Indiana Rules of Court
Rules of Criminal Procedure

Including Amendments Received Through January 1, 2019

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Rule 1. Statutory rules adopted

Chapter 185, Acts of 1937, has heretofore been abrogated. All other rules of procedure and practice applicable to trial courts adopted by statutory enactment and in effect on January 1, 1970, including the statutes attempted to be repealed by Chapter 185, Acts of 1937, shall continue in full force and effect, except as otherwise provided by the rules of this court.

Rule 1.1. Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)

Documents and information excluded from public access pursuant to Administrative Rule 9(G) shall be filed in accordance with Trial Rule 5(G).

Rule 2. Subpoena duces tecum

A subpoena may command the person to whom it is directed to produce the books, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(1) quash or modify the subpoena if it is unreasonable and oppressive;

(2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, documents, or tangible things; or

(3) quash a Grand-Jury subpoena on the ground of privilege against self-incrimination on the motion of a Grand Jury Target Witness.

Rule 2.1. Appearance

(A) State of Indiana. At the time a criminal proceeding is commenced, the clerk shall enter the appearance of the elected prosecuting attorney for the jurisdiction where the action is pending. The prosecuting attorney be responsible for providing the clerk:

(1) The name, address, attorney number, telephone number, and electronic mail address of the prosecuting attorney;

(2) The case type of the proceeding [Administrative Rule 8(B)(3)];

(3) [Deleted]

(4) The number of any arrest report relating to the factual basis underlying the criminal proceeding;

(5) The transaction control number associated with the fingerprints submitted by the arresting agency and the state identification number assigned to the defendant by the Indiana State Police Central Records Repository if the defendant has been arrested and processed at the jail; and

(6) Such additional matters specified by state or local rule required to maintain the information management system employed by the court

through the Indiana Electronic Filing System (IEFS) if possible or in writing.

Any special or senior prosecuting attorney appointed to replace the elected prosecuting attorney, shall be responsible for providing the foregoing information to the clerk.

(B) Deputy Prosecuting Attorneys. Deputy prosecuting attorneys need not file a separate appearance or a temporary appearance in the criminal proceedings to which they are assigned; however, if an appearance is filed, the deputy prosecuting attorney shall follow the provisions of Trial Rules when withdrawing representation or at the completion of temporary or limited representation.

(C) Defendant. At the time an attorney for the defendant first appears in the criminal proceeding, the defense attorney shall file an appearance form setting forth the following information:

(1) The name, address, attorney number, telephone number, and electronic mail address of the attorney representing the defendant;

(2) The case number assigned to the criminal proceeding; and

(3) [Deleted]

(4) Such additional matters specified by state or local rule required to maintain the information management system employed by the court.

(D) Unrepresented. In the event a defendant decides to represent himself or herself in a criminal proceeding without assistance of counsel, the defendant shall file an appearance that includes the defendant's name, address, telephone number, and e-mail address on a form as provided in section (H).

(E) Completion and Correction of Information. In the event matters must be filed before the information required by this rule is available, the information shall be submitted to the clerk and supplemented when the absent information is acquired. Attorneys shall promptly advise the clerk of the court of any change in the information previously supplied to the court.

(F) Temporary Appearance. In the event a defense attorney, different from any specifically identified in a previously filed appearance, is temporarily representing the defendant in a proceeding before the court, through filing a pleading with the court or in any other capacity including discovery, the new attorney shall be required to provide the information set out in Section (C) above, and shall provide the new attorney's temporary status, and the date the temporary appearance shall end. The court shall not be required to act on the temporary appearance unless the new temporary attorney has not appeared at the request of the defendant's previously identified counsel.

(G) Replacement Counsel.

1. The clerk shall be responsible for updating the information in (A)(1) in any pending case for any prosecuting attorney holding elected office.

(a) **When Electronic Filing Capability is Available.** If electronic filing capability is available through the IEFS, prosecuting attorneys holding elected office may, with notice to the clerk, substitute their names and attorney numbers in any open case in their jurisdiction. Special and senior prosecuting attorneys who replace a prosecutor holding elected office or another special or senior prosecutor shall, with notice to the clerk and the defendant, electronically transmit the information and any missing information as set forth in subsection (A).

(b) **When Electronic Filing Capability is Unavailable.** If electronic filing capability is unavailable through the IEFS, prosecuting attorneys holding elected office may, with notice to the clerk, conventionally substitute their names and attorney numbers in any case in their jurisdiction. Special and senior prosecuting attorneys who replace a prosecuting attorney holding elected office or another special or senior prosecutor shall, with notice to the clerk and the defendant, conventionally cause the information and any missing information as set forth in subsection (A) to be made of record in the proceeding.

2. Defense counsel shall be responsible for updating the information set out in subsection (C):

(a) **When Electronic Filing Capability is Available.** Replacement defense attorneys shall, with notice to the clerk and State of Indiana, electronically transmit the information set out in subsection (C).

(b) **When Electronic Filing Capability is Unavailable.** Replacement defense attorneys shall, with notice to the clerk and State of Indiana, conventionally cause the information set out in subsection (C) to be made of record in the proceeding.

(H) Forms. The Indiana Office of Court Services shall prepare and publish a standard format for compliance with the provisions of this rule.

Rule 2.2. Assignment of cases

The courts of record in each county shall adopt for approval by the Indiana Supreme Court a local rule by which all felony and misdemeanor cases shall be assigned to each court in the county at the time of filing. Should a county fail to adopt such plan, the Supreme Court shall prescribe a plan for use by the county. The local rule shall include:

(A) provision for non-discretionary assignment of all felony and misdemeanor cases filed in the county to one or more of the courts and judges with such jurisdiction;

(B) to the extent practical under this mandate for non-discretionary assignment in criminal cases, consideration of the workload of each court in other areas;

(C) provision for the continued assignment of a judge in the event of dismissal; and

(D) pursuant to Ind.Crim.Rule 13(C), provision for the reassignment of the case in the event a change of judge is granted under Ind.Crim.Rule 12 or an order of disqualification or recusal is entered in the case.

Rule 2.3 Transfer of Cases

(A) Transfer of Cases from City and Town Courts. In all counties where there are circuit, superior, county or juvenile courts, and where there also exist in the same county a city or town court, the judge of the city or town court may, with the consent of the judge of such circuit, superior, county or juvenile court, transfer to the circuit, superior, county or juvenile court any cause of action filed and docketed in such city or town court. Transfer may occur by transferring to the receiving court all original pleadings and documents and bail bonds filed in such cause of action. The cause of action shall be redocketed in the receiving court and disposed as if originally filed with the receiving court, provided that the receiving court has jurisdiction over the matter.

(B) Transfer of Cases to City and Town Courts. The judge of a circuit, superior, county or juvenile court may, with the consent of the judge of a city or town court within the county, transfer to such city or town court any cause of action filed and docketed in the circuit, superior, county or juvenile court, provided that the receiving court has jurisdiction over the matter. Transfer may occur by transferring to the receiving court all original pleadings and documents and bail bonds filed in such cause of action. The cause of action shall be redocketed in the receiving court and disposed as if originally filed with the receiving court.

(C) Transfer of Probation Supervision between Counties after Sentencing. The judge of a circuit, superior, city or town court, when transferring probation supervision to a court of another jurisdiction, may also transfer sanctioning authority for probation violations, including revocation of probation. If the original sentencing court transfers sanctioning authority, the consent of the judge in the receiving court is required.

(D) Fee for Transfer of Probation Supervision. An offender on probation who applies to have the probation supervision transferred to a court in another jurisdiction shall pay a transfer fee of seventy-five dollars ($75) to the receiving court. The receiving court may waive the transfer fee if it finds the offender is indigent.

Rule 3. Memorandum to be filed with motion to dismiss

Motion to Dismiss--Memorandum. In all cases where a motion is made to dismiss an indictment or affidavit, a memorandum shall be filed therewith stating specifically the grounds for dismissal. A motion to dismiss shall be based upon such grounds as are provided by law, whether statutory or other legal grounds. A defendant who is in a position adequately to raise more than one (1) ground in support of the motion to dismiss shall raise every ground upon which he intends to challenge the indictment or information. A subsequent motion based upon a ground not properly raised, although available, in the original motion to dismiss may be summarily denied. The court, however, in the interest of justice and for good cause shown, may entertain and dispose of such a motion on the merits. A motion to dismiss based upon lack of jurisdiction over the subject matter may be made at any time.

Rule 4. Discharge for delay in criminal trials

(A) Defendant in Jail. No defendant shall be detained in jail on a charge, without a trial, for a period in aggregate embracing more than six (6) months from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge (whichever is later); except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall make such statement in a motion for continuance not later than ten (10) days prior to the date set for trial, or if such motion is filed less than ten (10) days prior to trial, the prosecuting attorney shall show additionally that the delay in filing the motion was not the fault of the prosecutor. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so detained shall be released on his own recognizance at the conclusion of the six-month period aforesaid and may be held to answer a criminal charge against him within the limitations provided for in subsection (C) of this rule.

(B) (1) Defendant in Jail--Motion for Early Trial. If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar. Provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as set forth in subdivision (A) of this rule. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time.

(2) In computing the time comprising the seventy (70) calendar days under this Criminal Rule 4(B), each and every day after the filing of such motion for early trial shall be counted, including every Saturday, every Sunday, and every holiday excepting only, that if the seventieth (70th) day should fall upon a Saturday, a Sunday, or a holiday, then such trial may be commenced on the next day thereafter, which is not a Saturday, Sunday, or legal holiday.

(3) The amendment to this Criminal Rule 4(B) shall be effective as to each and every motion for early trial filed on and after June 4, 1974.

(C) Defendant Discharged. No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as under subdivision (A) of this rule. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

(D) Discharge for delay in trial--When may be refused--Extensions of time. If when application is made for discharge of a defendant under this rule, the court be satisfied that there is evidence for the state, which cannot then be had, that reasonable effort has been made to procure the same and there is just ground to believe that such evidence can be had within ninety (90) days, the cause may be continued, and the prisoner remanded or admitted to bail; and if he be not brought to trial by the state within such additional ninety (90) days, he shall then be discharged.

(E) Expiration of time. When any time period established by the rule shall expire on a holiday or during vacation, the time so established shall be extended until the close of the next day when court is in session. This rule supersedes in part Burns' Stat., §§ 9-1402-9-1404 (Repl.1956).

(F) Time periods extended. When a continuance is had on motion of the defendant, or delay in trial is caused by his act, any time limitation contained in this rule shall be extended by the amount of the resulting period of such delay caused thereby. However, if the defendant causes any such delay during the last thirty (30) days of any period of time set by operation of this rule, the State may petition the trial court for an extension of such period for an additional thirty (30) days.

(G) Application. This rule shall apply to all trial courts having criminal jurisdiction in the state of Indiana.

Rule 5. Recording machines: transcripts

Every trial judge exercising criminal jurisdiction of this state shall arrange and provide for the electronic recording or stenographic reporting with computer-aided transcription capability of any and all oral evidence and testimony given in all cases and hearings, including both questions and answers, all rulings of the judge in respect to the admission and rejection of evidence and objections thereto, and any other oral matters occurring during the hearing in any proceeding.

The recording device or the computer-aided transcription equipment shall be selected and approved by the court and may be placed under the supervision and operation of the official court reporter or such other person as may be designated by the court. The court may, in its discretion, eliminate shorthand or stenographic reporting of any recorded matter. When computer-aided transcription equipment is used to record oral matters in felony cases, a printed transcript shall be produced and maintained as a court record for fifty-five years. If a transcription of the recorded matters has not been prepared, certified and filed in the criminal proceeding, the electronic recording of all oral matters, together with a log denoting the individuals recorded and meter location of crucial events, or floppy disk and stenographic paper notes, shall be maintained as a court record for ten years in all misdemeanors or fifty-five years in all felony cases.

The judge of the court in which the oral matters were recorded may direct the court reporter or any other responsible, competent person, in his discretion, to make a transcription of recorded oral matters and certify the accuracy of the transcription. Upon certification, the transcription of recorded oral matters shall have the same effect as if made from shorthand or stenographic notes.

Rule 6. Exceptions not necessary; offer to prove

The record need not show exceptions to adverse actions, orders or rulings of the court in order to present alleged errors with respect thereto, for the purposes of a motion to correct errors on an appeal. This rule is not intended to affect in any manner the present practice in regard to objections.

Where, on the examination of a witness, an offer to prove is made, the same may be made either before or after the ruling of the trial court on the objection to the question propounded.

Rule 7. Joint and several

All motions of any kind addressed to two [2] or more paragraphs of any pleading, or filed by two [2] or more parties, shall be taken and construed as joint, separate, and several motions to each of such paragraphs and by each of such parties. All motions containing two [2] or more subject matters shall be taken and construed as separate and several as to each subject matter. All objections to rulings made by two [2] or more parties shall be taken and construed as the joint, separate, and several objections of each of such parties.

All motions containing two [2] or more subject matters should be taken and construed as separate and several as to each subject matter.

Rule 8. Instructions; limitations thereon; objections

(A) In addition to instructions given by the Court on its own motion, a party in any cause tried by a jury, before argument, shall be entitled to tender in writing not to exceed ten (10) proposed instructions to be given to the jury. However, the trial court, in its discretion, may fix a greater number in a particular case, which number shall be stated of record by an order book entry made by the court. The number of tendered instructions permitted shall not be reduced by any necessary limiting or cautionary instructions, tendered as final instructions, where a limiting or cautionary instruction has been requested during the course of the presentation of evidence. No party shall be entitled to predicate error upon the refusal of a trial court to give any tendered instruction in excess of the number fixed by the court order, whichever is greater. Each tendered instruction shall be confined to one (1) relevant legal principle.

(B) The court shall indicate on all instructions, in advance of the argument, those that are to be given and those refused. After the court has indicated the instructions to be given, each party shall have a reasonable opportunity to examine such instructions and to state his specific objection to each, out of the presence of the jury and before argument, or specific written objections to each instruction may be submitted to the court before argument. No error with respect to the giving of instructions shall be available as a cause for new trial or on appeal, except upon the specific objections made as above required.

(C) All instructions given or refused, and all written objections submitted thereto, shall be filed in open court and become a part of the record in the cause without a bill of exceptions. Objections made orally shall be taken by the reporter and may be made a part of the record by a general or a special bill of exceptions.

(D) Requested instructions must be reduced to writing (identified as to the party making submission), separately numbered, and accompanied by a cover sheet signed by the party, or his attorney, who requests such instructions and will be deemed sufficiently identified as having been tendered by the parties or submitted by the court if it appears in the record from an order book entry, bill of exceptions, or otherwise, by whom the same were tendered or submitted. Where final instructions are submitted to the jury in written form after having been read by the court, no indication of the party or parties by whom instructions were tendered should appear on any instruction.

(E) The court's action in directing or refusing to direct a verdict shall be shown by order book entry. Error may be predicated upon such ruling or upon the giving or refusing to give a written instruction directing the verdict.

(F) When the jury has been sworn the court shall instruct in writing as to the issues for trial, the burden of proof, the credibility of witnesses, and the manner of weighing the testimony to be received. Each party shall have

reasonable opportunity to examine such instructions and state his specific objections thereto out of the presence of the jury and before any party has stated his case.

(G) The court may of its own motion and shall, if requested by either party, reread to the jury the instructions given pursuant to subdivision (F) of this rule along with the other instructions given to the jury at the close of the case.

(H) The manner of objecting to such instructions, of saving questions thereon, and making the same a part of the record shall be the same as in Rule 51(C) of the Rules of Trial Procedure.

Rule 9. Authority of judges

The judge who presides at the trial of a cause shall, if available, rule on the motion to correct errors if one is filed, and shall sign all bills of exceptions, if such are requested. The unavailability of any such trial judge shall be determined and shown by a court order made by the judge then presiding in such court.

Rule 10. Plea of Guilty: Record to be Made

Whenever a plea of guilty to a felony or misdemeanor charge is accepted from any defendant who is sentenced upon said plea, the judge shall cause the entire proceeding in connection with such plea and sentencing, including questions, answers, statements made by the defendant and his attorney, if any, the prosecuting attorney and the judge to be recorded by an electronic recording device. The court may in its discretion also require the entire proceeding be recorded by the court reporter in shorthand or by stenographic notation.

If a transcription of the recorded matters has not been prepared, certified and filed in the criminal proceeding, the electronic recording of all oral matters, together with a log denoting the individuals recorded and the meter location of crucial events, shall be maintained as a court record for ten years in all misdemeanors or fifty-five years in all felony cases.

Whenever the record of the proceeding is transcribed it shall be prepared in a form similar to that in general use as a transcript of evidence in a trial. When so transcribed, the same shall be submitted to the judge who shall certify that it is a true and complete transcript of such proceedings and shall order the same filed as a part of the record and cause an order book entry of the filing thereof to be made by the clerk.

In any proceeding questioning the validity of such plea of guilty or judgment rendered thereon, such transcription shall be taken and considered as the record of the proceedings transcribed therein and upon appeal the original may be incorporated without copying as a part of the record in such appeal over the certificate of the clerk.

Rule 10.1. Presence of Prosecutor

Except for the initial hearing where evidence is not presented, the Prosecuting Attorney or a deputy prosecuting attorney shall be present at all felony or misdemeanor proceedings, including the presentation of evidence, sentencing or other final disposition of the case.

Rule 11. Instructions by Judge After Sentencing or Contested Felony Probation Revocation

Upon entering a conviction, whether the acceptance of a guilty plea or by finding or by verdict, the court shall sentence a defendant convicted in a criminal case within thirty (30) days of the plea or the finding or verdict of guilty, unless an extension for good cause is shown.

Following the sentencing of a defendant after a trial or following a judgment revoking probation of a defendant found to have violated the terms of his probation after a contested felony probation revocation proceeding, the judge shall immediately advise the defendant as follows:

(1) that he is entitled to take an appeal or file a motion to correct error;

(2) that if he wishes to file a motion to correct error, it must be done within thirty (30) days of the sentencing;

(3) that if he wishes to take an appeal, he must file a Notice of Appeal designating what is to be included in the record on appeal within thirty (30) days after the sentencing or within thirty (30) days after the motion to correct error is denied or deemed denied, if one is filed; if the Notice of Appeal is not timely filed, the right to appeal may be forfeited;

(4) that if he is financially unable to employ an attorney, the court will appoint counsel for defendant at public expense for the purpose of filing the motion to correct error and for taking an appeal.

Provided further that when a trial court imposes a death sentence, it shall also advise the defendant at sentencing that the court reporter and clerk will begin immediate preparation of the record on appeal.

The court shall then inquire of the defendant whether or not he wishes to appeal or file a Motion to Correct Error. If the defendant states that he does desire to do so, the court shall forthwith instruct trial counsel for defendant that it is his duty to consult with defendant and with defendant's appeal counsel, if any, on the action to be taken.

The court shall then inquire of the defendant whether or not he is a pauper and has insufficient funds to employ an attorney. If the court finds that he is financially unable to employ counsel for an appeal and the defendant states that he desires an attorney for appeal, the court shall thereupon promptly appoint an attorney to represent the defendant in an appeal and notify the defendant at said time of said action.

The judge shall cause the court reporter to record the entire proceedings in connection with such sentencing or probation revocation, including questions, answers, statements made by the defendant and his attorney, if any, the prosecuting attorney and the judge, and promptly thereafter to transcribe the same in form similar to that in general use as a transcript of evidence in a trial.

Thereafter in any subsequent inquiry into the events occurring at these proceedings, such transcript shall be considered as part of the record on appeal. When properly certified by the clerk, such transcript or a copy thereof may be incorporated as a part of the record in any appeal.

Rule 12. Change of venue in criminal cases

(A) Change of Venue from the County. In criminal actions and proceedings to enforce a statute defining an infraction, a motion for change of venue from the county shall be verified or accompanied by an affidavit signed by the criminal defendant or the prosecuting attorney setting forth facts in support of the constitutional or statutory basis or bases for the change. Any opposing party shall have the right to file counter-affidavits within ten (10) days, and after a hearing on the motion, the ruling of the court may be reviewed only for abuse of discretion.

(B) Change of Judge--Felony and Misdemeanor Cases. In felony and misdemeanor cases, the state or defendant may request a change of judge for bias or prejudice. The party shall timely file an affidavit that the judge has a personal bias or prejudice against the state or defendant. The affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be accompanied by a certificate from the attorney of record that the attorney in good faith believes that the historical facts recited in the affidavit are true. The request shall be granted if the historical facts recited in the affidavit support a rational inference of bias or prejudice.

(C) Change of Judge--Infractions and Ordinance Violations. In proceedings to enforce a statute defining an infraction and in cases involving the prosecution of ordinance violations, a motion for change of judge shall be verified or accompanied by an affidavit signed by the criminal defendant or prosecuting attorney setting forth facts in support of cause for such change of judge. Any opposing party shall have the right to file counter-affidavits within ten (10) days. The decision of the court in such matters shall be reviewed only for abuse of discretion. In the event a motion for change of judge is granted under this provision, the procedure for reassignment of the case as set forth in Criminal Rule 13 shall apply.

(D) Time Period for Filing Request for Change of Judge or Change of Venue. In any criminal action, no change of judge or change of venue from the county shall be granted except within the time herein provided.

(1) *Thirty Day Rule*. An application for a change of judge or change of venue from the county shall be filed within thirty (30) days of the initial hearing. Provided, that where a cause is remanded for a new trial by the court on appeal, such application must be filed not later than thirty (30) days after the defendant first appears in person before the trial court following remand.

(2) *Subsequently Discovered Grounds*. If the applicant first obtains knowledge of the cause for change of venue from the judge or from the county after the time above limited, the applicant may file the application, which shall be verified by the party specifically alleging when the cause was first discovered, how it was discovered, the facts showing the cause for a change, and why such cause could not have been discovered before by the exercise of due diligence. Any opposing party shall have the right to file counter-affidavits on such issue within ten (10) days, and after a hearing on the motion, the ruling of the court may be reviewed only for abuse of discretion.

(E) Pleadings and Papers. All pleadings, papers and affidavits filed at any hearing held pursuant to this rule shall become a part of the record without further action upon the part of either party.

(F) Reassignment of Case or Selection of Special Judge. Whenever in a criminal action an application for a change of judge has been timely filed and granted, the case shall be reassigned or a special judge shall be selected in accordance with Ind.Crim.Rule 13.

(G) Procedure for Change of Venue from County.

(1) Whenever a change of venue from the county is granted, if the parties to such action shall agree in open court, within three (3) days from the granting of the motion or affidavit for the change of venue, upon the county to which the change of venue shall be changed, it shall be the duty of the court to transfer such action to such county. In the absence of such agreement, it shall be the duty of the court within two (2) days thereafter to submit to the parties a written list of all of the counties adjoining the county from which the venue is changed; provided, however, if it appears to the regular judge or the presiding judge before whom an application for a change of venue from the county is pending that the grounds for such change also exist in one or more of the adjoining counties to which the case may be venued, such judge shall have the right to eliminate such county or counties from the list of counties to be submitted for striking and to substitute another county or counties where such grounds, in his opinion, do not exist in order that the defendant shall have a fair and impartial trial.

(2) The parties within seven (7) days thereafter, or within such time, not to exceed fourteen (14) days, as the court shall fix, shall each alternately strike off the names of such counties. The party first filing such motion shall

strike first, and the action shall be sent to the county remaining not stricken under such procedure. If a moving party fails to so strike within said time, such party shall not be entitled to a change of venue, and the court shall resume general jurisdiction of the cause. If a non-moving party fails to strike off the names of such counties within the time limited, then the clerk shall strike off such names for such party.

(3) Whenever a court has granted an order for a change of venue to another county and the costs thereof have been paid where an obligation exists to pay such costs for such change, either party to the cause may file a certified copy of the order making such change in the court to which such change has been made, and thereupon such court shall have full jurisdiction of said cause, regardless of the fact that the transcript and papers have not yet been filed with such court to which such change is taken. Nothing in this rule shall be construed as divesting the original court of its jurisdiction to hear and determine emergency matters between the time that a motion for change of venue to another county is filed and the time that the court grants an order for the change of venue.

(4) Notwithstanding any provision of these rules or the Indiana Rules of Trial Procedure to the contrary, whenever a court has granted an order for a change of venue to another county, the judge granting the change of venue may be appointed as special judge for that cause in the receiving county if the judge granting the change, the receiving judge, and all of the parties to the cause agree to such appointment.

Rule 13. Case reassignment and special judges; selection

(A) Application of Rule. This rule shall apply to the reassignment of the case and the selection of special judges in felony and misdemeanor cases where a change of judge is granted pursuant to Ind.Crim.Rule 12(B) or an order of disqualification or recusal is entered in the case. The reassignment procedure set forth in this rule also shall apply where a change of judge is granted pursuant to Ind.Post-Conviction Remedy Rule 1(4)(b) and in proceedings to enforce a statute defining an infraction and ordinance violation cases where a change of judge is granted for cause pursuant to Crim.R. 12(C).

(B) Duty to Notify Court. It shall be the duty of the parties to promptly advise the court of an application or motion for change of judge.

(C) Selection under Local Rule Adopted by Counties. Upon the granting of a change of judge or the disqualification or recusal of a judge, a successor judge shall be assigned in the same manner as the initial judge. Where this process does not result in the selection of a successor judge, selection shall be made by local rule. The local rule required by Ind.Crim.Rule 2.2 shall include an alternative assignment list of full-time judicial officers from contiguous counties and counties within the administrative district of the court as set forth in Administrative Rule 3(A) and senior judges. The local rule shall take into account the effective use of all judicial resources within an administrative district. Except for those serving pursuant to Criminal Rule 12(G)(4), judges previously assigned to the case are ineligible for reassignment.

A person appointed to serve as special judge under this subsection must accept jurisdiction in the case unless the appointed special judge is disqualified pursuant to the Code of Judicial Conduct, ineligible for service under this Rule, or excused from service by the Indiana Supreme Court.

(D) Appointment by Indiana Supreme Court. A trial court may request the Indiana Supreme Court to appoint a special judge in the following circumstances:

(1) No judge under the local rule is available for appointment: or

(2) The particular circumstance warrants selection of a special judge by the Indiana Supreme Court.

(E) Qualification and Oath. A judge assigned under the provision of this rule shall accept jurisdiction unless disqualified under the *Code of Judicial Conduct* or excused from service by the Indiana Supreme Court. The reassignment of a case or assignment of a special judge shall be entered in the Chronological Case Summary of the case. An oath or special order accepting jurisdiction is not required.

(F) Discontinuance of Service. In the event the case has been reassigned or a special judge assumes jurisdiction and thereafter ceases to act for any reason, further reassignment or the selection of a successor special judge shall be in the same manner as set forth in subsection (C) above.

(G) Compensation. A full-time judge, magistrate, or other employee of the judiciary shall not be paid a special judge fee for serving as a special judge or serving in a case reassigned pursuant to this rule. All other persons serving as special judge shall be paid a special judge fee of twenty-five dollars ($25.00) per day for each jurisdiction served for the entry of judgments and orders and hearings incidental to such entries. All judges, magistrates, and other persons who serve in courts outside of their county of residence shall be entitled to mileage at a rate equal to other public officials as established by state law, hotel accommodations, and reimbursement for meals and other expenses. Senior Judges who serve as special judges shall be paid in accordance with a schedule published by the Chief Administrative Officer (CAO) of the Indiana Office of Judicial Administration (IOJA). At the discretion of the special judge and following consultation with the parties, a special judge or a judge reassigned a case in another court may schedule conferences, entertain motions, and perform all administrative tasks without travel to the court where the case is pending. All hearings involving testimony by witnesses,

unless the parties agree to the contrary on record, shall be held in the court where the case is assigned. Special judges are encouraged to employ procedures that reduce the necessity for travel, such as telephone conferences, facsimile exchange of information, and other time-saving measures of communication. Compensation as permitted under this provision shall be paid by the State upon presentation of a claim for such services signed by the special judge.

(H) Continuation of Jurisdiction. A special judge appointed by the Indiana Supreme Court retains jurisdiction of the case for all future proceedings unless:

(1) a specific statute or rule provides to the contrary; or

(2) the judge is unavailable by reason of death, sickness, absence, or unwillingness to serve.

Rule 14. Judges pro tempore; appointment

When it shall be made to appear to the Supreme Court of Indiana by satisfactory proof that the judge of any court having criminal jurisdiction is unable because of physical or mental infirmity to perform the duties of his office, and no judge pro tempore has been legally appointed to perform and is performing such duties, the Supreme Court of the state may appoint a judge pro tempore to serve as sole judge of said court for the duration of such infirmity.

The judge so appointed shall be an attorney in good standing in the state of Indiana.

Provided further that when it shall be made to appear to the Supreme Court of Indiana by verified petition supported by affidavit that any judge of any court having criminal jurisdiction fails, refuses, or neglects to perform the duties of his office without good cause, the court shall issue an order to any such judge requiring him to proceed to perform the duties of his office and shall fix a date for said judge to appear and show cause why he has failed to perform such duties, or in the alternative to show cause why a judge or judges pro tempore or commissioner shall not be appointed to complete the performance of the duties of the judge of any such court under order and direction from the Supreme Court of Indiana. In all cases hereunder at least ten [10] days' prior notice, with a copy of such petition, shall be given to the judge concerned that such petition will be presented to the court upon a date named.

Rule 15. Time limitation for ruling; time limitation for holding issue under advisement

The time limitation for ruling and decision set forth under Trial Rules 53.1, 53.2 and 53.3 shall apply in criminal proceedings.

Rule 15.1. Entry of Judgment

Subject to the provisions set forth by statute, upon a verdict of a jury, or upon a decision of the court, the court shall promptly prepare and sign the judgment, and the clerk shall thereupon enter the judgment in the Record of Judgments and Orders and note the entry of the judgment in the Chronological Case Summary. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course. The judge, failing promptly to cause the judgment to be prepared, signed, and entered as provided herein, may be compelled to do so by mandate. The provisions of Trial Rule 58(B) relating to the content of a judgment shall not apply in criminal proceedings.

Rule 15.2. Abstract of Judgment

Upon sentencing a person for any felony conviction, the court shall complete an abstract of judgment in an electronic format approved by the Indiana Office of Judicial Administration (IOJA). The IOJA will maintain an automated system for purposes of submitting the electronic abstract of judgment.

Rule 16. Motion to Correct Error

(A) When Mandatory. A Motion to Correct Error is not a prerequisite for appeal, except when a party seeks to address newly discovered material evidence, including alleged jury misconduct, capable of production within thirty (30) days after the date of sentencing which, with reasonable diligence, could not have been discovered and produced at trial.

All other issues and grounds for appeal appropriately preserved during trial may be initially addressed in the appellate brief.

(B) Time for Filing; Service on. A Motion to Correct Error, if any, shall be filed within thirty (30) days after the date of sentencing, or the date of notation in the Chronological Case Summary of an order of dismissal or an order of acquittal, and shall be served upon the judge having jurisdiction of the cause. Trial Rule 59 (Motion to Correct Error) and Trial Rule 53.3 (Motion to Correct Error: Time Limitation for Ruling) will apply to criminal proceedings insofar as applicable and when not in conflict with any specific rule adopted by the Indiana Supreme Court for the conduct of criminal procedure.

Rule 17. Affidavits on motion to correct errors; notice; counter-affidavits

When a motion to correct errors is supported by affidavits, notice of the filing thereof shall be served upon the opposing party, or his attorneys of record, within ten [10] days after the filing thereof, and the opposing party shall have twenty [20] days after such service to file counter-affidavits; reply affidavits may be filed within ten [10] days after filing of counter-affidavits, which periods may be extended within the discretion of the court for good cause shown. Such affidavits shall be considered as evidence without the introduction thereof on the hearing on the motion, and shall be a part of the record without a bill of exceptions. If, besides the affidavits, additional evidence is received, the trial court shall cause the court reporter to record all such evidence, and when so transcribed, the same shall be submitted to the judge, who shall certify

that it is a true and complete transcript of such evidence, and the same shall be filed with the court and be a part of the record on appeal without being incorporated into any bill of exceptions.

Rule 18. Service of Pleadings, Motions and Briefs

Unless the court, on motion or of its own initiative orders otherwise, a copy of every pleading and motion, and every brief submitted to the trial court, except trial briefs, shall be served personally or by mail on or before the day of the filing thereof upon each attorney or firm of attorneys appearing of record for each adverse party. Handing a copy to an attorney or leaving it at the attorney's office with the clerk or other person in charge thereof shall be considered as personal service.

It shall be the duty of attorneys when entering their appearance in a cause or when filing pleadings or papers therein, to have noted on the Chronological Case Summary or on said pleadings or papers so filed, their mailing address, and service by mail at such address shall be deemed sufficient.

Rule 19. Time Within Which the Appeal Must be Submitted

The Notice of Appeal designating what is to be included in the record on appeal must be filed within thirty (30) days after the date of sentencing, or the date of notation in the Chronological Case Summary of an order of dismissal or an order of acquittal; provided however that if a Motion to Correct Error is timely filed pursuant to Criminal Rule 16, the Notice of Appeal must be filed within thirty (30) days after the ruling on the Motion to Correct Error is noted in the Chronological Case Summary or the Motion to Correct Error is deemed denied under Trial Rule 53.3, whichever occurs earlier. The time for filing other documents is governed by the Rules of Appellate Procedure. Unless a Notice of Appeal is filed within these time limits the right to appeal may be forfeited.

Rule 20. Extensions of time

Petitions for an extension of time in criminal cases shall contain a concise statement of the status of the case including information as to whether the defendant has been released on bond, whether he is incarcerated and if incarcerated, the name of the institution.

Rule 21. Application of trial and appellate rules

The Indiana rules of trial and appellate procedure shall apply to all criminal proceedings so far as they are not in conflict with any specific rule adopted by this court for the conduct of criminal proceedings.

Rule 22. Trial by Jury in Misdemeanor Cases: Demand: Notice: Waiver

A defendant charged with a misdemeanor may demand trial by jury by filing a written demand therefor not later than ten (10) days before his first scheduled trial date. The failure of a defendant to demand a trial by jury as required by this rule shall constitute a waiver by him of trial by jury unless the defendant has not had at least fifteen (15) days advance notice of his scheduled trial date and of the consequences of his failure to demand a trial by jury.

The trial court shall not grant a demand for a trial by jury filed after the time fixed has elapsed except upon the written agreement of the state and defendant, which agreement shall be filed with the court and made a part of the record. If such agreement is filed, then the trial court may, in its discretion, grant a trial by jury.

Rule 23. Method of Keeping Records

Under the direction of the Supreme Court of Indiana, the Clerk of the Circuit Court may, notwithstanding the recordkeeping practices set forth for criminal proceedings, keep records in any suitable media. The recordkeeping formats and systems and the quality and permanency requirements employed for the Chronological Case Summary, the Case File, and the Record of Judgments and Orders (Order Book) shall be approved by the Indiana Office of Judicial Administration (IOJA) for compliance with applicable requirements.

Rule 24. Capital Cases

(A) Supreme Court Cause Number. Whenever a prosecuting attorney seeks the death sentence by filing a request pursuant to Ind.Code § 35-50-2-9, the prosecuting attorney shall file that request with the trial court and with the Court Administrator, Indiana Supreme Court, 315 State House, Indianapolis, Indiana 46204. Upon receipt of same, the Court Administrator shall open a cause number in the Supreme Court and notify counsel.

(B) Appointment of Qualified Trial Counsel. Upon a finding of indigence, it shall be the duty of the judge presiding in a capital case to enter a written order specifically naming two (2) qualified attorneys to represent an individual in a trial proceeding where a death sentence is sought. The provisions for the appointment of counsel set forth in this section do not apply in cases wherein counsel is employed at the expense of the defendant.

(1) *Lead Counsel; Qualifications*. One (1) of the attorneys appointed by the court shall be designated as lead counsel. To be eligible to serve as lead counsel, an attorney shall:

   (a) be an experienced and active trial practitioner with at least five (5) years of criminal litigation experience;

   (b) have prior experience as lead or co-counsel in no fewer than five (5) felony jury trials which were tried to completion;

   (c) have prior experience as lead or co-counsel in at least one (1) case in which the death penalty was sought; and

(d) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(2) *Co-Counsel, Qualifications*. The remaining attorney shall be designated as co-counsel. To be eligible to serve as co-counsel, an attorney shall:

(a) be an experienced and active trial practitioner with at least three (3) years of criminal litigation experience;

(b) have prior experience as lead or co-counsel in no fewer than three (3) felony jury trials which were tried to completion; and

(c) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(3) *Workload of Appointed and Salaried Capital Counsel*. In the appointment of counsel, the nature and volume of the workload of appointed counsel must be considered to assure that counsel can direct sufficient attention to the defense of a capital case.

(a) Attorneys accepting appointments pursuant to this rule shall provide each client with quality representation in accordance with constitutional and professional standards. Appointed counsel shall not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

(b) A judge shall not make an appointment of counsel in a capital case without assessing the impact of the appointment on the attorney's workload, including the administrative duties of a chief or managing public defender.

(c) Salaried or contractual public defenders may be appointed as trial counsel in a capital case, if:

(i) the public defender's caseload will not exceed twenty (20) open felony cases while the capital case is pending in the trial court;

(ii) no new cases will be assigned to the public defender within thirty (30) days of the trial setting in the capital case;

(iii) none of the public defender's cases will be set for trial within fifteen (15) days of the trial setting in the capital case; and

(iv) compensation is provided as specified in paragraph (C).

(d) The workload of full-time salaried capital public defenders will be limited consistent with subsection (B)(3)(a) of this rule. The head of the local public defender agency or office, or in the event there is no agency or office, the trial judge, shall not make an appointment of a full-time capital public defender in a capital case without assessing the impact of the appointment on the attorney's workload, including the administrative duties of a chief or managing public defender. In assessing an attorney's workload, the head of the local public defender agency or office, or in the event there is no agency or office, the trial judge shall be guided by Standard J of the Standards for Indigent Defense Services in Non-Capital cases as adopted by the Indiana Public Defender Commission, effective January 1, 1995, and shall treat each capital case as the equivalent of forty (40) felonies under the Commission's "all felonies" category. Appointment of counsel shall also be subject to subsections (B)(3)(c)(ii), (iii) and (iv) of this rule.

(C) Compensation of Appointed Trial Counsel. All hourly rate trial defense counsel appointed in a capital case shall be compensated under subsection (1) of this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Hourly rate counsel shall submit periodic billings not less than once every thirty (30) days after the date of appointment by the trial court. All salaried capital public defenders compensated under subsection (4) of this provision shall present a monthly report detailing the date, activity, and time duration of services rendered after the date of appointment. Periodic payment during the course of counsel's representation shall be made.

(1) *Hours and Hourly Rate*. Defense counsel appointed at an hourly rate in capital cases filed or remanded after appeal on or after January 1, 2001, shall be compensated for time and services performed at the hourly rate of ninety dollars ($90.00) only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination shall be made within thirty (30) days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time.

The hourly rate set forth in this rule shall be subject to review and adjustment on a biennial basis by the Chief Administrative Officer (CAO) of the Indiana Office of Judicial Administration(IOJA). Beginning July 1, 2002, and July 1st of each even year thereafter, the CAO shall announce the hourly rate for defense counsel appointed in capital cases filed or remanded after appeal on or after January 1, of the years following the announcement.

The hourly rate will be calculated using the Gross Domestic Product Implicit Price Deflator, as announced by the United States Department of Commerce in its May report, for the last two years ending December 31st preceding the announcement. The calculation by the CAO shall be rounded to the next closest whole dollar.

In the event the appointing judge determines that the rate of compensation is not representative of practice in the community, the appointing judge may request the CAO of the IOJA to authorize payment of a different hourly rate of compensation in a specific case.

(2) *Support Services and Incidental Expenses*. Counsel appointed at an hourly rate in a capital case shall be provided, upon an ex parte showing to the trial court of reasonableness and necessity, with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase. In addition to the hourly rate provided in this rule, all counsel shall be reimbursed for reasonable and necessary incidental expenses approved by the trial judge. Counsel may seek advance authorization from the trial judge, ex parte, for specific incidental expenses.

Full-time salaried capital public defenders shall be provided with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase, as determined by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge as set forth above.

(3) *Contract Employees*. In the event counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty case to reflect the limitations of case assignment established by this rule.

(4) *Salaried Capital Public Defenders*. In those counties having adopted a Comprehensive Plan as set forth in I.C. 33-9-15 *et. seq*., which has been approved by the Indiana Public Defender Commission, and who are in compliance with Commission standards authorized by I.C. 33-9-13-3(2), a full-time salaried capital public defender meeting the requirements of this rule may be assigned in a capital case by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge. Salaried capital public defenders may be designated as either lead counsel or co-counsel. Salaried capital lead counsel and co-counsel must be paid salary and benefits equivalent to the average of the salary and benefits paid to lead prosecuting attorneys and prosecuting attorneys serving as co-counsel, respectively, assigned to capital cases in the county.

Each year, by July 1, those counties wishing to utilize full-time salaried capital public defenders for capital cases shall submit to the CAO of the IOJA the salary and benefits proposed to be paid the capital public defenders for the upcoming year along with the salaries and benefits paid to lead prosecutors and prosecutors serving as co-counsel assigned capital cases in the county in the thirty-six (36) months prior to July 1, or a certification that no such prosecutor assignments were made. The CAO shall verify and confirm to the Indiana Public Defender Commission and the requesting county that the proposed salary and benefits are in compliance with this rule. In the event a county determines that the rate of compensation set forth herein is not representative of practice in the community, the county may request the CAO to authorize a different salary for a specific year.

(D) Transcription of Capital Cases. The trial or post-conviction court in which a capital case is pending shall provide for stenographic reporting with computer-aided transcription of all phases of trial and sentencing and all evidentiary hearings, including both questions and answers, all rulings of the judge in respect to the admission and rejection of evidence and objections thereto and oral argument, as required by Criminal Rule 5. If the parties agree, on the record, the court may permit electronic recording or stenographic reporting without computer-aided transcription of pre-trial attorney conferences and pre-trial or post-trial non-evidentiary hearings and arguments.

(E) Imposition of Sentence. Whenever a court sentences a defendant to death, the court shall pronounce said sentence and issue its order to the Department of Correction for the defendant to be held in an appropriate facility. A copy of the order of conviction, order sentencing the defendant to death, and order committing the death-sentence inmate to the Department of Correction shall be forwarded by the court imposing sentence to the Indiana Supreme Court Administrator's Office. When a trial court imposes a death sentence, it shall, on the same day sentence is imposed, order the court reporter and clerk to begin immediate preparation of the record on appeal.

(F) Setting of Initial Execution Date--Notice. In the sentencing order, the trial court shall set an execution date one (1) year from the date of judgment of conviction. Copies of said order shall be sent by the trial court to:

(i) the prosecuting attorney of record;

(ii) the defendant;

(iii) the defendant's attorney of record;

(iv) the appellate counsel, if such has been appointed;

(v) the Attorney General;

(vi) the Commissioner of the Department of Correction;

(vii) the Warden of the institution where the defendant is confined; and

(viii) the State Public Defender.

Contemporaneously with the service of the order setting the date of execution to the parties listed in this section, the trial court shall forward to the Supreme Court Administrator's Office a copy of the order, with a certification by the clerk of the court that the parties listed in this section were served a copy of the order setting the date of execution.

(G) Stay of Execution Date. This section governs the stay of execution for defendants sentenced to death.

(1) *Stay of Execution--General.* The Supreme Court shall have exclusive jurisdiction to stay the execution of a death sentence. In the event the Supreme Court stays the execution of a death sentence, the Supreme Court shall order the new execution date when the stay is lifted. A copy of an order to stay an execution or set a new date for execution will be sent to the persons set forth in section (F) of this rule.

(2) *Stay of Initial Execution Date.* Upon petition or on its own motion, the Supreme Court shall stay the initial execution date set by the trial court. On the thirtieth (30th) day following completion of rehearing, the Supreme Court shall enter an order setting an execution date, unless counsel has appeared and requested a stay in accordance with section (H) of this rule. A copy of any order entered under this provision will be sent to the persons set forth in section (F) of this rule.

(H) Post-Conviction Relief--Stay--Duty of Counsel. Within thirty (30) days following completion of rehearing, private counsel retained by the inmate or the State Public Defender (by deputy or by special assistant in the event of a conflict of interest) shall enter an appearance in the trial court, advise the trial court of the intent to petition for post-conviction relief, and request the Supreme Court to extend the stay of execution of the death sentence. A copy of said appearance and notice of intent to file a petition for post-conviction relief shall be served by counsel on the Supreme Court Administrator. When the request to extend the stay is received, the Supreme Court will direct the trial court to submit a case management schedule consistent with Ind.Code § 35-50-2-9(i) for approval. On the thirtieth (30th) day following completion of any appellate review of the decision in the post-conviction proceeding, the Supreme Court shall enter an order setting the execution date. It shall be the duty of counsel of record to provide notice to the Supreme Court Administrator of any action filed with or decision rendered by a federal court that relate to defendants sentenced to death by a court in Indiana.

(I) Initiation of Appeal. When a trial court imposes a death sentence, it shall on the same day sentence is imposed order the court reporter and clerk to begin immediate preparation of the record on appeal.

(J) Appointment of Appellate Counsel. Upon a finding of indigence, the trial court imposing a sentence of death shall immediately enter a written order specifically naming counsel under this provision for appeal. If qualified to serve as appellate counsel under this rule, trial counsel shall be appointed as sole or co-counsel for appeal.

(1) *Qualifications of Appellate Counsel.* An attorney appointed to serve as appellate counsel for an individual sentenced to die, shall:

(a) be an experienced and active trial or appellate practitioner with at least three (3) years experience in criminal litigation;

(b) have prior experience within the last five (5) years as appellate counsel in no fewer than three (3) felony convictions in federal or state court; and

(c) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(2) *Workload of Appointed Appellate Counsel.* In the appointment of Appellate Counsel, the judge shall assess the nature and volume of the workload of appointed appellate counsel to assure that counsel can direct sufficient attention to the appeal of the capital case. In the event the appointed appellate counsel is under a contract to perform other defense or appellate services for the court of appointment, no new cases for appeal shall be assigned to such counsel until the Appellant's Brief in the death penalty case is filed.

(K) Compensation of Appellate Counsel. Appellate counsel appointed to represent an individual sentenced to die shall be compensated under this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Counsel shall submit periodic billings not less than once every thirty (30) days after the date of appointment. Attorneys employed by appellate counsel for consultation shall be compensated at the same rate as appellate counsel.

(1) *Hours and Hourly rate.* Appellate defense counsel appointed on or after January 1, 2001, to represent an individual sentenced to die shall be compensated for time and services performed at the hourly rate of ninety dollars only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination shall be made within thirty (30) days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, *ex parte*, for specific activities or expenditures of counsel's time.

The hourly rate set forth above shall be subject to review and adjustment as set forth in section (C)(1) of this rule.

In the event the appointing judge determines that this rate of compensation is not representative of practice in the community, the appointing judge may request the CAO of the IOJA to authorize payment of a different hourly rate of compensation in a specific case.

(2) *Contract Employees*. In the event appointed appellate counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty appeal to reflect the limitations of case assignment established by this rule.

(3) *Salaried Capital Public Defenders*. In the event appointed appellate counsel is a salaried capital public defender, as described in section (C)(4) of this rule, the county must comply with, and counsel shall be compensated according to, the requirements of section (C)(4).

(4) *Incidental Expenses*. In addition to the hourly rate or salary provided in this rule, appellate counsel shall be reimbursed for reasonable incidental expenses as approved by the court of appointment.

(L) Briefing on Appeal. In capital cases, counsel may place the verbatim judgment of the trial court and verbatim instructions and the verbatim objections thereto required by Appellate Rule 50B in an Addendum to Brief, and these documents shall not count against the word limit of the brief.

Rule 25. Right to Counsel in Juvenile Delinquency Proceedings

(A) Right to Counsel. A child charged with a delinquent act is entitled to be represented by counsel in accordance with Ind. Code Section 31-32-4-1.

(B) Mandatory Appointment of Counsel in Certain Juvenile Delinquency Proceedings. However, counsel for the child must be appointed:

(1) when there is a request to waive the child to a court having criminal jurisdiction; or

(2) when a parent, guardian, or custodian of the child has an interest adverse to the child; or

(3) before convening any hearing in which the court may find facts (or the child may admit to facts) on the basis of which the court may impose the following:

(a) wardship of the child to the Department of Correction;

(b) placement of the child in a community based correctional facility for children;

(c) confinement or continued confinement of the child in a juvenile detention center following the earlier of an initial or detention hearing;

(d) placement or continued placement of the child in a secure private facility following the earlier of an initial or detention hearing;

(e) placement or continued placement of the child in a shelter care facility following the earlier of an initial or detention hearing; or

(f) placement or continued placement of the child in any other non-relative out of home placement following the earlier of an initial or detention hearing; or unless or until a valid waiver has been or is made under subsection (C) below.

(C) Waiver. Following the appointment of counsel under subsection (B), any waiver of the right to counsel shall be made in open court, on the record and confirmed in writing, and in the presence of the child's attorney.

(D) Withdrawing Waiver. Waiver of the right to counsel may be withdrawn at any stage of a proceeding, in which event the court shall appoint counsel for the child.

(E) Effective Date. This rule shall become effective January 1, 2015.

Rule 26. Pretrial Release

(A) If an arrestee does not present a substantial risk of flight or danger to themselves or others, the court should release the arrestee without money bail or surety subject to such restrictions and conditions as determined by the court except when:

(1) The arrestee is charged with murder or treason.

(2) The arrestee is on pre-trial release not related to the incident that is the basis for the present arrest.

(3) The arrestee is on probation, parole or other community supervision.

(B) 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 Indiana Office of Court Services, and such other information as the court finds relevant. The court is not required to administer an assessment prior to releasing an arrestee if administering the assessment will delay the arrestee's release

(C) 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. The court may set and accept a partial cash payment of the bail upon such conditions as the court may establish including the arrestee's agreement that all court costs, fees, and expenses associated with the proceeding shall be paid from said partial payment. If the court authorizes the acceptance of a cash partial payment to satisfy bail, the court shall first secure the arrestee's agreement that, in the event of failure to appear as scheduled, the arrestee shall forfeit the deposit and must also pay such additional amounts as to satisfy the full amount of bail plus associated court costs, fees, and expenses.

(D) Statements by Arrestee

(1) Prohibited Uses: Evidence of an arrestee's statements and evidence derived from those statements made for use in preparing an authorized evidence-based risk assessment tool are not admissible against the arrestee in any civil or criminal proceeding.

(2) Exceptions: The court may admit such statements:

(a) in a pretrial proceeding involving the arrestee; or

(b) in any proceeding in which another statement made in preparing an authorized evidence-based risk assessment tool has been introduced, if in fairness the statements ought to be considered together.

(3) No statements made for these purposes may be used in any other court except in a pretrial proceeding.

This rule in its entirety, became effective September 7, 2016 in the pretrial pilot courts and in courts using an approved evidence based risk assessment under Section B.

Sections C. and D. became effective September 7, 2016, in all courts.

Sections A. and B. will be effective in all courts January 1, 2020.