

# LOCAL RULES

## FOR ST. JOSEPH COUNTY, INDIANA

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## **PREAMBLE**

The Judges and Magistrate Judges of the State Courts in St. Joseph County intend that court business will be conducted in a manner consistent with the highest standards of ethics, civility, and professionalism as exemplified by the Indiana Code of Judicial Conduct, the Indiana Rules of Professional Conduct, and other rules of court. The proper conduct of proceedings in Courts within St. Joseph County is appropriately described by the following quotation:

[L]itigation provides an opportunity for private parties to dispose of disputes in orderly and disciplined fashion. But the open forum which our courts provide for conflict resolution is not, nor can it ever be, a license to slander and abuse one's adversary. Such conduct diminishes the integrity of an institution whose usefulness depends upon the respect in which it is held by the public and by the lawyers who practice in it.

*Van Iderstine Company v. RGJ Contracting Co., Inc.*, 480 F.2d 454 (2nd Cir. 1973).

As noted by former Chief Justice Warren E. Burger, "fixed rules of etiquette and manners are the lubricant to keep the focus of the courtroom contest on issues and facts and away from distracting personal clashes and irrelevancies." Burger, ABA JOURNAL 2, 74 Vol. 60, p.171 (1974).

With this in mind, lawyers and litigants are reminded of their continuing obligation to comply with the rules of court and to maintain an atmosphere of civility within the courtrooms in St. Joseph County.

## **LOCAL GENERAL AND ADMINISTRATIVE RULES FOR ST. JOSEPH COUNTY (100 SERIES)**

### **Rule LR71-TR1-101. Intent and Scope of Local Rules.**

These local rules are adopted by the Courts of the 60<sup>th</sup> Judicial Circuit pursuant to the authority of T.R. 81, Indiana Rules of Trial Procedure, and are intended to supplement those Rules.

These local rules shall govern the practice and procedure in all cases in the following courts:

- (1) St. Joseph Circuit Court (hereinafter "Circuit Court");
- (2) St. Joseph Superior Court (hereinafter "Superior Court"); and
- (3) St. Joseph Probate Court (hereinafter "Probate Court").

Wherever appropriate, the term "Judge" shall be construed to mean Judge, Magistrate Judge, Senior Judge or any other appropriate judicial officer of the applicable Court.

Nothing contained in these rules is intended to limit the jurisdiction and/or authority of any judge of Circuit Court, Superior Court, or Probate Court (hereinafter "Courts"); however, these rules shall control the assignment of cases within the 60<sup>th</sup> Judicial Circuit.

In an individual case, a judge of the St. Joseph Circuit, Superior, or Probate courts, upon motion of any party or on the court's own motion, may suspend or modify any of these local rules should the interests of justice so require.

### **Rule LR71-AR00-102. Conduct, Dress, and Courthouse Policies.**

#### **102.1. Professional Conduct.**

The business of the Courts of the 60<sup>th</sup> Judicial Circuit will be conducted by the Judge in accordance with the Indiana Code of Judicial Conduct. Lawyers practicing in these Courts will do so in accordance with the Indiana Rules of Professional Conduct.

#### **102.2. Behavior in the Courthouse.**

While in any of the courthouses within St. Joseph County, the following behavior is prohibited:

- (1) Lawyers and litigants shall not lean on the bench and shall not sit or lean on counsel tables or the jury box.
- (2) Lawyers, litigants, and spectators shall refrain from unnecessary conversation in the courthouse or in the courtroom that would disturb the proceedings. Any necessary conversation in the

courthouse or in the courtroom shall be conducted at a sufficiently low voice level so as not to interfere with the conduct of trials, hearings, or other proceedings before the court.

- (3) Lawyers, litigants, or spectators may bring water bottles with a lid that seals or a non-disposable, spill-proof drink container into the courtroom. Open cups or cups with lids and straws are not allowed. All food and all prohibited beverage containers must be disposed of prior to entering the courthouses.
- (4) Lawyers, litigants, or any other person in the courtroom shall not talk to the court reporter during the hearings in which they are not participating.
- (5) Lawyers, litigants, or any other person shall not chew gum or tobacco in the courthouse.

### **102.3. Appearance and Dress.**

Every person who enters a courthouse in St. Joseph County should be appropriately dressed. Lawyers should appear for court proceedings in professional attire; litigants, witnesses, and spectators should appear in appropriate attire. Unless worn for religious purposes, court participants may be asked to remove hats or caps. Lawyers and litigants must remove outwear prior to the start of their court hearing.

### **102.4. Prohibited Items.**

To ensure compliance with state law and to promote public safety, the following rules apply to the presence or use of specific items in and around the courthouse complexes within St. Joseph County:

#### **102.3.1. Weapons.**

No attorney, litigant, witness, or spectator may possess firearms, knives, or other deadly weapons while in or around the courthouse complexes within St. Joseph County without the prior written authorization of the Judge of the Circuit Court or Probate Court or the Chief Judge of the Superior Court. However, a law enforcement officer who is not a litigant in a pending matter and who is appearing as a witness may retain possession of their issued firearm while in the courthouse so long as they advise, and receives the permission of, the supervisor of the courthouse security detail upon entering the courthouse complex or has prior authorization from a Judge of one of the Courts.

### **102.3.2. Cameras and Other Recording Devices.**

To avoid disruption during court proceedings, the following items are prohibited in the courtrooms and the areas in or around the courtrooms during hearings or trials:

- (1) Cameras, video cameras, or any devices capable of audio and/or visual recording;
- (2) If allowed inside the courthouses by these Rules or by order of a court, a personal digital assistant, electronic book, telephone, beeper, or similar electronic device capable of making an audible noise shall be disabled or switched to vibrate mode prior to entering a courtroom;
- (3) Newspapers or other periodicals unrelated to the business of the Court; and
- (4) Other items that may be disruptive to the court proceedings.

### **102.3.3. Video and Audio Broadcasting and Photographs.**

The taking of photographs, sound recording (except by official court reporters in the performance of their duties), broadcasting by radio, television, telephone, or any other means, in connection with any judicial proceeding in the environs of the court houses within St. Joseph County is prohibited;

A judge may permit the taking of photographs, broadcasting, televising or recording incidental to investiture, ceremonial, training, marital, adoption or other non-judicial proceedings.

Pursuant to Rule 2.17 of the Code of Judicial Conduct, a judge, by specific order, may allow the use of cameras or audio/visual recording equipment in their courtroom in an individual case so long as the means of recording will not distract participants or impair the dignity of the proceedings, and the broadcasting is restricted to non-confidential proceedings.

### **102.3.4. Limitations on the Use of Cellphones and other electronic devices.**

To facilitate governmental efficiency and client service, the general public may bring cellular telephones or similar electronic devices (hereinafter "electronic devices") into the portion of the St. Joseph County Courthouse complex that contains county and city



governmental offices, (County City Building) located at 227 W. Jefferson Boulevard, in South Bend, Indiana.

To enhance court security and the personal safety of litigants and court personnel, the general public is prohibited from bringing these electronic devices into the remainder of the St. Joseph County Courthouse complex (the portions of the Courthouse complex located at 101 South Main Street (Courthouse 1), 112 South Lafayette Street (Courthouse 2), and 129 South Main Street (Courthouse 3), South Bend, Indiana) as well as the Courthouse complexes located at 1000 S. Michigan Street, South Bend, Indiana, and 219 Lincoln Way West, Mishawaka, Indiana. Lockers have been installed at or near the entrances to Courthouses 1, 2, and 3, and inside the County-City Building, so members of the public can secure their electronic devices before going into the buildings.

Attorneys, credentialed journalists, court employees, building personnel, law enforcement officers, and other government employees on official business may bring these electronic devices into Courthouse complexes. Individuals who are allowed to bring an electronic device into Courthouse complexes will ensure that the device is deactivated before entering a courtroom and will not be allowed to activate the device while inside a courtroom. However, court staff, attorneys, maintenance staff, and security staff may bring an activated electronic device into a courtroom to facilitate court security, safety, and operations, and court business, provided that the electronic device is switched to vibrate (rather than an audible) mode prior to entering a courtroom.

All persons authorized by this Rule to bring electronic devices into Courthouse complexes are strictly prohibited from using such devices for any improper or unlawful purpose, including without limitation the taking of any photographs, videos, or recording audio or video. In the interests of privacy, safety, and/or justice, a judge, a bailiff or other member of court staff, or a duly authorized court security officer, may prohibit an individual who is otherwise allowed to possess an electronic device in a Courthouse complex from bringing an electronic device into any portion of a Courthouse complex. If a security officer prohibits an individual from bringing an electronic device into a Courthouse complex, the security officer

will prepare a written report detailing the reason(s) and/or concern(s), and shall distribute a copy to the Sheriff and to the appropriate judicial officer(s).

By written authorization, a judge may permit an expert witness or other person to utilize an electronic device in a specifically designated area within a Courthouse complex. Nothing in this rule is intended to prevent an individual from using a cellular telephone in the case of a legitimate emergency involving the personal health or safety of that individual or a third party.

#### **102.3.5. Enforcement.**

The Sheriff of St. Joseph County (hereinafter "Sheriff"), courthouse security personnel, and the bailiffs of each of the Courts have been authorized to monitor and enforce compliance with these Rules of Conduct and Dress. Any person violating the rules regarding photography, cameras, cellular telephones, or other electronic devices shall be subject to immediate confiscation of the camera, cellular telephone, or electronic device and/or a fine of up to and including \$1,500.00 if a camera or device makes an audio or visual recording, or a cellphone or other electronic device creates an audible noise, in a courtroom of a courthouse in St. Joseph County while court is in session, which penalty shall be imposed at the discretion of the judicial officer in whose courtroom the violation occurred or whose court proceeding was disrupted.

#### **102.3.6. Consent to Search.**

All persons entering any of the courthouses within St. Joseph County are required to pass through a magnetometer/x-ray screening point and to comply with all reasonable requests of courthouse security personnel. By entering a courthouse within St. Joseph County, every person is consenting to the reasonable search of their person and effects to ensure that they are complying with the requirements of this Rule. The Sheriff, law enforcement officers, or court security personnel may detain any person whom they have reason to believe possesses any weapon or other prohibited item in violation of this Rule for a period of time sufficient to obtain the name, address, date of birth, social security number, and/or to seize any weapon or other prohibited item.

## **Rule LR71-TR72-103. Court Clerk.**

### **103.1. Clerk of the Court.**

The term "Clerk" means the Clerk of the Circuit Court duly elected and qualified under Article 6, Sections 2 and 4 of the Constitution of the State of Indiana. Pursuant to I.C. 33-33-2-1, the Clerk of the Circuit Court shall also serve as the *ex-officio* Clerk of the Superior and Probate Courts.

### **103.2. Staffing.**

The Clerk shall assign sufficient staff to each court in order to effectively and efficiently manage the cases filed with and/or assigned to the respective Courts.

### **103.3. Clerk's Hours of Operation.**

The offices of the Clerk designated to receive filings for causes pending in their respective Courts shall be open on all days that any court is in session between the hours of 8:00 a.m. and 4:30 p.m. for all purposes contemplated by these rules.

## **Rule LR71-AR00-104. Court Hours and Scheduling.**

### **104.1. Court's Hours of Operation.**

#### **104.1.1. Judicial Days.**

The Courts shall be in session Monday through Friday, legal holidays excluded, and during such other hours as each court may, from time to time, direct or otherwise post. Unless otherwise occupied by court business or the operational needs of the court, each Court will convene on each judicial day of the calendar term.

#### **104.1.2. Legal Holidays.**

The Courts will follow the schedule for legal holidays authorized by the Board of Commissioners of St. Joseph County, subject to change due to emergencies or the operational needs of the Court.

#### **104.1.3. Emergency Closure.**

When weather conditions or other emergencies arise, the individual court may be closed at the direction of the Judge of the Circuit Court, the Judge of the Probate Court, or the Chief Judge of the Superior Court. If a closing is announced, the Court and the Clerk

of the Court shall make reasonable effort to notify attorneys and litigants scheduled to attend court on that date or time.

**104.2. Daily Calendar.**

Each regularly presiding Judge will maintain a separate calendar. The calendar of cases set for hearing on a given day will be made public in the Courthouse rotunda, on the Courtroom door, inside the Courtroom, and with the Clerk of the Court.

**104.3. Hearing on Matters Other Than Trials.**

Each Judge shall reserve periods of time for hearing matters other than contested trials, such as pre-trial and post-trial motions, rules to show cause, defaults, uncontested dissolutions of marriage, etc. as necessary to minimize conflicts in scheduling. The Judges shall set these schedules after consultation. Hearings shall be scheduled as follows:

**104.3.1. Scheduling Uncontested or Routine Matters.**

Routine matters, procedural motions, domestic relations applications for provisional relief and contempt proceedings, uncontested petitions for dissolution of marriage, and all other matters appropriate for summary consideration and disposition will be heard on the daily calendar.

**104.3.2. Scheduling Contested or Complicated Matters.**

Other matters that will require a hearing reasonably estimated to last in excess of twenty (20) minutes will be scheduled as the Court's calendar allows. Counsel or a party proceeding *pro se* should contact the chambers of the assigned judge to arrange for an appropriate hearing date and time.

**104.4. Trials.**

Trial settings will be scheduled by the trial judge. Counsel or a party proceeding *pro se* should contact the chambers of the assigned judge to obtain a trial date, to schedule a pre-trial conference, and/or to request a copy of the trial calendar.

**104.5. Prompt Appearance at Hearings and Trials.**

Prompt appearance at the time scheduled for all hearings and trials is required of the Court, counsel, and parties. Should an occasion arise when counsel or a party proceeding *pro se* can reasonably anticipate that they will be tardy for a scheduled hearing, or a scheduled hearing or trial must

be rescheduled due to an unanticipated emergency, counsel or the party shall notify the Court immediately.

**104.6. Penalties for Failure to Comply.**

Unless good cause is shown, the failure of counsel or a moving party to comply with this rule or to appear for a scheduled hearing or trial may result in the entry of default pursuant to the Trial Rules and/or may be enforced by direct contempt of court, which may result in a monetary fine or other appropriate penalty.

**Rule LR71-AR00-105. Court Sessions and Management.**

**105.1. Circuit Court.**

**105.1.1. Court Sessions.**

The calendar year term of the Circuit Court shall be divided into quarterly sessions as follows:

- (1) Session I shall be conducted during the calendar months of January, February, and March;
- (2) Session II shall be conducted during the calendar months of April, May, and June;
- (3) Session III shall be conducted during the calendar months of July, August, and September;
- (4) Session IV shall be conducted during the calendar months of October, November, and December.

**105.1.2. Grand Jury.**

The Circuit Court may call a grand jury as provided by I.C. 35-34-2-2.

**105.1.3. Petit Jury.**

A petit jury shall be called to serve during each of the sessions of the calendar year.

**105.2. Superior Court.**

**105.2.1. Division Assignments.**

From time to time, the Chief Judge will publish a schedule for the calendar year of the Superior Court and its Divisions. The schedule will contain the names of the Judges who are assigned to the various divisions of the Court for each session. The schedule will be

posted within the Courthouse and provided to attorneys upon request.

**105.2.2. Petit Jury.**

A petit jury shall be called to serve within each Division of the Superior Court.

**105.3. Probate Court.**

**105.3.1. Court Sessions.**

No sessions of Court shall be published; however, from time to time, the Judge will publish a schedule for the calendar year of the Probate Court and its Divisions.

**105.3.2. Petit Jury.**

If needed, a petit jury shall be called to serve during each of the sessions of the calendar year. The petit jury may be called from the list maintained by the Circuit Court or Superior Court.

**Rule LR71-TR40-106. Case Flow and Disposition.**

**106.1. Assignment of Cases in the Circuit Court.**

**106.1.1. Civil Assignment List.**

The Circuit Court shall keep assignment lists for civil cases. When the issues are closed in any civil case where a trial is contemplated, that case shall be placed on the appropriate assignment list. Cases shall be placed on the assignment lists in chronological sequence according to the date on which the issues are closed.

**106.1.2. Closing of Issues in Pending Cases.**

Where a party or an attorney of a party has a good faith belief that the issues in a case have been closed by the filing of a pleading or otherwise, the party or the attorney may so inform the Court and any opposing counsel in writing and file a copy of the notice with the Clerk of the Court. Opposing counsel shall then have ten (10) days in which to file written objections to such indication that the issues are closed, unless otherwise ordered by the Court. If no such objection is filed the cause shall be placed on the appropriate assignment list.

## **106.2. Assignment of Cases in Superior Court.**

All Superior Court cases (except Small Claims and Traffic & Misdemeanor) will be assigned to a particular Judge of the Superior Court immediately upon filing. Each Judge will be responsible for the management of his or her assigned caseload and will hear all motions, conduct pre-trial conferences, and prepare individual calendars of cases for trial.

### **106.2.1. Assignment of Civil Cases in Superior Court.**

All civil cases, including those transferred to the Court from other counties on change of venue, upon being filed with the Clerk, shall immediately be assigned, at random and by computer, by the Clerk to a Judge of the Court for all further action. It shall be the responsibility of the party filing the case, or the party's attorney, to ascertain the Judge to which the case has been assigned. The Chief Judge, pursuant to statute and Local Rule 109, herein, shall have the authority to transfer cases among and between the Judges or to other Judicial Officers, including Magistrate Judges, Senior Judges, Special Judges, and Temporary Judges, in order to balance the assignment of cases to the Judges of the Court and so as to comply with Indiana Supreme Court Administrative Rule 15 and Local Rule 1001, that being the LR71-AR1-1001(Appendix A).

### **106.2.2. Assignment of Criminal Cases in Superior Court.**

All felony criminal cases, including those transferred to this Court from other counties on change of venue, upon being filed with the clerk, shall be assigned to the Criminal Trial Division of this Court. The Chief Judge, pursuant to statute and Local Rule 109, herein, shall have the authority to transfer cases among and between the Judges or to other Judicial Officers, including Magistrate Judges, Senior Judges, and Temporary Judges in order to balance the assignment of cases to the Judges of the Court and so as to comply with Ind. Administrative Rule 15 and Rule LR71-AR1-1001, that being the LR71-AR1-1001(Appendix A).

## **106.3. All Entries by Assigned Judge.**

After the assignment of a case to a Judge, all entries and orders, including judgments and orders of dismissal, may be filed with the Clerk, who shall

submit the same to the assigned Judge (or, if unavailable, to any sitting Judge) for approval and entry in the court records.

**106.4. Listing of Assigned Cases.**

After the filing of the first responsive pleading, the assigned Judge will cause the case to be placed on a list to be kept by each Judge of the Court, in which noted cases are subject to call for trial pre-trial conference. Cases may be advanced upon this list by petition to the assigned Judge for good cause shown.

**Rule LR71-AR00-108. Organization of the Circuit Court.**

**108.1. General Organization.**

The Circuit Court shall be divided into two divisions, which shall be known as the South Bend and Mishawaka Divisions.

**108.2. Magistrate Judges.**

Magistrate judges appointed pursuant to statute, or otherwise, shall hold office at the pleasure of the Judge of the Circuit Court and shall perform such judicial duties as may be allowed by law, as set out in these rules, or as may be assigned by the Judge of the Circuit Court.

**Rule LR71-AR00-109. Organization of the Superior Court.**

**109.1. General Organization.**

The Superior Court shall be divided into five divisions, which shall be known as the Criminal Trial, Civil Trial, Small Claims, Traffic & Misdemeanor, and Mishawaka Divisions. Each of the Judges of the Superior Court is permanently assigned to the Civil or Criminal Divisions of the Court. Regardless of such assignment under these Rules, each Judge is authorized at all times to conduct hearings and trials in all matters, and to exercise the full jurisdiction of the St. Joseph Superior Court.

**109.2. Criminal Trial Division.**

The Chief Judge shall determine the Judges assigned to the criminal division. All felony cases, as well as all traffic and misdemeanor cases in which a demand has been made for trial by jury, shall be tried in the Criminal Trial Division. The Judge assigned to the Mishawaka Division shall be responsible for the trial of all cases assigned to that Judge. The



Chief Judge shall prepare an annual schedule indicating which Judge will be available in felony cases to approve requests for warrants, to fix bonds, and to conduct arraignments.

**109.2.1. Drug Treatment Court.**

There may be established a Drug Treatment Court for which one or more Judges or Magistrate Judges of the Superior Court shall be responsible. Eligibility for the Drug Treatment Court shall be determined by written criteria currently in place, or as hereafter modified. Cases may be assigned to the Drug Treatment Court only upon the consent of the Prosecuting Attorney, defendant, and the Judge assigned to the court, and upon the continuance of the case pursuant to the filing of a standard written agreement for such purposes.

**109.3. Civil Trial Division.**

The Chief Judge shall determine the Judges assigned to the Civil Trial Division. Trials of civil cases, whether by court or by jury (except such cases as are pending in Small Claims Division), ordinarily shall be conducted in the Civil Trial Division. Petitions for temporary or regular civil commitments and for emergency detentions shall be heard in this Division. The Judge assigned to the Mishawaka Division shall be responsible for the trial of all cases assigned to that Judge.

**109.4. Traffic and Misdemeanor Division.**

The Chief Judge shall determine the judicial officers to assign to the Traffic & Misdemeanor Division. This Division shall be responsible for the trial and disposition of traffic violations, criminal misdemeanors, infractions, and City ordinance violations. This Division is further responsible for such classes of violations as may be designated for disposition upon a plea of guilty in a violations bureau. Cases pending in the Traffic & Misdemeanor Division shall not be deemed assigned to the judge sitting therein, nor any other Judge, except upon a proper motion for change of venue.

**109.5. Small Claims Division.**

The Chief Judge shall determine the judicial officer to assign to the Small Claims Division. This division shall be responsible for the trial and disposition of all cases filed in its individual docket and falling within the jurisdiction of the division pursuant to I.C. 33-29-2-1, et seq. This division may publish its own rules of procedure. Cases pending in this division

shall not be deemed assigned to the Judge sitting therein, nor to any other Judge, except upon a proper motion for change of venue.

**109.6. Mishawaka Division.**

The Chief Judge shall assign at least one Judge to this division but may assign other judicial officers. The length of service shall be determined by the Chief Judge. The appointment shall not be considered permanent; the Chief Judge shall retain discretionary assignment authority pursuant to I.C. 33-5-40-23, as may be amended from time to time. The Mishawaka Division shall be responsible for the disposition of all cases assigned to it or that Judge. In the event that a Judge is reassigned from this division to the South Bend Division or to any other division of the court, the cases shall remain in Mishawaka and be assigned to the succeeding Judge or Magistrate Judge.

**109.7. Magistrate Judges.**

Magistrate Judges appointed pursuant to statute, or otherwise, shall hold office at the pleasure of the court and shall perform such judicial duties as may be allowed by law, as set out in these rules, or as may be assigned by the Chief Judge.

**109.8. Chief Judge of the Superior Court.**

**109.8.1. Election of Chief Judge.**

A Chief Judge, as provided for by I.C. 33-5-40-23, shall be elected for a term of two years by a majority vote of the Judges of the Court. Such elections shall be held no later than the last regularly scheduled Judges meeting in even-numbered years. The term of the Chief Judge shall begin on January 1, following his or her election. A vacancy in the office of the Chief Judge shall be filled by a majority vote of the remaining Judges of the court. A Judge may resign the office of the Chief Judge without resigning from the Court and shall be eligible to vote in the election to select a successor.

**109.8.2. General Authority and Duties of Chief Judge.**

The Chief Judge shall have such authority and responsibilities as conferred by statute, Supreme Court Rule, or Local Rule and shall be responsible for the efficient operation of the Court and management of its business. The Chief Judge shall have the

authority to assign and reassign Judges between the divisions of the Court and to reassign cases previously assigned. The Chief Judge shall designate another Judge of the Court as acting Chief Judge during any period of the Chief Judge's unavailability or to assist the Chief Judge as may be necessary. The Chief Judge may make various assignments and appointments to boards, commissions, committees, or other such organizations as may be required or in the best interests of the Court.

**109.8.3. Specific Authority to Transfer Cases.**

The Chief Judge may, in addition to the general authority otherwise granted, and in order to effectively and efficiently manage the Court, transfer cases between the Judges and magistrate judges in order to accommodate speedy trial requests in criminal cases, to handle emergency matters, to join co-defendants or related cases, to transfer all cases pending against a defendant or filed by a plaintiff to a single Judge, to hear dispositive motions, to transfer cases to a Senior Judge, Magistrate Judge, Special Judge, or Temporary Judge, and to make such other transfers and assignments as may be in the best interests of the Court.

**Rule LR71-AR00-110. Organization of the Probate Court.**

**110.1. General Organization.**

The Probate Court shall be divided into two divisions, which shall be known as the Probate and Juvenile Divisions.

**110.2. Magistrate Judges.**

Magistrate Judges appointed pursuant to statute or otherwise shall hold office at the pleasure of the Judge of the Probate Court and shall perform such judicial duties as may be allowed by law, as set out in these rules, or as may be assigned by the Judge of the Probate Court.

**Rule LR71-AR15-112. Evidence Handling, Retention, and Disposition.**

**112.1 Retention and Destruction of Evidence APPLICATION OF RULE.**

These Rules shall apply to the retention of evidence by St. Joseph Circuit, Probate, and Superior Courts unless the Court directs a longer retention period after motion by any party or on its own motion.

**112.2 Retention Periods for Evidence introduced in Civil Proceedings Including Adoption, Paternity, and Juvenile Proceedings, but not including Ordinance Violation or infraction Proceedings.**

**112.2.1** All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, four (4) months after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for two (2) years from the termination of the appeal, retrial, or subsequent appeal and termination, whichever is later. The Court reporter shall retain the mechanical or electronic records or tapes, shorthand, or stenographic notes as provided in Administrative Rule 7.

**112.3 Retention Periods for Evidence Introduced in Ordinance Violation, Infraction, Criminal Misdemeanor, Class D and Class C, Level 4, Level 5, Level 6 Felonies and Attempts.**

All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence except as otherwise ordered by the court, three (3) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for three (3) years from the termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending. The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

**112.4 Retention Periods for Evidence Introduced in Criminal Class B, Class A, Level 1, Level 2, Level 3 Felonies, Murder and Attempts.**

All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, twenty (20) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such

exhibits shall be retained by the court reporter for twenty (20) years from the termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending. The court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7. Courts should be encouraged to photograph as much evidence as possible and courts and parties reminded of the requirements of Appellate Rule 29(B).

**112.5 Non-documentary and Oversized Exhibits.**

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

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

**112.6 Notification and Disposition.**

(1) The Court must provide notice, by mail, or as otherwise provided, herein, (see Appendix) to all attorneys of record and to parties only if unrepresented by counsel, that the evidence will be destroyed pursuant to this Rule if not timely retrieved. Counsel and parties have the duty to keep the Court informed of their current addresses and notice to the last current address shall be sufficient. Court reporters should maintain a log of retained evidence and scheduled disposition dates (see Appendix) and evidence should be held in a secure area. At the time of removal, a detailed receipt must be given to the court reporter by the party receiving and removing the evidence, the receipt will be made part of the court file.

(2) The notice (see Appendix) referred to above shall be actual notice, provided by the Clerk to the Plaintiff upon the initiation of an action and issued to the Defendant(s) pursuant to Trial Rule 4, or sent at the time a party first appears in a case in all cases filed after the effective date of this Rule. The notice referred to above, for all civil cases filed before the effective date of this Rule, may be actual notice, if possible issued at the time of a final disposition in the case or, if a final disposition has been entered prior to the effective date of this Rule, at the time the evidence is scheduled for destruction: Provided, however,

that for those civil cases in which a final disposition was entered at the trial level more than ten (10) years before the effective date of this notice, or with respect to which it is not possible to give actual notice, the Court shall annually issue notice of intent to destroy evidence by publication in a newspaper of general circulation within St. Joseph County, posting at the County Courthouses. For all civil cases initiated after the effective date of this rule, the party initiating the action must provide to the Clerk of the Court, at the time the case is initiated or at any time additional defendants are added to the case, a sufficient number of copies of the notice for service upon each defendant, as well as a copy to be returned to each Plaintiff and a copy for the Court's file. For all civil cases initiated before the effective date but disposed of after the effective date of this rule, the Court must be provided with a sufficient number of copies of the notice for service on all parties participating in all matters at which tangible evidence was offered or admitted. Actual notice may be accomplished by electronic mail if so authorized by the local electronic filing rules, *infra*.

(3) Evidence which is not retaken after notice and expiration of the applicable retention period should be disposed of by the Sheriff, or his agent, on the Court's Order. The Sheriff should be ordered to destroy evidence if its possession is illegal or if it has negligible value. Evidence of some value should be auctioned by the Sheriff with proceeds going to the county general fund. These Rules and their retention periods will take precedence over inconsistent language in statutes, *ct I.C. 35-33-5-5 (c)(2)*.

(4) Notwithstanding any provision of this rule to the contrary, the Judge of the St. Joseph Circuit Court, the Judge of the St. Joseph Probate Court, and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

### **112.7 Biological Contaminated Evidence.**

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

# APPENDIX B TO LOCAL GENERAL AND ADMINISTRATIVE RULES, 100 SERIES

## NOTICE OF EVIDENCE RETENTION TIME LIMITS CIVIL CAUSE OF ACTION

Pursuant to Local Rule 112 of the St. Joseph County Courts ("Rule"), all models, diagrams, documents, or material admitted in evidence or pertaining to this case that has been or will be placed in the custody of the Official Court Reporter as exhibits must be taken away by the parties offering them in evidence, **four (4) months** after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the Official Court Reporter for **two (2) years** from termination of the appeal, retrial, or subsequent appeal and termination, whichever is latest. These time periods may be altered by Court order.

Evidence which is not retaken after expiration of the applicable retention period, above, will be disposed of by the Sheriff, or his agent, on the Court's Order.

Notwithstanding any provision of the Rule or this Notice to the contrary, the Judge of the St. Joseph Circuit Court, the Judge of the St. Joseph Probate Court, and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers, or inadvertent destruction.

NOTICE OF EVIDENCE RETENTION TIME LIMITS  
INFRACTION AND ORDINANCE VIOLATION CASES

Pursuant to Local Rule 112 of the St. Joseph County Courts (“Rule”), all models, diagrams, documents, or material admitted in evidence or pertaining to Cause No. \_\_\_\_\_ that has been or will be placed in the custody of the Official Court Reporter as exhibits must be taken away by the parties offering them in evidence, **four (4) months** after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for **two (2) years** from termination of the appeal, retrial, or subsequent appeal and termination, whichever is latest. These time periods may be altered by Court order.

Evidence which is not retaken after expiration of the applicable retention period, above, will be disposed of by the Sheriff, or his agent, on the Court’s Order.

Notwithstanding any provision of the Rule or this Notice to the contrary, the Judge of the St. Joseph Circuit Court, the Judge of the St. Joseph Probate Court, and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.



NOTICE OF EVIDENCE RETENTION TIME LIMITS  
MISDEMEANOR CASES

Pursuant to Local Rule 112 of the St. Joseph County Courts (“Rule”), all models, diagrams, documents, or material admitted in evidence or pertaining to Cause No. \_\_\_\_\_ that has been or will be placed in the custody of the Official Court Reporter as exhibits must be taken away by the parties offering them in evidence, **three (3) years** after the case is dismissed, the defendant is found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for **three (3) years** from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

Evidence which is not retaken after expiration of the applicable retention period, above, will be disposed of by the Sheriff, or his agent, on the Court’s Order.

Notwithstanding any provision of the Rule or this Notice to the contrary, the Judge of the St. Joseph Circuit Court and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

NOTICE OF EVIDENCE RETENTION TIME LIMITS  
CRIMINAL CLASS D, CLASS C, LEVEL 4, LEVEL 5, LEVEL 6 FELONY AND ATTEMPTS

Pursuant to Local Rule 112 of the St. Joseph County Courts (“Rule”), all models, diagrams, documents, or material admitted in evidence or pertaining to Cause No. \_\_\_\_\_ that has been or will be placed in the custody of the Official Court Reporter as exhibits must be taken away by the parties offering them in evidence, **three (3) years** after the case is dismissed, the defendant is found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for **three (3) years** from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

Evidence which is not retaken after expiration of the applicable retention period, above, will be disposed of by the Sheriff, or his agent, on the Court’s Order.

Notwithstanding any provision of the Rule or this Notice to the contrary, the Judge of the St. Joseph Circuit Court and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

NOTICE OF EVIDENCE RETENTION TIME LIMITS  
CRIMINAL CLASS B, CLASS A, LEVEL 1, LEVEL 2, LEVEL3 FELONIES, MURDER AND  
ATTEMPTS

Pursuant to Local Rule 112 of the St. Joseph County Courts ("Rule"), all models, diagrams, documents, or material admitted in evidence or pertaining to Cause No. \_\_\_\_\_ that has been or will be placed in the custody of the Official Court Reporter as exhibits must be taken away by the parties offering them in evidence, **twenty (20) years** after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits must be retained by the court reporter for **twenty (20) years** from termination of the appeal, retrial, or subsequent appeal and termination, whichever is latest, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

Evidence which is not retaken after expiration of the applicable retention period, above, will be disposed of by the Sheriff, or his agent, on the Court's Order.

Notwithstanding any provision of the Rule or this Notice to the contrary, the Judge of the St. Joseph Circuit Court and the Chief Judge of the St. Joseph Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

EVIDENCE RETENTION LOG – CIVIL PROCEEDINGS

	DATE	NOTES
TRIAL COMMENCED		
TRIAL CONCLUDED		
JUDGMENT ENTERED		
APPEAL?	Yes / No	
CERTIFIED OPINION COURT OF APPEALS		
CERTIFIED OPINION SUPREME COURT		
FURTHER TRIAL PROCEEDINGS	Yes/No	See attached log, page 2
NOTICE OF RETREIVAL / INTENT TO DESTROY (When Final disposition occurred prior to MM/DD/YEAR		Plaintiff:  Defendant:
DESTRUCTION DATE		

## **LOCAL CIVIL RULES FOR ST. JOSEPH COUNTY (200 SERIES)**

### **Rule LR71-TR77-201. Filing, Pleading, and Motions.**

#### **201.1. Paper Filing**

In that only non-represented litigants may file paper documents with the Clerk, those documents should be flat and unfolded. Documents shall have no covers or backs and shall be fastened together at the top left-hand corner only.

#### **201.2. Filing with the Clerk.**

All pleadings shall be filed with the Clerk, not directly with the Court, unless otherwise required by the Indiana Rules of Court. The entry of appearances and the filing of pleadings or other matters not requiring immediate Court action shall be filed with the Clerk and not in open Court. A Judge may permit papers to be filed in chambers, in which event they shall note thereon the filing date and transmit the papers to the Clerk. Unless otherwise authorized by LR 701 et seq., electronic filing of pleadings by computerized or facsimile transmission is not permitted.

#### **201.3. Format of Pleadings.**

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

##### **201.3.1. Paper when allowed.**

Pleadings, motions, and other papers shall be either legibly printed or typewritten on white opaque paper so that it is readable. The paper should be eight and one-half inches (8 1/2") in width and eleven inches (11") in length as required by Administrative Rule 11. All copies, when required, shall likewise be on white paper of sufficient strength and durability to resist normal wear and tear.

##### **201.3.2. Style, Margins, Spacing, and Font.**

Printing shall be on one side of the paper. Margins shall be at least one inch (1"). If typewritten, the lines shall be double-spaced except for quotations, which shall be indented and single-spaced. Typefaces shall be 12 font size or larger within the body of the document and 10 font size or larger in the footnotes. The font type

must be legible and script type shall not be used. Italicized type may be used for quotations, references, or case citations.

**201.3.3. Caption.**

Every pleading shall contain a caption setting forth the name of the Court, the title of the action, and the cause number. Where applicable, the pleading shall also contain a Quest or other CMS file number. If a special judge has been assigned to the case, the pleading should also identify the special judge.

**201.3.4. Title.**

All pleadings or motions shall include a title, which shall delineate each topic included in the pleading. For example, where a pleading contains an answer, a motion to dismiss, and a jury request, each topic shall be set forth in the title.

**201.3.5. Format and Layout.**

The separate Court may designate the form and/or layout for pleadings and motions to promote clarity, efficiency, and judicial economy, and to ensure compatibility and appropriate interface with the Odyssey and Quest case management systems. Pleadings not conforming to the designated form or layout may be stricken by the Court pursuant to T.R. 88.

**201.3.6. Signature, Verification, and Other Requirements.**

Parties and their counsel are enjoined to comply with the verification requirements of T.R. 11, and either the moving party or the party's attorney of record shall sign all pleadings and motions before filing with the Clerk of the Court. Every motion, petition, or other pleading filed with the Clerk shall contain the name, organization, physical address, telephone number, and facsimile number of the filing party or an attorney for that party. The Clerk shall not accept any motion, petition, notice, or other pleading or a CCS entry form for filing from an unrepresented litigant unless the unrepresented litigant's current address and phone number appear on the pleading, and an opposing party may service notices and responses on an unrepresented litigant at any address they have provided on a pleading.

## **201.4. Forms.**

### **201.4.1. Chronological Case Summary Entry Form.**

Chronological Case Summary (CCS) entries shall not be filed. All CCS entries are generated by the electronic filing system.

### **201.4.2. Summons.**

Summonses shall be served in compliance with Indiana Trial Rule 4. A summons filed with the Clerk of the Circuit Court of St. Joseph County shall be in substantial conformity with the form attached at Appendix C to these local rules.

## **201.5. Service of Copies.**

### **201.5.1. Service Generally.**

Every motion, petition, notice, or other pleading required to be served by T.R. 5 of the Indiana Rules of Trial Procedure, shall be served on all counsel of record or unrepresented parties either before it is filed or on the day it is filed with the Court, and the date of filing shall be indicated on the Certificate of Service.

### **201.5.3. Service by the Clerk.**

Whenever the Clerk is required by rule or statute to give notice, the party or parties requesting such notice shall furnish the Clerk with sufficient copies of the notice to be given, along with stamped, addressed envelopes with the names and the addresses of the parties or their counsel to whom such notice is to be given.

### **201.5.4. Service on the Court.**

Service on a Judge may be made by delivering a copy to the Judge's secretary or mailing a copy to the Judge at his or her chambers. Service on a Judge may not be accomplished by e-mail or facsimile transmission; however, a courtesy copy may be sent to the Judge's chambers by e-mail contemporaneously with service by mail or otherwise.

### **201.5.5. Distribution of Copies**

Unless service by Sheriff or United States Mail, Return Receipt Requested is designated, the party required to serve one of the documents listed above in this subsection shall be prepared to

demonstrate that service was affected by the manner most likely to ensure actual notice to the person or entity to be served.

#### **201.6. Reports.**

Reports of appraisers, masters, and commissioners shall be electronically filed with the Court.

#### **201.7. Motions**

##### **201.7.1. Scheduling Motions for Hearings.**

Except for motions not likely to require a hearing (as described below), all motions shall be scheduled for hearing at the time they are filed. It shall be the responsibility of the moving party or counsel for the moving party to secure the date and time of the hearing from the Clerk or Court personnel who maintain the calendar for each Judge or Magistrate Judge. It shall also be the responsibility of the moving party or counsel for the moving party to coordinate the hearing date with all opposing counsel or unrepresented parties.

##### **201.7.2. Motions Not Likely to Require Hearing.**

At the time of the filing, a moving party shall bring the following motions to the attention of the assigned judge:

- (1) Motion for Enlargement of Time;
- (2) Motion for Change of Judge;
- (3) Motion for Change of Venue from the County;
- (4) Motion to Dismiss Complaint by Plaintiff when no Answer has been filed;
- (5) Motion to Dismiss Counterclaim by Defendant when no Reply has been filed;
- (6) Motions to Reconsider

Such motions may be summarily granted or denied ex parte and without the necessity for a hearing, unless the Judge, in his or her discretion, determines that a hearing should be scheduled on any such motion and schedules a hearing on the Court's own motion.

##### **201.7.3. Motions to Correct Error.**

It is within the discretion of the assigned Judge whether a hearing shall be held on a motion to correct error; however, any party may request a hearing upon a motion to correct error by filing a written



request by separate motion at any time before the Court has ruled upon such Motion.

**201.7.4. Oral Arguments on Motions and Other Pleadings.**

Unless otherwise required by these rules or Indiana Trial Rules, it is within the discretion of the assigned Judge whether to allow oral argument; however, any party may file a request for oral argument by filing a written request by separate motion contemporaneously or at any time before the Court has ruled upon the motion or pleadings to be argued.

**201.7.5. Motion for Enlargement of Time.**

An initial written motion for enlargement of time pursuant to Indiana Trial Rule 6(B)(1) to answer a claim shall be routinely granted for an additional 30 days from the original due date or other period the assigned Judge deems reasonable by written order of the Court. Any motion for enlargement of time shall state the date when such response is due and the date to which time is requested to be enlarged. The motion must be filed on or before the original due date or this Rule shall be inapplicable. All subsequent motions for enlargement of time shall be so designated and will only be granted for good cause shown or in the interest of justice.

**201.7.6. Motions for Summary Judgment or Dismissal.**

Motions for summary judgment or motions to dismiss pursuant to Indiana Trial Rule 12 or 41 shall be scheduled for hearing unless the Court issues a written scheduling order providing otherwise. (See Local Rule 206 for specific requirements for Pleadings and Motions under Trial Rules 12 and 56.)

**Rule LR71-AR8-202. Uniform Court and Case Number Designation.**

All filings shall conform to the requirements for uniform court and case number designation set by Admin. Rule 8. In addition, all filings shall contain the proper court and case designation as described below.

**202.1. Court Designation.**

Pursuant to Indiana Code 33-33-71-2, St. Joseph County, Indiana, constitutes the 60<sup>th</sup> Judicial Circuit. The legal names of the courts within

the 60<sup>th</sup> Judicial Circuit are the St. Joseph Circuit Court, the St. Joseph Superior Court, and the St. Joseph Probate Court. All filings shall properly reflect the legal name of the applicable court. Any filing may be amended, rejected, or stricken if it does not contain the proper case name and/or the legal name of the court.

## **202.2. Case Designation.**

At the time of filing, the party initiating the case should properly designate the case type.

### **202.2.1. Designation Upon Filing.**

The filing party (or the attorney for the filing party) shall designate the correct case type in the cause number line of each summons and complaint before presenting a new filing to the Clerk.

### **202.2.2. Proper Designations.**

Case type designations must conform to the requirements of Ind. Admin. Rules 8(B)(3).

### **202.2.3. Failure to Designate.**

If a filing is presented without a case type designation on each summons and complaint, the entire filing may be rejected or stricken. Should a case be accepted with an incorrect designation, the court may order the matter to be redocketed with the correct case type designation and may require that the filing party pay a redocketing fee.

### **202.2.4. Advice and Assistance.**

The Clerk or their deputies may assist the filing party in this regard but should not be required to make a legal judgment as to the correct case type designation. Any questions or doubts should be referred to a judge or a magistrate judge in the court receiving the filing.

## **Rule LR71-TR3.1-204. Appearance and Withdrawal of Appearance of Counsel.**

### **204.1. Appearances.**

Counsel and unrepresented parties appearing after the filing of the original complaint shall forthwith notify all other counsel of record and unrepresented parties of such appearance and file proof of such notice.

Each counsel or party shall file an appearance form (or its equivalent) that includes a mailing address and telephone number. The notice may include a post office box but must include a physical street address to allow for proper service of process or other notification by the Court.

**204.2. Withdrawal of Appearance.**

Unless authorized by the party in open Court or in writing or upon the appearance of other counsel, an attorney will be permitted to withdraw their appearance for a party only after filing a Motion to Withdraw and setting the matter for hearing not fewer than 14 days from the date of filing. If a trial date has already been set, a motion to withdraw an appearance must be filed at least 30 days before that date unless the attorney has leave of the court to file in a shorter amount of time.

**204.3. Service of Notice to Withdraw.**

The attorney must present to the Court adequate proof of notice to their client, as well as all other counsel and unrepresented litigants, of the intent to withdraw and of any impending pre-trial, hearing, or trial dates. The notice to their client shall be by postage prepaid, certified mail, return receipt requested and received or returned by the Postal Service undeliverable or refused addressed to the last known address of the client.

**204.4. Contact Information.**

In cases where the withdrawal of appearance shall leave the client unrepresented, the Motion to Withdraw must contain the address and, if known, telephone number of the client where service of documents can be delivered, or other notice can be provided. As required by the Rules on Access to Court Records, this contact information may be designated as confidential and excluded from public access.

**204.5. Certified Legal Interns.**

A certified legal intern shall comply with the requirements of the Ind. Trial Rule 3.1 and this Rule regarding appearance. The appearance of a certified legal intern may be withdrawn upon notice to the Court, which shall be signed by the supervising attorney of the certified legal intern.

**Rule LR71-TR41(E)-205. Dismissal for Lack of Prosecution.**

**205.1. Initiated by Court.**

Rules to show cause why a cause should not be dismissed for lack of prosecution pursuant to T.R. 41(E) will be routinely issued and served upon affected parties and counsel by ordinary mail or by personal delivery in all cases in which no entry has been made for 60 days. Records of the setting of cases for trial and motions for continuance will not be considered as entries tolling the time.

**205.2. Initiated by Parties.**

Nothing in Rule 205.1 above shall affect the right of any party to file a motion pursuant to T.R. 41. Unless otherwise directed by the regularly presiding Judge, a party filing a motion for dismissal pursuant to T.R. 41 shall request that the Court set the matter for hearing.

**Rule LR71-TR12-206. Pleading and Motions under Trial Rules 12 and 56.**

**206.1. Supporting Memorandum of Law.**

All pleadings and motions filed pursuant to Trial Rules 12 and 56 shall be accompanied by a separate supporting brief. An adverse party shall have 30 days after service of the motion in which to serve and file an answer brief. Subject to Court approval, the moving party may file a reply brief. With regard to all other motions or matters submitted to the Court, and so long as consistent with Indiana Rules of Procedure, an adverse party wishing to respond shall do so within 15 days of service. Each motion shall be separate, while alternative motions filed together shall each be identified on the caption. Failure to file an answer brief or reply brief within the time prescribed shall be deemed a waiver of the right thereto and shall subject the motion to summary ruling.

**206.2. Hearing; Hearing Date; Opposing Memorandum.**

Notwithstanding any other rule of court, all T.R. 12 and 56 motions shall be set for hearing by the moving party at the time of filing unless otherwise ordered by the Court. Unless otherwise authorized by the Court, the hearing shall be scheduled for a day not fewer than 14 days after the time allowed for the filing of briefs as specified in Rule 206.1 *supra*.

**206.3. Waiver of Hearing; Stipulation of the Parties.**

Adverse parties may stipulate that a T.R. 12 or 56 motion may be ruled upon by the Court without a hearing thereon, in which event the motion

and stipulation shall be brought to the personal attention of the Judge by counsel or by a party proceeding *pro se*.

#### **206.4. Required Notices to Parties.**

##### **206.4.1 Notice to Parties in Mortgage Foreclosure (MF) Causes of Action.**

A party filing a mortgage foreclosure (MF) cause of action shall cause to be served on the resident a copy of the Notice Concerning Mortgage Foreclosure, which is attached hereto and made a part hereof as Appendix A. Should the plaintiff fail to comply with the rule, the Court may refuse to enter a default judgment, refuse to grant judgment on the pleadings, or take similar action until compliance is demonstrated. Additionally, should the plaintiff's failure to comply with this rule result in additional costs to the defendant, the Court may order the plaintiff to pay reasonable expenses, including attorney fees, that are related to the plaintiff's noncompliance. See also, Ind. Code 32-30-10.5 et seq.

##### **206.4.2 Notice to Unrepresented Parties Regarding Trial Rule 56 Motions.**

Notwithstanding any other rule of court, if a party is proceeding *pro se* and an opposing party files a motion for summary judgment, counsel for the moving party must serve a notice upon the unrepresented party as set forth in Appendix B, which is attached hereto and made a part hereof.

#### **206.5. Appearance by Counsel at Scheduled Hearings.**

Whenever the Court schedules a hearing on a motion under Trial Rule 12 and/or 56, counsel for all represented parties shall appear in person or by local co-counsel at such hearing.

#### **Rule LR71-TR55-207. Default Judgments.**

##### **207.1. Proper Service.**

At the time of the request for entry of a default judgment under T.R. 55, the moving party must demonstrate that service has been perfected on the party or parties against whom default is sought.

**207.2. Affidavit for Judgment by Default.**

At the time of filing of a motion for default judgment or at the time of a hearing scheduled for entry of a default judgment, the moving party shall file an affidavit indicating that the party or parties against whom default is sought is not a member of the military service, is neither a minor nor incompetent, and is not institutionalized.

**207.3. Affidavit of Attorney Fees.**

At the time of filing of a motion for default judgment or at the time of a hearing scheduled for entry of a default judgment, a moving party who is requesting an allowance of attorney's fees shall file an affidavit executed by the attorney requesting the fee. The affidavit shall be in a form and substance to enable the Court to determine if attorney's fees are appropriate, and if so the reasonable amount of fees. The affidavit shall set forth the authority for the Court to award attorney's fees (i.e., statute, contract, etc.) and the basis upon which the proposed fees were computed (i.e., the hourly rate, the number of hours employed or anticipated to be employed in obtaining and enforcing a judgment herein). In the absence of an affidavit or sworn testimony in lieu thereof, no attorney's fees shall be allowed.

**Rule LR71-TR26-208. Discovery Requests.**

**208.1. Filing with the Court.**

As envisioned by the Trial Rules, discovery requests shall be served upon the parties and should not be filed with the Court unless in connection with a dispute concerning compliance with prior discovery requests. The procedure for addressing discovery disputes is outlined in Rule 208.4 below.

**208.2. Format of Discovery Requests.**

Whenever agreed by the parties or otherwise ordered by the Court, a party shall forward simultaneously with the hard copy discovery request (interrogatories, requests for production, requests for admissions, or other discovery requests) either a flash drive or an electronic mail message with a copy of the request attached in digital format.

**208.3. Interrogatories.**

All interrogatories to parties propounded pursuant to T.R. 33 shall be prepared as follows:

- (1) The propounding party or the attorney of record for the propounding party shall sign and date the interrogatories as of the date of service;
- (2) After each interrogatory, sufficient blank space shall be left by the propounding party as is reasonably anticipated may be required for the responder's answer. If additional space is required for an answer, the responder shall attach supplemental pages, incorporated by reference, to comply with the spirit of T.R. 33.
- (3) Additional space shall be left by the propounding party at the close of the interrogatories for the signature and appropriate typed oath or affirmation to be supplied by the responder.
- (4) The responding party shall fill in the requested answers, supply the jurat, and serve the original and one duplicate on propounding counsel.

#### **208.4. Scheduling of Depositions.**

Pursuant to their obligations under the Indiana Rules of Professional Conduct and as officers of the St. Joseph Circuit, Superior or Probate Courts, attorneys shall make a good faith effort to schedule depositions in a manner that avoids scheduling conflicts. Unless agreed by counsel or otherwise authorized by the court, no deposition shall be scheduled on less than 10 days' notice.

#### **208.5. Discovery Disputes.**

To promote the orderly and expeditious handling of cases to trial readiness, counsel shall attempt in good faith to resolve all disagreements between or among themselves concerning the necessity for and scope of discovery, the necessity to seek sanctions, and/or protection against discovery under T.R. 26 through T.R. 37. After personal consultation in person or by telephone and good faith attempts to resolve differences as to the foregoing matters, counsel for any or all parties may move to compel discovery, invoke sanctions, or seek protection against discovery as aforesaid. As a part of such motion, the party shall recite the date, time, and place of the personal consultations and the names of the participants. If counsel for any party advises the Court in writing that counsel for any other party has refused or delayed consultation hereby contemplated, the Court shall take such action as is appropriate to preclude, obviate, or avoid further delay. Where an objection is raised which threatens to prevent the completion of the deposition and which counsel has a good

faith belief is susceptible to resolution by the court without the submission of written materials, any party may recess the deposition to submit the objection by telephone to a judge for a ruling instant, subject to the availability of and within the discretion of the judge. Before contacting a judge for such a ruling, all parties shall in good faith confer or attempt to confer in an effort to resolve the matter without court intervention and, if court action is still necessary, the parties shall inform the judge of the efforts taken to attempt to resolve the matter.

## **Rule LR71-TR16-209. Pre-trial Procedures.**

### **209.1. Purpose of Pre-trial Procedure.**

This rule is intended to accomplish the original purpose of pre-trial procedure – to simplify the issues, make cases easier, quicker, and less expensive for the Court, lawyer, and litigant and to alleviate the burden of ceremonial detail and to aid the efficient preparation of a case.

### **209.2. Pre-trial Conference.**

A pre-trial conference with Court and counsel may be scheduled by the Court on its own motion or at the request of counsel for any party in any civil case in which, at the discretion of the Court, possible problems can be identified, the course and progress of the case, the necessity, sequence, and scope of discovery should be anticipated, planned, scheduled, or estimated for the orderly and expeditious handling of it by Court and counsel. At the pre-trial conference, the Court may designate deadlines for discovery, dispositive motions, or alternative dispute resolution. The Court may also provide the parties with proposed dates for trial, additional pre-trial conferences, and/or require the filing of a pre-trial order. The Clerk shall endeavor to give at least thirty (30) days' notice of the initial pre-trial conference to the parties.

### **209.3. Alternative Dispute Resolution.**

On the Court's own motion or initiative, the parties may be required to attempt alternative dispute resolution (ADR). Such ADR efforts may include, at the Court's discretion, mediation and/or settlement conferences and may require one or more sessions or sessions lasting a specific amount of time.

One or more of the parties may request that the Court order the parties to engage in ADR. Such a request must be in writing and must be accompanied by a memorandum informing the Court of the nature of the



case, the attorneys or unrepresented litigants involved, and a history of the settlement negotiations that have taken place to that date and that the previous settlement negotiations made in good faith have failed.

At any mediation or settlement conference, counsel for each party shall be present, in person, and each party or a designated representative having complete authority to settle the matter in question shall be present in person. Any party intending to appear by a designated representative shall advise all other parties to the mediation or settlement conference of that fact and the identity of the designee not fewer than 10 days before the commencement of the mediation or settlement conference. Upon request and by leave of court, a party or representative of a party may be allowed to participate in said settlement conference by telephone in place of a personal appearance. Should any party or counsel for any party violate the requirements of this rule concerning attendance, the Court may impose sanctions.

#### **209.3.1. Mortgage Foreclosures on Real Estate.**

Effective April 15, 2010, Plaintiffs filing new mortgage foreclosure (MF) actions in the St. Joseph Circuit Court, or the St. Joseph Superior Court will be required to provide to the Clerk of the Court:

- One (1) additional stamped, addressed envelope, with no return address information, for each individual (but not including any corporation or entity) named as a defendant, AND
- A service list, including the name, address, and, if available, the telephone number of each defendant.

This rule is adopted by the St. Joseph Circuit Court and the St. Joseph Superior Court pursuant to an initiative of the Indiana Supreme Court and the Indiana Housing and Community Development Authority to train and recruit volunteer lawyers to assist homeowners facing foreclosure and in furtherance of the purposes underlying Senate Enrolled Act No. 492 (2010).

#### **209.4. Adequate Preparation for Pre-trial Conference.**

The purpose of the pre-trial conference being too narrow and simplify the issues for trial and to expedite the trial, counsel shall report for such conference with the Judge after full preparation including an adequate

meeting of counsel as contemplated by T.R. 16(C). In all cases, counsel shall be prepared to indicate to the Court whether the case may be tried to a jury of six and whether the Judge may conduct all the voir dire examination of prospective jurors or the initial voir dire examination with supplemental inquiry by counsel.

**209.5. Completion of Discovery.**

In cases in which a preliminary pre-trial conference has been held under Rule 12(B), discovery shall be made during the time ordered. In cases in which no preliminary pre-trial conference has been held, all discovery shall be completed before the pre-trial conference and no discovery shall be conducted thereafter unless, upon motion or stipulation showing good cause therefore, an order is entered permitting further discovery within time to be prescribed by the Court.

**209.6. Pre-trial Readiness Conference.**

At least seven days before trial, the Court may set a Readiness Conference. In addition to each party proceeding *pro se* and counsel for each of the parties, the Court may order that one or more of the parties themselves attend the Readiness Conference. The purpose of the Readiness Conference is to simplify the issues anticipated at trial, and the Conference will include a determination of the parties' readiness to proceed to trial, the progress of the parties in obtaining stipulations of fact and authenticity of exhibits and, if appropriate, the willingness of the parties to waive the jury trial demand. Where the parties have filed a written stipulation signed by all parties addressing these issues and confirming the trial date, the Court in its discretion may vacate the Readiness Conference.

**209.7. Attendance by Trial Counsel Required.**

Unless otherwise directed by the Court, each pre-trial conference shall be attended without exception by any party proceeding *pro se* and at least one of the attorneys for each of the parties who will participate in the trial of the case and who shall be authorized to deal comprehensively with all subjects on the agenda. With prior approval of the presiding Judge, an attorney may appear telephonically or by video. Sanctions for failure to comply with this rule shall be deemed appropriate.

**209.8. Failure to Attend.**

Failure to attend and adequately participate in pre-trial conferences as intended by T.R. 16 may result in reassignment of the cause to the bottom of the appropriate assignment list, issuing an order pursuant to T.R. 41(E), and/or the imposition of appropriate sanctions.

**209.9. Setting for Trial.**

Civil cases may be set for trial at the pre-trial conference or as otherwise directed by the assigned Judge.

**Rule LR71-TR39-210. Scheduling Trials.**

**210.1. Trial Settings.**

All cases scheduled for trial shall be ready for trial on the date scheduled unless otherwise directed by the Court. Where multiple trials are set on one day, all trial settings shall be considered first settings and the parties shall be ready for trial on the date scheduled unless the parties have been advised of a notice of priority as described in Rule 210.2 below.

**210.2. Notice of Priority.**

At the time of setting the case for trial, upon motion of either party and for good cause shown, the Court may order that the parties are entitled to notice of priority. Where notice of priority has been ordered for multiple trials set on the same day, the case assigned a second setting shall stand for trial if the parties are given 48 hours prior notice, and cases assigned a third subsequent setting shall stand for trial if the parties are given seven days' notice.

**210.3. Continuances of Trial Settings.**

All motions for continuances shall be in writing and shall set forth specifically the grounds asserted for such motion. Unless otherwise directed or excused by the Court, all attorneys of record and parties proceeding *pro se* shall appear before the Court on the date of the trial setting. The Court may assign a new trial setting on the date of the original trial setting, or on the date a continuance is granted, or as otherwise directed by the Court.

**210.4. Imposition of Costs for Late Settlement.**

If a civil case is settled less than 48 hours prior to the time it is scheduled for trial or is settled after 10:00 a.m. on the Friday prior to a Monday trial setting (or a Tuesday setting if the intervening Monday is a legal holiday),

any costs incurred by the Court as a result of the late settlement of the case may be assessed against the parties in a manner the Court deems appropriate.

**Rule LR71-TR47-211. Jurors.**

**211.1. Jury Lists.**

The Court will maintain lists of petit jurors who are subject to call during any session of the Court's calendar year term. Such juror lists will contain brief biographical data concerning each member of the panel. Prior to trial, the Judge will provide counsel with a list of the petit jurors called for the trial of that particular case, juror biographical data, and a juror seating chart. Juror lists and biographical information shall be confidential.

**211.2. Alternate Jurors.**

By agreement of the parties or on the order of the Court, alternative jurors may be selected and seated, selection thereof to be made after the jury itself has been selected. All jurors, both regular and alternate, shall be sworn as a panel. The parties may also agree to waive the selection of alternate jurors.

**211.3. Special Venire.**

The Court may call a special venire as provided by statute.

**211.4. Voir Dire Examination.**

The Court may conduct a portion of the voir dire examination of prospective jurors and shall permit counsel to conduct voir dire. Further, voir dire examination shall be conducted pursuant to the Indiana Jury Rules.

**211.5. Passing and Acceptance of Jurors.**

Unless otherwise approved or directed by the Court, the one-pass rule shall be followed; that is, the passing of an individual juror following the voir dire examination of a panel of prospective jurors of which that juror was a member shall constitute an acceptance of that juror by the party so passing. Challenges shall be made at the bench outside the hearing of the prospective jurors and may be made by use of slips of paper of uniform size or as otherwise directed by the Court.

## **Rule LR71-TR51-212. Trial Procedures.**

### **212.1. Exhibits.**

#### **212.1.1. Marking in Advance.**

All exhibits shall be marked in advance of trial or other evidentiary hearings or during recesses in the trial in accordance with the practice of the Official Court Reporter so that the trial is not delayed for the marking of exhibits.

#### **212.1.2. Custody of Official Court Reporter.**

After being marked for identification and offered into evidence, whether or not admitted into evidence, all exhibits and proposed exhibits necessary to the record on appeal shall be placed in the custody of the Official Court Reporter who shall be responsible for their safekeeping until otherwise ordered by the Judge.

#### **212.1.3. Return to Parties.**

Any model, diagram, exhibit, or proposed exhibit shall be returned to the party offering it upon request to the reporter after the time for appeal has elapsed or the possibility of further appeal is exhausted, unless the Court otherwise orders.

#### **212.1.4. Disposal.**

Where no request for the return of exhibits or proposed exhibits is made within 90 days of final judgment, the same may be disposed of by the Official Court Reporter as the Court may direct.

### **212.2. Instructions Requested at Commencement of Trial.**

All requests for special instructions tendered in accordance with T.R. 51 shall be submitted to the Court not later than the commencement of the trial or in advance of trial if ordered by the Court. The Court shall, in the interests of justice, permit the tender of additional instructions during the trial on matters which could not have been reasonably anticipated in advance of trial. Requests for special instructions shall contain citations to supporting authorities. Instructions shall be exchanged by counsel as directed by the Court.

### **212.3. Objections to Admissibility of Evidence.**

All objections to the admissibility of evidence or procedure during trial shall be made at the bench in sidebar conference outside the hearing of the jury.

## **Rule LR71-TR77-213. Proposed Orders.**

### **213.1. Matters in Which Proposed Orders Required.**

Before entry by the Court of orders granting motions or applications, the moving party or applicant (or their attorney) shall, unless the Court directs otherwise, furnish the Court with proposed orders in the following matters:

- (1) enlargement of time;
- (2) continuance;
- (3) default judgment;
- (4) dismissal;
- (5) appointment of receiver;
- (6) appointment of guardian;
- (7) restraining order, temporary, or permanent injunction;
- (8) immediate possession of real estate;
- (9) immediate possession of personal property;
- (10) findings of fact and conclusions of law;
- (11) petition for certification of interlocutory appeals;
- (12) staying further proceedings because of bankruptcy, appeal, or other cognizable grounds;
- (13) withdrawal of appearance of counsel;
- (14) such other orders, judgments, or decrees as the Court may direct.

Unless otherwise directed by the Court as provided by Rule 213.5 below, this rule does not apply to judgments on general verdicts of the jury, to judgments rendered following trial to the bench, or to matters taken under advisement by a Court.

### **213.2. Form of Proposed Order.**

Any proposed order shall be a document that is separate and apart from the motion or application to which it relates and shall contain a caption showing the name of the court, the case number assigned to the case, and the title of the case as shown by the complaint pursuant to Rule LR71-AR8-201. If there are multiple parties, the title may be shortened to include only the first name plaintiff and defendant with appropriate

indication that there are additional parties. The proposed order shall be on white paper, 8 ½" x 11" in size, and each page shall be numbered. The last page of the proposed order shall contain a line for the date, either "Dated \_\_\_\_" or "Signed on the date filemarked hereon." On the last page there also shall be a line for the signature of the Judicial Officer under which shall be typed "Judge or Magistrate, St. Joseph [Circuit or Superior or Probate] Court." To allow compliance with the notice requirements of Rule 72(D), Indiana Rules of Trial Procedure, the lower four (4) inches of the last page of the proposed order shall be left blank. The proposed order shall also include a prepared proof of notice under T.R. 72(D), and in preparing such a notice the filing party shall complete all portions of the prepared proof of notice.

**213.3. Proposed Orders on Motions for Summary Judgment.**

The Court may require that the attorney for the prevailing party prepare a form of order on a motion for summary judgment in accordance with the provisions of T.R. 56. A proposed order on a motion for summary judgment may contain the language called for in T.R. 56(C) that there is not just reason for delay and directs entry of final judgment as to less than all the issues, claims, or parties.

**213.4. Orders Following Other Hearings.**

As directed by the Court, a party or an attorney for a party shall prepare a proposed order based on the decision rendered by the Court. The party so directed shall prepare the proposed order promptly and, upon filing, shall advise the chambers of the applicable judge that the proposed order has been prepared and filed. Unless otherwise directed or given leave of the Court, proposed Orders in emergency matters shall be filed within 48 hours after a hearing; proposed Orders in other matters shall be filed within seven days as computed by Ind. Trial Rule 6.

**Rule LR71-TR53.1-214. Matters Under Advisement.**

**214.1. Judicial Officers**

Each Judge will endeavor to rule promptly on all matters submitted for their determination. However, if ruling is reserved in a matter and a decision has not been rendered or a matter has not been scheduled for hearing as the times fixed by Indiana Trial Rule 53.1, 53.2, 53.3, and 53.4 approach, counsel or an unrepresented party are encouraged and invited to contact the chambers of the assigned Judge and remind them of the

approaching deadline. It shall be the responsibility of counsel or the unrepresented party to advise the assigned Judge, in writing, by motion or other appropriate notice of the approaching or passed deadline prior to filing a praecipe (Notice of Appeal) under Indiana Trial Rule 53.1(E)

**Rule LR71-TR76-215. Change of Venue.**

**215.1. Payment of Transfer Fee.**

When a change of venue from the County is granted, all accrued costs and the fee for transfer must be paid to the Clerk by the moving party within 10 days after the transfer order is entered.

**215.2. Failure to Pay Fee.**

In the absence of such payment, the movant will be deemed to have abandoned the motion so the Clerk will not perfect the change, the cause will be restored to the docket of this Court, and this Court shall resume general jurisdiction of the cause in accordance with T.R. 76.

**Rule LR71-TR63-217. Senior Judges, Temporary Judges, and Judges Pro Tempore.**

All routine appointments of Senior Judges, Temporary Judges, and Judges Pro Tempore shall be made by the Judge of the Circuit Court or the Probate Court, or the Chief Judge of the Superior Court.

**Rule LR71-AP9-218. Appellate Records.**

When an appeal is initiated by the filing of a Notice of Appeal pursuant to Appellate Rule 2, Indiana Rules of Appellate Procedure and a transcript of all or any part of the evidence is sought for the record on appeal, the party or counsel filing the Notice shall contemporaneously personally deliver a copy of the Notice to the Official Court Reporter, shall advise the Official Court Reporter of the deadline for preparation of the record, and shall arrange to pay the Official Court Reporter for the preparation of the transcript.

**Rule LR71-TR69-219. Proceedings Supplemental; Other Collection Remedies.**

**219.1. Post-Judgment Proceedings.**

Post-judgment proceedings shall not be instituted until 10 calendar days have elapsed since the entry of a final decree or judgment in the records of the Clerk of the Court. The Court may waive this requirement where it is



shown that a party will be unduly harmed by its enforcement or where a rule of court or statute specifically provides otherwise.

**219.2. Notification of Appearance; Local Counsel.**

If at the time of filing of a proceedings supplemental or any time thereafter, counsel for the moving party or a party proceeding *pro se* determines that they will not attend the hearing in person, the counsel or the moving party shall notify the Court in writing of the substitute or local counsel who will be in attendance at the hearing. Failure to comply with these notification procedures may be enforced by direct contempt of court.

**219.3. Special Post-Judgment Procedures.**

Unless an emergency or other good cause is shown, any party filing for an extraordinary collection remedy (e.g., account freeze, employment information, or garnishment) shall have filed previously a proceedings supplemental and interrogatories responses, as appropriate.

**219.4. Penalties for Failure to Comply.**

Unless good cause is shown, the failure of counsel or a moving party to comply with this rule or to appear for a scheduled hearing on proceedings supplemental may be enforced by contempt of court and may result in a monetary fine or other appropriate penalty.

**219.5. Notice of Debtor Rights.**

All parties filing a Verified Motion for Proceedings Supplemental under T.R. 69 shall include either on the order page, or on a separate page a NOTICE OF DEBTOR RIGHTS as depicted in Appendix D, with conspicuous language as to a defendant's right to appear before a judge.

## Appendix A

### NOTICE REGARDING MORTGAGE FORECLOSURE

## GET HELP. GET HOPE.

FROM THE  
INDIANA HOUSING & COMMUNITY DEVELOPMENT AUTHORITY  
AND ITS  
INDIANA FORECLOSURE PREVENTION NETWORK

Your mortgage lender has filed to foreclose on your home. According to Indiana law, you *may* be entitled to a court-ordered settlement conference. This provides an opportunity for you and your lender to negotiate a “foreclosure prevention agreement” that may allow you to keep your home.

If you want to take advantage of this right, you must notify the Court of your intention no more than 30 days after this Notice was served. You may, but are not required to, notify the Court by signing this Notice where indicated and mailing or delivering it to the appropriate Court at either 101 S. Main Street, South Bend, IN 46601 or 219 Lincolnway West, Mishawaka, IN 46544, as indicated on the Summons. You should also send a copy of the signed Notice to the lender’s attorney at the address shown in the Summons.

If you choose to participate in a settlement conference, the Court will schedule it to take place at least 25 days, but no more than 60 days after the date of this Notice. You have the right to be represented by an attorney or assisted by a mortgage foreclosure counselor, either in person or by telephone, at the settlement conference.

We urge you to contact the Indiana Foreclosure Prevention Network (the “Network”) to assist you in this process. The Network will help you find a foreclosure prevention counselor and/or an attorney who is knowledgeable in the foreclosure process. This is a **free and confidential** service that is provided by the State of Indiana and coordinated by the Indiana Housing and Community Development Authority. You can reach the Network by calling **1-877-GET-HOPE (1-877-438-4673)** or by visiting [www.877GetHope.org](http://www.877GetHope.org).

Mortgage foreclosure is a complex process. People may approach you about “saving” your home. You should be careful about any such promises, **especially if you are asked to pay for their services**. If you believe that you have been

a victim of a "foreclosure rescue scam," you should contact the Office of the Attorney General's Home Owner Protection Unit by calling 1-800-382-5516.

Date of Notice: \_\_\_\_\_

\*\*\*\*\*

\*\*\*\*\*

**I want to participate in a foreclosure prevention settlement conference:**

**Sign Here:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

**Case No.** \_\_\_\_\_ **(please insert # from Complaint)**

*Developed and prescribed by IHCD as required by P.L. 105-2009r (St. Joseph County Version, 8/1/2009)*

## Appendix B

### **NOTICE REGARDING SUMMARY JUDGMENT MOTION**

**READ THIS NOTICE AND THE ENCLOSED PAPERS – A MOTION FOR SUMMARY JUDGMENT HAS BEEN FILED AND, IF UNOPPOSED, THIS MOTION MAY RESULT IN JUDGMENT BEING ENTERED AGAINST YOU WITHOUT A HEARING OR TRIAL.**

The Courts of St. Joseph County, Indiana require that this notice be sent to you about the motion for summary judgment that was filed by the opposing party. This notice does not contain legal advice but does provide important information about your legal options. Please read it carefully.

The opposing party has filed a motion for summary judgment pursuant to Indiana Trial Rule 56(C). The motion alleges that the facts are not in dispute and the Court can rule as a matter of law. The motion asks the Court to enter judgment in favor of the opposing party without a trial.

As you are not represented by counsel, you are hereby advised of your obligation to respond to the summary judgment motion. Your previous answer, denial or even counter-claim in response to the original complaint is not sufficient to defend a motion for summary judgment. Unless you submit your own affidavits (or other documentary evidence) or a response that specifically identifies information within the existing court records that contradict the factual assertions of the evidence designated in the motion for summary judgment and supporting materials, any factual assertions in our motion and supporting documentation will be accepted by the Court as true. In essence, your failure to respond to the pending motion for summary judgment would be equivalent to failing to present any evidence in your favor at a trial.

If you wish to file a response to the motion, the Court must receive your response within thirty-three (33) days after your opponent's motion was mailed to you. Failure to meet this timeframe will result in the Court being unable to consider your response or any attachments thereto.

Either party may request a court hearing on the summary judgment motion. A written request for a hearing must be received by the Court no later than ten (10) days after the response was filed or is due. The hearing will not be a trial, and neither party will be able to present evidence at the hearing. However, either party may make legal argument and refer to the evidence designated with the summary judgment

motion or with any response. If no request for a hearing is filed with the Court, the Court may decide the motion without a hearing based on the affidavits and documents filed by the parties.

Any response or request for a hearing must be served (or mailed) on the attorney for the opposing party. A response (or other pleading) filed with the Court must include a statement that you have complied with this requirement. Your statement may be in the following form: "I delivered a copy of this response to (Attorney Name) by United States Mail on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_."

As with any legal matter, you may wish to consult with and/or retain an attorney to represent you in this lawsuit and to assist you in responding to our motion for summary judgment.

*[If appropriate under the Federal Fair Debt Collection Act, the following identifying information should be included with the Notice:*

Notice Provided by:

Attorney Name

Law Firm (if any)

Address

Telephone Number

Our Law Firm is a debt collector. This Notice is provided as part of an attempt to collect a debt, and any information obtained by us will be used for that purpose. As we represent an opposing party, we cannot provide you with legal advice.]

# Appendix C

## CERTIFIED MAIL CERTIFIED MAIL

I hereby certify, as indicated in the date issued field, that a copy of this document was sent to the named person at the address furnished, by registered/certified mail at South Bend / Mishawaka, Indiana, return requested.

I hereby certify, as indicated in the date issued field, that a copy of this document was sent to the named person at the address furnished, by registered/certified mail at South Bend / Mishawaka, Indiana, return receipt requested.

Date Issued: \_\_\_\_\_

Date Issued: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the St. Joseph Circuit and Superior Courts

\_\_\_\_\_  
Signature of Party or Attorney

## ADMISSION OF SERVICE

I received a copy of this document on this date \_\_\_\_\_ and at this location: \_\_\_\_\_

\_\_\_\_\_  
Signature of Party                      Relationship (if not the within named party)

## RETURN OF SERVICE BY SHERIFF OR OTHER OFFICER

Enter the alphabetical letter in the space provided to indicate the type of service.

I served a copy of this document as specified: ( \_\_\_\_\_ )

READING/delivering a copy    (A) to the within named property

LEAVING A COPY for the within named party

(B) with the SPOUSE, named:

(F) with a SECRETARY, named:

(C) with a RELATIVE, named:

(G) with the ATTORNEY, named:

(D) at the RESIDENCE, located at address below: (H) with this person (OTHER – specify)

(E) with the EMPLOYER, named:

\_\_\_\_\_  
Specify the name of the person, work supervisor, place of business, or location where copy was left.

(Check if applicable) \_\_\_\_\_ And by sending a copy of this document by first-class mail to the last known address of the within named person as indicated:

\_\_\_\_\_  
Last Known Address of Person Named in the document (or Change of Address) **TO BE COMPLETED BY PARTY COMPLETING SUMMONS**

I did not serve a copy of this document because: ( \_\_\_\_\_ )

(I) the party was NOT FOUND / NO SUCH ADDRESS

(R) the party was on VACATION

(J) the document EXPIRED

(S) the party was NOT FOUND / VACANT

(K) the party AVOIDED service

(T) the party was NOT FOUND / MOVED

(L) the party REFUSED service

(U) the party was NOT FOUND IN THIS BAILIWICK

(M) the party was NO LONGER EMPLOYED at that address

(V) INSUFFICIENT ADDRESS OR INFORMATION WAS GIVEN

(N) the document was RETURNED by the authority of the plaintiff

(W) the location is NO LONGER IN BUSINESS

(O) the party is DECEASED

(X) several attempts were made / UNABLE TO SERVE

(P) the party was UNKNOWN AT THAT ADDRESS

(Y) of the following reason (OTHER – specify):

(Q) the party was on SICK LEAVE / LAY OFF

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

\_\_\_\_\_  
Date served / Attempted

\_\_\_\_\_  
Time Served / Attempted

\_\_\_\_\_  
Signature of Sheriff of St. Joseph (or \_\_\_\_\_) County,  
Indiana (or other Officer) and Badge No.

\_\_\_\_\_  
v. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ORDER TO APPEAR**

Upon proper filing of a Verified Motion in the Proceeding Supplementary, the Court now finds said Motion is sufficient.

IT IS THEREFORE ORDERED that the DEFENDANT(s) \_\_\_\_\_, \_\_\_\_\_, APPEAR before this Court at 101 SOUTH MAIN STREET, SOUTH BEND, IN 46601 on \_\_\_/\_\_\_/\_\_\_ at \_\_\_ AM to answer as to the Defendant’s non-exempt property subject to Proceedings Supplemental to execution. In place of said appearance, the Garnishee may answer the following interrogatories and return them to the Clerk of the Court by mail within twenty-five (25) days after service.

ENTERED the date file stamped hereon

\_\_\_\_\_  
JUDGE, ST. JOSEPH CIRCUIT / SUPERIOR COURT

**NOTICE OF DEBTOR RIGHTS**

The judgment debt can be collected from income you receive or property you own unless the income or property is protected from collection. If it is protected, it is called “exempt.”

When you appear in Court, you will be asked to describe the property you own and the amount of income you have. You cannot be jailed for not paying your debts. You can, however, be arrested if you ignore a Court order that requires you to appear.

When you appear, you will meet with a representative of the creditor that was awarded a judgment against you. You may attempt to reach an agreement to make payments toward your debt. **However, you have the right to appear before a Judge.** You should request to appear before the Judge if the judgment holder will not agree that certain income or property listed below is exempt.

Example of Exempt Income:

- 1. Wages: The federal minimum hourly wage is currently \$7.25. A part of minimum wage earnings cannot be garnished. The part that cannot be garnished is the lesser of (a) 30 hours of minimum wage earnings (which is \$217.50) or (b) seventy-five percent (75%) of your net earnings. Here is an example of how (a) and (b) work:

Example: If your net income is \$300.00 a week, you could be garnished in the amount of:

- (a) \$82.50 (\$300.00 – \$217.50 = \$82.50) [calculation (a) – note how the exempt amount of \$217.50 is first subtracted and set apart from your net income, to leave the balance that may be subject to garnishment] or
- (b) in the amount of \$75.00 (\$300 x .25 = \$75) [calculation (b) – since calculation (b) requires seventy-five percent (75%) of your net income to be exempt, you calculate the remaining percentage – twenty-five percent (25%) – of your net income].

Since \$75 is less than \$82.50, the amount garnished should be \$75. The higher amount of income remaining, \$225 in this example (seventy-five percent (75%) of your net earnings), is exempt. This exemption is usually applied automatically.

- 2. All Social Security benefits, and certain retirement accounts, such as an IRA.
- 3. All Veterans Administration, Unemployment Compensation, and Workers Compensation benefits

Example of Exempt Property:

- 1. Intangible Personal Property (cash, bank accounts, etc.) up to a maximum of \$400.00.
- 2. All money in a bank account that only receives deposits from exempt sources, such as Social Security.
- 3. A home you own or are buying--Equity value up to \$19,300.00 per debtor is exempt. If you and your spouse both owe the debt and both own or are buying the home, you each receive an equity exemption of \$19,300.00.
- 4. A home that you and your spouse own or are buying together-- If you and your spouse own or are buying your home as husband and wife (“tenants by the entireties”) and if the debt is owed by only one spouse, the entire equity value of the home is exempt.
- 5. Tangible personal property (cars, furniture, etc.) with a total combined value of up to \$10,250.00.

Please note that this Notice of Rights applies only to debts you owe to an individual or a business; it does not apply to Child Support collection or to debts owed to the Government. Exemption laws are complicated. The above information is not a final determination of your rights or a complete description of the law.

You may wish to seek legal advice from these (or other) organizations:

INDIANA LEGAL SERVICES, INC.  
401 E. COLFAX AVENUE, STE. 116  
SOUTH BEND, IN 46617  
(574) 234-8121  
(844) 243-8570

VOLUNTEER LAWYER NETWORK  
P O BOX 1358  
SOUTH BEND, IN 46624-1358  
(574) 277-0075

\_\_\_\_\_  
Debtor Signature  
NOTRE DAME CLINICAL LAW CENTER  
725 HOWARD STREET  
SOUTH BEND, IN 46617  
(574) 631-7795

LAWYER REFERRAL SERVICE OF  
ST. JOSEPH COUNTY BAR ASSOCIATION  
101 S. MAIN STR., LAW LIBRARY  
SOUTH BEND, IN 46601  
(574) 235-9657

## **LOCAL CRIMINAL RULES FOR ST. JOSEPH COUNTY (300 SERIES)**

### **Rule LR71-CR00-301. Criminal Cases.**

#### **301.1. Intent of the Local Criminal Rules.**

Criminal cases shall be governed by this rule which is adopted to conserve the time of Court and counsel and to expedite and assure the disposition of criminal cases within the constraints imposed by Ind. Crim. Rule 4 and is intended to provide a routine procedure for the advancement of cases from filing to disposition.

#### **301.2. Balancing of Interests.**

The legitimate interests of all civil litigants and the prompt and orderly dispatch of all civil litigation in the Circuit Court will be given preference subject only to such priority of disposition as is from time to time required for criminal cases by applicable rules of Indiana Trial Procedure, rules of the Indiana Supreme Court, and the requirements of the Constitutions of the United States and the State of Indiana to preserve to criminal case defendants all rights thereby conferred or guaranteed.

### **Rule LR71-CR21-302. Application of Local Rules.**

The local administrative and trial rules shall apply to all criminal proceedings so far as they are not in conflict with any specific local rule adopted for the conduct of criminal proceedings, which are enumerated hereafter.

### **Rule LR71-CR2.2-303. Assignment of Criminal Cases.**

#### **303.1. Grand Jury Proceedings and Indictments.**

##### **303.1.1. Convening a Grand Jury.**

The Circuit Court shall call and conduct all Grand Jury proceedings.

##### **303.1.2. Docketing Grand Jury Proceedings.**

Each newly impaneled grand jury shall be assigned a cause number on the miscellaneous criminal docket. All pre-indictment motions, orders, and other filings pertaining to matters before that grand jury shall bear that particular docket number and shall be maintained by the Clerk under seal if so ordered by the Court.

##### **303.1.3. Pre-indictment Challenges to Subpoenas or Proceedings.**

All pre-indictment challenges to grand jury subpoenas or grand jury proceedings shall be made in writing and filed with the clerk and shall recite all pertinent facts including the grand jury number, the date of service of the subpoena, the appearance or production date of the subpoena, and the law.



Motions to quash or limit a grand jury subpoena shall be filed and served upon the Prosecuting Attorney no later than seven (7) days prior to the appearance or production date unless good cause exists for a later filing. Upon the filing of any motion to quash or limit a grand jury subpoena, the court will endeavor to rule upon the motion on or before the return date of the subpoena.

**303.1.4. Persons Authorized to Appear before Grand Jury.**

No person shall be present in the hall adjacent to the area or rooms utilized by a grand jury in the process of performing its function. In addition, while a grand jury is in the process of performing its function, no person shall remain in an area in which persons who are appearing before the grand jury can be monitored or observed. This rule shall not apply to grand jurors; witnesses; prosecuting attorneys, law enforcement officers, and employees; court personnel concerned with grand jury proceedings; private attorneys whose clients have been called to appear as a witness at a session of the grand jury then in progress or about to commence; and others specifically authorized to be present at the grand jury proceedings.

**303.1.5. Assignment of Grand Jury Indictments.**

Except as provided in Rule 303.2 below, indictments issued by the Grand Jury shall be filed on a random basis in equal numbers between the Circuit and Superior Courts.

**303.2. Felony Nonsupport and Welfare Fraud.**

All criminal proceedings, whether by information, indictment, or by transfer from another county, alleging violation of I.C. 35-43-5-7 (welfare fraud), I.C. 35-43-5-7.1 (Medicaid fraud), I.C. 35-43-5-7.2 (children's health insurance fraud), or I.C. 35-46-1-5 (nonsupport of a dependent child), shall be assigned to the Circuit Court. To effectuate caseload balancing and judicial economy, other criminal proceedings may be assigned to the Circuit Court by written order signed by the Judge of the Circuit Court and the Chief Judge of the Superior Court.

**303.3. Other Criminal Proceedings.**

This Rule applies to all criminal cases filed with the Superior Court, whether initiated by information, indictment (pursuant to Local Rule 302.1), or by transfer from another county. Criminal felony and misdemeanor cases filed in the Superior Court will be assigned as follows:

- (1) Each of the Judges of the court shall be assigned responsibility by the Chief Judge, for the finding of probable cause in new criminal felony and misdemeanor filings.
- (2) Upon the finding of probable cause on a felony charge, the prosecutor shall submit to the clerk of the court the charges and the court's finding of probable cause. The clerk shall not assign a Judge or cause number to any new criminal

felony filings in advance of a judicial finding of probable cause. Further, if the prosecuting attorney shall elect to file a case and request that the clerk issue a summons, without first submitting the case for a finding of probable cause, or after a finding of no probable cause, the clerk shall assign the case as provided herein.

- (3) The clerk shall, upon filing, whether by indictment or information, randomly assign, by computer, all criminal felony cases to the Judges of the criminal division. Should there be a Drug Treatment Court established pursuant to Local Rule 109.2 herein, all cases assigned to that Court shall be done in accordance with an assignment order entered by the Chief Judge. The Chief Judge shall thereafter have the authority to transfer such felonies to other Judges of the court, so as to comply with Rule LR71-AR1-1001, that being the Local Caseload Plan for St. Joseph County.
- (4) Notwithstanding the subparagraph above, the Chief Judge may reassign a case to any other Judge of the court for good cause shown by any judge of the court, by agreement between judges of the court, or as may be determined to be in the best interests of the court pursuant to Rule LR71-AR1-1001, herein.
- (5) Upon a change of Judge under Ind. Crim Rule 2.4, the case shall be reassigned according to LR71-AR1-1001: Joint Local Caseload Allocation Plan for St. Joseph County, Felony Criminal Cases section, paragraphs 6(A) through (E).
- (6) Special procedures for Traffic and Misdemeanor Division, (a) upon one's initial appearance, counsel will be entitled, upon request, to a continuance of three (3) to four (4) weeks to investigate the case and/or discuss potential plea agreements with the prosecutor's office; (b) at the second appearance, counsel and defendant must be present and unless good cause is shown, be prepared to enter a plea or set the matter for trial.
- (7) (a) If the State files a new Information against a defendant with a pending case, the judge presiding over the new case shall transfer the new case to the judge presiding over the older, pending case. At the discretion of the judge presiding over the new case, that judge may decline to transfer the new case.  
(b) If the State files a new Information against a defendant with a pending petition to revoke probation or placement, the judge presiding over the new case shall transfer that case to the judge presiding over the petition to revoke probation or placement. At the discretion of the judge presiding over the new case, that judge may decline to transfer that case.

## **Rule LR71-CR00-304. Appearance, Withdrawal, and Presence of Defendants.**

### **304.1. Written Appearance.**

An attorney entering an appearance on behalf of any party, or defendant appearing "Pro-se" shall file a written appearance electronically as provided by and in accordance with Rule 3.1 of the Indiana Rules of Trial Procedure.

### **304.2. Withdrawal of Counsel.**

Counsel for the defendant charged with a criminal offense may file a motion to withdraw from the case pursuant to I.C. 35-36-8-2. A motion to withdraw shall be in writing with an attached notice to the client of the intention to withdraw. The notice of the intention to withdraw shall be sent to the client no later than ten (10) days before the filing of the motion to withdraw. The notice of the intention to withdraw shall include an explanation of the present status of the case, the dates of the scheduled hearings or other pending matters in the case and the potential consequences to the client's case resulting from the failure of the client to act promptly or to secure new counsel.

### **304.3 Personal Presence of Defendants.**

- a) The personal presence of the Defendant in court, in person or by video, is required at initial hearings, pretrial conference/record hearings, hearings at which the Defendant enters a guilty plea if the plea agreement includes a consent to appear by video or the Defendant gives verbal consent at the hearing, and pretrial motion hearings. The personal presence of the Defendant in court, in person, is required for bench trials, jury trials, and sentencing hearings.
- b) For all hearings other than those enumerated in subsection (a) above, the Defendant and/or their attorney, at the discretion of the judge presiding over their case, may appear remotely, by telephone or video. The attorney for the Defendant, or the Defendant if self-represented, must get permission from the court to appear remotely prior to the hearing.
- c) In lieu of the Defendant's remote appearance at hearings pursuant to subparagraph (b), counsel for the Defendant may appear on the Defendant's behalf if given permission to do so by the judge presiding over the case. Counsel shall confirm with the court that counsel has had regular contact with the Defendant, has the Defendant's correct contact information, is able to, and shall inform the Defendant of what transpired at the hearing and the Defendant's next court date. Counsel's representation shall constitute prima facie evidence of the Defendant's knowledge of their court date in the event the Defendant fails to appear for any subsequent hearing scheduled at the hearing attended only by counsel. If insufficient evidence exists to rebut the presumption of the Defendant's knowledge of the hearing, the court may issue a bench warrant for the failure to appear.
- d) As a condition of pretrial release, the Defendant shall provide the Clerk of the Court and Counsel for the Defendant with the Defendant's current address and telephone number. If the Defendant owns and/or uses a cellular telephone for telephonic communication, the Defendant shall provide the cellular telephone number to receive text notifications concerning upcoming court hearings. The Defendant shall notify the Clerk of the Court and Counsel of any changes in address and/or telephone number within 48 hours of the change.

#### **304.4 Presence of Traffic and Misdemeanor Defendants.**

Traffic and Misdemeanor defendants represented by counsel, upon request of counsel and leave of the Court, may be excused from appearing in Traffic and Misdemeanor Court except for (a) initial hearing, (b) second appearance, (c) record and trial setting. A traffic and misdemeanor defendant who is excused under this rule stipulates that notice to the attorney of the next court date requiring his or her presence shall constitute notice to the traffic and misdemeanor defendant.

#### **304.5 Witness Subpoena; Release.**

A witness whose appearance at a criminal trial has been compelled by subpoena remains subject to the subpoena until either (1) released by the court or (2) such time as the trial is continued or vacated by order of the court.

### **Rule LR71-CR00-305. Discovery.**

#### **305.1. Motions and Orders.**

Criminal Rule 2.5 governs discovery obligations and procedures in all criminal cases and the parties shall comply with its mandates.

#### **305.2. Discovery Deadlines.**

In all criminal cases, the Judge may assign a discovery deadline date. The parties shall have a continuing obligation to disclose evidence and discovery pursuant to these Rules, the Indiana Rules of Criminal Procedure, or by law.

#### **305.3. Notice Required.**

Each side, within the time allowed for compliance with discovery under this Rule, shall provide the other with notice of its intent to introduce evidence pursuant to Indiana Rule of Evidence 404(b), 609(b), or any other Rule which requires notices as a prerequisite to the admission of evidence.

#### **305.4. Waiver.**

Although each side has a right to full discovery under this Rule, each side has a corresponding duty to seek out discovery. Failure to do so may result in the waiver of this right.

#### **305.5. State's Disclosure.**

The State shall provide discovery in accordance with Ind. Crim. Rule 2.5(B).

#### **305.6. Defendant's Disclosure.**

The Defendant shall provide discovery in accordance with Ind. Crim. Rule 2.5(C).

### **305.7. Additions, Limitations, and Protective Orders.**

#### **305.7.1. Discretionary Disclosures.**

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

#### **305.7.2. 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.

#### **305.7.3. Matters Not Subject to Disclosure.**

##### **305.7.3.1. Work Product.**

Disclosure hereunder shall not be required of legal research of 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.

##### **305.7.3.2. 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.

#### **305.7.4. Protective Orders.**

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

### **Rule LR71-CR00-306. Dispositive Motions, Motions to Suppress, Other Motions.**

#### **306.1. Motions to be in Writing.**

Unless a party has prior, written leave of Court, all pre-trial motions shall be filed in writing with adequate notice provided to opposing counsel and the Court.

#### **306.2. Hearings on Motions.**

The court will not ordinarily set for hearing any motion to dismiss, motion to suppress, motion in limine (where the grounds therefore are known before trial), or other such dispositive motion, unless the motion contains a factual explanation as to why the granting of such is appropriate and is accompanied by a sufficient memorandum of

law. Unless good cause is shown, the responding party opposing such dispositive motions shall file a response within 15 days, unless the court specifically sets different time frames, which contains a factual explanation as to why denying the motion is appropriate accompanied by a sufficient memorandum of law.

## **Rule LR71-CR00-307. Plea Agreement Deadlines.**

### **307.1. Plea Agreement Date – Felony Cases.**

In all criminal prosecutions, the Judge may assign a date that will serve as the plea bargain deadline date. The Judge may also assign a record date, trial date, and other dates as may be appropriate.

### **307.2. Plea Agreement Date – Traffic and Misdemeanor Division.**

The judicial officer presiding over criminal prosecutions in the Traffic & Misdemeanor Division may assign an omnibus date, record date, trial date, and other dates as may be appropriate. If the parties have no plea agreement, the court may hold a pre-trial conference on the plea agreement deadline date.

## **Rule LR71-CR00-308. Miscellaneous Criminal Rules.**

### **308.1. Determination of Probable Cause.**

In the event that any charging instrument, search warrant, subpoena, or another document, the issuance of which requires a finding of probable cause, or similar factual and legal finding, shall be submitted to a judge and that judge finds that no probable cause exists or that the submission is in any other way insufficient, any re-submission shall be made to the original judge, unless the original judge agrees that it may be submitted to another judge for his or her consideration.

### **308.2. Dismissal.**

Any dismissed felony shall be assigned to the original Judge if refiled, notwithstanding any other assignment rule herein.

### **308.3. Bond Schedule.**

Each of the Courts, individually or in concert, may establish a presumptive bond schedule for criminal cases. The schedules are attached hereto as Appendix A and Appendix A-1.

### **308.4. Withdrawal of a Public Defender Appointment.**

(a) The appointment to serve as a public defender in any single criminal proceeding shall terminate upon entry of sentencing order and dispositional order the appearance of counsel shall be withdrawn from the Court's case management system unless a person appointed as public defender makes a request of the court to the contrary. At sentencing or disposition, the Defendant shall be notified of the termination of the Public Defender appointment.

(b) The Public Defender in a Juvenile Delinquency case (JD) shall remain appointed until closure of the case.

**308.5. Access to Pre-Sentence/Pre-Dispositional Reports.**

(a) Any:

- (1) presentence report or memoranda; and
- (2) report of a physical or mental examination; submitted to the court in connection with sentencing shall be kept confidential.

(b) The materials specified in subsection (a) may not be made available to any person or public or private agency other than:

- (1) the convicted person and counsel who has entered his or her appearance for the convicted person in the proceeding at issue;
- (2) the prosecuting attorney;
- (3) the probation department;
- (4) the community corrections program in which an offender is placed under IC 35-38-2.6; and
- (5) the Indiana criminal justice institute established under IC 5-2-6; except where specifically required or permitted by statute or upon specific authorization by the court and the convicted person.

## Appendix A

### St. Joseph County Pretrial Release Schedule

#### Preamble

On September 7, 2016, the Indiana Supreme Court issued an order adopting Indiana Rule of Criminal Procedure 26 (now known as Ind. Crim. Rule 2.6). This rule developed as a result of the State's Pretrial Release Initiative, which seeks to "support implementation of a risk-informed pretrial system that will maximize release, court appearance, and public safety."<sup>1</sup>

This rule promotes the release of certain arrestees on their own recognizance and the use of non-monetary supervision conditions to ensure that they appear for all future court dates and refrain from committing new offenses while on pretrial release.

These terms apply to all cases to be filed in the Circuit and Superior Courts of this county. The Sheriff of St. Joseph County is hereby ordered to follow this schedule for determining the pretrial release/detention for all persons arrested for criminal offenses to be filed in the above Courts.

#### **Nothing in this Rule should be construed to limit the discretion of judicial officers in making release/detention decisions for arrestees.**

Pursuant to the authority of the St. Joseph County Circuit and Superior Courts to establish a reasonable basis for release/detention in criminal cases, a pretrial release program has been established in accordance with the following terms and conditions:

1. All persons detained in the St. Joseph County Jail on felony charges: and otherwise eligible to post bond shall be screened by the Pretrial Services Division of the St. Joseph County Adult Probation Department.
2. Screening shall consist of at least one State approved pretrial risk assessment instrument and such other risk assessment instrument(s) that may be approved and required by the judges of the Circuit and Superior Courts of St. Joseph County.
3. A person is eligible for screening upon being booked into the St. Joseph County Jail unless the person lacks the capacity to participate in a valid risk assessment due to the effects of drugs, chemical withdrawal, or a mental or emotional

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<sup>1</sup> Indiana Office of Court Services, *Pretrial Services*, <https://www.in.gov/courts/iocs/pretrial/> (accessed 6/15/24).



condition. A person booked in for an alcohol-related offense becomes eligible for screening pursuant to the chart established for release eligibility in Ind. Code 35-33-1-6. A person who lacks the capacity to participate in a valid risk assessment becomes eligible for screening when they regain capacity or at the discretion of the pretrial services assessor.

4. All decisions regarding release and/or release conditions under this rule are conditional and may be reviewed by the Court at any time. After the initial hearing (or waiver thereof), the Court *sua sponte* may review the defendant's pretrial release/detention status and/or conditions of release. After the initial hearing, the Prosecuting Attorney or defendant, by written motion, may request a hearing to review the defendant's pretrial release/detention status and/or conditions of release.

5. All persons arrested and for whom:

- a. The identity of the arrestee is unknown (this includes, but is not limited to, those individuals who refuse to cooperate in their identification, individuals who possess conflicting identification, and individuals whose identifying information cannot be verified); or
- b. There is good cause to believe that the arrestee is on probation, home detention/house arrest, parole; or
- c. There is good cause to believe the arrestee is on pretrial release or bond for a pending criminal offense;

shall be held without bond until the person is brought before the Court for a hearing to consider release conditions.

6. At the time of the finding of probable cause, the judicial officer reviewing probable cause may:

- a. Order the arrestee held without bond until the person is brought before the Court for a hearing to consider release conditions; or
- b. Set a bond in accordance with the attached monetary bond schedule; or
  - i. The attached monetary bond schedule incorporates the results of the Indiana Risk Assessment System Pretrial Assessment Tool (IRAS-PAT). These assessments may not always be available at the time of the finding of probable cause. The court is not required to administer an assessment prior to releasing an arrestee if administering the assessment will delay the arrestee's release. *Ind. Crim. Rule 2.6(B)*.

- c. If provisions 5(a)-5(c) do not apply to an arrestee, release the arrestee on their own recognizance.
7. If the Sheriff has a reasonable belief that an arrestee is intoxicated notwithstanding the results of a breath test, the Sheriff may hold that arrestee for no more than twenty-four (24) hours from the time of arrest.
- a. A person arrested for an alcohol-related offense shall be detained until their blood/breath alcohol level reaches .05 or below. The jail may utilize the chart in Ind. Code 35-33-1-6 to determine the number of hours needed to reach that level.
  - b. For the purposes of this provision, "intoxicated" means under the influence of:
    - i. alcohol;
    - ii. a controlled substance (as defined in IC 35-48-1);
    - iii. a drug other than alcohol or a controlled substance;
    - iv. a substance described in IC 35-46-6-2 or IC 35-46-6-3;
    - v. a combination of substances described in subdivisions (1) through (4); or
    - vi. any other substance, not including food and food ingredients (as defined in IC 6-2.5-1-20), tobacco (as defined in IC 6-2.5-1-28), or a dietary supplement (as defined in IC 6-2.5-1-16); so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties. Ind. Code 9-13-2-86.
8. In accordance with Ind. Code 35-33-8-3.5(c), a Court may not admit a sexually violent predator defendant, a person charged with child molesting, or a person charged with child solicitation to bail until the Court has conducted a bail hearing in open Court.
9. In accordance with Ind. Code 35-33-8-6.5, a Court and/or the St. Joseph County Jail may not release a person arrested for a crime of domestic violence on bail until at least eight (8) hours from the time of the person's arrest.
10. The following three (3) risk categories from the Indiana Risk Assessment System – Pretrial Assessment Tool (IRAS-PAT) are adopted:
- a. Low
  - b. Moderate
  - c. High

11. The Sheriff shall provide all persons released prior to the initial hearing with a Notice/Promise to Appear and an initial court hearing date.
  - a. In accordance with I.C. 35-33-7-1, a person arrested without a warrant for a crime shall be taken promptly before a judicial officer. If an arrestee makes bail before their initial hearing before a judicial officer, the initial hearing shall occur at any time within twenty (20) calendar days after the person's arrest. If a person has been arrested under I.C. 9-30-5 (Operating a Vehicle while Intoxicated) and makes bail before their initial hearing before a judicial officer, the initial hearing must occur within ten (10) days after the person's arrest.
12. Pretrial conditions of release under this pretrial release schedule shall include that the person released:
  - a. Shall appear in Court at all times required by the Court;
  - b. Shall not leave the State of Indiana without the prior written consent of the Court and shall agree to waive extradition as a condition of the Court granting such consent;
  - c. Shall not commit nor be arrested for another criminal offense;
  - d. Shall keep his/her attorney, the Court and Pretrial Services advised in writing of any change in address or telephone number within forty-eight (48) hours of such change;
  - e. Shall comply with any conditions ordered by the Court;
  - f. In appropriate cases, the arrestee may be required to refrain from any direct or indirect contact with an alleged victim of an offense or other individual as ordered by the Court pursuant to Ind. Code 35-33-8-3.2.
13. Any violation of any condition may result in the revocation of bond or recognizance and issuance of an arrest warrant.
14. If an arrestee is eligible for non-monetary release under Ind. Crim. Rule 2.6, the Court should consider releasing the arrestee on their own recognizance. An arrestee is not eligible for Ind. Crim. Rule 2.6 release if:
  - a. The arrest presents a substantial risk of flight or danger to themselves or others;

- b. The arrestee is charged with murder or treason;
  - c. The arrestee is on pretrial release not related to the incident that is the basis for the present arrest; and/or
  - d. The arrestee is on probation, parole, or other community supervision.
15. An arrestee is presumed eligible for Ind. Crim. Rule 2.6 consideration if the arrestee meets the aforementioned eligibility criteria AND does not present a substantial risk of flight or danger to self or others.
- a. Arrestees who do not present a substantial risk of flight or danger to self or others should be released without money bail or surety subject to such restrictions and conditions as determined by the court. Ind. Crim. Rule 2.6(A). (see also Ind. Code §35-33-8-3.2).
  - b. If an arrestee is not eligible for CR 2.6 consideration, the arrestee should be held for hearing or released according to the attached cash bond schedule (Appendix A-1). If the court determines that an arrestee is to be held subject to money bail, the court is authorized to determine the amount of such bail and whether such bail may be satisfied by surety bond and/or cash deposit. (Ind. Crim. Rule 2.6(C)).
16. The judicial officer when determining bond shall consider the factors relating to public safety and risk of flight as reflected in I.C. §35-33-8-4. If an arrestee is eligible for non- monetary release under Criminal Rule 2.6, the Court should consider releasing the arrestee on their own recognizance. The court is not required to administer a risk assessment prior to releasing an arrestee if administering the assessment will delay the arrestee's release. Ind. Crim. Rule 2.6(B).

The Court shall consider the following factors when determining bond:

- 1. Arrestee's prior criminal history;
- 2. Nature of the instant charges;
- 3. Alleged level of harm;
- 4. Alleged victim of the instant charges;
- 5. Whether the alleged offense included the possession and/or use of a deadly weapon;
- 6. Defendant's risk of flight;
- 7. Whether the alleged offense included the violation of a Court Order; and
- 8. Whether the arrestee has a history of Public Safety Offenses, or if the alleged instant offense constitutes a Public Safety Offense;

- For the purposes of this Order, a public safety offense is any level of any of the following offense types:
  - Domestic Violence;
  - Invasion of Privacy;
  - Any Crime Against Law Enforcement;
  - Any Crime Committed by Means of a Deadly Weapon;
  - Any Crime Involving Felony Possession of a Handgun/Firearm;
  - Any Crime Charged under Ind. Code §35-42 (Crimes against a Person); and,
  - Whether the alleged offense violates a term of the arrestee’s release on probation or parole.

**17. BAIL/BOND/RELEASE RULES FOR MISDEMEANOR CASES**

- A. If a person is arrested for an offense with any of the factors listed below, bail/bond amounts and release conditions will be determined in each case by the judicial officer reviewing the State’s charging document and probable cause affidavit pursuant to Indiana Criminal Rule 2.6:
1. All offenses if the offender is on probation, parole, bond or release on the person’s own recognizance for another offense;
  2. All misdemeanors involving Operating While Intoxicated proscribed by I.C. §9-30-5 et seq.;
  3. All misdemeanor offenses involving Battery, as a class A Misdemeanor, as proscribed by I.C. §35-42-2-1(d);
  4. All misdemeanors involving Domestic Battery as proscribed by I.C. §35-42-2-1.3;
  5. All misdemeanor offenses involving resisting law enforcement as proscribed by I.C. §35-44.1-3-1;
  6. All misdemeanors involving invasion of privacy as proscribed by I.C. §35-46-1-15.1;
  7. All misdemeanors involving possession or delivery of a firearm as proscribed by I.C. § 35-47 et seq.
  8. All misdemeanors where the jail shall hold the offender for a **24-HOUR HOLD**: pursuant to Indiana Code 35-33-8-6.5.
- B. In all cases of a warrantless arrest, the St. Joseph County Sheriff is obligated to ensure the jail’s compliance with the 48-Hour rule. To allow for more timely release of certain non-violent or victimless misdemeanor offenses, the judicial officers of the Superior Court have created the following presumptive schedule that the Sheriff may implement to facilitate timely pre-charging release of arrestees:

PRESUMPTIVE MISDEMEANOR BOND SCHEDULE (PRE-CHARGING)

- Class A Misdemeanor Offenses \$5000 surety/500 cash
- Class B Misdemeanors \$2500 surety/250 cash
- Class C Misdemeanors \$1500 surety/150 cash

The Sheriff of St. Joseph County or his/her designee may allow eligible arrestees to post bond according to the above schedule before charging paperwork is received by the jail. Arrestees who post the presumptive bond amount pre-charging shall be given—and must sign—a promise to appear form with the date/time of their in-court appearance.

The Court may fix a higher or lower bail upon the showing of appropriate circumstances. All bail fixed pursuant to this schedule shall be reviewed upon motion of any party. The Court, after the initial hearing, may consider a release of some/all of the funds pursuant to the above schedule if the Court reasonably believes the person will attend scheduled court hearings and, after review of the filed charges, does not present a risk to the physical safety of a person or the community that could be addressed by the previously posted bond.

C. Persons Arrested for a Crime of Driving While Suspended or Operator Never Licensed

After being processed by the St. Joseph County Sheriff and completing the “Promise to Appear” form, persons arrested for driving while suspended pursuant to IC 9-24-19-2 or -3 or Operator Never Licensed pursuant to IC 9-24-18-1 shall be released on their own recognizance without having to post a bond. The Sheriff shall provide these persons with an initial hearing date and time.

D. Persons Arrested for Minor Consuming (Class C Misdemeanor), Possession of Marijuana (Class A and Class B Misdemeanor), Possession of Paraphernalia (Class A and Class B Misdemeanor)

If not impaired at time of arrest, the Sheriff shall complete the “Promise to Appear” form, and immediately release on the person’s own recognizance all persons arrested for (1) consumption, transportation, possession of alcohol by a minor pursuant to IC 7.1-5-7-7, (2) possession of marijuana pursuant to IC 35-48-4-11, and (3) possession of paraphernalia pursuant to IC 35-48-4-8.3 . If intoxicated, impaired or actively using at the time of arrest, the Sheriff shall book-in, and hold an arrestee for a minimum of four (4) hours (and longer if still impaired after four (4) hours) and then release the person once it appears reasonably safe to do so on their own recognizance.

E. 24-Hour Hold:

Pursuant to Indiana Code 35-33-8-6.5, a person arrested for one or more of the following misdemeanor offenses committed against a "family or household member" cannot be released on bail for at least twenty-four hours (24) from the booking date/time:

- a. Domestic Battery, I.C. 35-42-2-1.3
- b. Battery, I.C. 35-42-2-1
- c. Invasion of Privacy, I.C. 35-46-1-15.1
- d. Criminal Recklessness, I.C. 35-42-2-2

F. Lack of Identification:

Any person who cannot be positively identified during the booking process shall be held without bond until the person is brought before the Court for their initial hearing. This includes, but is not limited to, those individuals who refuse to cooperate in their identification by refusing to be fingerprinted, individuals who possess conflicting identification, and individuals whose identifying information cannot be verified.

Appendix A-1  
St. Joseph County Monetary Bond Schedule

This schedule is designed for arrestees who are not C.R. 2.6 eligible. If an arrestee is eligible for non-monetary release under Criminal Rule 2.6, the Court should consider releasing the arrestee on their own recognizance.

The Court is not required to administer a risk assessment prior to releasing an arrestee if administering the assessment will delay the arrestee's release. Ind. Crim. Rule 2.6(B)

**IRAS-PAT Risk Level**

<b>Bail Factor Score</b>	<b>Low</b>	<b>Moderate</b>	<b>High</b>
<b>6+</b>	\$25,000-\$100,000	\$40,000-\$150,000	\$50,000+
<b>5</b>	\$7,500-\$20,000	\$12,000-\$40,000	\$25,000-\$100,000
<b>4</b>	\$3,000-\$10,000	\$7,500-\$15,000	\$15,000-\$30,000
<b>3</b>	\$1,500-\$4,500	\$3,000-\$7,500	\$6,000-\$15,000
<b>2</b>	\$0-\$1,500	\$0-\$3,000	\$500-\$5,000
<b>1</b>	\$0-\$750	\$0-\$1,500	\$0-\$3,000
<b>0</b>	ROR / \$0	\$0-\$500	\$0-\$1,000

This schedule shall apply to all felony charges. EXCEPTION: for Level 6 Felonies, the Bail Factor Scores are capped as follows:

1. For a non-violent (to be determined at the court's discretion) Level 6 Felony, the maximum number of points considered in the Bail Factor Score is 2.
2. For a violent (to be determined at the court's discretion) Level 6 Felony, the maximum number of points considered in the Bail Factor Score is 3

In determining whether an arrestee presents a substantial risk of flight or danger to self or other persons or to the public, the court should utilize the results of an evidence-based risk assessment approved by the Office of Judicial Administration, and such other information as the court finds relevant. (Ind. Crim. Rule 2.6(B)). Such other information includes, but is not limited to:

1. Arrestee's prior criminal history;



2. Nature of the instant charges;
3. Alleged level of harm;
4. Alleged victim of the instant charges;
5. Whether the alleged offense included the possession and/or use of a deadly weapon;
6. Defendant's risk of flight;
7. Whether the alleged offense included the violation of a Court Order; and
8. Whether the arrestee has a history of Public Safety Offenses, or if the alleged instant offense constitutes a Public Safety Offense;
  - a. For the purposes of this Order, a public safety offense is any level of any of the following offense types:
    - i. Domestic Violence;
    - ii. Invasion of Privacy;
    - iii. Any Crime Against Law Enforcement;
    - iv. Any Crime Committed by Means of a Deadly Weapon;
    - v. Any Crime Involving Felony Possession of a Handgun/Firearm;
    - vi. Any Crime Charged under Ind. Code §35-42 (Crimes against a Person); and
    - vii. Whether the alleged offense violates a term of the arrestee's release on probation or parole.

# **LOCAL RULES FOR FAMILY COURT AND ORDERS OF PROTECTION FOR ST. JOSEPH COUNTY (400 SERIES)**

## **Rule LR71-FL00-401. Domestic Relations Authority.**

### **401.1. Authority.**

These rules are adopted under the authority of T.R. 81 of the Indiana Rules of Trial Procedure and are intended to supplement those rules. These rules shall govern the practice and procedure in all domestic relations cases in the St. Joseph Circuit, Superior, and Probate Courts and are created to foster the healthy and child focused functioning of families.

### **401.2. Definition of Family Cases.**

"Family cases" means all marital dissolution, annulment, legal separation, child custody, child parenting time and visitation, child support, paternity, guardianship, and adoption cases.

### **401.3. Liberal Construction and Application.**

The St. Joseph Circuit, Superior, and Probate Courts are committed to a cooperative model for handling family cases. These rules will be liberally construed and applied to serve the ends of (a) ensuring safety, (b) reducing conflict, (c) building cooperation, and (d) protecting children and (e) promoting healthy relationships within families.

### **401.4. Intent and Best Practices.**

Conflict between parties can easily escalate and in some cases end tragically. To avoid such escalation and possible tragic results, the judicial officers of these Courts remind attorneys and parties that:

- (1) Actions taken at any time in family cases, including the earliest stages, will often define much of the future of the case and the family's ability to function without the constant intervention of the Court.
- (2) While courts are largely powerless to affect cases before they are filed, attorneys can set a tone of either beneficial cooperation or destructive conflict for families in those cases.
- (3) Therefore, attorneys' language and conduct in family cases, including before they are filed, should be governed by a commitment to ensure safety, reduce conflict, build cooperation, protect children, and promote the healthy family relationships that children depend on.
- (4) The St. Joseph Circuit, Superior, and Probate Courts, therefore, expect and will continuously encourage attorneys to conduct themselves at all times,

including before cases are filed, in ways that ensure safety, reduce conflict, build cooperation, protect children and promote healthy relationships within families.

- (5) At all times, the attorney's commitment to those ends should include the following:
- (a) **Assessment of Case and Safety Considerations.** Counsel meeting with a person involved in or contemplating a family case should promptly assess whether the case can safely be handled cooperatively and without adversarial motions or hearings. Unless safety, a history of family violence (including requests for protective orders) or other exceptional circumstances make cooperation unreasonable, counsel should handle the case in ways that avoid court and maximize the prospective parties' and other family members' development of cooperative problem-solving, childrearing, and child protection.
  - (b) **Cooperation between Counsel before Initial Filings.** Counsel representing persons anticipating a family case should make reasonable efforts to determine if the other possible parties have or may be seeking representation. Unless doing so would be dangerous or otherwise unreasonable, counsel should:
    - (i) Consult and cooperate with each other;
    - (ii) attempt in good faith to find cooperative resolutions to provisional matters so that unnecessary provisional filings and hearings can be avoided and early family cooperation can be encouraged;
    - (iii) refer parents to resources such as co-parenting education, counseling, and mediation that can help them, their children, and the relationships within the family.
  - (c) **Cooperation with Self-Represented Parties before Initial Filings.** Unless doing so would be dangerous or otherwise unreasonable, counsel should employ these same efforts at consultation and cooperation with self-represented persons before the filing of any family case. When safe to do so, counsel should (i) communicate directly with such persons (including a self-represented spouse, parent, putative parent, or guardian), and (ii) take all reasonable measures to avoid provisional filings and hearings on matters that could be resolved by cooperative measures such as discussion, counseling, and mediation. Counsel should be sensitive to the special needs of victims of family violence, and nothing in these rules should be construed to require a victim of family violence to

engage in pre-suit negotiations with an alleged perpetrator or to feel pressure to settle because of perceived or implied physical or mental coercion.

- (d) Cooperation after Initial Filings. The principles set forth in paragraphs (b) and (c) above should be observed and implemented where appropriate in all matters arising after initial filings.

#### **401.5. Duties of Attorneys and Parties in Family Cases involving Children.**

- (1) Attorneys and parties in family cases shall be responsible ~~to act~~ for acting with the Courts as co-problem-solvers, not mere problem-reporters.

Unless safety or a history of family violence requires otherwise, attorneys should:

- (a) counsel clients, as soon as possible and as often as necessary, about the advantages and judicial expectations of safe cooperation in family cases;
- (b) refer clients to all co-parenting classes, counseling, mediation, and other problem-solving processes required by the court or that appear to counsel to be promising resources for good family functioning;
- (c) work with other counsel to ensure safety in families where domestic violence has been or reasonably could be an issue;
- (d) work with all counsel to reduce conflict, build cooperation, and protect children;
- (e) avoid unnecessary motions and hearings; and
- (f) use the least divisive processes in pursuing safety, fairness, cooperation, and the best interests of children (where reasonably possible, for example, consulting with other counsel as early and often as necessary to find cooperative resolutions, using service by mail or acknowledgment of service instead of service of process by Sheriff, encouraging restraint and safe cooperation between family members, and exhausting all viable cooperative measures before requesting relief from court).

- (2) The Courts will expect all parties and attorneys to consistently pursue:

- (a) *personal responsibility* by acting on one's own opportunities to solve problems and improve families' circumstances rather than merely reporting on the alleged fault in others;
- (b) *cooperation* by sensibly defining and pursuing the best interests of all family members, especially children;
- (c) *courtesy* by the consistent observance of respectful language and behavior; and

- (d) *focused attention on children's needs*, including awareness (i) that parent conflict is gravely dangerous to children and (ii) that the good future relationships between and among all parents, grandparents, and other adults in children's lives must be protected and nurtured in all family cases.

## **Rule LR71-FL00-402. Case Captioning and Language of in Family Cases.**

### **402.1. Dissolution, Separation, Custody and Support Cases.**

Pleadings in dissolution, separation, custody, and support proceedings shall be captioned as required by statute. Parents and counsel representing parents and grandparents in family cases are encouraged to use non-adversary language in case captioning and pleadings. To facilitate respect, harmony, and collegiality, parties shall be referred to using non-adversarial language whenever possible. For example, "child," "mother," "father," "putative father," "guardian," and similar non-adversarial language should be used instead of "petitioner," "respondent," "plaintiff," or "defendant," and "versus" shall not be used in the captions of any family cases involving children.

All pleadings in marital dissolution and separation cases in which the parties have one or more children under the age of 18 on the date of the initial filing may be captioned, "In Re the Marriage of \_\_\_\_\_, Petitioner, Father, or Mother, and \_\_\_\_\_, Respondent, Mother, or Father."

All pleadings in marital dissolution and separation cases without children may be captioned, "In Re the Marriage of \_\_\_\_\_, Petitioner, or Husband or Wife, or Former Husband or Former Wife, and \_\_\_\_\_, Respondent, or Husband or Wife, or Former Husband or Former Wife."

### **402.2. Paternity and Paternity-related Cases.**

Pleadings in paternity proceedings will be captioned as required by statute; however, parents in paternity cases shall not be referred to as petitioner or respondent and, as appropriate, shall be referred to as Mother, Father, or Putative Father. Captions in paternity cases will be in the form of "In Re the Matter of the Paternity of \_\_\_\_\_, a Child Born Out of Wedlock," and shall also include all adult parties such as parents, alleged parents, de facto custodians, guardians, intervenors, etc. If the case is filed on an "ex rel" basis as contemplated by Trial Rule 19(A)(2) or

as allowed by statute—this includes actions by the state (i.e., IV-D and DCS filings)—then the caption shall disclose that fact.

#### **402.3. Language used elsewhere.**

Rule 8.4 of the Indiana Rules of Professional Conduct and Rule 2.3 of the Indiana Code of Judicial Conduct require lawyers and judges to refrain from using terms that demonstrate bias or prejudice toward others. In written documents and oral presentations to the Court, counsel and parties shall be mindful of and strive to use the preferred pronouns of others in the courtroom or case. When referring to parties in same-gender relationships, it may be helpful to use language such as “biological parent,” “adopting parent,” “birth parent,” and the like. Use of names can also promote clarity, such as “Mr. Jones” and “Mx. Smith.” If the parties have the same last name, use of first names may be appropriate.

### **Rule LR71-FL00-403. Family Cases Involving Unemancipated Children.**

#### **403. 1. Contested Matters.**

##### **403.1.1. Referrals for Investigation and Report.**

A Court may refer contested matters involving child custody and parenting issues to the Domestic Relations Counseling Bureau (DRCB) or another service provider for screening, investigation, and/or report. A referral may be made before the hearing, both before and after a final decree, on motion of either party with the consent of the Court, or on the Court’s own motion.

##### **403.1.2. Definition.**

“Contested matters,” for purposes of this rule, shall include issues involving child custody and parenting time, which may exist both before and after the entry of a final decree.

##### **403.1.3. Cooperation of Parties.**

The parties to contested matters shall promptly meet, and cooperate, with the DRCB or other service provider as required.

##### **403.1.4. DRCB Recommendations.**

Upon referral, the DRCB may recommend either that the parties be referred for interventions (such as mediation, counseling, or case management), or that the parties proceed to an investigation and

evaluation. Unless otherwise ordered by the Court, a DRCB investigation and evaluation of contested matters involving child custody and parenting time will not be conducted by the DRCB unless the above-mentioned interventions have failed or are found to be inadequate to protect the physical safety or emotional well-being of a minor child.

**403.1.5. DRCB Reports.**

The DRCB shall report to the Court on all contested matters referred to its attention. The DRCB shall file its original report with the Court, which shall distribute copies to counsel or to a party not represented by counsel.

**403.1.6. Confidentiality of DRCB Records.**

The records and reports of the DRCB contain information of a private and personal nature, and the release of that information, without court approval and supervision, could result in intentional mischief or unintentional injury to the parties, their children, or relatives. As such, the records and reports of the DRCB are confidential, and that any and all access to the notes, records, or reports of the DRCB shall be allowed only by order of the Court that has jurisdiction over the relevant parties and cause of action.

**403.2. Uncontested Matters.**

The parents of unemancipated children are encouraged to develop a parenting plan that is mutually acceptable to the parents and their children. Where practicable and appropriate for all concerned, the Court shall give due consideration to agreements between parents.

**Rule LR71-FL00-404. Conduct of the Parties and Counsel in Family Cases.**

**404.1. Generally.**

Fault of one or both parties in the breakdown of a marriage is not at issue in a dissolution of marriage action under Indiana law. Likewise, fault is not typically an issue in other types of "family cases" covered by these rules. Parties and counsel are required to focus on the relevant issues in the case and to avoid assigning fault to an opposing party or counsel in family cases. At all times, the parties to family law cases covered by these rules and their attorneys are to conduct themselves in a manner consistent with Indiana law and rules of court. The Court will not permit unsolicited arguments, name-calling by anyone, needless accusations, or irrelevant or immaterial evidence to be submitted at these hearings. In its

discretion, the Court may sanction violations of this rule.

#### **404.2. Giving Rules to Clients.**

Attorneys appearing in family cases shall (a) furnish their family clients with a copy of these Rules at the earliest reasonable opportunity and (b) review all pertinent parts with their clients, and (c) assist clients in fully understanding and observing their provisions.

### **Rule LR71-FL00-405. Expectations of Parents and Requirements for Attorneys.**

#### **405.1 Expectations of Parents and Attorneys.**

- a. Parents and attorneys in family cases will conduct themselves in concert with the courts to serve as co-problem solvers.
- b. Parents and attorneys shall pursue the best interests of all family members with particular deference to the needs and welfare of the children.
- c. Parents and attorneys will pursue all opportunities to resolve disputes and conflicts before relying on the Court for a determination.
- d. Parents and attorneys will treat one another with courtesy and respect.

#### **405.2 Requirements for Initial, Provisional, and Other Hearings.**

##### **405.2.1. Pre-Hearing Meeting Requirements, Exceptions.**

It is required that, unless considerations of safety or other good cause make it unreasonable, before the date and time set for an initial, provisional, or other hearing, attorneys and pro se parties shall meet with each other in a good faith attempt to resolve all issues. Attorneys and pro se parties contacted for this purpose shall make themselves reasonably available for consultation. Prior to commencement of a hearing or trial, the attorneys and pro se parties shall certify to the court that they have complied with this rule. The duty of consultation shall be continuing.

#### **405.3. Resolution of Parenting Time Problems and Disputes**

##### **405.3.1. Disagreements Generally.**

When a disagreement occurs regarding parenting time and the requirements of the Indiana Parenting Time Guidelines, both



parents shall make every effort to discuss options, including mediation, in an attempt to resolve the dispute before going to court.

**405.3.2. Mediation.**

If court action is initiated, the parents shall ~~enter into~~ engage in mediation pursuant to Rule 411.1 unless otherwise ordered by the court.

**405.3.3. Child Hesitation.**

If a child is reluctant to participate in parenting time, each parent shall be responsible to ensure the child complies with the scheduled parenting time. In no event shall a child be allowed to decide on whether scheduled parenting time takes place.

**405.3.4. Relocation.**

When either parent considers a change of residence, reasonable advance notice of the intent to move in accordance with Indiana Code provisions shall be given to the other parent. Parents are expected to discuss necessary changes in the parenting schedule as well as the allocation of transportation costs in exercising parenting time which may result from the move.

**405.3.5. Withholding Support or Parenting Time.**

Neither parenting time nor child support shall be withheld because of one parent's failure to comply with a court order. Only the court may enter sanctions for noncompliance. A child has the right both to support and parenting time, neither of which is dependent upon the other. If there is a violation of either requirement, the remedy is to apply to the court for appropriate sanctions.

**405.3.6. Enforcement of Parenting Time.**

**a) Contempt Sanctions.**

Court orders regarding parenting time must be followed by both parents. Unjustified violations of any of the provisions contained in the order may subject the offender (noncompliant party) to contempt sanctions. These sanctions may include fines, imprisonment, and/or community service.

**b) Injunctive Relief.**

Under Indiana law, a non-custodial parent who regularly pays support and is barred from parenting time by the custodial parent may apply for an injunction to enforce parenting time under Indiana law.

**c) Criminal Penalties.**

Interference with custody or visitation rights may be a crime under Indiana law.

**405.3.7. Attorney Fees.**

In any court action to enforce an order granting or denying parenting time, a court may award reasonable attorney fees and expenses of litigation. In awarding fees, a court may consider whether the parent seeking attorney fees substantially prevailed and whether the parent violating the order did so knowingly or intentionally. A court can also award attorney fees and expenses against a parent who pursues a frivolous or vexatious court action.

**405.3.8. Inapplicability to the Title IV-D Agency.**

As the State of Indiana does not represent either of the parents in a Title IV-D child support case, this rule does not apply to petitions or rules to show cause filed by the Title IV-D agency; however, the attorney for the Title IV-D agency and the parent(s) and their counsel, if any, are encouraged to meet and discuss resolution of these matters in advance of any hearing.

**Rule LR71-FL00-406. Protective Orders; Restraining Orders.**

A Petition for Protective Order filed by a party who has an open dissolution, separation, or paternity case shall be assigned to the judge handling the dissolution, separation, or paternity case. A Petition for Protective Order that is filed contemporaneously with a dissolution, separation, or paternity case shall be assigned a separate cause number but shall be assigned to the judge to whom the dissolution, separation, or paternity case is assigned.

No application for a temporary restraining order not authorized pursuant to I.C. 34-26-5 or 6 shall issue without strict compliance with the requirements of T.R. 65.

## **Rule LR71-FL00-407. Discovery.**

### **407.1. Disclosure by the Parties.**

Upon the filing of a petition for dissolution of marriage or paternity action, the parties shall have a duty of reciprocal discovery and, unless otherwise ordered by the Court, shall provide the other party with copies of the following documents and things within thirty days:

- (1) Personal Federal and State, tax returns for three years preceding the filing of the petition for dissolution of marriage with all pertinent forms W-2, 1099, K-1, and other schedules, and the most recent employment pay stub, with year-to-date gross earnings and written employment contract(s), if any;
- (2) Tax returns and financial statements for five years preceding the filing of the petition for dissolution of marriage for all corporations, or partnerships, or other business entities in which either marital partner has any ownership or membership interest;
- (3) Statements from all banks, brokerage firms, investments firms, or mutual funds for three months before and including the month in which the petition for dissolution of marriage is filed in which either marital partner has any interest, either alone or together with any other person, to include all checking, savings, certificate of deposit, treasury bills, stocks, bonds, or other forms of intangible assets;
- (4) A copy of the deed to the marital residence, or any other real estate in which a marital partner has any legal or equitable interest, whether alone or with others, including but not limited to any corporate deeds;
- (5) An amortization schedule or statement of balance for the month in which the petition for dissolution of marriage was filed for any mortgage, land contract, or other liens on any real estate in the name of a marital partner, whether or not the marital partner has a sole or partial ownership interest;

- (6) Copies of appraisals of real estate, or personal property in which a marital partner holds an interest, prepared within two (2) years from the date of filing of the petition for dissolution of marriage;
- (7) Statement of pension, profit sharing, individual retirement account, ESOP, or other form of tax-deferred compensation plan maintained by or for a marital partner, for the month in which the petition for dissolution of marriage was filed;
- (8) Declaration sheet and schedule of cash value for all insurance policies owned by or for which any marital partner is the beneficiary which have a cash surrender value;
- (9) Copies of the most current statements of debt for the three months preceding and including the month in which the petition was filed.

Each party shall make their initial disclosures based on information reasonably available to them and no party is excused from making disclosures because they have not fully completed their investigation of the case or because they challenge the sufficiency of the other party's disclosure or because the other party has not made the required disclosure.

**407.2. Continuing Duty to Disclose.**

Duties of disclosure set forth by the Court's reciprocal discovery order shall be continuous. Supplementation shall be required not fewer than ~~ten~~ 10 days before trial showing any changes in the status of assets and debts as of the month of or one month prior to trial, the most recent of which documents and things are available.

**407.3. Utilization of Indiana Rules of Trial Procedure.**

The parties may utilize all remedies available in the Indiana Rules of Trial Procedure to enforce, modify, or extend the time within which to comply with the Court's reciprocal discovery order. The reciprocal discovery order does not preclude either party from utilizing the provisions governing requests for discovery provided for in the Indiana Rules of Trial Procedure to the full extent permitted by said rules.

**Rule LR71-FL00-408. Status Conferences.**

A status conference may be requested at any time, and one may be set by the Court on its own motion after the filing of the initial petition for dissolution. The primary purpose of the status conference will be for attorneys and unrepresented parents to review with the Court the progress being made as it pertains to the resolution of outstanding issues. Attorneys and parents are expected to assist by informing the Court of all efforts being made to resolve the conflicts to protect and serve the immediate and long-term best interests of the children. Counsel and parents should be ready to provide to and discuss with the Court:

- (1) The parents' most current *Parenting Plan Worksheet (PPW)*. If the parents have not completed a joint parenting plan, each parent is expected to prepare and provide their own *PPW*.
- (2) A list of community resources the parents could use to assist them in resolving their parenting issues.
- (3) A copy of the parents' *Agreed Commitments* from their website work as provided in Rule LR71-FL00-413.

## **Rule LR71-FL00-409. Hearings.**

### **409.1. Summary Considerations.**

Hearings on uncontested petitions for dissolution, applications for provisional relief, rules to show cause, petitions to modify, and other matters appropriate for summary consideration and disposition and uncontested petitions for dissolution of marriage shall be set for summary disposition on each judicial day or at other available times upon request as the calendar of the Court permits. Hearings on contested matters shall be set no earlier than ten days after the filing of the report of the DRCB, as the calendar of the Court will permit. Dissolution petitions will not be considered uncontested if any issue remains unresolved between the parties.

### **409.2. Parenting Issues.**

Parents and attorneys are reminded of their obligation to avoid the use of exaggeration and unnecessarily harsh criticism in their motions and pleadings. Hearings on motions and pleadings filed with the Court in matters involving parenting time and parenting concerns may only be scheduled after first attempting to resolve the issue(s) by reaching agreements that best serve the interest of all family members with

particular regard to the best interest of the children. Except in instances where it would be dangerous (i.e. past or present domestic violence; abuse or neglect of children) or otherwise unreasonable to do so if both parents are represented by counsel, attorneys are expected to use personal or telephonic consultation to resolve any issue before seeking relief from the Court. In that consultation, it is expected that counsel will cooperate to:

- (1) Attempt to resolve the matter(s) at issue;
- (2) Discuss the alternative resources (including but not limited to counseling, mediation, support from the DRCB, etc.) that could be used to resolve the conflict and foster cooperation further serving the best interests of the children;
- (3) Confirm that the parents have completed their mandatory website work and attended the co-parenting classes, and review with them their *Agreed Commitments* from the website discussed below in Rule LR71-FL00-413;
- (4) Attempt to resolve ongoing conflict by assisting their clients in the development of, with their clients, a *Parenting Plan* (forms are available from the DRCB) to serve all family members with particular regard for the best interest of the children.

## **Rule LR71-FL00-410. Trials and Pre-trial Conferences.**

### **410.1. Trial Settings.**

A scheduling order, setting for trial, pre-trial conference, and discovery cut-off dates may be entered by the Court after the filing of the Petition. Each case in which a trial has been set must be ready on at least ~~three~~ (3) days' notice by the Court to the attorneys of record. Petitions for dissolution will be set by the Court as early as the Court's calendar permits. Contested matters that are ready for trial in less time than provided herein may be set for trial at the request of one or both of the parties as the calendar of the Court permits. Cases in which a request for trial has been made must be ready on at least three days' notice by the Court to the attorneys of record.

### **410.2. Pre-trial Conferences.**

On request of any party or on the Court's own motion, a pre-trial conference shall be set by the Court before the trial date. Not fewer than five days before the pre-trial conference, the parties shall exchange Pre-trial Statements (See Local Rule 410.4).

**410.3 Pre-trial Statements.**

Pre-trial Statements shall be prepared by each party prior to the pre-trial conference and shall address the following:

- (1) Preliminary Financial Statement, which shall include:
  - (a) Identification and valuation of assets;
  - (b) Identification and valuation of liabilities;
- (2) Identification of other contested issues, including custody, parenting time, support, post-secondary educational assistance, and rehabilitative maintenance;
- (3) Preliminary proposal for resolution of contested issues;
- (4) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (5) The names of witnesses to be called during the trial and the general nature of their expected testimony;
- (6) Such other matters as may aid in the disposition of the action.

At the end of the pre-trial conference, the Court shall order the case to proceed to trial or continue the trial setting and order the parties to mediation if the Court determines mediation will assist in the resolution of contested matters.

**410.4. Trial Submissions.**

Each party's final verified financial statement and contentions must be filed with the Court at least five days before the date of trial. No case shall be considered ready for trial, or be tried, unless the report of the DRCB (where appropriate) has been filed with the Court.

**Rule LR71-FL00-411. Mediation or Alternative Dispute Resolution.**

#### **411.1 Mandatory Mediation.**

In any case involving unemancipated children, before any contested hearing or trial, either before or after the issuance of a final decree of dissolution, the parents shall participate in mediation pursuant to Ind. ADR Rule 2 et seq., or, instead of the foregoing mediation requirement, the parties may participate in another method of alternative dispute resolution (ADR) as outlined in Ind. ADR Rule 1.1. Unless excused by court order after certification by counsel or by an unrepresented party of an emergency or another reason indicating that mediation would be detrimental or counterproductive to one or more of the parents or children, parents shall mediate contested matters, both before provisional hearings involving unemancipated children and after a final decree.

#### **411.2 Exceptions.**

The Court may excuse the parents from this requirement if an attorney for one of the parents or an unrepresented parent certifies in writing pursuant to Ind. TR 11 that an emergency exists or some other reason exists that justifies a conclusion that mediation would be detrimental or counterproductive to one or more of the parents or children. The certification shall include a statement of facts sufficient to enable the Court to determine whether waiver of the mediation or ADR requirements of this rule is appropriate under the circumstances. Counsel and parents are advised that the Courts do not favor requests for a waiver from the requirements of this rule and that waiver requests should be sought only in exceptional instances and not as a matter of course.

#### **Rule LR71-FL00-412. Child Support Worksheet.**

At the time of the hearing in all matters regarding child support issues, the parties shall file:

- (1) A Verified Child Support Worksheet with the Court; and
- (2) Such supporting documentation as the Court may require to establish current income and income earned during the prior tax year, work-related childcare expenses, if any, and the children's portion of health care expense.



A party seeking an order for child support shall cause a Notice of Hearing and Order to Disclose Information, with a Child Support Worksheet, and a copy of the Petition to be served upon the opposing party in a manner complying with the Indiana Rules of Civil Procedure. Blank copies of the worksheet may be obtained from the Clerk.

**Rule LR71-FL00-413. Mandatory Website Work and Co-Parenting Programs.**

**413.1. Co-Parenting Programs in Marital Dissolution and Separation Cases.**

In marital dissolution and separation cases, parents with one or more children under the age of 18 on the date of their initial petition shall attend the two co-parenting programs as assigned by the Domestic Relations Counseling Bureau (DRCB). Each parent shall contact the DRCB within 20 days of the filing of the initial petition in their case to schedule attendance at the programs. Parents shall complete the programs within 60 days of the initial petition unless otherwise authorized by the Court.

**413.2. Website Work in Marital Dissolution and Separation Cases.**

In marital dissolution and separation cases, parents with children under the age of 18 on the date of their initial petition shall complete the website work on [www.UpToParents.org](http://www.UpToParents.org), or a similar website program approved by the Court, within 30 days of the filing of the action. Parents should take a completed copy of their work to their co-parenting class(es). Parents shall submit a copy of "The Conclusion Page" (which appears as the final page of the website work) to the DRCB for filing with the Court to verify completion of the website work. Parents may also file a copy directly with the Clerk of the Court.

**413.3. Paternity Cases.**

In paternity cases, parents shall attend the co-parenting class ordered by the Probate Court. Each parent shall contact the DRCB within 20 days of the filing of the initial petition in their case to schedule attendance at co-parenting classes. Parents shall complete the classes within 60 days of the finding of paternity in any paternity case unless otherwise authorized by the Court. Parents in paternity cases shall complete the website work at [www.UpToParent.org](http://www.UpToParent.org) or a similar website approved by the Court and take their completed website work to their co-parenting classes.

**413.4. Website Assistance.**

Parents may find forms (e.g. parenting plan worksheet) to develop an agreed parenting plan on the website [www.UpToParents.org](http://www.UpToParents.org), [www.in.gov/judiciary](http://www.in.gov/judiciary), or a similar website program approved by the Court.

**413.5. Website Work Brought to Hearing.**

Parents may be asked by the Court to produce their completed website work (Exercises and Agreed Commitments) to any hearing. If a hearing is scheduled in a dissolution, separation, or paternity case, the parents shall merge their chosen Commitments from their website work into a set of Agreed Commitments, review those Agreed Commitments before each hearing, and take copies of them to all hearings. If more than a year has passed since the parents' completion of the website work, they shall redo the work, merge their Commitments into a set of Agreed Commitments, and bring those Agreed Commitments to all hearings.

**Rule LR71-FL00-414. Sanctions.**

A party that fails to comply with these rules is subject to sanctions, upon motion of a party, pursuant to T.R. 37, Indiana Rules of Trial Procedure.

**Rule LR71-FL00-415. Alternative Dispute Resolution Fee.**

The Clerk of the Court shall collect from every party filing a petition for legal separation, paternity, or dissolution of marriage action under I.C. 31 an alternative dispute resolution fee of \$20; as such amount may be modified from time to time.

**Rule LR71-FL00-416. Local Rules for Family Court Project.**

**416.1 Creation of Family Court.**

With the adoption of this rule, the Circuit, Probate, and Superior Courts establish a Family Court Project within St. Joseph County, Indiana.

**416.2 St. Joseph Family Court.**

The Family Court Project within St. Joseph County shall be known as the St. Joseph Family Court.

**416.3 Objective of Family Court.**

The primary objective of the St. Joseph Family Court is to coordinate cases among Family members throughout the judicial process. This allows

judges to review issues comprehensively, consolidate hearings when appropriate, issue non-conflicting orders, impose sanctions to best fit Family needs, and encourage accountability.

#### **416.4 Scope of Family Court Rules.**

These rules are implemented only for cases assigned to the St. Joseph Family Court. These rules are in addition to the local administrative, civil, and family law rules, and in the event of a conflict the specific rules of the Family Court shall control.

#### **416.5 Definitions.**

##### **416.5.1 Family.**

For purposes of these rules, "Family" includes parents and their child or children, whether all of these individuals reside together or not, or a household comprised of adults and a child or children, whether all of the adults are related by blood or marriage to any of the child or children.

##### **416.5.2 Family Court.**

"Family Court" is the designation given the coordinated effort to link together for purposes of case coordination all courts before which cases involving a family or household with children (hereinafter a "Family") are pending. The individual cases maintain their separate integrity and separate docket number but may be given a common Family Court designation. Individual cases may all be transferred to one Judge or may remain in the separate courts in which they were originally filed.

##### **416.5.3 Family Court Proceeding.**

A "Family Court Proceeding" refers to all proceedings of each case pertaining to a Family that has been assigned to Family Court.

##### **416.5.4 Related Case.**

Related cases, for purposes of the St. Joseph Family Court, include the following types of cases involving one or more members of a Family: CM, or DF filings involving domestic and/or family violence related charges and/or substance abuse charges, and all cases of the following types: PO, JM, JS, JP, JT, JD, JC, DR, GU, AD, and MH.

## **Rule LR71-FL00-417. Jurisdiction and Related Cases.**

### **417.1. Related Cases.**

The following types of cases in which a Family has involvement in multiple court proceedings are within the jurisdiction of the St. Joseph Family Court: CHINS, delinquency, juvenile status offense, child support, termination of parental rights, adoption, placement of children, paternity, dissolution of marriage, legal separation, mental health, domestic violence, protective order, adult criminal (intra-family), and alcohol or drug charges.

### **417.2. Concurrent Jurisdiction.**

Concurrent Family Court jurisdiction over any Related Case may be exercised by a court exercising jurisdiction over a juvenile case involving the Family.

### **417.3. Concurrent Hearings.**

A judicial officer exercising Family Court jurisdiction over multiple cases involving a Family may, in its discretion, conduct concurrent hearings in related cases, take evidence on the related cases at these hearings, and rule on the admissibility of evidence for each case separately, as needed to adequately preserve the record for appeal.

## **Rule LR71-AR00-418. Assignment of Cases and Clerk's Responsibilities.**

### **418.1. Approval of Assignment.**

Assignment of Family Court designation and jurisdiction to all cases involving a Family shall require the approval of the Judge of the St. Joseph Circuit Court, St. Joseph Probate Court, or St. Joseph Superior Court to which the case has been assigned. The transfer and consolidation of cases assigned to the Family Court are subject to the provisions of Rule LR71-TR42-424 of these Family Court Rules.

### **418.2. DRCB Referral.**

Upon assignment of a case to Family Court, case management procedures shall be implemented, including referral to the DRCB for coordination services. The DRCB may undertake the following, as appropriate:

- (1) Assess family situations and needs for types of parenting intervention through screening intakes;

- (2) Conduct cross-reference checks with other Court agencies for multiple-case families;
- (3) Notify appropriate Courts of all legal interventions involving the family;
- (4) Make referrals or recommend referrals to the Courts regarding the appropriate parental education, mediation, facilitation, high-conflict co-parenting education, counseling, or evaluation service;
- (5) Monitor compliance with
- (6) referrals and Court orders;
- (7) Coordinate other needed services for families;
- (8) Provide varied levels of direct case management services for at-risk families.

**Rule LR71-TR72-419. Clerk's Responsibilities; Notice.**

**419.1. Notification of Assignment.**

Notification of assignment to Family Court shall be provided to all parties and counsel. The Clerk is to enter the Family Court assignment on the chronological case summary.

**419.2. Service Lists.**

The DRCB shall confirm the entry of appearances of any counsel in any Family Court case and shall create service lists for the judicial officer to which each case is assigned.

**419.3. Notice of Related Case Assignment.**

The parties, within a reasonable time after a case is assigned to Family Court jurisdiction, shall provide to the DRCB a list of all Related Cases.

**Rule LR71-TR76-420. Change of Judge.**

**423.1. Change of Judge.**

Once notice is sent to the parties that a case has been selected for Family Court, no motion for change of venue from the judge may be granted except to the extent permitted by Indiana Trial Rule 76 and these Local Rules. A motion for change of venue from the judge in any matters arising in the Family Court proceeding or any future cases joined in the Family Court proceedings after the initial selection of cases shall be granted only for cause.

**423.2. Special Judge.**

If a special judge is appointed, all current and future cases in the Family Court proceeding may be assigned to the special judge.

**423.3. Objection to Assignment to Family Court Jurisdiction.**

A party may object to the assignment of a case to Family Court jurisdiction. Any such objection must be filed within 10 days after notice is sent that a case has been assigned to Family Court and shall set forth the basis of the objection. An objection to the assignment of a case to Family Court jurisdiction may be granted for good cause shown only.

**Rule LR71-TR42-424. Case Consolidation and Transfer.**

The supervising judge of the St. Joseph Family Court may enter orders for the consolidation and transfer of Related Cases to Family Court jurisdiction when the judicial officers presiding over such cases do not object. No case shall be transferred or consolidated until the judicial officers to whom such cases have been assigned have been advised of the contemplated action. The consolidation and transfer of Family Court cases shall be accomplished by the entry of an order signed by the Presiding Judge of the St. Joseph Family Court.

**Rule LR71-EV201-425. Judicial Notice and Access to Records.**

**425.1. Judicial Notice.**

Any court having jurisdiction over a case assigned to Family Court jurisdiction may take judicial notice of any relevant orders or Chronological Case Summary (CCS) entries issued by any Indiana Circuit, Superior, or Probate Court.

**425.2. Notice to Parties.**

If a court takes judicial notice of:

(1) A court order, the court shall provide a copy of that order; or

(2) A CCS entry(s), the court shall provide a copy of the entire CCS.

The court shall provide copies of the order or CCS to the parties to the case at or near the time judicial notice is taken.

#### **425.3. Access to Records.**

Parties to a Family Court proceeding shall have access to all Related Cases, except for confidential cases or records to which they are not a party. Parties may seek access to confidential cases or records in another case within the Family Court proceeding in which they are not a party, by written petition based on relevancy and need. Confidential records shall retain their confidential status and shall not be included in the public record of the proceedings. The DRCB shall be given access to all records for the purpose of maintaining their records and producing reports regarding its investigations. The records and reports of the DRCB shall be considered confidential, and all access to the records and reports of the DRCB shall be allowed only by order of the Court that has jurisdiction over the relevant parties and cause of action.

#### **Rule LR71-AR00-426. Requirement to Update Information.**

When a Family member leaves the residence of a Family member whose case has been assigned to Family Court jurisdiction, the DRCB shall be notified within three (3) business days by the party or counsel, and the new address is to be provided to the DRCB.

#### **Rule LR71-AR00-428. Administrative Matters.**

##### **Judicial Oversight Committee.**

A Judicial Oversight Committee, composed of three judges selected as follows: one of the civil judges on the St. Joseph Superior Court, the St. Joseph Circuit Court Judge, and the St. Joseph Probate Court Judge, or other judicial officer designated by each of these Courts, shall be selected by the judges of the St. Joseph Circuit, Probate, and Superior Courts. The members of the Judicial Oversight Committee shall select one of their members to serve as supervising judge of the St. Joseph Family Court. The

supervising judge shall serve for a term of two years. The supervising judge can be reelected.

**Supervising Judge.**

The supervising judge of the St. Joseph Family Court shall have the responsibility of administering Family Court, in consultation with the Judicial Oversight Committee. This shall include the employment and supervision of DRCB personnel concerning Family Court jurisdiction only. The implementation of rules for Family Court shall be done only after consultation with and approval by a majority of St. Joseph County judicial officers, including judges and magistrate judges.

**Case Management Reporting.**

The supervising judge of the Family Court and/or its coordinator may report and discuss case procedure with, and report case management status to, any judicial officer presiding over that case regarding the Family Court case assignment.

**Rule LR71-FL00-429. Reserved.**

**Rule LR71-FL00-430. Title IV-D Court.**

These local rules are adopted by the Courts of the 60<sup>th</sup> Judicial Circuit to govern the practice and procedures for Title IV-D magistrates.

**430.1 Organization of Title IV-D Child Support Court.**

Pursuant to I.C. 31-25-4-15, the Circuit, Superior, and Probate Courts each hereby designate a Title IV-D Court to establish and enforce child support orders under federal and state law, and any other necessary order or judgment.

**430.1.1 Assignment of Magistrates to IV-D Court.**

The Judges of the Circuit, Superior, and Probate Courts shall assign matters to one or more magistrates to hear IV-D matters. Each magistrate so appointed shall be designated as a IV-D magistrate.

**430.1.1 Responsibilities of IV-D Magistrates.**

Each IV-D magistrate appointed by the Judges and assigned to hear IV-D matters Court pursuant to Rule 430.1.1 has the authority to preside over, make findings of fact and recommendations for the



approval of the Judges of Circuit, Superior and Probate Courts in actions arising under Title IV-D of the Social Security Act. In addition, the IV-D magistrate has the authority to provide such assistance as may be required in making these findings of fact and recommendations.

## **430.2 Reciprocal Support Paternity Cases.**

### **430.2.1 Filing of New Non-Paternity Reciprocal Cases (RS).**

All new reciprocal support non-paternity cases shall be directly filed in Circuit Court and assigned to the Circuit Court's IV-D magistrate. The court identifier for these cases will be 71C01 and the case type will be RS.

### **430.2.2 Filing of New Paternity Reciprocal Cases (RS).**

All new reciprocal support paternity cases shall be directly filed in Probate Court and assigned to the Probate Court's IV-D magistrate. The court identifier for these cases will be 71J01 and the case type will be RS.

## **430.3 IV-D Petitions for Support in Favor of Third-Party Custodian.**

### **430.3.1 Filing of New Petitions for Support for Child Born Out of Wedlock.**

All new IV-D Petitions for Support in favor of a third-party custodian wherein the child is born out of wedlock and the action has arisen under Title IV-D shall be directly filed in Probate Court and assigned to the Probate Court's IV-D Magistrate. The court identifier for these cases will be 71J01 and the case type will be JP.

## **430.4 IV-D Petitions for Support for a Child of a Marriage.**

All IV-D Petitions for Support wherein the support sought is for a child born of a marriage, and there is no petition to dissolve the marriage, or for legal separation, shall be filed in Circuit Court.

## **430.5 Procedure for Assignment of IV-D Matters to IV-D Court.**

Once a Judge of the Circuit, Superior or Probate Court has assigned a case involving IV-D issues to a IV-D magistrate for the resolution of IV-D issues, the following procedure will control:

- (1) Cases may be considered for assignment at the oral or written request of any party or *sua sponte* by the assigning Judge.
- (2) The Judge may issue a written ORDER OF ASSIGNMENT upon a finding that a IV-D support issue needs to be resolved. The ORDER OF ASSIGNMENT will be entered into the original physical chronological case summary (CCS) or docket sheet or electronic record.
- (3) The ORDER OF ASSIGNMENT will be served on all parties by the Child Support Division of the Prosecutor's Office. If a pending issue requires an immediate hearing, the Child Support Division shall also be responsible for coordinating the hearing date and time and notifying all parties.
- (4) Procedure for Objection to Assignment: Assignment to the Title IV-D Court is within the sole discretion of the regularly presiding judge. A change of venue from the regularly presiding judge may be made under applicable Indiana Trial Rules or statutes. An objection to assignment to a Title IV-D court shall be made to the regularly presiding judge and is within his or her discretion to grant or deny.

## **LOCAL RULES FOR SMALL CLAIMS FOR ST. JOSEPH COUNTY (500 SERIES)**

### **Rule LR71-TR1-501. Intent and Scope.**

These local rules are adopted by the Courts of the 60<sup>th</sup> Judicial Circuit to govern the practice and procedure in Small Claims proceedings.

### **Rule LR71-AR00-502. Appearance in Court.**

#### **502.1. Verification of Presence.**

All counsel and litigants must verify their presence for any scheduled hearing or trial by checking in with the bailiff and signing his or her name to the bailiff's daily log.

#### **502.2. Prompt Appearance at Hearings and Trials.**

Prompt appearance at the time scheduled for all hearings and trials is enjoined upon Court, counsel and parties. Should an occasion arise when counsel or a party proceeding *pro se* can reasonably anticipate that they will be tardy for a scheduled hearing or trial, or a scheduled hearing or trial must be rescheduled due to an unanticipated emergency, counsel or the party shall notify the Court immediately.

#### **502.3. Requirements for Parties and Attorneys.**

All parties and counsel shall pursue all reasonable opportunities to resolve disputes and conflicts before relying on the court for a determination. It is required that, except for cases involving orders of protection for a person, all parties and counsel shall meet and discuss resolution of their dispute and conflicts before any hearing or trial. Failure to comply with this requirement may result in possible delay or cancellation of the hearing or trial. Prior to the commencement of any hearing or trial, the parties shall certify to the Court that they have complied with this requirement.

### **Rule LR71-SC15-503. Court Reporting.**

#### **503.1. Recording.**

Proceedings in Small Claims – South Bend and in Small Claims – Mishawaka shall be recorded by the Court using audiotape recording only. The official court record shall remain under the control of the Official

Court Reporter or the Court unless otherwise ordered by the Court or an Indiana appellate court.

**Rule LR71-SC2-504. Filing, Forms.**

**504.1. Use of Forms.**

Counsel and parties filing a claim or counterclaim must use the claim form provided by the Clerk or a substantially similar form, if approved by the Court. Forms for other routine matters are available from the Clerk. All motions must be accompanied by an appropriate order for the Court's consideration and use.

**504.2. Restricted Access.**

Where a motion, petition, or other pleading is excluded from public access under Access to Court Records Rule 5, the parties and their counsel are enjoined to comply with the filing requirements of T.R. 5(G).

**504.3. Minute Entry Codes.**

The Court's Minute Entry Codes shall be used by counsel and litigants for summarizing standard entries on the Chronological Case Summary (CCS).

**504.4. Court Files.**

No Court file nor any part thereof may be removed from the custody of the Court Clerk by any person, including any attorney or Judge of this or any other Court, except upon authorization by the regularly presiding Judge to which the case is assigned and then only upon such terms and conditions as may be provided by them in the Order for authorization. One unalterable and invariable condition of this Order is the written acknowledgment of the authorized person that he has such file in his personal possession.

**Rule LR71-SC6-505. Discovery.**

Discovery may be undertaken only upon written motion, with a copy of the proposed limited discovery sought to be attached, and approval by the Court. Requests for third-party discovery in aid of collection on a judgment shall not be approved, without good cause, prior to at least one unsuccessful attempt to gain information through proceedings supplemental.

**Rule LR71-SC12-506. Change of Venue.**

**506.1. Payment of Transfer Fee.**

When a change of venue from the County is granted, all accrued costs and the transfer fee must be paid to the clerk by the moving party within ten (10) days after the transfer order is entered.

**506.2. Failure to Pay Fee.**

In the absence of such payment, the movant will be deemed to have abandoned the motion so the Clerk will not perfect the change, the cause will be restored to the docket of this Court, and this Court shall resume general jurisdiction of the cause in accordance with T.R. 76.

**Rule LR71-AR00-507. Transfer the Court's Plenary Division.**

**507.1. South Bend.**

Cases pending in Small Claims – South Bend and on which transfer to the plenary calendar of the St. Joseph Superior Court has been sought and granted shall be re-assigned by the Clerk pursuant to the Clerk's random case assignment.

**507.2. Mishawaka.**

Cases pending in Small Claims – Mishawaka and on which transfer to the Court's plenary calendar of the St. Joseph Superior Court has been sought and granted shall be re-assigned by the Clerk to the plenary calendar of the judge of the St. Joseph Superior Court assigned to the Mishawaka Division of the St. Joseph Superior Court.

**Rule LR71-AR00-508. Incorporation of Small Claims Manual.**

The July 2005 Small Claims Manual, published by the Indiana Judicial Center, is adopted and incorporated herein, as the same may be amended from time to time.

## **LOCAL PROBATE AND ESTATE RULES FOR ST. JOSEPH COUNTY (600 SERIES)**

### **Rule LR71-PR00-601. Notice.**

#### **601.1. Attorney Responsibilities.**

Whenever notice by publication and/or written notice by U.S. Mail is required either in writing or by publication, the attorney shall prepare the notice and take such actions consistent with local practices to ensure that such notice is published and/or served. In all respects, the notice shall comply with all statutory requirements. The attorney shall be responsible to establish proper service of notice bringing the subject matter of the notice before the Court.

#### **601.2. Motions and Petitions to Accompany Notice.**

Where notice is required because a motion or petition has been filed with the Court, a copy of the petition or motion shall be served along with the written notice. If the notice is given by publication, the notice shall adequately describe the subject matter of the petition or motion and describe how to obtain a copy of the petition or motion without charge.

#### **601.3. Service of Notice of Hearing.**

Unless waived by a person entitled to notice, a copy of the verified account must be served with written notice of the hearing on final settlement of the estate or guardianship. If notice is given by publication, the notice shall explain how to obtain a copy of the accounting without charge.

#### **601.4. Notice of Opening of Estate.**

Notice of the opening of an estate shall be sent by First Class United States Mail to all distributees of the estate and also to all reasonably ascertainable creditors; however, the use of "certified mail, return receipt requested," to serve such notice is recommended.

#### **601.5. Notice of Insolvent Estate.**

When a Petition is filed to determine that an estate is insolvent, Notice of the hearing on the Petition along with a copy of the Petition shall be served on all interested parties.

#### **601.6. Electronic Filing.**

Any reference within the Local Probate Rules for St. Joseph County to “written notice,” “notice in writing,” or the like shall include notice delivered electronically. Notice requirements in the Probate Court must also comply with the Local Rules for Electronic Filing.

## **Rule LR71-PR00-602. Filing of Pleadings.**

### **602.1. Compliance.**

All filings in the Probate Court must comply with the Local Rules for Electronic Filing.

### **602.2. Paper Pleadings.**

Some documents, such as inheritance tax returns, are required to be filed in paper format. When necessary, such documents may be filed with the Clerk for transmittal to the Court.

### **602.3. Preparation of Orders.**

Unless directed otherwise by the Court, all attorneys are required to prepare a form of Order for use by the Court in all proceedings.

### **602.4. Signature and Verification.**

All estate and guardianship pleadings and other applications to the Court shall be signed and verified by the Petitioner.

### **602.5. Attorney Information.**

Unless the Court approves in advance, no personal representative of an estate or guardian may proceed without counsel. Prior to filing any pleadings in a matter before the Court, all attorneys shall enter an appearance in the given action and shall include in their appearance form the attorney’s name, address, telephone number, and registration number to be retained within the electronic case management system.

#### **602.5.1 QUEST Information Form.**

The *QUEST* Information Form provided by the Clerk of the Probate Court is to be completed and filed with the Clerk, accompanied with requested documents and fees per the form before a cause number for the new action will be assigned.

### **602.6. Initial Petition.**

In addition to other relevant information, the initial petition or the confidential information sheet to open an estate shall include the name, address, social security number, birth date, and telephone number of the personal representative. The initial petition to open a guardianship shall include all of the same information of the proposed guardian. If the fiduciary is an entity as opposed to an individual, a birth date is not required. Confidential data may be submitted in a manner consistent with Access to Court Records Rule 5.

**602.6.1 Nonresident Fiduciary.**

Nonresident personal representatives and guardians shall either appear before the Court on initial petition or else submit an affidavit describing their education, employment, and lack of felony convictions.

**602.7. Affidavit of Compliance.**

An affidavit of compliance with the notice requirements to creditors of an estate proceeding may be timely filed with the Clerk of the Court.

**Rule LR71-PR00-603. Bond.**

**603.1. General Statement.**

With respect to an estate, guardianship, or any other proceeding which involves the appointment of a fiduciary, the Court may in its discretion set such bond as is deemed adequate to protect the interests of the interested parties.

**603.2. Bond Waived by Will.**

Although the terms of a will may express the testator's intention that no bond be required, the Court may set a bond adequate to protect creditors, tax authorities, and devisees.

**603.3. Heir or Legatee Fiduciary.**

Where the fiduciary is an heir or legatee of the estate, the bond may be reduced by such fiduciary's share of the estate, or the value of real estate, or other assets that cannot be transferred or accessed without court approval or order. The Court shall have the right to review the amount of bond if the Court should grant access to such property or asset.

**603.4. Unsupervised Estate.**



In an unsupervised estate, a bond will be required unless the personal representative is the sole beneficiary or unless otherwise ordered by the court. The Court may waive bond or set bond in an amount to be determined at the discretion of the Court.

**603.5. Request for Service Without Bond.**

Where the heirs or legatees have filed a written request that the fiduciary serve without bond, the Court may set bond in an amount adequate to protect the rights of the creditors only.

**603.6. Corporate Fiduciary.**

No bond shall be required in any estate or guardianship in which a corporate fiduciary that is qualified by law to serve in such capacity is appointed to be either the sole fiduciary or one of several co-fiduciaries.

**603.7. Nonresident Fiduciary.**

A nonresident fiduciary shall post bond before qualification as required by statute.

**603.8. Bond requirements.**

All bonds filed with the Court shall comply with the provisions of IC 29-1-11-1 *et seq.* The name and address of the insurance underwriter as well as the name and address of the insurance agency providing the corporate surety shall be typed or printed on all corporate bonds.

**Rule LR71-PR00-604. Estate Inventory.**

**604.1. Time Period for Preparation and Filing.**

An inventory shall be prepared by the fiduciary in an estate within two (2) months following the date of appointment of the fiduciary. In a supervised administration, the inventory shall be provided to interested parties upon request or may be filed with the Court. In an unsupervised estate, the inventory shall be provided to distributees upon request or may be filed with the Court.

**604.2. Partial Inventory.**

In the event a partial inventory is prepared, all subsequent inventories must contain a recapitulation of prior inventories.

**604.3. Sealed Inventory.**

In the event that the personal representative wishes to file an inventory under seal, the Court may, in its sole discretion, seal such inventory. If the inventory is sealed, it shall be held and protected according to Court policy and procedures.

#### **Rule LR71-PR00-605. Real Estate.**

##### **605.1. Deed Requirements.**

A judge's signature is not required on a deed arising within an estate or guardianship. However, if a deed is submitted to the Court for approval, in either estate or guardianship proceedings, it shall be signed by the fiduciary and the signature notarized prior to its submission, unless the Court permits otherwise.

##### **605.2. Unsupervised Estates.**

No Personal Representative's Deed shall be approved in unsupervised estates.

#### **Rule LR71-PR00-606. Accounting.**

##### **606.1. Failure to Close Within One Year.**

Whenever an estate cannot be closed within one (1) year, the personal representative shall file a statement with the Court stating the reasons why the estate has not been closed if requested by the Court. In addition, the Court reserves the power to require the personal representative to file an intermediate accounting with the Court.

##### **606.2. Statutory Format.**

All accounts shall follow the prescribed statutory format. Informal, handwritten, or transactional accountings will not be accepted.

##### **606.3. Payment of Court Costs.**

All court costs shall be paid and all claims satisfied and released before the Court will hear a Motion on Final Account.

##### **606.4. Inheritance or Estate Taxes.**

Before the Court will hear a motion to approve a final account, all Federal and State inheritance or estate taxes must be paid and the estate must have received a closing letter from each appropriate taxing authority acknowledging such payment and releasing the estate from further

liability. The attorney for the estate, or the pro se fiduciary, is responsible for maintaining paper or electronic copies of such closing letter(s) and shall provide any copies to the Court upon request. Further, the petition to close the estate shall include an affirmation that such income and other taxes as may be applicable to the estate either have been paid in full or that they will be paid in full.

#### **Rule LR71-PR00-607. Unsupervised Administration.**

##### **607.1. Administrative Records.**

The attorney for the estate in an unsupervised administration shall maintain and preserve, in paper or electronic format, records of notices delivered to distributees at the opening of the estate, the estate inventory, correspondence with each distributee during the administration of the estate and a full record of the final accounting including supporting statements, invoices, appraisals, and distribution reports. Such records will be supplied to the Court upon request.

##### **607.2. Closing Statement.**

Every Closing Statement shall comply with LR71-PR00606.6

##### **607.3. Order on Closing.**

Even if not statutorily required, the Court may enter an Order approving the Closing Statement although an Order is not needed since such estate is closed by operation of law.

#### **Rule LR71-PR00-607.15 Fees of Attorneys and Fiduciaries.**

##### **607.15. Approval.**

Fees paid to fiduciaries and to attorneys in the administration of a supervised estate or guardianship shall be reported to the Court with Motion on Final Account and such fees shall be subjected to approval by the Court at that time. No attorney or fiduciary fees will be determined or authorized for payment by the Court in any unsupervised administration of a decedent's estate.

#### **Rule LR71-PR00-608. Miscellaneous.**

##### **608.1. Implementation of Rules.**

The Court may adopt procedures to effectuate the implementation of these rules and the Court may, in its discretion, deviate from these rules when justice requires.

**Rule LR71-PR00-609. Guardianships.**

**609.1. Appearance of the Incapacitated Person.**

In all guardianship matters seeking to declare an adult incapacitated for any reason, the incapacitated person shall be present at the hearing or sufficient evidence shall be presented, by the petition, showing that the incapacitated person is unable to appear. The Court may at any time appoint a guardian ad litem to investigate and protect the best interest of the incapacitated person.

**609.2. Physician's Report.**

In all guardianship matters seeking to declare an adult incapacitated for any reason, a Physician's Report by the doctor treating the alleged incapacitated person, or such additional evidence as the Court shall require shall be presented to the Court at the time the petition is filed or on the hearing date. No determination will be made without a supporting medical report or testimony.

**609.3. Appointment Without Notice.**

Pursuant to IC 29-3-3-4(a), no guardian of an adult shall be applied, or protective order entered without notice, except upon verified allegations that delay may result in immediate and irreparable injury to the person, or loss or damage to the property.

**609.4. Appointment For a Minor.**

In every petition for the appointment of a guardian of the person of a minor child, the following information shall be given:

- a. The child's present address;
- b. The places where the child has lived within the past two (2) years and the names and present addresses of the persons with whom the child has lived during that period;
- c. General information concerning school, health, etc....;
- d. Whether, to the petitioner's knowledge, any other litigation is pending concerning the custody of the child in this or in any other state;

e. Whether, to the 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.

**609.5 Statutory Sealed Affidavit.**

In every petition for the appointment or modification of a guardianship for a minor, the attorney representing the petitioner shall question the parties as to the circumstances that must be reported to the Court under IC 29-3-2-7, IC 31-14-14-6, IC 31-17-2-26, IC 31-17-4-11 and IC 31-17-5. Where appropriate, a sealed affidavit is to be filed with the Court in substantially the form as provided by the Court.

**609.6 Petition to Open a Guardianship Estate.**

All petitions to open a guardianship shall provide an approximate value and description of the property of the incapacitated person or minor.

**609.7 Inventory.**

An inventory shall be prepared by the fiduciary in a guardianship within 90 days following the date of appointment, or within 30 days in the case of a temporary guardianship. The inventory prepared for the guardianship shall be filed with the Court on or before the last day identified above for preparation of the inventory.

**609.8 Guardian's Report.**

The Guardian's Report filed by the guardian of the person as opposed to the estate, shall provide the present residence of the protected person and a description of his or her general condition. If the protected person is an adult, a report of an attending physician shall be filed with the Guardian's Report attesting to the fact that the incapacity of the person continues and that the living arrangements for the protected person are appropriate. The Guardian's Report is to be filed with the Court on the same schedule as required for accountings in compliance with Rule 609.9.

**609.9 Accountings and Verification Required.**

When an individual or corporate fiduciary has been appointed to handle the financial affairs of a protected person, an accounting shall be filed within thirty (30) days after the first anniversary of the date the guardianship letters were issued. Thereafter, unless a contrary order is issued by the Court, all accountings shall be filed biennially. All guardianship accountings shall contain a certification of an officer of any

financial institution in which guardianship assets are held, verifying the account balance. All accounts shall follow the prescribed statutory format. Informal, handwritten, or transactional accounts will not be accepted.

**609.10 Social Security Benefits.**

All Social Security or Medicare Benefits received on behalf of an incapacitated person shall be included and accounted for in the guardianship accounting unless Court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility, or because of the amount of such funds, the Court finds that such funds can only be used by the guardian or designated person for the benefit of, or use for such incapacitated person.

**609.11 Compliance with Other Rules.**

Nothing herein shall be deemed as amending, superseding, or altering the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States of America, and every fiduciary and attorney shall comply with same, if applicable.

**609.12 Financial Matters.**

Other than for routine matters, the guardian shall obtain Court approval prior to taking any action on any financial matter pertaining to carrying out the guardian's duties and responsibilities for the protected person.

**Rule LR71-TR66-610. Receivership Estates.**

**610.1. Proceedings to Which This Rule is Applicable.**

This rule is promulgated, for the administration of estates by receivers or by other officers appointed by the court pursuant to Indiana Trial Rule 66.

**610.2. Inventory and Appraisal.**

Unless the Court otherwise orders, a receiver or similar officer, as soon as practicable after the appointment and not later than twenty-eight (28) days after they have taken possession of the estate, shall file an inventory and an appraisal of all the property and assets in the receiver's possession or in the possession of others who hold possession as his or her agent, and in a separate schedule, and inventory of the property and assets of the estate not reduced to possession by the receiver but claimed and held by others.

**610.3. Periodic Reports.**

Within twenty-eight (28) days after the filing of inventory, and at regular intervals of three (3) months thereafter until discharged, unless the Court otherwise directs, the receiver or other similar officer shall file reports of the receipts and expenditures and of his or her acts and transactions in an official capacity.

**610.4. Compensation of Receiver, Attorneys, and Other Officers.**

In the exercise of its discretion, the Court shall determine and fix the compensation of receivers or similar officers and their counsel and the compensation of all others who may have been appointed by the Court to aid in the administration of the estate, and such allowances or compensation shall be made only on petition therefore and on such notice, if any, to creditors, and other interested persons as the Court may direct.

**Rule LR71-PR00-611. Miscellaneous.**

**611.1. Filings and Orders.**

Prior to the filing of any Order, parties shall provide notice to all other parties involved in the matter and will have filed with the Court proper pleadings to support said Order. Parties will contact the Court to schedule a hearing for all matters filed with Court, requiring the same prior to the submission of any Order, parties will leave all matters requiring a hearing incomplete, if submitted electronically in *QUEST*, all Orders submitted in final form prior to the day of the scheduled hearing, will be rejected. If a party wished to vacate a hearing and submit a final Order for approval of the Court the party shall submit an additional Motion or pleading indicating the reason for vacating the hearing and submission of the Order.

**611.2. Continuances.**

Parties requesting a continuance shall submit a Pleading or Motion to the Court and shall indicate whether they have contacted all other parties and shall indicate in the pleading or Motion the agreement or opposition to the request for a continuance.

**Rule LR71-PR00-612. Transfer of Cases.**

**612.1. Transfer of Cases from the Probate Court.**

The Judge of the Probate Court may, with the consent of either the Circuit Court Judge or the Superior Court Chief Judge, transfer any action, cause, or proceeding filed and docketed in the Probate Court to either the Circuit Court or the Superior Court by transferring all original papers and instruments filed in the action, cause, or proceeding without further transcript to be redocketed and disposed of as if originally filed with the Circuit Court or Superior Court.

**612.2. Transfer of Cases to the Probate Court.**

The Judge of the Circuit Court or the Chief Judge of the Superior Court may, with the consent of the Judge of the Probate Court, transfer any action, cause, or proceeding filed and docketed in either the Circuit Court or Superior Court by transferring all original papers and instruments filed in the action, cause or proceeding without further transcript to be redocketed and disposed of as if originally filed with the Probate Court.

**Rule LR71-PR00-613. Sale of Assets.**

**613.1. Sale of Personal Property.**

To the extent that the sale of assets is not authorized by the decedent's will, no Petition to Sell Personal Property in a supervised estate or guardianship shall be granted unless a written appraisal, prepared by a person competent enough to appraise such property and setting forth its fair market value, is filed with the Petition or was previously filed with the inventory. This rule shall not apply to personal property which is sold at public auction.

**613.2. Date of Appraisal.**

All appraisals required by 613.1 above shall be made within one year of the date of the Petition to Sell.

**613.3. Exempt Assets.**

No written appraisal shall be required for the sale of assets which are securities traded on a recognized stock exchange. Such assets include but are not limited to stocks, bonds, and mutual funds.



## **LOCAL RULES FOR ELECTRONIC FILING FOR ST. JOSEPH COUNTY (700 SERIES)**

### **Rule LR71-AR16-701. Electronic Filing of Cases in St. Joseph County.**

#### **701.1. Purpose.**

The Courts in St. Joseph County, generally, and the St. Joseph Probate Court, specifically, intend to use current technology to improve efficiency, public access, and ease of use. With the approval of the Supreme Court of Indiana pursuant to T.R. 77, the Courts set forth these local rules of procedure to assist the public, the bar, and the courts in implementing electronic filing and computer case management for the Circuit, Superior, and Probate Courts.

#### **701.2. Authority.**

The following rules are hereby adopted and promulgated pursuant to T.R. 81 of the Indiana Rules of Trial Procedure.

#### **701.3. Control.**

If any local rule shall conflict with or be inconsistent with the Indiana Rules of Trial Procedure, the latter shall control.

### **Rule LR71-AR16-702. Filing of Cases in the St. Joseph Probate Court.**

#### **702.1. Application.**

These rules apply to all new cases filed with the Probate Court and all old cases already filed with the Probate Court. Old cases will not be required to convert to the computer system until some activity occurs in the case. As of January 1, 2006, all documents (other than those specifically excepted by the Probate Court) shall be filed electronically in all cases.

#### **702.2. Case Management System.**

The Probate Court is utilizing a computer case management system known as "QUEST." A filing in *QUEST* or a *QUEST* filing is a filing in the Probate Court's computer system.

#### **702.3. Electronic Court Files.**

Probate Court files kept electronically shall be available for inspection by the public and the bar except for those files that are deemed confidential by statute or court order.

## **702.4. Electronic Filing of Pleadings.**

### **702.4.1. New Cases.**

Before creating a new case in the *QUEST* system, a party must obtain a cause number from the Clerk of the Court. The cause number may be obtained upon submission of an appearance form and payment of the filing fee to the Clerk [or upon presentation to the Clerk of a court order waiving the filing fee]. Issuance of a cause number does not constitute a “filing” and will not toll any statute of limitations or other time limitation. To create a new case in the court computer system (*QUEST*), a person must have a password and user identification granting access to the system. An action must be commenced in conformity with Trial Rule 3 and pursuant to Trial Rules 4 through 4.17 of the Indiana Rules of Trial Procedure.

### **702.4.2. Existing Cases.**

The CCS and pleadings of any existing case may be viewed on the *QUEST* system by use of a valid password. This does not apply to cases that are confidential by virtue of the law or court order. To electronically file a pleading in *QUEST*, one must first complete an appearance form and file it with the clerk. Upon accepting the appearance form filing, the Clerk will make that case accessible for the filing of pleadings by the person who has made the appearance. Whenever an attorney withdraws his appearance in a case, his accessibility to that case for the filing of pleadings will be removed.

### **702.4.3. Time of Filing.**

A document may be filed through an E-filing system at any time that the Clerk’s office is open to receive the filing or at such other times as may be designated by the Clerk and posted publicly. Documents filed through the E-filing system are deemed filed the next regular time when the Clerk’s office is open for filing. The time stamp issued by the E-filing system shall be presumed to be the time the Document is received by the Clerk.

### **702.4.4. Notice of Filing of Pleading (*Manner of Service*).**

In addition to the usual ways of serving parties of record pursuant to T.R. 5, service may be made by *QUEST* e-mail to those parties of

record or their attorneys who are current users of the *QUEST* system. Said notice shall indicate the name of the pleading filed, the date it was filed, and any hearing date thereon, if applicable. The notified party or attorney may then access the pleading through the *QUEST* system. The Clerk of the Probate Court shall maintain a list of current users of the *QUEST* system.

## **702.5. System Access.**

### **702.5.1. Password.**

In order to access Probate Court files electronically on the *QUEST* case management system, a person must obtain a unique username and password. Prior to being assigned a username and password, the requesting individual must execute a user agreement with the Probate Court. Upon receipt of the signed user agreement, the *QUEST* system administrator will issue a unique user identification and password.

### **702.5.2. Security.**

Each person is responsible for the use of his password. No person shall knowingly utilize or cause another person to utilize the password of another without permission of the holder of the password or in violation of these rules. No attorney shall knowingly permit or cause to permit his username and password to be utilized by anyone other than an employee of his law firm.

### **702.5.3. Fees and Waiver.**

The user agreement requires parties to pay a nominal fee. However, access shall be free of charge for parties or litigants claiming indigence.

### **702.5.4. Training and Assistance.**

The Court will provide assistance and/or instruction to individuals utilizing the electronic filing system. Provisions will be made to ensure access to the system by disabled or self-represented parties or litigants.

## **702.6. Electronic Signature of Documents.**

Documents filed through the E-filing system by use of a valid username and password are presumed to have been signed and authorized by the

user to whom that username and password have been issued. The following will meet the signature requirements:

- (1) Where a person's signature is required on a verified pleading or document, the *QUEST* imprint of the name will satisfy the requirement; however, the attorney is required to maintain an original, signed paper copy in his office. Said pleading or document must be maintained for as long as required by the Administrative Rules of the Supreme Court of Indiana.
- (2) A *pro se* litigant is required to file a signed paper copy with the clerk unless he is able to sign the pleading or document electronically at the clerk's office.
- (3) An attorney will not be required to maintain an original, signed paper copy of a verified pleading or document if the attorney has a Court approved signature pad which enables electronic signatures to be entered on the verified pleading or document, and the pleading or document which is being filed has an electronic signature affixed to it.

**702.7. Format of Pleadings.**

Pleadings shall conform to the form or layout designed by the Court pursuant to LR71-TR77-201.3.5. The Court reserves the right to strike any pleading that does not conform to the requirements of the Quest or Odyssey case management systems, or that create an undue hardship for Court staff who are assigned to prepare and/or complete entries and orders in those case management systems.

## **LOCAL JURY RULES FOR ST. JOSEPH COUNTY (800 SERIES)**

### **Rule LR71-AR00-801. Definitions.**

#### **801.1. Court.**

The term "Court" or "Courts" shall mean the St. Joseph Circuit, Superior, and Probate Courts.

#### **801.2. Judge.**

The term "Judge" or "Judges" shall mean the Judge of the Circuit Court, the Judge of the Probate Court, and the Chief Judge of the Superior Court.

#### **801.3. Jury Administrator.**

The term "Jury Administrator" shall mean a person so appointed to administer and manage the jury process to the extent permitted by Indiana Law.

#### **801.4. Jury Pool.**

The term "Jury Pool" shall mean a list of names, the number of which is to be determined annually by the Judges, drawn in accordance with this rule, from the list of names supplied by the Indiana Supreme Court, pursuant to statute and the Indiana Jury Rules.

#### **801.5. Notice of Jury Service.**

The term "Notice of Jury Service" shall mean a written document which accompanies the Juror Qualification and Questionnaire Form and provides general information regarding the juror selection process of the St. Joseph County Courts.

#### **801.6. Juror Qualification and Questionnaire Form.**

The term "Juror Qualification and Questionnaire Form" shall mean a written document which solicits information from prospective jurors regarding statutory qualification and exemptions.

#### **801.7. Summons.**

The term "Summons" shall mean a written document which notifies a prospective juror of the dates and details of their jury service.

#### **801.8. Bi-monthly List.**

The term "Bi-monthly List" shall mean a random subset of the Jury Pool which shall be requested from the Clerk of Court by the Jury Administrator. Unless otherwise directed by the Judges, the bi-monthly Venire List shall be composed of one-sixth (1/6) of the Jury Pool.

**Rule LR71-AR00-802. Effective Date.**

In compliance with the Indiana Jury Rules, these rules shall become effective immediately.

**Rule LR71-AR00-803. Scope.**

The rules shall govern petit jury assembly, selection, and management in the Courts.

**Rule LR71-AR00-804. Initial Appointment of Jury Administrators.**

The following are hereby appointed to act as Jury Administrators, to administer the jury assembly process:

1. A sufficient number of Jury Commissioners as appointed by the Courts pursuant to the Indiana Code.
2. At least one (1) Jury Clerk from the St. Joseph County clerk's office.
3. The Bailiff of each Court and Judge thereof.

**Rule LR71-AR00-805. Additional Modification of Appointments.**

Appointments made under this rule shall be updated or modified, from time to time, as deemed necessary.

**Rule LR71-AR00-806. Assembly of the Jury Pool.**

No later than November 1 of each calendar year, the Jury Pool shall be assembled for the next calendar year by randomly selecting names from the appropriate lists as may be required and supplied by the Indiana Supreme Court and/or appropriate statute.

**Rule LR71-AR00-807. Summoning Jurors.**

Jurors shall be summoned using a Two-Tier Notice and Summons procedure, as follows:

- (1) At least bi-monthly, the Jury Administrator shall randomly draw the bi-monthly Venire List from the Jury Pool and mail, or cause to be mailed, the Notice of Jury Service and Juror Qualification and Questionnaire Form. The bi-monthly lists may be drawn before each two-month jury service period or at any other time as may be appropriate.
- (2) Not later than one (1) week before a jury panel for jury selection is needed, the Jury Administrator or Bailiff assigned to each court shall mail, or cause to be mailed, the Summons of Jury Service which shall specify the specific dates for which the prospective juror shall remain on call for jury service.
- (3) Each Judge may implement such additional procedures as they may believe will best ensure compliance with the Summons for Jury Service.

**Rule LR71-AR00-808. Assistance of the Clerk of Court.**

At the discretion of the Court, the Jury Administrator may receive technical, administrative, or clerical assistance in summoning prospective jurors from the Office of the St. Joseph County Clerk.

**Rule LR71-AR00-809. Criteria for Disqualification.**

Prospective jurors shall be found disqualified from jury service using only those criteria which is expressly provided in the Indiana Code and/or the Indiana Jury Rules.

**Rule LR71-AR00-810. Criteria for Exemption.**

Prospective jurors shall be exempted from jury service using only those exemptions expressly provided in the Indiana Code and/or the Indiana Jury Rules.

**Rule LR71-AR00-811. Documentation of Disqualification, Exemption, or Deferral.**

Facts supporting disqualification, exemption, or deferral from jury service shall be provided to the Court, in writing, under oath or affirmation.

**Rule LR71-AR00-812. Term of Jury Service.**

The term of jury service shall be that as set forth in Indiana Jury Rule 9.

**Rule LR71-AR00-813. Record Keeping.**

**813.1. Format.**

Records of the jury management in the Courts shall be maintained, in written format, electronic format, or both, by the Jury Administrator.

**813.2. Items Included.**

Records shall include, but are not limited to:

- (1) Annual jury pool;
- (2) Periodic list;
- (3) Jurors qualified;
- (4) Exemptions granted;
- (5) Deferrals granted;
- (6) Jurors who served; and
- (7) Terms of service.

**813.3. Protocols.**

The protocols for record keeping and retention established in each Court shall comply strictly with the standards established in the Indiana Code, Indiana Jury Rules, Indiana Administrative Rules, or otherwise provided by Indiana Law.

**Rule LR71-AR00-814. Juror Privacy.**

In addition to, and to the extent that it is not contrary to disclosure either permitted or prohibited by Indiana Supreme Court Administrative Rule 9:

- (1) Personal information relating to a juror or prospective juror not disclosed in open court is confidential, other than for the use of the parties and counsel.
- (2) Upon request, paper or electronic copies of the Juror Qualification and Questionnaire Form may be made available to counsel on the date of trial.
  - (a) All copies of the Juror Qualification and Questionnaire Form so provided shall be returned to the Court at the completion of the jury selection process or, by leave of Court, at the completion of the trial.



- (b) No photocopies or duplicates of the Juror Qualification and Questionnaire Form shall be made without specific Court authorization.
- (3) Each Court shall take steps to protect and maintain juror privacy and the confidentiality of juror information. A Court may enforce any violation of this Rule by direct or indirect contempt of court and/or by a fine, which may include attorney's fees.

**Rule LR71-AR00-815. Miscellaneous.**

All other proceedings involving the assembly, selection, and management of petit juries in the Courts shall be conducted as required by the Indiana Jury Rules.

## **LOCAL RULE FOR COURT FEES FOR ST. JOSEPH COUNTY (900 SERIES)**

### **Rule LR71-AR00-901. Intent and Scope of Fee Schedule.**

The Courts adopt the following schedule of fees for referrals to offset the costs of court services and to reduce the burden on the County taxpayer. The Courts find that the following rules establish a reasonable schedule of user fees for the Courts of St. Joseph County.

### **Rule LR71-AR00-902. Fee Schedule for CSAP and Drug Court.**

The Courts adopt the following schedule of fees for referrals to the Court Substance Abuse Program (CSAP) and Drug Court.

#### **902.1. CSAP User Fee.**

A party referred to CSAP shall pay a user fee of \$400.00, which is payable to the Clerk of the Court. This CSAP user fee will include an assessment, participation in drug education, if recommended, case monitoring, and case closure.

#### **902.2. Problem-Solving Court User Fee.**

A person participating in a problem-solving Court shall pay a problem-solving court administration fee of one hundred dollars (\$100.00). In addition, each participant in a problem-solving court shall be assessed a services fee of fifty dollars (\$50.00) per month beginning with the second month of participation and for each month thereafter for the duration of participation in the problem-solving court. Provided further, however, that the aggregate of fees paid under this section by any participant shall not exceed five hundred dollars (\$500.00).

#### **902.3. Urine Drug Screening Fees.**

Urine Drug Screening Fees payable to the Court Substance Abuse Program laboratory for deposit with the auditor as follows:

- (a) Problem-Solving Court Urine Drug Screening Fees: \$20.00 for positive drug screens, \$15.00 for negative drug screens, \$3.00 for no specimen fees, \$2.00 for breathalyzer fee, and \$45.00 for confirmation testing at an off-site laboratory.

- (b) CSAP Urine Drug Screening Fees: \$15.00 for drug screens, \$3.00 for no specimen fees, \$2.00 for breathalyzer fee, and \$45.00 for confirmation testing at an off-site laboratory.

**902.4. Transfer Fees.**

Transfer fees shall be payable to the Clerk of the Court as follows:

- (a) Transfer to another jurisdiction: A transfer fee of \$75.00 shall be paid to the Clerk of the Court to transfer a case to another state or in-state jurisdiction, or to transfer directly to an in-state or out-of-state treatment provider without alcohol and drug assessment.
- (b) Transfer from another jurisdiction: A transfer fee of \$150.00 shall be paid to the Clerk of the Court for cases transferred from another jurisdiction.

**902.5. Case Monitoring Fees.**

A party referred for case monitoring only shall pay a fee of \$75.00, which includes monitoring compliance with treatment at a court-ordered treatment provider and for monitoring of urine drug screens.

**902.6. Alcohol and Drug Assessments.**

A party referred for an alcohol and drug assessment without other services shall pay a fee of \$150.00.

**Rule LR71-AR00-903. Late Payment Fee for Court Costs, Fines, and Civil Penalties.**

Pursuant to Indiana Code 33-37-5-22, the Courts of St. Joseph County adopt a late payment fee in the sum of twenty-five (\$25.00) for defendants who have not tendered timely payment of costs, fines, or civil penalties.

**903.1 Definitions.**

**903.1.1 Definition of Defendant.**

For the purposes of this local rule, an individual who has committed a crime, violated a statute defining an infraction, violated an ordinance of a municipal corporation, or committed a delinquent act, is defined as a "defendant."

**903.1.2 Definition of Costs.**

For the purposes of this local rule, "costs" includes court costs and fees assessed by a Court.

**903.2 Assessment of Late Payment Fee.**

A defendant who is required to pay court costs (including fees), a fine, or civil penalty and who has not been determined by the Court imposing the costs, fine, or civil penalty to be indigent shall pay, in addition to the costs, fine or civil penalty, a late payment fee in the sum of \$25.00 to the Clerk of the Court if the defendant fails to pay the costs, fine or civil penalty in full before the later of the following: (a) the end of the business day on which the Court enters the conviction or judgment; or (b) the end of the period specified in a payment schedule set for the payment of court costs, fines, and civil penalties adopted for the operation of the Courts of St. Joseph County.

**903.3 Clerk to Assess and Collect Late Payment Fee.**

When a defendant meets the criteria described in LR71-AR00-903.2, the Clerk shall assess and collect a late payment fee in the sum of \$25.00, unless the late payment fee is suspended by Court order as provided by LR71-AR00-903.4. The Clerk may take all appropriate steps to collect late payment fees, including without limitation the retention of legal counsel to effectuate collection proceedings.

**903.4 Court May Suspend Late Payment Fee.**

Notwithstanding LR71-AR00-903.2, the Court that imposed the costs, fine or civil penalty may suspend the late payment fee required by this Rule if the Court finds that the Defendant has demonstrated good cause for failure to make a timely payment of the previously assessed costs, fine or civil penalty and issues an order to that effect directing the Clerk of the Court to suspend the assessment and collection of the Late Payment Fee.

**LOCAL RULES THAT REQUIRE SUPREME COURT APPROVAL FOR ST. JOSEPH COUNTY (1000 SERIES)**

**Rule LR71-AR1-1001. Joint Local Caseload Allocation Plan for St. Joseph County.**

**1001.1 Caseload Review.**

Not later than October 1 of each year, a committee composed of the Judge of the Circuit Court, the Judge of the Probate Court, and the Chief Judge of the Superior Court, shall meet in person, telephonically, or by other means and shall evaluate each court's caseload data, as reported by the Office of Judicial Administration.

**1001.2 Special Circumstances.**

The committee shall consider in addition to the actual caseload data, any special circumstances relevant to evaluating the various caseloads of the various Courts and Judges in St. Joseph County. These special circumstances shall include such matters as death penalty cases, Administrative and Special Judge service, availability of physical resources, and any other relevant factors.

**1001.3 Statistical Deviation.**

Based upon the foregoing caseload evaluation for each Court within the County, the committee shall determine whether or not a sufficient statistical deviation occurs between the Courts which would warrant a transfer of cases within St. Joseph County from one court to another or a limitation during the following year upon what case types may be filed in certain courts or before certain Judges to more effectively and efficiently provide services to the citizens of St. Joseph County.

**1001.4 Caseload Allocation Plan and Transfer of Cases.**

In the event the committee determines a significant statistical deviation exists and is likely to continue to exist the following year, the committee shall unanimously adopt a written plan providing for the assignment of cases and/or for the transfer of cases from one Court to another in order to more equally distribute cases among and between the various Courts within St. Joseph County or requiring that certain types of cases only be filed in certain courts or assigned to certain Judges therein. Such transfer of cases or limitation on filing shall take into consideration the specialized jurisdictional attributes of the Probate Court and endeavor to transfer cases that fit within a receiving Judge's statutory jurisdiction. In the event

that either cases transferring in or out of Probate Court are outside the normal statutory jurisdiction of the receiving Judge, the committee shall designate the receiving Judge as a special Judge of the court that retains jurisdiction over the original proceeding. The committee shall also take into consideration the impact of such transfer upon other local agencies such as the Prosecutor's Office, Public Defender's Office, Sheriff's Department, Local Law Enforcement, County Clerk's Office, Probation Departments, as well as the general citizenry and the cost of such transfers. The caseload allocation plan may be memorialized as an appendix to this rule.

**1001.5 Procedures Following Transfer.**

Once a case is assigned or transferred pursuant to the caseload allocation plan adopted by the committee into another Court, the case shall be heard and processed as all other cases originally filed within that Court.

**Rule LR71-TR79-1002. Special Judge Selection.**

**1002.1 Selection of Agreed Special Judge.**

For civil cases other than those specified in Rule 216.2, within seven days of the notation in the Chronological Case Summary of a judge granting a motion for change of judge or recusing or disqualifying from a case pursuant to T.R. 79(C) or otherwise, the parties shall attempt to select a special judge by agreement. As required by T.R. 79(D), the parties shall have seven days within which to file a written agreement:

(a) selecting an eligible special judge or reporting that an agreement was not reached; or,

(b) proceeding directly under § 216.3 in a case where a change of judge has been granted or under § 216.4 in a case where the judge has recused or disqualified

If no agreement is filed within seven days, the selection of a special judge shall proceed as provided by § 216.3 of this local rule.

**1002.2 Selection of Special Judge in DR, DN, and DC cases**

Notwithstanding any other provision of this Rule, within seven days of the notation in the Chronological Case summary of a judicial officer granting a motion for change of judge or recusing or disqualifying from a case with a

DR, DN, or DC designation, pursuant to T.R. 79(C) or otherwise, the regularly presiding judicial officer shall direct the Clerk to randomly select a special judge from a list of all eligible St. Joseph County judicial officers in the same manner as set forth in §216.4. Parties are not permitted to agree upon the selection of a special judge in DR, DN, or DC cases.

**1002.3 Failure of Special Judge to Accept or to Qualify; Failure to Meet Selection Deadlines; Random Selection.**

In the event:

- (a) a special judge who was selected by agreement pursuant to §216.1 declines or fails to accept after being selected or is otherwise disqualified or excused from the case, or
- (b) the parties stipulate to the random selection of a special judge, or
- (c) the judge before whom the case was pending has recused or disqualified,

the regularly presiding judicial officer shall direct the Clerk to randomly select a special judge from the list of eligible judicial officers, as set forth in §216.4.1.

**1002.4 Rotation of Special Judge selection**

The Clerk shall select special judges in the following order:

- 1) Circuit Court Judge
- 2) Superior Court D04
- 3) Superior Court D05
- 4) Circuit Court Magistrate (South Bend)
- 5) Superior Court D06
- 6) Circuit Court Magistrate (Mishawaka)
- 7) Superior Court D07
- 8) Circuit Court Magistrate (South Bend)
- 9) Eligible Senior Judge

If none of the judicial officers listed above may accept the appointment under Trial Rule 79(J), the Clerk shall select a special judge from the

remaining Superior Court judges and magistrates on a rotating basis in the following order:

- 1) Superior Court Magistrate (D02/D05)
- 2) Superior Court D08
- 3) Superior Court Magistrate (D03/D07)
- 4) Superior Court D01
- 5) Superior Court Magistrate (D01/D06)
- 6) Superior Court D02
- 7) Superior Court Magistrate (D04/D08)
- 8) Superior Court D03
- 9) Probate Court Judge
- 10) Probate Court Magistrate
- 11) Probate Court Magistrate
- 12) Probate Court Magistrate

**1002.5 Acceptance; Disqualification; Ineligibility.**

A special judge selected pursuant to § 216.3. or 216.4. of this rule must accept jurisdiction unless disqualified pursuant to the Code of Judicial Conduct or excused from service by the Supreme Court of Indiana. In the event no judicial officer within Administrative District 4 is eligible to serve as special judge or the particular circumstances dictate the selection of a special judge by the Supreme Court of Indiana, a regularly presiding judge of the court in which the matter is pending shall certify the matter to the Supreme Court of Indiana for appointment of a special judge.

**1002.6 Discontinuation of Service as Special Judge.**

In the event a special judge who has assumed jurisdiction thereafter fails to act or notifies the parties that they no longer can serve as special judge, a regularly presiding judge of the court in which the case is pending shall assume jurisdiction; provided such judge has not previously served in the case and is otherwise eligible to serve. If the regularly presiding judge cannot assume jurisdiction under this section, the selection of a successor special judge shall proceed pursuant to T.R. 79(D) and this rule.

**Rule LR71-AR15-1003. Court Reporter Services.**

**1003.1 Definitions.**



**1003.1.1 Court Reporter (Official Court Reporter).**

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.

**1003.1.2 Equipment.**

Equipment means all physical items owned by the Court or other governmental entity and used by a court in performing court reporter services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes, and any other device used for recording, storing, and transcribing electronic data.

**1003.1.3 Workspace.**

Workspace means that portion of the Court's facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.

**1003.1.4 Page.**

Page means the page unit of a transcript that results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 7.2.

**1003.1.5 Recording.**

Recording means the electronic, mechanical, stenographic, or other recording made as required by Indiana Rule of Trial Procedure 74.

**1003.1.6 Regular Hours Worked.**

Regular hours worked means those hours during which the Court is regularly scheduled to work during any given workweek. Depending on the particular Court, these hours may vary from court to court within the County but remain the same for each workweek.

**1003.1.7 Gap Hours Worked.**

Gap hours worked means those hours worked that are more than the regular hours worked but hours not over forty (40) hours per workweek.

**1003.1.8 Overtime Hours Worked.**

Overtime hours worked means those hours worked more than forty (40) hours per workweek.

**1003.1.9 Workweek.**

Workweek means a five consecutive day week that consistently begins on Monday and ends on Friday.

**1003.1.10 Court.**

Court means the particular court for which the court reporter performs services.

**1003.1.11 County Indigent Transcript.**

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.

**1003.1.12 State Indigent Transcript.**

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.

**1003.1.13 Private Transcript.**

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

**1003.2 Salaries and Per-Page Fees.**

**1003.2.1 Annual Salary.**

A court reporter 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.

- (1) That the court reporter is to be compensated for gap and overtime hours by compensatory time off regular work hours only when the judge to whom the court reporter is assigned is not performing duties requiring the court reporter's presence;
- (2) it shall be the responsibility of the court reporter to keep accurate time records of regular work hours, gap, and

overtime hours to justify their compensatory hours. Hours spent in transcript preparation are not to be counted toward regular hours worked;

**1003.2.2 Non-expedited County Indigent Transcript.**

The per page fee for one original non-expedited County indigent transcript preparation shall be \$5.00 with a minimum fee of thirty-five dollars (\$35.00).

**1003.2.3 Claim for Preparation.**

The court reporter shall submit directly to the County a claim for the preparation of a County indigent transcript.

**1003.2.4 Non-expedited State Indigent Transcript.**

The maximum per page fee that a court reporter may charge for one original non-expedited State indigent transcript shall be \$5.00 with a minimum fee of thirty-five dollars (\$35.00).

**1003.2.5 Non-expedited Private Transcript.**

The maximum per page fee that a court reporter may charge for one original and one additional copy of a non-expedited private transcript shall be \$5.00 with a minimum fee of thirty-five dollars (\$35.00). Re-orders of an existing transcript shall be \$1.50 per page.

**1003.2.6 Expedited Transcript.**

The maximum per page fee that a court reporter may charge for an expedited transcript shall be as follows:

- (1) Within seven working days: \$6.00 per page

**1003.2.7 Reporting of Transcript Fees.**

Each court reporter shall report at least on an annual basis to the Indiana Supreme Court, Office of Judicial Administration, on forms prescribed by the Division, all transcript fees (either County indigent, State indigent, or private) received by the court reporter.

**1003.2.8 Transcript preparation.**

The preparation of *any* transcript for payment shall not be performed during regular work hours, including but not limited to transcribing, copying, or other functions related to the compilation of the transcript.

### **1003.2.9 Transcript copies.**

An electronic or digital copy of any County or State indigent transcript that has already been prepared will not be assessed a fee unless the court reporter is supplying the disk or other medium, in which case a fee of \$5.00 will be charged.

### **1003.3 Private Practice.**

If a court reporter elects to engage in private practice through recording of a deposition and/or preparing of a deposition transcript and desires to utilize the Court's equipment and workspace, and the Court agrees to the use of the Court equipment and workspace for such purpose, the Court and the court reporter shall enter into a written agreement which must, at a minimum, designate the following:

- (1) The court reporter shall at their own expense supply paper and covers for the preparation of such deposition transcript;
- (2) The reasonable market rate for the use of equipment, workspace, and supplies and the method by which the court reporter is to reimburse the court for the use of said equipment, workspace, and supplies;
- (3) That if a court reporter elects to engage in private practice through recording of a deposition and/or the preparing of a deposition transcript, that such private practice shall be conducted outside of regular working hours, unless the time is considered as compensatory time off from regular work hours;

CASELOAD ALLOCATION PLAN

FOR COURTS IN ST. JOSEPH COUNTY, INDIANA

I. Organization of the Courts of St. Joseph County:

As of July 1, 2015, the Courts of St. Joseph County are organized and assigned judicial officers as follows:

1. St. Joseph Circuit Court – one judge and three magistrate judges;
2. St. Joseph Superior Court – eight judges and four magistrate judges; and
3. St. Joseph Probate Court – one judge and three magistrate judges.

II. Designation of Judicial Officers to Hear Civil, Criminal, and Juvenile Cases:

1. Judicial Officers Designated to Hear Civil Cases: Civil Cases (other than small claims matters), shall be heard by the judge and the magistrate judges of the Circuit Court and by the judges and/or magistrate judges of the Superior Court designated by the Chief Judge of the Superior Court to hear civil cases;
2. Judicial Officers Designated to Hear Felony Criminal Cases: Felony criminal cases shall be heard by the judges and/or magistrate judges of the Superior Court designated by the Chief Judge of the Superior Court to hear felony criminal cases;
3. Judicial Officers Designated to Hear Small Claims Cases: Small claims matters shall be heard by the judges and/or magistrate judges of the Superior Court designated by the Chief Judge of the Superior Court to hear small claims matters;
4. Judicial Officers Designated to Hear Traffic and Misdemeanor Cases: Unless otherwise assigned to a felony criminal court for judicial economy because a defendant has pending felony, misdemeanor, and/or probation revocation matters, traffic and misdemeanor matters shall be heard by the judges and/or

magistrate judges of the Superior Court designated by the Chief Judge of the Superior Court to hear traffic and misdemeanor matters.

5. Judicial Officers Designated to Hear Paternity (JP), Delinquency, (JD), CHINS (JC), Juvenile Status (JS), Juvenile Guardianship cases (GU), Termination of Parental Rights cases (JT), and Adoption Cases (AD): shall be assigned to the Judge of the Probate Court unless the Judge assigns the matter to be heard by a magistrate judge of the Probate Court. Notwithstanding any other provision of this rule, cases designated ES, EU, GU, and TR may continue to be filed in any of the courts consistent with traditional practice in St. Joseph County.
6. Judicial Officers Designated to Hear Title IV-D Cases: Pursuant to LR71-FL00-430 et seq., Title IV-D Cases may be assigned to the Title IV-D Court and heard by a magistrate judge of the Circuit, Superior, or Probate Court designated to preside over Title IV-D hearings.

### III. Protocol for Assignment of Cases Among the Courts of St. Joseph County:

1. Civil cases shall be assigned randomly among the judges and/or magistrate judges of the Circuit Court and the Superior Court designated to hear civil matters.
2. **Exceptions:**
  - I. Small claims matters, which includes SC cases and all EV cases filed on the small claims docket;
  - II. JD, JC, JS, JM, AD, JT which are traditionally assigned to the Probate Court as the court with traditional exclusive jurisdiction over juvenile cases; and
  - III. License reinstatement, name changes, health department enforcement cases, TS and TP cases, and RF cases, which are assigned to the Circuit Court
3. Civil cases are assigned as follows:
  - A. Circuit Court shall receive a total of 50% of all upper civil filings and Superior Court shall receive 50% of all upper civil filings.

- B. Four civil judges in Superior Court shall receive as follows: the three Superior judges sitting in South Bend shall each receive approximately 30% of the upper civil filings in Superior Court, and the judge sitting in Mishawaka shall receive approximately 10% of the upper civil filings in Superior Court.
- C. Circuit Court shall have a Mishawaka Division with one Circuit Court magistrate presiding and a South Bend Division with the Circuit Court judge and two magistrates presiding.
- D. Superior Court shall have a Mishawaka Division with one Superior Court judge presiding and a South Bend Division with three Superior Court judges and four magistrate judges presiding.
- E. Civil cases (other than small claims cases) may be filed in Circuit Court and Superior Court in South Bend or Mishawaka, Indiana as follows:
  - (a) The City of Mishawaka, the School City of Mishawaka, or a resident of the City of Mishawaka where all defendants are residents of the City of Mishawaka shall designate all of their cases for filing with the Mishawaka Division of Superior and Circuit Courts. The Clerk shall assign these cases on an alternating basis to ensure equal distribution of those filings between the Mishawaka Divisions of those courts.
  - (b) All attorneys and business entities with their principal places of business and all individuals with their principal residences located east of Logan Street but within St. Joseph County may either:
    - i. file their civil cases (other than small claims cases) without designation, in which case they will be assigned randomly to the Mishawaka Division of the Superior and Circuit Courts or one of the three judges of the civil division of the Superior Court or the judge of the Circuit Court; or
    - ii. file their civil cases (other than small claims cases) for filing in the Mishawaka Division of Superior and Circuit Courts in which case they will be assigned on an alternating basis to

ensure equal distribution of those filings between the Mishawaka Divisions of those courts.

- F. For all civil case filings other than small claims cases not designated for filing in the Mishawaka Divisions of the Circuit and Superior Court, a 20-case assignment rotation cycle shall be utilized with each 20 cases assigned as follows:
    - (a) Ten cases for Circuit Court (approximately 50%)
    - (b) Ten for Superior Court (approximately 50%), with three out of ten going to each of the South Bend Superior Court judges and one out of ten going to the Mishawaka Superior Court judge.
  - G. The Superior Court civil judge sitting in Mishawaka is also assigned all:
    - (a) All TR cases designated for filing in Mishawaka;
    - (b) All EU, ES, and EM cases designated for filing in Mishawaka; and
    - (c) All adult GU cases designated for filing in Mishawaka.
4. Circuit Court shall from time to time designate three cases (17.65% of the Circuit cases) or four cases (23.53% of the Circuit cases) of each of the ten Circuit Court cases in each assignment rotation cycle to go to the Circuit Court magistrate judge sitting in Mishawaka to which direct filings will be added to achieve whatever total percentage of cases the Circuit Court judge wants in the Circuit Court Mishawaka Division.
5. The Chief Judge of the Superior Court shall, from time to time, reallocate civil cases from the Mishawaka Division to the South Bend Division to ensure there is an approximate weighted caseload allocation among the four judges of the Superior Court's Civil Division.

### **Felony Criminal Cases:**

1. Except for criminal cases that must be assigned to the Circuit Court by L71-CR2.2-303.1 or -303.2, felony criminal cases shall be assigned randomly and equally among the four Superior Court criminal judges.



- A. All felony Superior Court judges may refer a level 5 or 6 felony drug cause for Drug Court assessment upon the filing of a Drug Court preliminary approval checklist by the Prosecutor's Office. Upon successful completion of the assessment process as determined by the Drug Court team, acceptance to the Drug Court Program, and the e-filing of a signed Drug Court plea, the cause shall be transferred to the Superior Court judge assigned to Drug Court and given that judge's cause number designation.
  - B. All felony Superior Court judges may refer a case for Veteran's Court assessment upon the request of the State or the Defendant. Upon successful completion of the assessment process as determined by the Veteran's Court team, acceptance to the Veteran's Court Program, and the e-filing of a signed Veteran's Court plea, the cause shall be transferred to the Superior Court judge assigned to Veteran's Court and given that judge's cause number designation.
  - C. In felony cases involving intimate partner domestic violence, all felony Superior Court judges may transfer the case if the Defendant has been approved by the Prosecutor's Office and Adult Probation for participation in the Domestic Violence Court Supervised Recidivism Reduction Program ("DVCSRRP"). Transfer will occur only after a signed DVCSRRP plea has been e-filed. The cause shall be transferred to the Superior Court judge assigned to DVCSRRP and given that judge's cause number designation.
2. At the request of a Superior Court criminal judge, a magistrate judge of the Superior Court may preside over a felony trial or felony hearing(s).
  3. However, and notwithstanding this method of random assignment, in all felony criminal cases, except MR cases, where co-defendants are charged, cases shall be reassigned to a single judge or magistrate judge, as follows:
    - I. where co-defendants have been equally assigned to different judges, the judge having the lowest assigned cause number shall be assigned/reassigned all co-defendant cases; or
    - II. if co-defendants have been unequally assigned to different judges, the judge having the greatest number of co-defendants shall be assigned/reassigned all co-defendant cases.

4. Additional case reassignment may occur pursuant to Local Rule 303.3(7). The Chief Judge of the Superior Court may reassign MR cases or other felony cases where such reassignment is in the interest of judicial economy or dictated by the weighted caseload balancing requirements.
5. Any dismissed felony charges shall, if re-filed, be assigned to the original Judge, notwithstanding paragraph 4 above.
6. Upon granting a change of judge under Ind. Crim. Rule 2.4, or the disqualification or recusal of a judge in a criminal case, post-conviction proceeding, infraction, or ordinance violation, a successor judge shall be assigned in the same manner as the initial judge as set forth in this Plan. Where this process does not result in the selection of a successor judge, the Chief Judge shall reassign the case as follows:
  - A. For a felony case or a post-conviction case concerning a felony conviction, the case shall be reassigned to another felony judge. If the other felony judges cannot accept the case, the Chief Judge shall then assign the case to a Superior Court magistrate or a Superior Court civil judge.
  - B. If no Superior Court judicial officer can accept the case, the Chief Judge shall reassign the case to a Circuit Court judge or magistrate, or a Probate Court judge or magistrate, or a Senior Judge. If no St. Joseph County judicial officer or Senior Judge can accept the case, the Chief Judge shall select a successor judge from Elkhart, Laporte, or Marshall County.
  - C. For a misdemeanor, infraction, or ordinance violation case, the matter shall be heard by one of the remaining Superior Court magistrate judges. If none of the magistrate judges can accept the case, the Chief Judge shall reassign the case as detailed above.
  - D. A person appointed to serve as special judge must accept jurisdiction in the case unless the appointed special judge is disqualified pursuant to the Code of Judicial Conduct, ineligible for service under Administrative Rule 21, or excused from service by the Indiana Supreme Court.
  - E. All other provisions of Ind. Administrative Rule 21 shall apply to the

reassignment of criminal cases.

### **Small Claims Cases**

1. Superior Court has a Small Claims Division with two (2) locations: South Bend and Mishawaka. All small claims cases shall be assigned to the Small Claims Division in South Bend and assigned to that Division at the South Bend location, except for the following:
  - A. All small claims cases filed by the City of Mishawaka, the School City of Mishawaka, or a resident of the City of Mishawaka where all defendants are residents of the City of Mishawaka, shall be designated for filing in Mishawaka and shall be assigned to the Small Claims Division of Superior Court in Mishawaka.
  - B. All small claims cases filed by attorneys and business entities with their principal places of business and individuals with their principal residences located east of Logan Street but within St. Joseph County may, at the filer's discretion:
    - (a) File their small claims cases without designation, in which case they will be assigned to the South Bend Small Claims Division; or
    - (b) Designate their small claims cases for filing in the Mishawaka Division, in which case they will be assigned to the Small Claims Division's Mishawaka location.

The four (4) Superior Court magistrates work equally for each one of the eight (8) Superior Court judges; therefore, for case allocation reporting purposes: each Superior Court judge is assigned: 1/8<sup>th</sup> of all small claims cases assigned to the Small Claims Division's South Bend location.

### **Traffic and Misdemeanor Cases:**

1. Superior Court has a Traffic and Misdemeanor Division located in South Bend. All TM, CM, IF, and OV cases shall be assigned to the Traffic and Misdemeanor Division.

2. The four (4) Superior Court magistrates work equally for each one of the eight (8) Superior Court judges; therefore, their handling of all traffic and misdemeanor cases shall be assigned as follows for case allocation reporting purposes: 1/8<sup>th</sup> of all CM, IF, and OV cases1/8<sup>th</sup> of all CM, IF, and OV cases will be assigned equally to each of the eight (8) Superior Court judges. will be assigned equally to each of the eight (8) Superior Court judges.

### **Mental Health Cases:**

All MH cases will be divided equally among the four (4) Superior Court civil judges.

### **Paternity, CHINS, Delinquency, Dependency, and Adoption Cases:**

All paternity, CHINS, delinquency, dependency, and adoption cases shall be filed in Probate Court.

### **Specialized Driving Cases:**

Separate petitions for specialized driving privileges shall be filed in the St. Joseph Circuit Court; however, petitions for post-conviction relief (PCR) or requests for relief from suspensions entered in a pending criminal cause of action shall be filed before the court that issued the judgment of sentence or interlocutory suspension.

### **Protective Order (PO) Cases:**

1. Petitions for civil orders of protection alleging domestic violence (DV), sexual assault, stalking, or harassment shall be filed in the Circuit Court and assigned to the Civil Protective Order Court, except for the following matters:
  - A. Cases filed directly with a Court that has already assumed jurisdiction over a dissolution of marriage, paternity, child in need of services (CHINS), or delinquency proceeding involving the parties;
  - B. Cases filed as plenary cases in South Bend. Plenary cases shall be randomly assigned based on subparagraph (1) *supra*.
2. PO cases may be filed at Courthouse 1, Mishawaka Courthouse, and Probate Court in St. Joseph County, the Family Justice Center, and any other place designated by the Judicial Executive Committee (as defined in DR04-AR00-3).

3. PO hearings shall be set according to a written schedule that shall be developed by the Judicial Executive Committee or by the regularly presiding judge of the applicable court. Workplace violence cases shall be randomly assigned based on subparagraph (1) *supra*.

#### IV. Exceptions to the Protocol for Assignment of Cases:

1. Mass Filing of Collection Cases (other than small claims): Upon request and designation by the Judge of the Circuit Court and the Chief Judge of the Superior Court, a lawyer or law firm may be approved to make mass filing of collection cases (other than small claims). Unless otherwise directed by the Judge of the Circuit Court or the Chief Judge of the Superior Court based on weighted caseload balancing requirements or otherwise, cases filed by a lawyer or law firm approved for mass filing shall be assigned to the Circuit Court.
2. Special Judge of Transfer: Nothing in these local rules shall be interpreted to prevent a party from taking a change of judge or requesting transfer of a case as otherwise authorized by statute or rule of court.
3. Temporary or Permanent Assignment of Cases: Nothing in these local rules shall be interpreted to prevent the regularly presiding judge of a Court from assigning a case on a temporary or permanent basis to a Magistrate Judge, Special Judge, Senior Judge, Temporary Judge, Judge Pro Tem, Referee, or another duly appointed judicial officer.
4. Caseload Balancing: Nothing in these local rules shall be interpreted to prevent the Judge of the Circuit Court, the Chief Judge of the Superior Court, or the Judge of the Probate Court, from reassigning a case for the purpose of caseload balancing based on the weighted caseload criteria or other caseload criteria.
5. Emergency or Exigent Circumstances: Nothing in these local rules shall be interpreted to prevent the Judge of the Circuit Court, the Chief Judge of the Superior Court, or the Judge of the Probate Court, either jointly or individually, from assigning a case based on an emergency or exigent circumstances.

#### V. Authority and Effective Date:

1. This Caseload Allocation Plan is adopted pursuant to the requirements of A.R. 1 (E) and LR71-AR1-1001.1.
2. The effective date of this amended Caseload Allocation Plan is January 1, 2025.

