



In the
Indiana Supreme Court

In the Matter of the Approval of Local
Rules for Elkhart County

Supreme Court Case No.
18S-MS-57

ORDER APPROVING AMENDED LOCAL RULES

The judges of the Elkhart Circuit and Superior Courts request the approval of amended local rules for caseload allocation in accordance with Indiana Administrative Rule 1(E), and appointment of special judges in accordance with Indiana Trial Rule 79 and Indiana Criminal Rule 2.2. Attached to this Order are the proposed amended local rules.

Upon examination of the proposed rule amendments requested by the Elkhart Circuit and Superior Courts, this Court finds that the proposed rule amendments, LR20-AR00-NAFC-2, LR20-AR1E-19, LR20-CR2.2-NAFC-2.1, and LR20-TR79-NAFC-2.2 comply with the requirements of Indiana Administrative Rule 1(E), Indiana Trial Rule 79, and Indiana Criminal Rule 2.2, and accordingly, should be approved.

IT IS, THEREFORE, ORDERED by this Court that Elkhart Circuit and Superior Local Rules, LR20-AR00-NAFC-2, LR20-AR1E-19, LR20-CR2.2-NAFC-2.1, and LR20-TR79-NAFC-2.2, set forth as an attachment to this Order, are approved effective the date of this Order. Done at Indianapolis, Indiana, on 1/30/2018.

Steven H. David

Steven H. David
Acting Chief Justice of Indiana

(A) GENERAL

All new causes of action shall be docketed with the Clerk of the Court and shall comply with Trial Rules 77 and 86, as well as, Administrative Rule 9 including filing of required Notice of Exclusion: Form 9-G1.

(B) COURT COSTS

No cause shall be docketed or transferred without payment of the costs of the action, unless otherwise ordered.

1) COLLECTION OF FEE FOR LATE PAYMENT

A) A late fee is assessed to the defendant if the defendant has:

- committed a crime;
- violated a statute defining an infraction;
- violated an ordinance of a municipal corporation; or
- committed a delinquent act, and the defendant is required to pay:
 - court costs, including fees;
 - a fine; or
 - a civil penalty, and the defendant is not determined by the court imposing the court costs, fine, or civil penalty to be indigent.

B) If the defendant fails to pay to the clerk the costs, fine, or civil penalty in full before the later of the following:

- The end of the business day on which the court enters the conviction or judgment.
- The end of the period specified by the Court.

C) The fee assessed is \$25.00 or, if amended, that sum allowed by I.C. § 33-37-5-22.

D) The court may, if the defendant has demonstrated good cause for failure to make a timely payment of court costs, a fine, or a civil penalty may suspend the payment of the late fee.

(C) ASSIGNMENT OF CRIMINAL CASES**1) Criminal cases shall be filed in specific courts as follows:****a. Elkhart Circuit Court**

- All murder charges;
- All attempted murder cases, except child victim cases
- All manslaughter cases, except those in which a child is the victim
- All vehicular homicide cases
- All robbery cases
- All reckless homicide cases
- One-half (1/2) of all Level 1, 2, 3, 4, and 5 controlled substance sale and possession cases
- Juvenile cases (Juvenile Court Magistrate)
- Grand Jury cases

b. Elkhart Superior Court 1

- All rape cases, except child victim cases
- All sexual battery cases, except child victim cases
- All criminal recklessness cases, except when a child is the victim
- All Level 5 battery and Level 6 domestic battery cases, except child victim cases, and except those filed in the three (3) city courts sitting in Elkhart County, Indiana
- All Level 3 and 4 felony cases which are not specifically assigned to a court pursuant to this rule

c. Elkhart Superior Court 2

- All burglary cases
- All welfare fraud cases
- All forgery cases
- All Level 5 felony theft cases
- All arson cases
- All Level 5 felony cases which are not specifically assigned to a court pursuant to this rule

d. Elkhart Superior Court 3

- All child victim cases except murder
- One-half (1/2) of all Level 1, 2, 3, 4, and 5 controlled substance sale and possession cases
- All kidnapping and confinement cases
- All Level 1 and 2 felony cases which are not specifically assigned to a court pursuant to this rule

e. Elkhart Superior Court 4

- One-half (1/2) of all habitual traffic offender cases and one-third (1/3) of all other Level 6 felony and misdemeanor cases, except non-support cases and those filed in the three (3) city courts sitting in Elkhart County, Indiana.
- All infraction and county ordinance cases other than those filed in the aforementioned city courts
- All requests for Trial De Novo arising out of a conviction in the Nappanee and Goshen City Courts.

f. Elkhart Superior Court 5

- One-half (1/2) of all habitual traffic offender cases and one-third (1/3) of all other Level 6 felony and misdemeanor cases, except non-support cases and those cases filed in the aforementioned city courts
- All requests for Trial De Novo arising out of a conviction in the Elkhart City Court.

g. Elkhart Superior Court 6

All non-support cases and one-third (1/3) of all Level 6 felony and misdemeanor cases, except habitual traffic offender cases and those cases filed in the aforementioned city courts

2) Assigning new, subsequent, and recharged cases:

- a. **New cases** – New cases that may be filed in more than one court (e.g., Level 1, 2, 3, 4, and 5 felony and controlled substances cases) must be filed on a rotating basis.
- b. **Subsequent cases** –
 1. If the defendant in a pending criminal case is charged with new offenses that carry no greater penalty than the pending charges, the subsequent charges must be filed in the same court hearing the original case.
 2. If a new case carrying greater penalties is filed against the defendant in a pending case, the original case must be transferred to the court hearing the subsequent case. Except domestic battery cases.
 3. Pending cases include a case filed in a local court that has not yet had a final disposition; or, has had a final disposition, but the defendant is under a withheld or suspended sentence that the new case could affect.
- c. **Sealing and Expunging Conviction Records**– Whenever practicable, all sealing of records and expunging of convictions filed under I.C. §§ 35-38-9-4 and 35-38-9-5 shall be filed in the same court as the underlying case. If more than two underlying cases are being expunged, the petitioner shall pick between the court where one of the underlying cases originated. If not practicable, then petitioner shall pick between any Circuit or Superior court.
- d. **Recharged cases** – Any pending case that is later recharged as murder must be transferred to Circuit Court.

- 3) All cases in which juvenile court jurisdiction is waived to adult court shall be filed in the appropriate court as dictated by this rule.
- 4) All charges of escape, including Level 5 and Level 6 felonies, shall be filed in the court which committed the defendant to the facility from which he or she allegedly escaped. All charges of failure to appear shall be filed in the court in which the subject order to appear was entered.

(D) ASSIGNMENT OF CIVIL CASES

1) Civil cases shall be filed in specific courts as follows:

a. Elkhart Circuit Court

All civil filings with the exception of mental health cases and small claims.

JUVENILE DIVISION:

Juvenile Miscellaneous; Juvenile Child in Need of Services; Juvenile Termination of Paternal Rights and Guardianship related to Juvenile Child in Need of Services; Juvenile Termination of Paternal Rights and Juvenile Delinquency.

b. Elkhart Superior Court 1

All civil filings with the exception of mental health cases and small claims.

c. Elkhart Superior Court 2

All civil filings with the exception of guardianships and small claims.

d. Elkhart Superior Court 3

All civil filings except guardianships and small claims.

e. Elkhart Superior Court 4

All civil filings except guardianship, estates, mental health, paternity, dissolution, adoptions and mortgage foreclosure cases.

f. Elkhart Superior Court 5

All civil filings except guardianships, estates, mental health, paternity, dissolution, adoptions and mortgage foreclosure cases.

g. Elkhart Superior Court 6

All civil filings except guardianships, estates, mental health, civil torts and mortgage foreclosure cases.

(E) DELINQUENT LISTS

- 1) Any civil case pending for more than six months may be placed upon a Delinquent List pursuant to Trial Rule 41(E). Any case so listed shall, after 45 days, be dismissed at the cost of the filing party, except for good cause shown.
- 2) Any probate matter in which no filing has been made for more than six months may be placed upon a Delinquent List. If no action is taken within 45 days thereafter, the Court may require the personal representative to show cause why the Court should not impose an appropriate sanction against the personal representative.
- 3) Guardianships shall not be placed upon a delinquent list within two years after the issuance of letters of guardianship, the filing of an inventory, or the filing of a current account.

Days served per week in each court per 2014 4th quarter
QCSR

Judicial Officer	Circuit	Days per week						total Days per Jud Officer
		Sup 1	Sup 2	Sup 3	Sup 4	Sup 5	Sup 6	
Deborah Domine	5.00							5.00
Thomas Murto		1.10	0.50	0.40	1.00	1.25	0.75	5.00
Rita Parsons		0.50						2.50
Dean Burton		1.00	0.50			0.88	2.62	5.00
Total days reported by court for all additional judicial officers	5.00	2.60	1.00	0.40	1.00	2.13	5.87	
Have calculated for WCL	2.00	1.52	1.20	1.08	1.20	1.43	2.17	10.60
Need for each court	2.42	2.20	1.67	1.16	1.51	1.84	3.07	13.87
New Utilization totals	1.21	1.45	1.39	1.07	1.26	1.29	1.41	1.30

When the appointment of a special judge is required under Criminal Rule 12 of the Indiana Rules of Criminal Procedure or an order of disqualification or recusal is entered in a case, or where a change of judge is granted pursuant to Indiana Post-Conviction Remedy Rule 1(4)(b), the provisions of this Rule constitute the exclusive manner for the selection of special judges in circuit and superior courts in all criminal proceedings in Elkhart County.

- a. If the case is in the **Elkhart Circuit Court**, it must be transferred to **Elkhart Superior Court 3**.
- b. If the case is in **Elkhart Superior Court 3**, it must be transferred to **Elkhart Circuit Court**.
- c. If the case is in **Elkhart Superior Court 1**, it must be transferred to **Elkhart Superior Court 2**.
- d. If the case is in **Elkhart Superior Court 2**, it must be transferred to **Elkhart Superior Court 1**.
- e. If the case is in **Elkhart Superior Court 4**, it must be transferred to **Elkhart Superior Court 5**.
- f. If the case is in **Elkhart Superior Court 5**, it must be transferred to **Elkhart Superior 6**.
- g. If the case is in **Elkhart Superior Court 6**, it must be transferred to **Elkhart Superior Court 4**.

If, after the above transfer, the judge of the transferee court is unable to hear the case, the Chief Judge of the administrative judicial district of which Elkhart County is a member, must appoint a special judge first from the other judges within Elkhart County and then from the judges within the judicial district. If the Chief Judge of the administrative judicial district is unable to make the appointment, the district judge, who is not a judicial officer in Elkhart County, with the most time of judicial service shall make the appointment.

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

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

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

- a. If the case is in the **Elkhart Circuit Court**, it must be transferred to **Elkhart Superior Court 3** except for guardianships cases which must be transferred to **Elkhart Superior Court 1**.
- b. If the case is in **Elkhart Superior Court 3**, it must be transferred to **Elkhart Circuit Court** except for mental health cases which must be transferred to **Elkhart Superior Court 2**.
- c. If the case is in **Elkhart Superior Court 1**, it must be transferred to **Elkhart Superior Court 2** except for guardianships cases which must be transferred to **Elkhart Circuit Court**.
- d. If the case is in **Elkhart Superior Court 2**, it must be transferred to **Elkhart Superior Court 1** except for mental health cases which must be transferred to **Elkhart Superior Court 3**.
- e. If the case is in **Elkhart Superior Court 4**, it must be transferred to **Elkhart Superior Court 5**.
- f. If the case is in **Elkhart Superior Court 5**, it must be transferred to **Elkhart Superior Court 6**.
- g. If the case is in **Elkhart Superior Court 6**, it must be transferred to **Elkhart Superior Court 4** except for DR, DN, DC, RS or JP cases which must be transferred to **Elkhart Superior Court 1** or **2** on a rotating basis.

If, after the above transfer, the judge of the transferee court is unable to hear the case, the Chief Judge of the administrative judicial district of which Elkhart County is a member, must appoint a special judge first from the other judges within Elkhart County and then from the judges within the judicial district. If the Chief Judge of the administrative judicial district is unable to make the appointment, the district judge, who is not a judicial officer in Elkhart County, with the most time of judicial service shall make the appointment.

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

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