of all health care providers who have treated Plaintiff/Worker within the last 20 years.

11. Medicare Form A-1 (HICN request) and Medicare Form A-2 (Authorization to Release Information).

The time limit for providing this information to the joint defense records gathering service is within 30 days of filing the VIDS in non-exigent cases, and within 15 days of filing the VIDS in exigent cases.

E. Standing to Compel Releases. Any defendant shall have the right to petition the Court for an Order to compel the plaintiff to provide a signed release if more than 30 days have passed from the time plaintiff was provided a release to be signed. The requirements of Trial Rule 26(F) shall apply to a petition to compel release.

LR49-TR30 Rule 709
DEPOSITIONS *DE BENE ESSE*

A. If a party has a good faith belief that the health and medical condition of their client or a witness requires that a videotaped deposition *de bene esse* be taken of such witness, they shall provide to defendants not less than 20 days prior to the date set for such deposition, the following information:

1. Written notice of their intent to take such a deposition to all defendants (to their counsel if counsel have appeared for such defendant(s), or to any defendant's appropriate person for receipt of service of process if no counsel has yet appeared for that defendant). Such Notice of Deposition shall be in writing, delivered by facsimile together with hard copy by mail, or by hard copy hand-delivered to counsel for such defendant (if there is one), or by electronic mail (or similar computer assisted electronic means), but if and only if such defendant has previously agreed to such service; and,

2. Copies of the following documents:

   a. A copy of the Verified Initial Disclosure Statement;

   b. Any and all medical and hospital records and reports in the possession of such plaintiffs' counsel (except that these are to be delivered to the joint defense records gathering service);

   c. Signed and undated authorizations for the release of all medical and hospital records (except that these are to be delivered to the joint defense records gathering service);

   d. Plaintiff's Social Security Administration Work History (Form SSA-7050), if available or establish that such records have been timely requested pursuant to LR 708(D); and,

e. Answers to Defendants' Master Set of Interrogatories and Requests for Production.

B. The *de bene esse* deposition shall not occur less than 60 days from the date the Complaint is filed, other than by leave of Court for good cause shown.

C. Prior to the taking of the witness's deposition *de bene esse* as noticed above, the non-noticing party shall have the right to take a discovery deposition of such witness, notwithstanding Rule 704(B).

D. The *de bene esse* deposition shall occur no less than seven days after the completion of the discovery deposition, except as by agreement of all parties or by order of the Court.

E. In extraordinary circumstances, counsel may conduct the evidentiary deposition *de bene esse*, without the non-noticing party first taking a discovery deposition, if the noticing party's counsel can establish to the satisfaction of the non-noticing parties (or, if necessary, the Court) a necessity for doing so. The non-noticing party shall have the right to conduct cross examination immediately following the conclusion of the direct examination in the deposition *de bene esse*, which shall continue day-to-day until completed, as the witness's health permits.

LR49-TR30 Rule 710
DEPOSITIONS

A. Attendance by defendant. A defendant shall not be required to attend depositions of product identification and exposure witnesses identified by plaintiff, unless plaintiff, in good faith, has identified, along with the notice of deposition or on the plaintiffs' Witness List, that this witness will testify regarding a product manufactured, distributed by, or attributed to, that particular defendant; an alleged exposure upon a premises owned by or in the control of that particular defendant; or an alleged exposure caused by work performed by that particular defendant. At least seven days prior to the scheduled deposition of a Plaintiff, coworker, or other identification witness, Plaintiff shall serve Defendants with a notice containing the names of each Plaintiff for whom the witness will be called to testify and against which Defendants the witness is offered. These witnesses shall be produced for deposition by Plaintiff's counsel without subpoena upon reasonable notice by Defendants. Plaintiff will be prohibited from relying on or using at summary judgment or trial any evidence from any witness who fails to appear for a deposition as noticed, without good cause.

B. Use of testimony. If a witness submits an affidavit, testifies in his or her deposition, or testifies at trial about a product or job site which was not identified with the notice of deposition or on the plaintiff's Witness List, plaintiff shall be prohibited from introducing that testimony at trial, using that testimony in opposition to a motion for summary judgment or using that testimony in any other manner against the defendant who did not receive proper notice. Plaintiff may be allowed to utilize such testimony, however, upon giving those defendants, who were only identified by such witness subsequent to the issuance of the original notice of deposition, proper notice and a chance to re-depose this witness as to issues regarding their products, job sites, or work at issue.

C. Video Depositions. Any party may videotape a deposition taken in a case subject to these Local Rules after providing advanced written notice pursuant to Ind. R. Trial P. 30(B)(4). Any party or parties who videotape a deposition must videotape the entire deposition and be responsible for the expense related to the videotaping.

LR49-TR40 Rule 711
TRIAL SETTINGS

A. The Court will set no more than four trial settings per calendar year (January, April, July, and October) for the asbestos cases pending on the Marion County Mass Tort Litigation Docket.

B. Once a particular trial setting has been established, no cases can be added or removed, nor can the order of the cases be altered in any way without a written, verified showing of extraordinary circumstances. Specifically, if a case is settled, dismissed or resolved in some other manner, or an exigent case loses its exigent status, before the applicable trial date, the parties will not be allowed to fill the newly vacant slot in the trial setting with another case.

C. This Court has determined that generally no more than eight cases shall be set for each trial setting. Of these eight cases, no more than two exigent cases should be included per setting. Relief from this Rule may be granted upon good cause shown.

D. Provisional Order Setting Trial. No less than 15 months prior to a trial date, Plaintiff's counsel shall post to the S-2 master docket a proposed Provisional Order Setting Trial ("POST") using the trial setting criteria in Rule 713. Parties shall have a seven-day period from the POST to file an objection. Absent any objections, the Court may enter the POST.

1. The POST shall list:

    a. First and second-choice settings, consisting of two exigent cases, if any, and if not, two (2) slots tentatively reserved for exigent cases;

    b. Third through eighth-choice settings, consisting of six non-exigent cases in First in, First out ("FIFO") order; and,

    c. Two (2) additional non-exigent cases in FIFO order that shall be listed as alternates, and which are only tentatively set for trial, but which will be the eighth setting, or seventh and eighth- choice settings, in the event that there is only one or are no exigent cases for that trial setting.

2. All non-exigent cases are only tentatively set for trial, and are subject to displacement by cases that are rolled over from the previous trial setting for the same plaintiffs' counsel.

3. This POST is intended to allow the parties to begin preparing the tentatively scheduled cases for trial and alleviate the burden the parties bear in litigating entire cases in very short time frames.

E. Exigent case. In the event that a case is granted exigent status pursuant to Rule 712 and set for trial less than 18 months prior to its scheduled trial date, certain Case Management Deadlines provided in these Rules are modified:

1. Plaintiff's VIDS, Plaintiff's Preliminary Fact Witness List shall be filed no later than 30 days after the Motion for Expedited Trial Setting is filed;

2. In an exigent case, a plaintiff shall respond to Defendants' Master Set of Interrogatories and Requests for Production no later than 30 days after the date that the Motion for Expedited Trial Setting was filed, the filing of the VIDS, or service of the discovery, whichever is later.

3. This section modifies only those due dates specified herein. The deadlines established in section (G), below, control the remaining deadlines, and all other provisions of Section (G) otherwise control.

F. Stayed cases.

1. Definition and Designation of Stayed Cases. A "stayed case" is one that is currently not set for trial or one that is not exigent under Rule 712. The stayed case designation shall be lifted when the case is reached in FIFO order and set on a POST. Otherwise, a party may move the Court to lift the stayed case designation, which the Court may order for good cause shown.

2. Effect of Stayed Status. No formal activity is required in a stayed case, other than the filing of plaintiffs' pleadings, appearances, and the gathering of information provided in Rule 708(D). Those filings must be made regardless of stayed status. Other filings are permitted by any party, but the time for response shall not begin until the case is set on a POST.

G. Case management orders. Except as otherwise provided in Section (E), above, all cases shall be governed by the Case Management Order, provided herein:

STATE OF INDIANA	)	MARION SUPERIOR COURT THIRTEEN
	)	MASS TORT LITIGATION
COUNTY OF MARION	)	ASBESTOS DIVISION

IN RE: [month] [year] Trial Setting Master Docket, 95-000
[CASE NAMES] [CAUSE NO.'S]

CASE MANAGEMENT ORDER

Pursuant to Rule 711, the Court hereby enters the following Case Management Order to govern cases included in the POST.

The Court recognizes that some of the cases may have been subject to prior Case Management Orders. The deadlines established in this Order shall supersede all prior deadlines. Except where specifically noted below, nothing in this order shall be read to require a party to refile or re-serve any materials, except for Requests for Hearings on motions for summary judgment. Should any party desire to re-file or re-serve amended or supplemental materials in accordance with the following deadlines, leave is hereby granted to do so without the need for any

further motion or order. The specific dates set forth in this Order are based on the recommendations of the parties.

1. Verified Initial Disclosure Statements. Plaintiffs shall file their Verified Initial Disclosure Statement ("VIDS") within 90 days of the filing of the Complaint. In an exigent case, Plaintiffs shall file their VIDS within 30 days of the filing of Plaintiffs' Motion for Expedited Trial Setting.

2. Statement of special damages and settled parties.

A. In both exigent and non-exigent cases, Plaintiffs shall file their statement of special damages and their list of settled Defendants 120 days before trial. In exigent cases, Plaintiffs shall file any amendments to their statement of special damages and their list of settled Defendants no later than 120 days before trial.

B. Plaintiffs shall have a continuing obligation to update this list of settled Defendants and shall provide a complete list to opposing counsel and the Court at the Final Pre-Trial Conference, at which time counsel for the Defense may orally amend their Answer and the record to add any Defendants recently dismissed from the case as nonparties.

3. Written discovery.

A. Written discovery shall be served and answered pursuant to Mass Tort Local Rules 707 and 708.

B. No party shall serve written discovery any later than 90 days before trial.

4. Witnesses.

A. No later than 90 days following the Court's entry of the POST, Plaintiffs shall file their Preliminary Fact Witness Lists identifying all witnesses from whom Plaintiffs may offer testimony at trial or in connection with dispositive motions. To the extent Plaintiffs have previously filed a Preliminary or Final Fact Witness List, Plaintiffs shall also by this date review them and supplement and amend them to identify those witnesses Plaintiffs currently believe will actually testify. Plaintiffs' counsel shall accept service of subpoenas on behalf of all Plaintiffs' fact witnesses and/or produce those witnesses for deposition, unless Plaintiffs' counsel notifies Defendants otherwise. Except by agreement of all parties or by order of the Court for good cause shown, Plaintiff must produce for deposition by Defendants all of Plaintiff's fact witnesses upon whom Plaintiff will rely for purposes of summary judgment no later than 180 days before trial.

B. At least seven days prior to the scheduled deposition of a Plaintiff, coworker, or other identification witness, Plaintiff shall serve Defendants with a notice containing the names of each Plaintiff for whom the witness will be called to testify and against which Defendants the witness is offered. These witnesses shall be produced for deposition by Plaintiff's counsel without subpoena upon reasonable notice by Defendants. Plaintiff will be prohibited from relying on or using at summary judgment or trial any evidence from any witness who fails to appear for a deposition as noticed, without good cause.

C. 60 days after Plaintiffs file their Preliminary Fact Witness Lists, Defendants shall file their Preliminary Fact Witness Lists identifying all witnesses from whom Defendants may offer testimony at trial or in connection with dispositive motions. To the extent Defendants have previously filed a Preliminary or Final Fact Witness List, Defendants shall also by this date review them and supplement and amend them to identify those witnesses Defendants currently believe will actually testify.

D. 150 days before trial, Plaintiffs shall file their Expert Witness Lists identifying those expert witnesses from whom Plaintiffs may offer testimony at trial or in connection with any dispositive motions. To the extent Plaintiffs have previously provided Expert Witness Lists, Plaintiffs shall also by this date review them and supplement and amend them to identify those witnesses Plaintiffs currently believe will actually testify. Plaintiffs shall also by this date serve copies of any existing expert reports prepared in connection with these cases, if any, and reliance materials. 120 days before trial, Plaintiffs shall provide available deposition dates and locations for all of their testifying experts. Pursuant to T.R. 26(B)(4)(c), the parties seeking expert discovery shall pay the expert's reasonable fee for deposition testimony.

E. 120 days before trial, or 30 days after Plaintiffs have complied with the disclosure requirements of Rule 711(G)(4)(D), whichever date is later, Defendants shall file their Expert Witness Lists identifying those expert witnesses from whom Defendants may offer testimony at trial or in connection with any dispositive motions. To the extent Defendants have previously provided Expert Witness Lists, Defendants shall also by this date review them and supplement and amend them to identify those witnesses Defendants currently believe will actually testify. Defendants shall also by this date serve copies of any existing expert reports prepared in connection with these cases, if any, and reliance materials. 90 days before trial, or 30 days after Plaintiffs have complied with the requirements of Rule 711(G)(4)(D) to provide expert witness deposition dates and locations, whichever date is later, Defendants shall provide available deposition dates and locations for all of their testifying experts. Pursuant to T.R. 26(B)(4)(c), the parties seeking expert discovery shall pay the expert's reasonable fee for deposition testimony.

F. 90 days before trial, Plaintiffs shall file their Final Witness and Exhibit Lists.

G. **Mediation.** Absent leave of Court, mediation shall be completed no later than 60 days before trial, unless the summary judgment motions of any remaining defendants have not been ruled upon. In the event summary judgment motions have not been ruled upon more than 60 days prior to trial, mandatory mediation for all parties will not be required.

H. 60 days before trial, or 30 days after Plaintiffs have filed their Final Witness and Exhibit Lists pursuant to Rule 711(G)(4)(F), whichever date is later, Defendants shall file their Final Witness and Exhibit Lists.

I. Thirty (30) days before trial, the parties shall have made available for deposition all witnesses and all experts they have retained to testify. The parties shall cooperate in the scheduling of depositions and shall complete all deposition discovery by that date, unless otherwise agreed by all parties or by order of Court with good cause shown.

5. Motions.

A. Motions for summary judgment shall be filed 150 days before trial and comply with Rule 610. Responses, replies and surreplies shall be filed as set forth in T.R. 56 and in 610. Hearings on motions for summary judgment will be scheduled for any party requesting a hearing, pursuant to T.R. 56 and Rule 610(F).

B. Hearings on motions for summary judgment will be set at least 90 days before trial, or on such other dates as the Court may schedule for particular motions for any party tendering notice as required by T.R. 56. The Court will provide counsel with a schedule setting forth the order of arguments and time limits. The parties are encouraged to file written waivers of these oral arguments.

C. All responses and/or objections to motions, with the exception of motions for summary judgment and motions to dismiss, served by one Defendant shall be deemed joined by all other Defendants, without the filing of any joinders.

D. Parties must file a request for a hearing on any motion.

6. Trial preparation.

A. Not later than 28 days before the trial date, the parties shall file all motions *in limine* to limit, exclude or challenge the qualifications or opinions of any expert witness under Indiana Rules of Evidence 702; make each of the exhibits described in their Final Exhibit Lists available for inspection and copying, and; Plaintiffs are to serve an updated statement of special damages and list of settled defendants. Nothing in this Order is intended to limit any party's right to copy or inspect trial exhibits earlier through discovery requests.

B. Not later than 21 days prior to the trial date, each party shall file:

1. Any stipulations of fact;

2. A list of depositions intended to be used in the party's case-in-chief that includes page and line numbers that will be read;

3. Additional motions *in limine*. All motions *in limine*other than motions based on Indiana Rules of Evidence 702 filed pursuant to Rule 711(G)(6)(A). All motions *in limine* must divide the subjects into categories and include legal authority for each point. Motions *in limine* which simply list subjects without proper briefing ad legal authority will not be considered; and

4. All briefs in response to motions in limine based on Indiana Rules of Evidence 702, filed pursuant to Rule 711(G)(6)(A).

5. A trial brief succinctly addressing the following matters: (a) contested issues of fact; (b) contested issues of law and supporting authority; (c) a summary of motions *in limine* and anticipated evidentiary disputes; (d) a list of witnesses that counsel intends to call at trial. The trial brief shall be delivered to Court personnel and shall not be served on other parties using File & ServeXpress. Each party shall present two copies of the trial brief to Court personnel which the Clerk shall stamp as "RECEIVED."

C. Not later than 14 days before trial, each party shall file:

1. Objections and counter-designations to depositions;

2. Objections or responses to motions *in limine*; and

3. Any proposed preliminary jury instructions to be read to the jury prior to opening statements, and an agreed preliminary issue instruction. The issue instruction shall also be provided to the Court via email in "word" processing format. If the parties cannot agree to a preliminary issue instruction, the proposed instructions may be provided to the Court in hard copy and via email along with a summary of any areas of disagreement.

D. Nothing in this Order is intended to prohibit the parties from raising matters related to these cases during other conferences scheduled on the Court's Mass Tort Litigation dockets. The parties shall submit proposed agendas which comply with Rule 611 and list specifically those matters which require attention. If no agendas are received or if all parties represent that the status conference is necessary, the Court may vacate that conference from the Court's calendar.

E. The Court shall conduct a final pre-trial conference to be scheduled. All trial counsel who expect to participate in the trial shall attend the final pre-trial conference.

F. The Court will announce during the Defense Case-in-Chief the deadline for the Final Proposed Jury Instructions, as well as the number of proposed non-pattern instructions permitted per side. Counsel shall submit two copies of ALL proposed instructions (pattern and non-pattern), in three-ring binders, with numerical dividers; providing the instruction with the appropriate given/modified/refused/withdrawn provisions, followed by copies of the legal support for the proposed instructions. Counsel shall also provide proposed pattern instructions separated from the non-pattern instructions with the appropriate given/modified/refused/ withdrawn provisions. The disks or email copies of the proposed instructions shall not have the citation that was provided on the hard copy (to reduce the amount of editing required during compilation for the instructions). Because the Court will require the Defendants to act in concert with regard to chargeable proposed instructions.

Updated January 1, 2021

LR49-TR40 Rule 712
EXIGENT CASES AND EXPEDITED TRIAL SETTINGS

A. "Exigent Case" shall mean the allegedly injured plaintiff has been diagnosed with malignant mesothelioma, any other asbestos-related Stage IV condition, or can show other compelling circumstances that justifies deviating from the strong presumption that all cases shall be handled in FIFO Order.

B. Any case that does not meet the definition of an "exigent case" shall be a non-exigent case. In the event the plaintiff in an exigent case dies before the deadline to file motions for summary judgment and the Court grants a party's motion to remove the case from an expedited trial setting, the case will no longer be considered exigent for purposes of establishing deadlines and trial settings.

C. To obtain exigent status and an expedited trial setting, a plaintiff must:

1. File with the Court a Motion for Expedited Trial Setting showing good cause why the plaintiff should be afforded the preferential treatment; and,

2. The Motion for Expedited Trial Setting shall contain a statement that the Plaintiff has a confirmed pathological diagnosis and/or clinical diagnosis of the disease mesothelioma or a stage IV cancer. The Motion shall reference that the confirming medical documentation is available through counsel for plaintiff and/or the joint defense records gathering service and shall not be attached to the motion to maintain privacy of the medical documentation. In the event that Plaintiff seeks exigent status on a basis other than the Plaintiff's serious medical conditions stated above, Plaintiff shall attach a detailed affidavit that demonstrates facts supporting the need for an expedited trial date.

D. Following a Motion for Expedited Trial Setting, the case shall proceed as if exigent pending the Court's ruling on that Request.

E. Defendant(s) shall file any objection to Plaintiff(s) Motion for Expedited Trial Setting within 60 days, or within 30 days of service upon that Defendant, whichever is later.

F. An exigent case shall remain exigent and receive expedited treatment only so long as:

1. The Plaintiff remains living; or

2. The parties and the Court have invested substantial amounts of time and effort in preparing the case for trial and the deadline for filing motions for summary judgment has passed such that in the interest of judicial economy the case should continue to receive expedited treatment and remain in place on the upcoming trial calendar.

G. At no time will an expedited trial setting be granted for any exigent case less than eight months after the date on which plaintiff requests the exigent status and expedited trial setting.

H. This Rule is only for the purposes of determining trial setting priority, and designation of a case as "exigent" shall not constitute evidence that the plaintiff's injuries were caused by or related to asbestos.

LR49-TR40 Rule 713
TRIAL SETTING CRITERIA

A. Asbestos cases pending on the Marion County Mass Tort Litigation Docket shall be set for trial pursuant to the following criteria, absent a written, verified showing of good cause:

1. Any case identified by the Court as an "exigent case" may receive a priority setting and expedited trial date, in comparison with non-exigent cases.

2. No more than two "exigent cases", as that term is defined in Rule 712, will be scheduled for trial in any single trial setting.

3. Non-exigent cases will fill the remaining slots in a particular trial setting using cause number order, beginning with a particular plaintiffs' firm's oldest pending cases and moving forward according to cause number.

B. In the event that one or more cases set in any particular trial setting is not tried, settled, dismissed or otherwise resolved:

1. The case shall roll over and displace the settings in that firm's next trial setting.

2. Cases rolled over will be set for trial behind only exigent cases assigned to that trial setting by the Court.

3. Cases that are rolled over will be assigned to that firm's next trial setting in the same order as originally scheduled for trial.

4. Any vacancies remaining in the new trial setting shall be filled according to the trial setting criteria in section A of this Rule.

5. Cases displaced by the cases rolled over from the previous trial setting then become first choice settings in that firm's very next trial setting in the order that they were originally set for trial, behind any exigent cases set for that day.

6. Any vacancies remaining in that trial setting shall be filled according to trial setting criteria in section A of this Rule.

7. For good cause the Court may make exception to the number of cases set in a trial setting.

8. In the event that one exigent case rolls over from the previous trial setting and two exigent cases are set for the next trial setting, no exigent case will be displaced, but all of the non-exigent cases will roll over to the next trial setting.

C. Cases will be released from a trial setting by the Court as follows:

1. Four weeks before the first scheduled day of trial, the seventh and eighth choice settings shall be released from the trial setting and roll over to the Plaintiff firm's next trial setting.

2. Two weeks from the first scheduled day of trial, cases that are not first, second, or third choices in the trial setting shall be released from the trial setting and roll over to the plaintiffs' firm's next trial setting.

3. At Noon on the day before trial is set to begin, all cases but the first choice in the trial setting shall be released from the trial setting and roll over to the plaintiffs' firm's next trial setting.

D. Once cases are assigned to a particular trial setting by the Court, the trial setting will not be altered or modified without good cause shown, other than to accommodate cases rolling over from previous trial settings, as described above.

E. A motion to continue trial may be made only by a written and verified motion pursuant to T.R. 53.5, and will be granted only upon a showing of exceptional circumstances.

F. If a motion to continue trial is granted:

1. The case(s) affected by the motion to continue shall roll over to the plaintiffs' firm's next trial setting immediately upon entry of the Court's order granting the motion; and,

2. The case(s) affected shall roll over to the plaintiffs' firm's next trial setting in the same order as previously set, in accordance with the provisions of this Rule.

G. For any case released from one trial setting and removed to another, all existing Case Management Order deadlines for that case are vacated unless already expired before the motion to continue was filed.

MARION COUNTY LOCAL SMALL CLAIMS RULES

GENERAL COMMENTS TO THE RULE

The Circuit Court is charged by Ind. Code § 33-34-3-6 and 7 to "make and adopt uniform rules for conducting the business of the small claims court . . . according to a simplified procedure to enable any person either to seek or to defend against a small claim without consulting or being represented by an attorney." In discharging this responsibility, the Court has decided to enhance the normal opportunity for comment by laying these proposed rules before an Advisory Committee.[4] The Court has also attended all of the public hearings of the Supreme Court Task Force on Marion County Small Claims Court and has carefully read its Report of May 1, 2012. Finally, the Court has elicited the advice and assistance of the nine sitting Small Claims Court judges.

At the end of the text of each proposed rule, the reader will find citations to any relevant Task Force finding or recommendation, as well as to relevant passages of a February 2012 report on "Landlord-Tenant Court Proceedings in Indiana" co-authored by Professor Florence Wagman Roisman of the Robert H. McKinney School of Law and Brienne Delaney, a 2012 graduate of the law school. Occasionally, the citations are supplemented by brief comments.

It should be noted that these Rules necessarily have a limited function. Most importantly, these Rules may not conflict with the Indiana Small Claims Rules. These rules may supplement, but not supplant the State rules.

100. GENERAL PROVISIONS

Rule LR49-SC01-101. Purpose, Scope and Authority

1. The purpose of these rules is to promote uniformity and fairness of practice and procedure among the township divisions of the Marion County Small Claims Court.

2. These rules are intended to supplement the Indiana Rules for Small Claims. In the event of a conflict between these rules and the Indiana Rules, the latter shall govern.

3. These rules shall apply to all divisions of the Marion County Small Claims Court and to all Judges serving in that Court, regardless of their formal designation as part-time or full-time.

4. The Circuit Court is authorized to promulgate these rules by Ind. Code §§ 33-34-3-6 - 7.

Adopted Oct. 15, 2012 effective March 1, 2013.

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[4] Advisory Committee Members: Chair John Day, Indiana State Representative, Alison Becker, Northern Indiana Public Service Company; David Gilman, Attorney at Law; Christine Hayes Hickey, Partner at Rubin & Levin, P.C.; John Keeler, Attorney at Law; Phillip LaMere, Attorney at Bowman, Heintz, Boscia & Vician, P.C.; Nathaniel Lee, Partner at Lee & Fairman, LLP; Aida J. Ramirez, Law Clerk for the Hon. Louis F. Rosenberg, Judge, Circuit Court. The Court acknowledges with thanks the public service performed by this Committee. As a result of their scrutiny, these rules were substantially improved.

Rule LR49-SC01-102. Citation

These rules may be cited as LR49-SC____.
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-103. Definitions

Court. "Court" shall mean all of the Marion County Small Claims Courts, unless the context indicates otherwise.
Court website. "Court['s] website" shall mean a website that contains Court information including a calendar and forms, with its URL location to be determined by March 01, 2013.
Judge. "Judge" means the sitting Judge or Judge *pro tempore* of a division of the Marion County Small Claims Court, unless the context indicates otherwise.
SCR. "SCR" shall mean Small Claims Rule of the State of Indiana.
Session. "Session" shall mean periods during which the Judge is scheduled to take the bench to transact the business of the court, in the morning between 9:00 A.M. and 12:00 P.M. and afternoon between 1:30 P.M. and 4:30 P.M.
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-104. Court Hours

The Court shall be open to accept pleadings and conduct any other business during "regular office hours" of 8:30 a.m. to 4:30 p.m. Monday through Friday of each week, except for holidays as recognized by the Circuit Court. For the convenience of the public, the Court may also arrange for sessions outside regular office hours.
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-105. Court Sessions

The Judge shall schedule as many sessions as necessary to transact the business of the Court in a reasonably prompt manner in compliance with these Rules. The Court shall post the Court calendar both in the Court and on the Court website.
Adopted Oct. 15, 2012, effective July 1, 2013.

LR49-AR15-SC-106 Court Reporter Services

Court reporters in all Marion County Small Claims Courts will follow Model One of LR49-AR15-307 in the Marion County Administrative Local Rules.

A. Definitions. The definitions in LR49-AR 15-307 (A.) shall apply under this local rule except as follows:

1. *Court* means the particular Township Marion County Small Claims Court for which the court reporter performs services.

2. *Marion County Small Claims Court indigent transcript* means a transcript that is paid for from Marion County Township Trustee funds and is for the use on behalf of a litigant who has been declared indigent by a court.

B. Court Reporter Model.

1. Transcription work may be subcontracted at the discretion of each Township's Marion County Small Claims Court Judge to private court transcription services.

C. Per Page Fees:

1. The maximum fee for preparing a Compact Disc recording of a proceeding is the cost of the compact disc, mailing costs if applicable, and a five dollar ($5.00) fee if the Compact Disc can be certified.

2. The transcript supplies used in the preparation and assembly of the transcript and exhibit binders shall be itemized and charged in accordance with the fee schedule set out in the Schedule of Transcript Supplies and Fees on file with each Small Claims Court Judge.

3. Each Court Reporter shall, on an annual basis, file a written report with the Indiana Supreme Court, Office of Judicial Administration, disclosing all transcript fees received by the Court Reporter for the preparation of Marion County Township Small Claims Court indigent, state indigent, or private transcripts. The report shall be made on forms prescribed by the Office of Judicial Administration and timely filed with that office.
(Adopted July 1, 2018)

200. COMMENCEMENT OF CASE

LR49-SC-201. Forms

A. For the purpose of this section, a "form" shall mean any standardized pleading or order or document approved for use in the Small Claims Courts by the Circuit Court.

B. For the purpose of this section, a "required form" is a form which must be used by litigants and the Court.

C. For the purpose of this section, a "suggested form" is a form which will be deemed acceptable by the Court but need not be used by litigants and the Court.

D. Before a form is deemed required, it must be presented to the various Small Claims Courts and the Office of Judicial Administration for comment. When a proposed required form is for the use of litigants, the Circuit Court shall also solicit comment from bar associations and organizations described in LR49-SC00-202 before adopting the same.

E. The Court shall maintain a supply of preprinted required forms. Required forms shall be posted on the Court website and the Indiana Judiciary website. The Court may charge a fee, not to exceed the cost to the Court, for providing a form subject to a waiver of such costs pursuant to LR49-SC00-202.

F. The Court may, in its discretion, maintain a supply of suggested forms. Suggested forms shall be available at each Court in a binder for inspection and copying. Suggested forms shall be posted on the Court website and the Indiana Judiciary website.

G. The Clerk shall assist unrepresented litigants in completing a form, but shall not provide advice as to the use or effect of the form.

Comment: The intent of LR49-SC02-201(G) is to encourage the provision of clerical assistance to unrepresented litigants in completing Court forms. It is not intended to encourage the provision of advice that could be considered the unauthorized practice of law. For instance, it is permissible to indicate that a form is asking for the facts of the case. It would not be permissible to suggest what facts should be included on the form or how those facts should be presented.
Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(34), p. 11; D(51)-(52), p. 13.
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 3(a), p. 28; 4, p. 29.
REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA III(B), p. 17.
Adopted Oct. 15, 2012, effective July 1, 2013; amended July 1, 2018).

Rule LR49-SC00-202. Waiver of Filing Fees and Costs

D. Upon filing a Waiver of Filing Fee and Costs form and a showing of the present inability to pay the filing fee and costs, the Court may waive the filing fee and costs in full or in part.

E. The Court may presume that an applicant is unable to pay the filing fee and costs if the applicant is represented by an attorney of an organization that uses generally accepted standards of poverty to determine eligibility for its services. Persons whose filing fees and costs have been waived are not required to pay Required Form fees as indicated in LR49-SC02-201(E).

Comment: For example, Indiana Legal Services uses objective financial criteria typically requiring eligible clients to have income at or below one hundred and twenty-five percent (125%) of the U.S. Census Poverty Guidelines.
Citation(s):
Ind. Code § 33-37-3-2
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT D(45), p. 12.
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC03-203. Timeliness of Service

Service shall be effected no fewer than twenty (20) days before the initial hearing, except when possession of real estate is sought. When possession of real estate is sought, service shall be effected no fewer than ten (10) days before the initial hearing, except in those instances consistent with Ind. Code § 32-30-3-4 and § 32-31-6-7.

Comment: In emergency situations, the Court may reduce the Timeliness of Service requirement to a period of time less than ten (10) days. Consistent with Ind. Code § 32-31-6-7, failure to pay rent is not considered an emergency situation.
Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT G, p. 15 -16.
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 1(b), p. 27.

Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC03-204. Explanation of Service Options

At the time of filing a claim, the Clerk shall explain to unrepresented litigants their options for serving the Notice of Claim and Summons. Should the litigant fail to designate a preference, service shall be by certified mail.
Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT G, p. 15 -16.
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 1(b), p. 27.
INDIANA SMALL CLAIMS RULE 3(C).

Adopted Oct. 15, 2012, effective March 1, 2013.

300. MOTIONS

Rule LR49-SC09-301 Continuances

A. Absent a Motion for Continuance, parties shall be ready for a trial on the merits at the initial hearing. Motions for Continuance of the initial hearing shall be granted liberally, except for hearings for possession of real estate. Motions for Continuance of the initial hearing joined by all parties shall be automatically granted. Motions for Continuance of hearings set after the initial hearing shall be granted only for good cause shown.

B. If the parties at the initial hearing declare that they desire to proceed to trial, the Court shall try the case during that session, provided that the Court may continue the case due to congestion on the Court docket. The Court shall reserve a reasonable portion of the Court's docket for contested matters on any day during which it holds initial hearings.

C. If a case is continued, the Court shall determine from the litigants the time needed for trial and the Court shall endeavor to schedule contested matters and keep its docket in such a manner as to avoid unnecessary delay and inconvenience to the parties.

Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(c), p. 27.
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC12-302. Change of Venue from the Court

In addition to a Motion to Correct Venue, as provided at SCR 12 either party may move for a change of venue from the Court, except in cases in which there is a claim between a landlord and tenant. The Court shall grant Motions for Change of Venue upon a showing of good cause. Motions for Change of Venue and Motions to Correct Venue shall be filed within ten (10) days of the service of the Notice of Claim or objections to venue will be deemed waived.
Comment: More than one Court may be considered proper venue. As a result, it may be appropriate to allow for a Motion for Change of Venue even though the Court granting the motion is considered a proper venue for the matter.
Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT E, p. 13 - 14.
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-TP38-303. Jury Demand

A demand for trial by jury must be filed with the Court no fewer than ten (10) days after the first setting of the initial hearing.
Comment: This Rule implements Ind. T. R. 38(B) which governs the timeliness of a Jury Demand. A jury must be demanded no later than ten (10) days after the deadline for filing a responsive pleading or in most cases about thirty (30) days after service. When as in Small Claims cases, no responsive pleading is required, the deadline for demanding a jury is "within ten (10) days after the time such pleading otherwise would have been required."
The right to a jury trial in most civil cases is a right protected by both the Indiana and U.S. Constitutions. Pro se litigants in small claims cases may first become aware of this important right by receiving a pamphlet or talking with court staff at the initial hearing. Imposing a deadline of ten (10) days after service, as is required by Ind. Code § 33-29-2-7 for small claims courts which are a division of a Superior Court, would result in some defendants inadvertently losing this right before their initial hearing. This Court believes that LR49-TP38-303 is more consistent with Ind. T. R. 38(B) and the constitutional status of the right to a trial by jury.
Adopted Oct. 15, 2012, effective March 1, 2013

LR49-TR79.1-SC-304. Appointment of Special Judges

In the event it becomes necessary to appoint a special judge in the Marion county small claims courts, the provisions of Indiana Rules of Trial Procedure at Rule 79.1 shall be followed.
(Adopted July 1, 2018)

400. HEARING PROCEDURES

Rule LR49-SC11-401. Non-Delegable Duties

The Judge shall review all tendered Judgments and Orders, but may delegate to Court staff related clerical functions not requiring the exercise of judicial discretion. In no event may any official duty of the Court be delegated to persons not sitting as *pro tempore* Judges or not employed as staff.

Comment: Court staff may only use a stamp bearing the Judge's signature when specifically directed to do so by the Judge. Standing policies regarding the use of such a stamp by Court staff other than the Judge are not permitted except regarding the use of the stamp for copies of Orders which bear the Judge's original signature.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(32) – (33), p. 11; C(35), p. 11.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(c)-(d), p. 27-28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(A), p. 6.

INDIANA SMALL CLAIMS RULE 11(A).

Reynolds v. Capps, 968 N.E.2d 789 (Ind. Ct. App. 2012).

Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-402. Notice of Litigant's Rights

At the beginning of each session, the Court shall notify litigants of their rights as described in the Notice of Claim including but not limited to the following:

A. Litigants are encouraged to settle their disputes;

B. Litigants are also free to refuse to speak or provide information to the opposing party or its attorney;

C. At the initial hearing, the Court will consider Motions to Continue the trial;

D. When the session resumes, a litigant may speak with the Judge in open Court;

E. If no Motions to Continue the trial are made, the case will be tried during the session, unless the Court's docket is congested, in which case the matter will be continued to a later date.

The above information will be included in a video provided by the Circuit Court which may be used instead of an oral notification. The video shall be subtitled in Spanish.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(34), p.11; C(40), p. 12; C(43), p. 12; D(44), p. 12; D(49), p. 13; D(53), p. 13.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(b), p. 27; 3(a), p. 28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA III(B), p. 17; III(C), p. 18.

Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-403. Access to Court Files

Court files shall be under the control of the Court at all times. To facilitate trial preparation and/or negotiations, the Court may allow a party or its counsel to review or possess on the Court premises one or more files for a short period of time before and after the session and during the session. The opposing party shall have reasonable access to the file when in the possession of the other party.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(29) – (30), p. 10 - 11.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(f), p. 28.

Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC11-404. Agreed Judgments and Post-Judgment Payment Plans

Agreed Judgments and payment plans shall be reviewed for approval by the Court. In determining whether to approve the proposed judgment or payment plan, the Court shall consider in addition to the requirements of SCR 11 whether the judgment requires payment from income or assets which would be exempt from execution and if so whether the Defendant was informed of such exemption rights before signing the agreement. A debtor's signature on a Court-prescribed Notice of Exemption Rights Form shall give rise to a rebuttable presumption that the debtor was informed of his/her exemption rights. The absence of the same shall give rise to a rebuttable presumption the debtor was not informed of his/her exemption rights.

Comment: This provision is consistent with Branham v. Varble, which indicates that it is appropriate for Judges in small claims proceedings to advise pro se litigants of their exemption rights, at least as it pertains to the general wage and SSI exemptions. Branham v. Varble, 952 N.E.2d 744, 748 (Ind. 2011).

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(35) – (36), p. 11; E(61), p. 14.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(c), p. 27; 2(e), p. 28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(A), p. 6.

Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-405. Notice of Appeal Rights

At the time that the Court announces its decision in a contested matter, the Court shall advise the losing party of his/her right to appeal. In the event that the Court enters judgment outside the presence of the parties, said advice shall be included in the Entry served on the parties.

Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-406. Bifurcation of Proceedings

When a claim for possession of real or personal property is joined with a claim for damages, the Court may bifurcate the proceedings. The initial hearing may be restricted to the issue of whether the Plaintiff is entitled to possession, provided that the Defendant may introduce evidence in the form of testimony, affidavits or certified records or other reliable evidence constituting a defense under Indiana statutes or common law. All remaining issues, including damages, may be tried at a subsequent hearing.
Comment: The intent of this section is to give effect to Ind. Code § 32-30-3-5 as to the form of permissible evidence. See Morton v. Ivacic, 898 N.E.2d 1196, 1199 (Ind. 2008). It is also intended to recognize defenses in addition to a denial that the rent was not paid. See Theis v. Heuer, 264 Ind. 1, 280 N.E.2d 300 (Ind. 1972); Barnes v. Mac Brown & Co., Inc., 264 Ind. 227, 342 N.E.2d 619 (Ind. 1976). Such defenses include, but are not limited to, constructive eviction, violations of warranties of habitability, and the Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5220.

Citation(s):
REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA II(B)(1), p. 12 - 13.
Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5220
Adopted Oct. 15, 2012, effective March 1, 2013.

500. DEFAULT JUDGMENTS

Rule LR49-SC03-501. Required Findings for Default Judgment

Before entering a default judgment, the Court shall make the following specific findings:

1. The Court has jurisdiction over the Defendant(s) and that the requirements of SCR 3(D) have been met.

2. The Plaintiff has complied with Ind. Trial Rule 9.2.

3. The Defendant(s) is not a member(s) of the United States Armed Forces in accordance with the Servicemembers Civil Relief Act.

Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 1(b), p. 27.
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT G, p. 15 - 16.
Servicemembers Civil Relief Act, 50 U.S.C. §§ 501 *et seq.*
Adopted Oct. 15, 2012, effective March 1, 2013.

LR49-SC00-502. Attorney's Fees

A. Attorney's fees shall not be awarded, unless such fees are authorized by law or contract. The party seeking attorney's fees shall support its request with evidence of the legal authority for the fees, the number of hours reasonably spent on the case, the hourly rate for those persons providing legal and/or paralegal services and any other fact relevant to the reasonableness of the requested fee. The parties may present evidence in the form of a sworn affidavit. Attorney fees may only be claimed for services provided for a particular case, provided that in those instances, when time spent on more than one case can be with reasonable accuracy apportioned among the cases, such apportioned time may be compensated.

B. In determining the amount of the fee, the Court shall consider:

1. time reasonably and actually expended on the case up to the date the request is heard or decided;
2. factors enumerated at Rule 1.5 of the Indiana Rules of Professional Conduct;
3. the amount of the fee in relation to the amount of damages sought; and
4. any other circumstance bearing on the "reasonableness" of the fee.

C. There shall be a rebuttable presumption that a reasonable attorney fee for a small claims case other than an eviction proceeding resulting in a judgment between $1.00 and $499.99 shall be $300.00. There shall be a rebuttable presumption that a reasonable attorney fee for a small claims case other than an eviction proceeding resulting in a judgment between $500.00 and $999.99 shall be $400.00. There shall be a rebuttable presumption that a reasonable attorney fee for a small claims case other than an eviction proceeding resulting in a judgment between $1,000.00 and $3,499.99 shall be $450.00. There shall be a rebuttable presumption that a reasonable attorney fee for a small claims case other than an eviction proceeding resulting in a judgment between $3,500.00 and $5,999.99 shall be $550.00. There shall be a rebuttable presumption that a reasonable attorney fee for a small claims case other than an eviction proceeding resulting in a judgment between $6,000.00 and $8,000.00 shall be $650.00.

D. There shall be a rebuttable presumption that prosecution of an eviction proceeding in a small claims court requires 2.5 hours of time and service and that a reasonable attorney fee for this time and service is $500.00. This fee shall be inclusive of time and service incurred to recover compensation for damages and unpaid rent.

E. A party seeking attorney fees is not limited to the presumptive attorney fee and may request fees in excess of the presumptive fee by submitting an attorney fee affidavit in compliance with section A above. A party who opposes a presumptive attorney fee may require itemization of time and service as required by section A above. A party who seeks a presumptive attorney fee under section C or D shall not be required to itemize time and service unless the request is challenged by the other party.

F. The Marion County Small Claims Judges shall review this rule every four years to determine whether or not the presumptive fees should be adjusted due to economic changes.

Comment: The purposes of the proposed amendment are two- fold. The MC Small Claims Courts have observed divergent practices and policies for determining "reasonable attorney's fees". The first purpose is then to promote uniformity on this subject to establish a baseline for the MC Small Claims Courts to determine attorney fees and to bring about a consistent policy in which attorneys and litigants can follow.

The second purpose of the amendment is to clarify that the courts are obliged to consider a wide variety of factors other than the amount of attorney time spent on the case. The amendment incorporates by reference Rule 1.5 of the Rules of Professional Conduct which lists no less than 8 factors. The list is not, however, exhaustive.
(Adopted Apr. 5, 2016, effective July 1, 2016)

Rule LR49-SC10- 503. Recoverable Damages

A judgment may not exceed the relief specifically requested in the Notice of Claim, except that a Notice of Claim generally seeking unpaid rents for real estate shall be deemed to include a request for rents accruing after filing through the date of judgment. Furthermore, a landlord may seek damages to the extent that notice of such damages has been given to the tenant in compliance with Ind. Code § 32-31-3-1 *et seq.* no fewer than five (5) days before the hearing. The Court may allow an amendment of the Notice of Claim and/or a continuance to file the same at any time before the damages hearing, if it finds that the Defendant(s) have or will receive reasonable notice of said amendment before the damages hearing.
Comment: The problem addressed in this rule is that of a Defendant not being made aware of the full extent of the landlord's alleged damages. A catch phrase of "all other available relief" or "compensation for any waste committed on the premises" is insufficient to alert an unrepresented Defendant in a small claims setting. By incorporating the requirements of the Indiana Security Deposit Act, specific and timely notice of the landlord's claims will be assured.
Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT D(48), p. 12.
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(h), p. 28.
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-504 Dismissal of Plaintiff's Claim

Upon the failure of a Plaintiff to appear at the initial hearing or at a trial on the merits, the cause may be dismissed without prejudice, provided that the dismissal may be with prejudice if the same cause of action was previously dismissed for failure to prosecute or was voluntarily dismissed by the Plaintiff. Further, default judgment may be entered in favor of Defendant on any counterclaim.
Adopted Oct. 15, 2012, effective March 1, 2013.

600. POST JUDGMENT PROCEEDINGS

LR49-SC-601. Court's Jurisdiction Pending Docketing in a New Court

Nothing in these rules shall be construed as divesting the Court of jurisdiction to hear matters arising between the date of filing of a Motion for Change of Venue and the date the case is docketed in the receiving Small Claims Court.
Adopted Oct. 15, 2012, effective March 1, 2013; amended July 1, 2018.

Rule LR49-SC00-602. Proceedings Supplemental

A. **General Procedure.** Proceedings supplemental to execution shall be governed by Ind. T. R. 69(E) and applicable statutes, and subject to the approval of the Court.

B. **Thirty-Day Rule.** A Motion for Proceedings Supplemental shall not be set until thirty (30) calendar days after the date of judgment, except by order of the Court for good cause shown.

C. **Hearings.** A Proceedings Supplemental shall be dismissed if the Court finds that the judgment creditor has had a reasonable opportunity to discover and/or execute on non-exempt assets or income. Except when the dismissal is due to the failure of the judgment debtor to appear at a Proceeding Supplemental hearing after due notice, subsequent Motions for Proceedings Supplemental shall only be granted upon a showing of a material change in the judgment debtor's financial circumstances or that a sufficient period of time has lapsed to justify a subsequent proceeding.

Comment: This provision is consistent with Carter v. Grace Whitney Properties, which holds that future proceedings supplemental "must be supported by a showing [by the creditor] that new facts justifying a new order or examination have come to its knowledge." Carter v. Grace Whitney Properties, 939 N.E.2d 630, 637 (Ind. App. 2010); See also, Button v. James, 909 N.E.2d 1007, 1009 (Ind. App. 2009); Kirk v. Monroe County Tire, 585 N.E.2d 1366, 1369 (Ind. Ct. App. 1992).

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(35) – (36), p. 11; E(61), p. 14.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(c), p. 27; 2(e), p. 28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(A), p. 6.

Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC11-603. Garnishment of Wages

The Court may set the amount of a wage garnishment at less than the maximum imposed by Ind. Code § 24-4.5-5-105, if it determines that Defendant will be deprived of income necessary for Defendant's support and/or the support of those legally dependent on the Defendant. The Defendant bears the burden of proving the above financial circumstances.

Comment: This provision is consistent with SCR 11(C), which authorizes the Court to specify the method of payment when ordering a judgment.

Citation(s):

Ind. Code § 24-4.5-5-105.

Adopted Oct. 15, 2012, effective March 1, 2013.

LR49-SC-604. Appeals

As of July 1, 2018, Marion County Small Claims Courts are Courts of Record. Therefore, any cases filed on or after that date shall be appealed to the Indiana Court of Appeals pursuant to the Indiana Rules of Appellate Procedure and IC 33-34-3-15.1.
Adopted Oct. 15, 2012, effective March 1, 2013; amended July 1, 2018.

700. MISCELLANEOUS

Rule LR49-SC00-701. Staff Identification

Court staff and the Constable and his/her deputies are to display identification by name and title at all times as prescribed by the Judge. When conducting Court business by phone, staff shall also identify themselves.
Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(31), p. 11.
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(a), p. 27.

Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-702. Court Facilities

Court facilities shall be available on an equal basis to all persons having business with the Court, provided that the Court may reserve facilities for the purpose of conducting settlement conferences during Court sessions and for a reasonable period of time before and after each session. The Courtroom may be used for conferences, if other areas on the premises are unavailable or insufficient. If it is necessary to use the Courtroom, oral and/or written notice shall be given that the use of the Courtroom is not an endorsement or approval of the positions of any party and that the Court will independently review any agreement reached by the parties.

Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(30), p. 11.
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-703. Wedding Fees

A. The Judge solely at his/her own discretion may perform weddings as a free service to the public on Court premises at any time. The Judge may perform weddings for a reasonable fee ("paid wedding"), so long as the ceremony is performed off Court premises and does not take place during the "regular office hours" of the Court, as defined by Rule 104 of these Rules.

B. Court staff shall be provided by the Judge with a written statement of his/her availability to conduct paid and/or free weddings to be given to persons inquiring about the same. If the inquirer desires a free wedding, Court staff may schedule the wedding or do any other task related to preparing for and conducting of the ceremony. If the inquirer desires a paid wedding, the staff shall do nothing other than providing the inquirer with information for contacting the Judge outside of Court. The staff shall not recommend any particular officiant, including the Judge, to perform a paid wedding. The staff providing the inquirer with the information for contacting the Judge outside of Court shall not be considered recommending any particular officiant including the Judge.

C. The Court may publicize the availability of free weddings to the public by brochure, social media or any other means of communication.

D. If the Judge chooses to advertise his/her services as a paid wedding officiant, he/she is only permitted to advertise his title and the township he serves. Any further information referring to his status as a judge such as pictures in judicial attire is strictly prohibited.

E. The Judge shall not solicit any public official or public employee to publicize his availability to perform weddings for a fee, but may solicit such publicity regarding his availability to perform weddings free.

F. Once the Judge becomes full-time, they are prohibited from performing weddings for a fee.

G. Each Judge has the discretion to perform weddings or not perform weddings.

Citations(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT F (64)-(65), P.15.
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 9, and P.30.
Comment: Officiating at weddings is a minor activity in all of the Small Claims Courts, except in Center Township. Wedding fees have been a substantial source of personal income for Center Township judges since the inception of the Small Claims system more than forty (40) years ago. Moreover, Justices of the Peace performed weddings for a fee for many years before they were replaced by the current system. Changing views on the propriety of public officials accepting fees as compensation and increases in the revenue derived from wedding fees require a reevaluation of this practice. For these reasons, the Rule follows the Task Force recommendation and requires that wedding fees for weddings performed in the Court or on Court time be deposited in the Township General Fund.
Adopted Oct. 15, 2012, effective March 1, 2013, amended effective October 5, 2015

Rule LR49-SC00-704. Law Practice of Judges

A Judge shall not practice law before another Small Claims Court Judge.
Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT F(68) – (70), p. 15.
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 8, p. 30.
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-705. Compliance with the Americans with Disabilities Act ("ADA")

The Court shall arrange for an evaluation of the compliance of Court facilities with the ADA. By April 1, 2013, the Court shall provide to the Township Advisory Board a copy of the evaluation and request the Board to correct violation(s).
Citation(s):
REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(C), p. 6 - 7.
Title VII Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-706. Availability of Rules and Other Legal Reference Material

1. Sufficient copies of these Rules, the Indiana Small Claims Rules, the Small Claims Litigant's Manual and the brochure entitled Rights and Responsibilities shall be available at the Court. The above materials shall be in English and Spanish. The Court may supplement the above materials as it sees fit.

2. The Circuit Court shall be responsible for making the above materials available to locations other than the Small Claims Court. These locations include, but are not limited to, the Court's website and Indianapolis Marion County Public Library branches.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 3(d), p. 28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(D), p. 8 - 7.
REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA III(A), p. 16.
Adopted Oct. 15, 2012, effective March 1, 2013.

Rule LR49-SC00-707. Availability of Interpreter Services

Upon a showing that a party has limited English proficiency to understand and/or effectively participate in the proceedings, the Court shall provide a certified interpreter at no cost to the party. The Court shall provide an American Sign Language interpreter at no cost to parties with hearing disabilities.

Citation(s):
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT D(46) – (48), p. 12.
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 3(d), p. 28.
REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(D), p. 8 - 7.
Adopted Oct. 15, 2012, effective March 1, 2013.

LR49-SC11-708 Redocket Fees

A. Redocket defined

When a case has been decided, the file shall be assigned a disposition date pursuant to Administrative Rule 7 of the Indiana Supreme Court and maintained under the original case number in a location apart from pending files. In the event a decided case is redocketed for reconsideration by the court after the initial entry of judgment that seeks enforcement or modification of the judgment, the disposition date shall be deleted from the file and the case file returned to the pending cases in sequence with the case number originally assigned. A disposition date shall be reassigned at the time the case returns to a decided status.

B. Application of Redocket Fee

A redocket fee pursuant to Indiana Code 33-34-8-1(a)(5), shall be applied to a case that has an initial entry of judgment that seeks enforcement or modification of the judgment.

C. Judicial discretion to waive or apply the fee

It is within the discretion of the Judge of the Marion County Small Claims Court to waive or apply the redocket fee.

(Rule to be effective on September 1, 2020)