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FAYETTE JOINT LOCAL CIVIL RULES

LR21-TR81-1 CITATION

These rules shall be known as Fayette County Civil Rules, and shall be cited as FCCVR

LR21-TR00-2 JUDGES

Pursuant to Indiana Code 33-29-1-10, the Judge of the Fayette Circuit Court shall sit as Judge of the Fayette Superior Court and the Judge of the Fayette Superior Court shall sit as Judge of the Fayette Circuit Court.

LR21-TR00-3 ASSIGNMENT OF JUDGES

Notwithstanding the above, all cases where either party or material witness is a person who falls within the third degree of relationship of the presiding judge or his spouse shall be assigned to the other Court. Should it be discovered after the case is filed that the case should have been filed in the other court the case shall be transferred to the other court and reassigned to the other judge as special judge.

LR21-AR1 (E)-4 CASE ASSIGNMENT

All cases with a designation of IF, OV, PO, SC, and MF shall be filed in Superior Court. Cases with a designation of PO and filed by the Department of Children Services shall be filed in the Fayette Circuit Court. All other case types may be filed in either Court. Any case(s) may be reassigned to the other Court upon agreement of the judges to rebalance caseloads for the efficient administration of justice.

LR21-TR3.1-5 APPEARANCES

(A) Any attorney for a party shall file his/her formal written appearance for such party.

(B) Every pleading filed shall clearly identify the name, address, telephone number of the attorney or attorneys filing such pleading.

(C) Any pleading not signed by at least one attorney appearing of record as required by Rule T.R. 11 or does not comply with subparagraph (B) of this rule shall not be accepted for filing or if inadvertently accepted for filing, shall, upon discovery, be stricken from the record.

(D) Counsel desiring to withdraw their appearance in any action shall file a written petition requesting leave to do so. Such petition shall fix a date for such withdrawal and petitioning counsel shall file with the Court satisfactory evidence of at least ten days written notice to his client in advance of such withdrawal date.

(E) A withdrawal of appearance when accompanied by the appearance of other counsel shall constitute a waiver of the requirements of subparagraph (D) of this rule.

LR21-TR00-6 FILING FEES

(A) The party commencing or reopening a civil action, shall pay to the Clerk of the Court the amount fixed by law.

(B) The party requesting notice by publication shall deliver the notice to be published to the Connersville News-Examiner and pay the cost.

LR21-TR4-7 SERVICE OF PROCESS

When summons or subpoenas are to be served by the Sheriff of Fayette County, the attorney seeking to effectuate such service shall attach to the face thereof a sheet giving the Sheriff the following information (Court form available):

- (1) The name of the person to be served;
 - (2) The address, as full as possible; i.e., if a County address, not only the rural route and box number but specific driving directions, landmarks, etc.
 - (3) The type of service required;
 - (4) Whether or not a restraining order is attached;
 - (5) Place of employment and work shift;
 - (6) Phone and apartment number;
 - (7) If not at own address, name of person residing with.
- A form of said fact sheet is available from the court.

LR21-TR4-8
FORM AND STYLE OF PAPER, NUMBER OF COPIES, FILING
AND SERVICE

(A) All papers presented to the Clerk for filing should be flat and unfolded, and without manuscript covers.

(B) All orders submitted to the Court shall be sufficient in number so that one copy besides the original may be retained by the Clerk and copy for each affected party; further, if service is directed to be made by the Sheriff, a sufficient number of additional copies shall be provided in order that the Sheriff may make necessary return of service.

(C) Only the original of briefs and motions shall be filed except when the Court directs otherwise.

(D) Proof of service required by Rule T.R. 5 shall be made by: (1) written acknowledgment of service signed by the party served or his attorney of record; (2) a written certificate of service signed by the attorney of record for the serving party; or (3) an affidavit of service by any other person.

(E) The use of mimeographed or printed forms is not encouraged and the same will be accepted for filing only if legible, clearly understandable and not in any way altered by striking over and/or erasing.

(F) After a Special Judge has qualified, copies of pleadings, motions or briefs filed shall be mailed or delivered to the office of the Special Judge with certificate of forwarding same made a part of the original papers.

(G) Service may be made on any Fayette County attorney by leaving a copy of the pleading, motion, order, etc. in the space provided by the Court in the Court's office or Clerk's office. It will be the responsibility of the attorneys to check their space. The attorney preparing an order on his own initiative or at the Court's request shall serve a copy of such order upon out of county attorneys.

(H) Any party requesting the Court to return file marked copies of the pleadings and/or orders by mail shall provide the Court with a self-addressed envelope with sufficient postage. It is the responsibility of the party requesting service to ascertain that proper service was obtained. If there is a question concerning service, that question should be brought to the Court's attention for a ruling. If service failed for any reason and a hearing is scheduled the Court will vacate the hearing date without notice.

LR21-TR8-9
MOTIONS, APPLICATIONS AND COMMUNICATIONS WITH THE
COURT

(A) The filing of any motion, or application requiring action or ruling by the Court, with the Clerk of the Court, shall be brought to the attention of the Judge within five (5) days following such filing. If such notice is not given the Judge within prescribed time the Judge may defer ruling on such motion until the pre-trial conference.

(B) The time of hearing motions and applications shall be fixed by the Court. Dates of hearing shall not be specified in the notice of the motion or application without authorization of the Court.

(C) In dissolution of marriage, custody, or support cases, affidavits shall be submitted by the parties to the Court in support of and in opposition to applications for maintenance, support money and/or attorneys fees pending trial. The Court may, however, request introduction of evidence in specific cases. The party requesting maintenance/support money and/or attorneys fees shall set out under oath at the time of the request the party's income from all sources and what they reasonably expect the spouse's income to be. Failure to comply may result in a denial of the request. Any such application and/or affidavit shall be served on opposing counsel in such a manner as to be received by such counsel at least 24 hours prior to any scheduled hearing to which such papers relate.

(D) The following motions shall be accompanied by an appropriate order: (1) Motion for Enlargement of Time; (2) Motion for A Continuance; (3) Motion for Default Judgment (4) Plaintiff's Motion for Dismissal and (5) Any Stipulated or Joint Motion and any other motions which the Court will have to rule upon.

(E) Unless otherwise ordered by the Court, a copy of any letter, paper or other written communication to the Court concerning a case with adverse parties shall be sent to opposing counsel or unrepresented parties who appear in said cause.

(F) Before the Court will Grant a Default Judgment the following information must be presented to the Court in affidavit form: the Defendant is not an infant, incompetent or in the military service within the meaning of the Soldiers and Sailors Civil Relief Act; the Defendant has not appeared, answered or otherwise appeared as required by law; and an itemized statement detailing the Plaintiff's damages. If the damage statement is insufficient to satisfy the Court the Defendant will be defaulted and a hearing for damages will be scheduled.

LR21-TR9-10
ORDERS AND JUDGMENTS

(A) Any Ruling, Order, Judgment, or Decree requested by the Court either explicitly or implied to be prepared by one of the attorneys in a case shall be prepared and submitted to the Judge for approval within two weeks of the request. If the Ruling, Order Judgment or Decree is not prepared within that time the Court may take appropriate action.

(B) The attorney representing the custodial parent shall, wherever support is established, modified or enforced, prepare a separate order in compliance with I.C. 31-2-10.

LR21-TR16-11
PRE-TRIAL CONFERENCES

(A) Pre-trial conferences shall be held as provided in Rule T.R. 16 (A).

(B) The Court has available a form agenda which, in addition to this rule, shall be followed by counsel in their conference between attorneys preceding the pre-trial conference with the Court as required by Rule T.R. 16.

(C) It shall be the joint responsibility of counsel for the parties to arrange for the conference of attorneys in advance of pre-trial conference with the Court. The purpose of this conference of attorneys is set forth in Rule T.R. 16 and the conference of attorneys shall be governed by this rule. In the absence of an agreement to the contrary, the conference shall be held in the office of the attorney nearest the Court in which the action is pending.

(D) Counsel shall file pre-trial statements which shall include all matter required to be reduced to writing by the provisions of Rule T.R. 16 and Appendix "B" to these rules and shall indicate that all requirements of Rule T.R. 16 and Appendix "B" have been complied with. Such statement shall be filed with the Court at least two (2) days prior to the pre-trial conference with the Court. (See FCCVR 25(D) 3(b) herein re: cancellation of pre-trial for failure to file pre-trial statements.)

(E) The Court may entertain oral motions by counsel appearing at a pre-trial conference for default or dismissal, or the imposition of other sanctions, or the Court may on its own motion default or dismiss or impose other sanctions, for the failure of a party to appear for the pre-trial conference or for failure to file timely pre-trial statement. Such motions may be granted summarily and without notice of hearing.

LR21-JR02-12
JURY POOL

The Clerk of Fayette Circuit Court is appointed Jury Administrator for Fayette County.

The jury administrator shall use the master list approved by the Indiana Supreme Court which has been randomly sorted by the Indiana Judicial Technology and Automation Committee.

LR21-JR04-13
JURY PANELS

The Judge of the Circuit Court shall direct the jury administrator when and how many individuals to summons for jury duty.

LR21-JR04-14
JURY SUMMONS

By means of a single tier notice/summons process, the jury administrator shall cause a jury qualification form and summons to be sent to prospective jurors within seven days.

LR21-JR01-15
ASSISTANT JURY ADMINISTRATOR

The Judge of either the Circuit Court or Superior Court may appoint other Court staff to serve as an assistant jury administrator for the purpose of maintaining the jury qualification forms and causing prospective jurors to appear for a specific trial.

LR21-JR01-16

When a jury is needed for a specific trial the jury administrator or assistant jury administrator shall cause the next qualified prospective juror on the panel to appear.

LR21-TR51-17
TRIALS

(A) All request for special instruction submitted in accordance with Rule T.R. 51 should be submitted to the Court in duplicate not later than the beginning of the final pre-trial conference. Counsel shall have the right to submit additional instructions during trial on matters which could not reasonably have been anticipated in advance of trial. Such request for special instruction shall contain citations to supporting authorities.

(B) Indiana Pattern Jury Instructions shall be used where applicable.

(C) When impaneling a jury, the plaintiff's side in a civil case or the State's side in a criminal case shall first examine the jurors of their voir dire and the defendant's side shall then examine the jurors. The parties shall then in writing make any pre-emptory challenge and any challenge for cause such side may then have the right to make. Each side shall continue to alternately examine the new jurors and may make any pre-emptory challenge and any challenge for cause such side may then have the right to make. Once a juror has been passed twice that juror may not be challenged except for cause which could not have been reasonably discovered prior to being passed the first time.

Each side shall be allotted an amount of time to be determined at pre-trial or by Court Rule to conduct voir dire examination unless such time shall be extended in particular case by special order of Court. The parties shall utilize jury questionnaires which shall be sent to and filled out by prospective jurors prior to trial and counsel shall not use voir dire time to question prospective jurors as to matters specifically covered by such questionnaires.

(D) The Court may in its discretion conduct voir dire examination. If the Court conducts the voir dire examination, counsel desiring any particular interrogations or questions shall submit the same to the Court in writing at least twenty-four (24) hours before commencement of trial. The Court will give counsel an opportunity at the completion of the voir dire conducted by the Court to request that the Court ask such further questions as counsel shall deem necessary and proper and which could not have been reasonably anticipated in advance of trial.

(E) Upon the trial of a cause before a jury, when a question is propounded by an attorney conducting the examination, and objection is made to such question, the attorney asking the question will not be permitted to state in the hearing of the jury what testimony he expects to elicit in answer to such question.

(F) In the trial of a cause, only one attorney for each party will be permitted to examine or cross-examine a witness, except by permission of the Court.

(G) A writ of attachment for an absent witness will be issued only after the absent witness has been called in open Court and an affidavit filed showing the materiality of the testimony of such witness and what it is expected to prove by him, and that he has been duly served with process more than twenty-four (24) hours before the calling of such witness, unless otherwise ordered by the Court.

(H) In any case where a special finding by the Court is requested, each party, plaintiff or defendant in such case, or his attorney, must submit to the Court a form of special finding embracing all the facts which he claims to have been proved, and the conclusions of law thereon, within ten (10) days after the conclusion of the trial of such case, unless further time is granted by the Court by proper order. If the party asking a special finding fails to comply with this rule, the Court may make a general finding.

(I) Admissions, agreements or stipulations in a cause, at the trial prior thereto, will not be enforced nor the time of the Court be permitted to be used in discussing them, unless the same are reduced to writing and filed with the Court or made of record in open Court to the Official Court Reporter.

(J) Whenever a jury is called for the trial of a cause and thereafter it becomes necessary to call off said jury, whether because of settlement of the cause or other reason attributable to the conduct of any party, the estimated cost of calling such jury, including any jurors' fees, and the estimated cost of notifying the jury not to appear for trial, shall be assessed as costs in the cause to be paid by the party who has made it necessary to call off said jury, or to be paid equally by both parties if the parties are equally responsible or the Court cannot summarily determine the responsible party.

LR21-TR47-18 VOIR DIRE

For jury trials, unless the Court prior to the trial, states otherwise voir dire by the attorneys shall be limited as follows:

- a. 20 minutes per side when the side has 3 peremptory challenges
- b. 30 minutes per side when the side has 5 peremptory challenges.
- c. 50 minutes per side when the side has 10 peremptory challenges.

Prior to voir dire by the parties, the Court will question the jury panel by asking questions which call for a no answer. The Court will follow up with those potential jurors who answer yes to a question. All peremptory challenges shall be at the conclusion of a pass without knowledge of the other side's challenge. Any individual not challenged will be selected. The parties may submit, to the Court, questions for the Court to ask of the jury panel.

LR21-TR33-19 INTERROGATORIES

No mimeographed or otherwise duplicated forms containing interrogatories shall be filed or served upon a party unless all interrogatories are consecutively numbered and applicable to the cause in which the same are filed and served. Interrogatories shall be limited in number wherever possible and shall be used solely for the purpose of discovery.

LR21-TR32-20
PUBLICATION AND OPENING AND REMOVAL OF DEPOSITIONS

All depositions filed with the Clerk shall be taken away by the party on whose behalf the deposition was taken except as otherwise ordered by the Court, within four (4) months after the final disposition of the case unless an appeal is taken. In all cases in which an appeal is taken, they shall be taken away within ninety (90) days after the final disposition of the appeal. At the time of removal, a detailed receipt shall be given to the Clerk and filed in the cause. Upon failure of such depositions to be removed in accordance with this rule, the Court may order the same destroyed or otherwise disposed of in a reasonable manner.

LR21-AR10-21
**COPIES OF PLEADINGS AND OTHER DOCUMENTS FURNISHED BY
THE CLERK**

On application of any person, the Clerk of the Court shall make copies of any pleading or order in his/her custody at the expense of the party requesting the same. The Clerk shall not furnish copies of any exhibit offered or admitted into evidence except to a party to that action.

This rule shall not apply to actions to establish paternity, adoptions, juvenile proceedings or other actions or matters which are not matters of public record.

LR21-AR10-22
WITHDRAWAL OF ORIGINAL RECORDS AND PAPERS

(A) Custody. After being marked for identification, models, diagrams, exhibits and material offered or admitted in evidence in any cause pending or tried before the Court shall be placed in the custody of the Court Reporter unless otherwise ordered by the Court.

(B) Removal. All models, diagrams, exhibits or material placed in the custody of the Court Reporter shall be taken away by the parties offering them in evidence, except as otherwise ordered by the Court, within four (4) months after the final disposition of the case unless an appeal is taken. In all cases in which an appeal is taken, they shall be taken away within ninety (90) days after the final disposition of the appeal. At the time of removal, a detailed receipt shall be given to the Court Reporter and filed in the cause. Upon failure of such items to be removed in accordance with this rule, the Court may order the same destroyed or otherwise disposed of in a reasonable manner.

LR21-AR00-24
LAW LIBRARY

(A) No books may be removed from the Library at any time, except when signed out by a member of the Fayette County Bar for a 48 hour period.

(C) Copies may be made by the Court at 25 cents a page.

(C) Books shall be returned to the appropriate shelves by the person using the books, prior to leaving the Library or when returning the books to the Library.

(D) A certified copy of this rule shall be posted in a conspicuous place in the Law Library.

LR21-TR40-25
SCHEDULING

(A) General Provisions

All matters shall be set by the Court in consultation with counsel where reasonably possible, except as otherwise provided herein. Hearings set after consulting with counsel will not be continued except for good cause. "Good cause" as used herein shall require a finding of such by the Court.

(B) Hearings

Pleadings, motions, or applications required action by the Court shall be set where practical for hearing within 60 days of filing unless such hearing is waived in writing by counsel and approved by the Court. Upon submission to the Court for ruling the Court shall fix the date by which the matter shall be ruled upon.

(C) Scheduling

(1) A case shall always be set for the next step, or reset for the same step in the processing of said case toward disposition.

(2) Jury Trials shall generally be set on Mondays.

(3) Counsel in a case set for trial may agree with counsel in any other case set for trial in the same position to exchange trial dates upon approval of the Court.

(4) A case set for trial in a second or subsequent position shall be prepared to go to trial with advance notice of fourteen (14) days. A party may be relieved of this requirement upon prompt application showing good cause.

(5) In the event that any case involves special problems arising out of emergency or other circumstances, which a party determines to require a decision of the Court as to scheduling, an application setting forth good cause may be filed.

(D) Pre-Trial

(1) A case shall generally be set for a pre-trial conference before the final trial date. Counsel shall meet at pre-pre-trial and proceed in accordance with T.R. 16 and Appendix "B" of these rules.

(2) If the parties fail to file pre-trial statements required by Rule 8(F) herein as a preliminary to pre-trial conference, the pre-trial conference may be canceled. The Court may take appropriate action for such failure.

(3) A pre-trial conference may be dispensed with in any case upon agreement of the parties and approval of the Court.

(E) Continuances

(1) A request for a continuance shall be by written motion stating good cause. The Motion shall indicate what steps have been taken to notify the other parties of the request and shall indicate at least five (5) dates that the parties have available to which the cause may be continued.

(2) Third or subsequent motions for continuances by a party shall contain the signature of the party or parties making the request, as well as counsel's.

(3) The Court in its discretion may require that any motion for continuance shall be signed by the party requesting the same.

LR21-TR79 (H)-26
SPECIAL FULL-TIME JUDICIAL OFFICER SELECTION

In the absence of an agreement as to a particular special full-time judicial officer [TR 79(D)], or a selected special full-time judicial officer does not accept the case, then the Clerk of the Fayette Circuit and Superior Courts shall select a special full-time judicial officer, first from the other Fayette County court, then from a qualifying senior judge residing in the county. This failing to produce a qualifying full-time judicial officer, the Clerk shall then appoint a full-time judicial officer from the following list in continuous rotating order, beginning with the listed full-time judicial officer immediately following the last listed full-time judicial officer to accept a special full-time judicial officer appointment in regular rotation, skipping once such listed full-time judicial officer accepting an appointment by agreement under TR79(D) since that full-time judicial officer's last appointment in the regular rotation. The list shall be maintained by the Clerk. The list shall contain the full-time judicial officers from courts within the judicial administrative district of which Fayette County is a member, and full-time judicial officers from contiguous counties outside of the judicial administrative district who have agreed to serve as a special full-time judicial officer in the court where the case is pending.

- 3.1. Incumbent Judge of Wayne County Circuit Court 1
- 4.2. Incumbent Judge of Wayne County Superior Court 1
- 5.3. Incumbent Judge of Wayne County Superior Court 2
- 6.4. Incumbent Judge of Wayne County Superior Court 3
- 7.5. Incumbent Magistrate of Wayne County
- 8.6. Incumbent Judge of Union County Circuit Court 1
- 9.7. Incumbent Judge of Rush County Circuit Court 1
- 10.8. Incumbent Judge of Rush County Superior Court 1
- 11.9. Incumbent Judge of Franklin County Circuit Court 1
- 12.10. Incumbent Judge of Franklin County Circuit Court 2

In cases in which no full-time judicial officer is eligible to serve as special full-time judicial officer, or the particular circumstance of a case warrants selection of a special full-time judicial officer by the Indiana Supreme Court, the regular sitting judge may certify the case to the Supreme Court for appointment of a special full-time judicial officer.

LR21-AR15-27
COURT REPORTERS

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

(1) Court Reporter is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.

(2) Equipment means all physical items owned by the court or other governmental entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes, and any other device used for recording and storing, and transcribing electronic data.

(3) Work Space means that portion of the court's facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.

(4) Page means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 7.2.

(5) Recording means the electronic, mechanical, stenographic or other recording made as required by Indiana Rule of Trial Procedure 74.

(6) Regular hours worked means those hours which the court is regularly scheduled to work during any given work week. Depending on the particular court, these hours may vary from court to court within the county but remain the same for each work week.

(7) Gap hours worked means those hours worked that are in excess of the regular hours worked but hours not in excess of forty (40) hours per week.

(8) Overtime hours worked means those hours worked in excess of forty (40) hours per work week.

(9) Work Week means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year, i.e. Sunday through Saturday, Wednesday through Tuesday, Friday through Thursday.

(10) Court means the particular court for which the court reporter performs services. Court may also mean all of the courts in Fayette County.

(11) County indigent transcript means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court.

(12) State indigent transcript means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court.

(13) Private transcript means a transcript, including but not limited to a deposition transcript that is paid for by a private party.

(B) Salaries and Per Page Fees

(1) Court Reporters shall be paid an annual salary for time spent working under the control, direction and direct supervision of their supervising court during any regular work hours, gap hours or overtime hours. The supervising court shall enter into a written agreement with the court reporters which outlines the manner in which the court reporter is to be compensated for gap and overtime hours, i.e. monetary compensation or compensatory time off regular work hours.

(2) The maximum per page fee a court reporter may charge for the preparation of a county indigent transcript shall be \$4.25; the court reporter shall submit a claim directly to the county for the preparation of any county indigent transcripts.

(3) The maximum per page fee a court reporter may charge for the preparation of a state indigent transcript shall be \$4.25.

(4) The maximum per page fee a court reporter may charge for the preparation of a private transcript shall be \$4.25.

(5) The maximum per page fee a court reporter may charge for a copy of a state or county indigent transcript and a private transcript shall be \$1.00.

(6) The minimum fee per transcript is \$35.00

(7) Each court reporter shall report, at least on an annual basis, all transcript fees received for the preparation of county indigent, state indigent or private transcripts to the Indiana Supreme Court Division of State Court Administration. The reporting shall be made on forms prescribed by the Office of Judicial Administration.

(C) Private Practice

(1) If a court reporter elects to engage in private practice through recording of a deposition and/or preparing of a deposition transcript, and the court reporter desires to utilize the court's equipment, work space and supplies, and the court agrees to the use of the court equipment for such purpose, the court and the court reporter shall enter into a written agreement which must, at a minimum, designate the following:

(a) The reasonable market rate for the use of equipment, work space and supplies;

(b) The method by which records are to be kept for the use of the equipment, work space and supplies; and

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

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

LR21-TR52-28

FINDINGS OF FACT AND CONCLUSION OF LAW

When a party makes a written request for Findings of Facts and Conclusion of Law pursuant to T.R. 52, the requesting party shall submit to the trial court within 10 days of the conclusion of the hearing its proposed Findings of Fact and Conclusion of Law. The proposed findings must be filed electronically and also provided to the court in Microsoft Word format. Failure to submit proposed findings will constitute a waiver on the part of the requesting party. Opposing parties may submit proposed findings within 20 days following the conclusion of the hearing.

LR21-AR00-29

SECURITY CAMERAS IN THE COURTROOM

Pursuant to Indiana Judicial Conduct Rule 2.17(1), security cameras shall be allowed in the courtroom for administrative purposes. According to Indiana Rules of Court, Rules on Access to Court Records Rules 94(D) and 5(D) (2), Fayette Circuit and Superior courts declare the recordings from the security cameras confidential and excluded public access to the recordings unless a court order allows access. *(Added effective January 1, 2023)*

LR21-AR00-30

SCHEDULE OF FEES FOR PROBLEM-SOLVING COURT SERVICES

Those persons directed to participate in the Fayette County Drug Court may be assessed fees in accordance with the following SCHEDULE OF FEES in effect at the time of this rule's effective date and subject to subsequent change by order of the problem-solving court's supervising full-time judicial officer without modification of this rule, pursuant to the authority granted by Ind. Code 33-23-16-23:

(1) A Drug Court administration fee of \$100.00, per participant, payable to Fayette County Drug Court;

(2) A Drug Court user fee of \$50.00 per month for every month that an individual participates in Drug Court (commencing the second month of participation), payable to Fayette County Drug Court;

(3) A Drug Court transfer fee of \$25.00 per participant per transfer; payable to Fayette County Drug Court.

(Effective January 1, 2023)

FAYETTE JOINT LOCAL CRIMINAL RULES

LR21-CR00-CR- 1 SCOPE

These rules govern the procedure and practice of criminal cases in the Fayette Circuit and Fayette Superior Courts unless otherwise provided by law or rules of the Supreme Court of Indiana.

LR21-CR00-2 ADOPTION OF INDIANA CRIMINAL RULES AND LOCAL CIVIL RULES

The Indiana Criminal Rules are adopted. All of the Local Civil Rules approved by the Fayette Circuit and Fayette Superior Courts are to be considered as a part of these rules. These rules shall be known as Fayette County Criminal Rules.

LR21-CR2.2-CR- 3 CASE ASSIGNMENT

The following cases will be filed in the Fayette Superior Court:

1. All criminal charges brought under Title 9 of the Indiana Criminal Code.
2. Level 5 Felony charges specified below:
 - a. Identity Deception
 - b. Synthetic Identity Deception
 - c. Card Skimming Device
 - d. Check Deception
 - e. Welfare Fraud
 - f. Medicaid Fraud
 - g. Fraud on Financial Institutions
 - h. Check Fraud
 - i. Inmate Fraud
 - j. Home Improvement Fraud
3. All Level 6 felony charges, except:
 - a. Neglect of a Dependent
 - b. Non-Support of a Dependent Child
4. All Misdemeanor Offenses and Infractions.

The following cases will be filed in the Fayette Circuit Court:

All felony charges not specifically assigned to the Superior Court by this Rule.

LR21-CR2.3-CR- 4
TRANSFER

A judge of Fayette Circuit or Superior Court, by appropriate order entered in the Record of Judgments and Orders may transfer and reassign to any other court of record in the county with jurisdiction to hear the charged offense in any pending case subject to acceptance by the receiving court.

LR21-CR2.2-CR- 5
REFILING AND SUBSEQUENT FILINGS

When the State of Indiana dismisses a case and chooses to refile that case, the case shall be assigned to the court from which the dismissal was taken.

LR21-CR2.2-CR- 6
REASSIGNMENT

In the event it becomes necessary to reassign a felony or misdemeanor case in the Fayette Circuit or Superior Court, the Clerk shall reassign the case first to the other sitting full-time judicial officer within the county, and then to a senior judge residing within the county, and then appoint a full-time judicial officer from the following list in continuous rotating order, beginning with the full-time judicial officer immediately following the last full-time judicial officer to accept a special full-time judicial officer appointment. The list shall be maintained by the Clerk. The list shall contain the full-time judicial officers from courts within the judicial administrative district of which Fayette County is a member, and full-time judicial officers from contiguous counties outside of the judicial administrative district.

1. Incumbent Judge of Henry County Circuit Court 1
2. Incumbent Judge of Henry County Circuit Court 2
3. Incumbent Judge of Henry County Circuit Court 3
4. Incumbent Judge of Wayne County Circuit Court 1
5. Incumbent Judge of Wayne County Superior Court 1
6. Incumbent Judge of Wayne County Superior Court 2
7. Incumbent Judge of Wayne County Superior Court 3
8. Incumbent Magistrate of Wayne County
9. Incumbent Judge of Union County Circuit Court 1
10. Incumbent Judge of Rush County Circuit Court 1
11. Incumbent Judge of Rush County Superior Court 1
12. Incumbent Judge of Franklin County Circuit Court 1
13. Incumbent Judge of Franklin County Circuit Court 2

LR21-CR13-CR- 7
APPOINTMENT OF SPECIAL JUDGE

In the event no judge is available for assignment or reassignment of a felony or misdemeanor case, such case shall be certified to the Indiana Supreme Court for the appointment of a special judge. In the event the judge presiding in a felony or misdemeanor case concludes that the unique circumstances presented in such proceeding require appointment by the Indiana Supreme Court of a Special Judge, the presiding judge may request the Indiana Supreme Court for such appointment.

LR21-CR04-CR- 8
COURT APPEARANCE

(A) The Sheriff shall take an arrested and incarcerated person before the court having jurisdiction without unnecessary delay. "Without unnecessary delay" is generally deemed to be 24 hours, excluding Saturdays, Sundays and holidays.

(B) Should an arrested person be released from custody or admitted to bail prior to his first court appearance, such person shall sign three copies of an appearance notice, acknowledging that he will appear in court on the next scheduled Initial Hearing date provided to the arrested person when leaving custody. A copy of the signed notice shall be given by the Sheriff to the court, the arrested person and the Sheriff shall retain a copy. No person shall be released from custody or admitted to bail until such appearance notice is completed and signed by the person being released.

LR21-CR2.1-CR- 9
APPEARANCE OF COUNSEL

Any attorney representing a defendant shall appear for such defendant immediately upon being retained or appointed, and by signing and filing a written appearance.

LR21-CR00-CR- 10
WITHDRAWAL OF COUNSEL

(A) Counsel for the defendant may withdraw from a case only after complying with IC 35-36-8-2.

Counsel desiring to withdraw their appearance shall file a motion requesting leave to do so. Such motion shall fix a time (to be procured from the Court) for the motion to be heard. Counsel shall also file with the Court satisfactory evidence of at least ten (10) days written notice of the motion to his client.

LR21-CR00-CR- 11 MOTIONS

(A) Criminal Code deadlines for filing motions and raising defenses shall be strictly followed, except where in direct conflict with rules adopted by the Indiana Supreme Court. And in such cases, the Rules of the Supreme Court shall govern. In all other cases not otherwise provided, the parties should advise the Court at the pre-trial.

(B) A motion other than one made during trial or hearing shall be in writing. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It shall be signed by an attorney of record or the defendant personally and shall clearly identify the name and address of any attorney filing the same.

LR21-CR00-CR- 12 TRIAL

(A) Jury trials in felonies shall only be waived by the defendant in open Court or by verified pleading signed by the defendant, or as the Court may otherwise direct.

(B) The Court shall control the trial calendar and shall initially set the case for trial at the initial hearing. The State and the Defendants shall advise the Court of facts relevant in determining the order of cases on the trial calendar.

LR21-CR00-CR-13 CRIMINAL DISCOVERY

(A) The State of Indiana shall disclose to the Defendant not less than fourteen (14) days prior to the omnibus date or forty-five (45) days after the entry of a plea whichever comes first, except as otherwise provided, the following material and information within its possession or control:

(1) The names and last known addresses of persons whom the State may call as witnesses, together with their relevant written or recorded statements, memoranda containing substantially verbatim reports of their oral statements and a list of memoranda reporting or summarizing their oral statements.

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

(3) A transcript of those portions of grand jury minutes containing testimony of persons whom the prosecuting attorney may call as witnesses at the hearing or trial, as designated by the defense after listening to the recording of the testimony.

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

(5) Any books, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in hearing or trial or which were obtained from or belong to the accused.

(6) Any record of prior criminal convictions which may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.

(7) Any evidence which tends to negate the guilt of the accused as to the offense charged or would tend to mitigate his punishment.

(8) That there has or has not been electronic surveillance of any conversation to which the accused was a party.

(9) Any 404(B) evidence which the State intends to use.

(B) Subject to Constitutional limitations, the Defendant shall disclose to the State, not less than seven (7) days prior to the omnibus date or fifty-five (55) days after the entry of a plea whichever comes first, the following material and information within its possession or control:

(1) The names and addresses of persons whom the Defendant may call as witnesses along with a summary of their testimony and record of prior criminal convictions.

(2) Any books, papers, documents, photographs or tangible objects which are intended to be used at a hearing or trial.

(3) Any medical or scientific reports relating to Defendant or Defendant's evidence which may be used at a hearing or trial.

(4) Any defenses, procedural or substantive, the Defendant intends to make at a hearing or trial.

(C) The Court may order discovery of matters not covered by this rule, upon showing by counsel that it is material, the request is reasonable, and the matter is legally discoverable.

(D) Neither counsel for the parties or other prosecution or defense personnel shall advise persons having properly discoverable information (except the accused and complaining victim) to refrain from discussing the case with opposing counsel, nor shall they otherwise impede opposing counsel's investigation of the case.

(E) Discovery pursuant to this rule shall continue in effect and apply to any information or material discovered subsequent to the initial compliance with such request or order.

(F) Any materials furnished to an attorney pursuant to this rule shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms or conditions as the Court may provide.

(G) Upon a showing of good cause the Court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate.

(H) If, at any time during the course of the proceedings, it is brought to the attention of the Court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the Court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, or enter such other order as it deems just, under the circumstances including exclusion of evidence at trial.

(I) Willful violation by counsel of this rule or any order issued pursuant thereto may subject counsel to appropriate sanctions by the Court.

(J) Objections to discovery shall be filed with the Court within five (5) days after the initial hearing or any request or motion for discovery is made.

(K) The following limitations shall apply:

(1) Discretionary Protective Order: The Court may deny disclosure 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 which outweighs any usefulness of the disclosure to counsel.

(2) Matters not subject to disclosure.

(a) Work product: Disclosure is not required of legal research or 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 staff.

(b) Information: Disclosure of an informant's identity will 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 of the identity of witnesses to be produced at a hearing or trial will be required.

(c) Any matters protected by law.

(L) Any material and /or information required to be disclosed by this rule or otherwise to the opposing party and which is not disclosed at least three (3) weeks prior to trial shall, upon request by opposing counsel, be excluded, unless good cause is shown.

LR21-CR00-CR- 14 STIPULATIONS

All stipulations must be reduced to writing and filed with the Court or made of record in open Court to the Official Court Reporter.

LR21-CR00-CR- 15 FAILURE TO APPEAR

When the defendant has failed to appear and the Court has issued a Bench Warrant and ordered the bondsman to surrender the Defendant, the State of Indiana is to prepare a proposed order concerning late surrender fee and bond forfeiture at the appropriate time for the Court's review when the bondsman has failed to produce the Defendant.

LR21-CR00-CR- 16 REQUEST TO CALL A JURY

The Court will not summons a jury unless a party has filed a request to call a jury no more than) twenty-eight (28) days but no less than seventeen (17) days prior to the trial. Failure to timely file a request may result in a continuance of the jury trial on the Court's own motion. Nothing in this rule is intended to prevent the Court from calling a jury on its own motion.

LR21-CR00-CR- 17 PROCEDURE NOT OTHERWISE SPECIFIED

If no procedure is especially prescribed by these rules the Court may proceed in any lawful manner not inconsistent with these rules or with any applicable Constitutional provision, statute, rule of the Supreme Court of Indiana, or local civil rules of the Fayette Circuit Court.

LR21-CR00-CR- 18 COMPLIANCE EXCUSED ONLY UPON ORDER OF COURT

The above Rules for Criminal Procedure shall be followed in all cases heard in the Fayette Circuit Court unless compliance is excused by the Judge for good cause shown.

LR21-CR00-CR- 19
ATTENDANCE OF WITNESSES

When a defendant requests to take the deposition of a witness listed or disclosed by the State in its discovery, it is the duty of the State to provide the most current address of the witness known to the State, or, in the alternative, to secure the attendance of the witness at the deposition.

LR21-CR00-CR- 20
DNA TESTING

Any individual convicted of a felony after July 1, 2005, shall submit a DNA sample as required by statute and as directed by the Court.

FAYETTE JOINT LOCAL JUVENILE RULES

LR21-JV00-1 CITATION

These rules shall be known as Fayette County Juvenile Rules.

LR21-JV00-2 APPLICATION OF LOCAL CIVIL AND CRIMINAL RULES

The Fayette County Local Civil Rules whether adopted by this Court on its own or in conjunction with the Fayette Superior Court including any subsequent modifications or amendments thereto apply to all Paternity and Children in Need of Services cases. The Fayette County Local Criminal Rules whether adopted by this Court on its own or in conjunction with the Fayette Superior Court including any subsequent modifications or amendments thereto apply to all Delinquency cases.

LR21-JV00-3 REPORTS

All reports that are required to be filed with the Court or are filed with the Court shall be filed at least 7 days prior to the hearing and shall promptly be given to the parents, foster parents, Special Advocate, caseworker, probation officer and attorneys. If the hearing was set with less than 10 days notice then the report shall be provided to the Court and the above individuals within 4 days of the date of the hearing but no later than 2 hours prior to the hearing. Reports include DPW 310's and DPW 311's. If the child is not with parents or relatives, all reports shall state what family members have requested custody and specifically why that relative is not being considered.

LR21-JV00-4 SERVICE PROVIDER REPORT

All Individuals and agencies providing service for a child or family that is the subject of a Delinquency or CHINS Petition shall provide at least monthly reports. The monthly reports shall among other things state specifically why the service should continue and whether or not there are less costly services that can be provided by the service provider or some other service provider. The monthly reports are to be provided to the Office of Family and Children, Probation Department, CASA, parents, foster parents, and attorneys. The caseworker or probation officer shall keep the service providers informed of the above individuals address so that the service providers can comply with this rule.

**LR21-JV00-5
CASE MANAGER**

Case Conferences are to be set at least 2 weeks in advance and cleared on the parents' and the child's attorney's calendar. Notice must be given immediately to the parent, foster parents, CASA and anyone else necessary for the conference to be a success. The approved case plan must be filed with the Court.

**LR21-JV00-6
CASE MANAGER**

Once a case has been assigned to a probation officer or caseworker that same person shall remain with the case until the Court terminates jurisdiction.

**LR21-JV00-7
NOTICE OF HEARING**

Proof of Notice of any hearing required to be served by the caseworker or probation worker shall be filed with the Court immediately after service has been made.

**LR21-JV00-8
CHILD SUPPORT WORKSHEET**

The probation officer or caseworker shall, within 3 days after a detention hearing or after a child has been removed or 3 days prior to a hearing whichever date occurs first, file a completed child support worksheet so that the Court may enter an order requiring the parents to pay for services as required by statute. The parents, under penalties for contempt, shall furnish the caseworker or officer with the necessary income information including the name and case number of any case where they are paying or receiving child support.

**LR21-JV00-9
SHARING OF INFORMATION**

The Office of Family and Children and the Probation Department shall freely share and exchange information, including documents, with each other concerning a child or family upon request regardless of the status of the case.

FAYETTE JOINT LOCAL FAMILY RULES

LR21-FL00-1 SCOPE

These Rules shall govern the procedure and practice of all family law and domestic relations matters in the Fayette Circuit and Superior Courts unless otherwise provided by law or rules of the Indiana Supreme Court. These Rules are in addition to and are not intended to replace the Fayette County Local Trial Rules.

LR21-FL00-2 ADMINISTRATIVE PROCEDURES

By agreement of the parties, all issues and evidence relevant to a domestic relations case may be presented in summary fashion by counsel. When submitting a Final Decree and Property Settlement, the parties shall submit sufficient copies of each for the Court to retain an original and copy of each and provide copies to all counsel of record. If counsel has been directed to submit a proposed order following a contested hearing the proposed order shall be submitted in writing and in electronic format. Before a Body Attachment may be issued a party must establish have personal service on the adverse party of a Rule to Show Cause stating that a failure to appear may results in a body attachment or otherwise show that the non appearing person was present in court at the time the hearing was set.

LR21-FL00-3 SPECIFIC DISCLOSURE REQUIREMENTS

Prior to any preliminary hearing or within thirty (30) days after service of any petition seeking relief in any family law matter, whichever shall first occur, each party shall provide the Court with written notice of any other pending legal proceeding in which such person is a party wherein the other pending legal proceeding involves an issue or allegation of domestic violence, spousal abuse, child abuse, protective order, restraining order, or any criminal charges. The written notice should include the cause number of the legal proceeding, identification and location of the Court, names of the parties involved, and a brief summary of the nature of the legal proceeding.

LR21-FL00-4
AGREED MODIFICATION

An agreed modification entry will not be approved by the Court without a petition for modification having first been filed. A Joint Petition for Modification or Stipulation for Agreed Entry of Modification shall specifically set forth the basis and reasons for such modification which meet the statutory requirements for such modification. The Stipulation or Joint Petition shall be separate and apart from the Order and shall not be combined in one pleading.

LR21-FL00-5
CHILD SUPPORT GUIDELINES

In all proceedings involving child support, including any petition to emancipate where there is more than one child, each party shall file with any settlement, or submit to the Court at the time a petition is filed, one or more Indiana Child Support Guidelines worksheets with supporting documentation. A response Child Support Worksheet with supporting documents shall be provided to the other party or to opposing counsel as the case may be, at least forty-eight (48) hours prior to the provisional hearing, unless reasonable circumstances prevent doing so and then such Child Support Worksheet shall be provided to the other party or opposing counsel at the earliest opportunity. Child Support Worksheets shall be promptly supplemented if changes occur prior to trial. Child Support Worksheets intended to be introduced at trial or final hearing shall be exchanged by the parties or counsel at least seven (7) days prior to trial.

If an agreement concerning support provides any deviation from the Guidelines, the parties shall present to the Court a written explanation, with supporting documentation, justifying the deviation. The proposed Order shall specifically state that the Court is deviating from the Child Support Guidelines and set forth the reasons for such deviation.

In all proceedings involving child support, an Income Withholding Order shall be submitted with any Settlement Agreement or Final Decree pursuant to Indiana Code 31-16-15-1 or the parties shall: Submit a written agreement providing for an alternative child support arrangement; or provide within the proposed Decree that “the Court determines that good cause exists not to require immediate income withholding” and stating the specific reasons therefore.

LR21-FL00-6
FINANCIAL DECLARATION FORM

In all relevant family law matters, including dissolutions of marriage, separations, post-decree and support proceedings, the party filing the petition/motion shall provide to the opposing party or his or her legal counsel, if applicable, a fully completed Financial Declaration Form (available from the Court) with all required attachments within forty-five (45) days of the filing of such petition/motion. The opposing party shall provide to the petitioning party or his or her legal counsel, if applicable, a fully completed Financial Declaration Form with all required attachments within fifty (50) days of the filing of the petition/motion.

The Financial Declaration Form need not be exchanged if: the parties agree in writing within fifty (50) days of the filing of the petition/motion to waive exchange; the parties have executed a written agreement which settles all financial issues; the proceeding is one in which the service is by publication and there is no response; the proceeding is post-decree and concerns issues without financial implications; provided, however, when the proceeding is post- decree and concerns an arrearage, the alleged delinquent party shall complete the entire Form, while the support recipient need complete only that portion which requires specification of the basis of the arrearage calculation (with appropriate supporting documentation); or, the Court otherwise waives such requirement.

Subject to specific evidentiary challenges, the Financial Declaration Form shall be admissible into evidence.

For the purpose of providing a full and complete verification of assets, liabilities and values, each party shall attach to the Financial Declaration Form all information reasonably required and reasonably available. This shall include recent bills, wage and tax records, bank records, pension and retirement account information, and mortgage account records. The term "reasonably available" means that material which may be obtained by letter accompanied with an authorization, but such term does not mean material that must be subpoenaed or is in the possession of the other party. Appraisals of real estate or personal property, or pension valuations are not required. However, once an appraisal or valuation is obtained it must be exchanged. Further, the Court may direct that an appraisal or valuation be obtained, just as it may designate the appraiser or valuator. The Court may require either party to supplement the Financial Declaration Form with appraisals, bank records, and other evidence to support the values set forth in the Form.

The exchange of financial declaration forms constitutes mandatory discovery. Thus, Indiana Trial Rule 37 sanctions apply. Additionally, pursuant to Indiana Trial Rule 26(E) (2) and (3), the Financial Declaration Form shall be supplemented if information changes or is added or if additional material becomes available. Any additional discovery such as Requests for Production, Interrogatories, or Depositions of the parties to the action shall not commence until the Financial Declaration Form has been exchanged. Any further discovery shall not seek to obtain information already obtained by the Financial Declaration Form.

Whenever the interest of privacy so requires, the Court may, upon proper Motion, direct that the Financial Declaration Form(s) be sealed until further order of the court. However, such request(s) shall not be made as a matter of course. When ordered sealed, the Court Reporter shall place the Financial Declaration Form(s) in a flat manner in an envelope of sufficient size, seal the envelope, and affix a copy of the Order directing that the Financial Declaration Form(s) be placed under seal. Financial Declaration Form(s) may be withdrawn at the conclusion of the case on such terms as the Court may allow.

Upon the filing of any family law matter referred to in Rule 6(A), the Clerk shall provide to the moving party upon filing and to the non-moving party by service a Notice of the requirement of this Rule. Such Notice shall be in a form substantially as follows:

You are advised that the moving party is required to provide to the opposing party or his or her legal counsel, if applicable, a fully completed Financial Declaration Form with all required attachments within forty-five (45) days of the filing of such petition/motion. The opposing party shall provide to the petitioning party or his or her legal counsel, if applicable, a fully completed Financial Declaration Form with all required attachments within fifty (50) days of the filing of the petition/motion. Failure to timely provide a fully completed Financial Declaration Form with all required attachments may be result in sanctions being entered against the party failing to file the Form.

LR21-FL00-7 VISITATION ORDERS

The phrase “reasonable visitation” if not specifically defined in the Court’s order is defined as those visitation rights agreed upon between the parties. To the extent the parties cannot agree to the particulars of such visitation, “reasonable visitation” shall be defined as those visitation rights provided for in the Indiana Parenting Times unless the court determines that under the particular circumstances a different visitation schedule is reasonable.

LR21-FL00-8 TEMPORARY RESTRAINING ORDERS

Subject to the provisions of Ind. Trial Rule 65, in an action for dissolution of marriage, legal separation or child support, the Court may issue a Temporary Restraining Order, without hearing or security, if either party files a verified petition alleging an injury would result to the moving party if no immediate order were issued.

If the Court finds that an order shall be entered, the Court may enjoin both parties from: Transferring, encumbering, concealing, selling or otherwise disposing of any joint property of the parties or asset of the marriage without the written consent of the parties or the permission of the Court; Removing any child of the parties then residing in the State of Indiana from the State of Indiana from the State with the intent to deprive the Court of jurisdiction over such child without the prior written consent of all parties or the permission of the Court.

In the event a party seeks to enjoin the non-moving party from abusing, harassing, disturbing the peace, committing a battery on the moving party or any child or stepchild of the parties, or exclude the non-moving party from the marital residence, and the Court determines that an order shall be issued, such order shall be addressed to one person only. A joint or mutual restraining or protective order shall not be issued. If both parties allege injury, they shall do so by separate petitions. The Court shall review each petition separately and grant or deny each petition on its individual merits. In the event the Court finds cause to grant both petitions, it shall do so by separate orders. The moving party shall provide the Court the following information concerning the non-moving party: Name; Age; Date of Birth; Race; Sex; Height; Weight; Scars, tattoos or other identifiable characteristics; Home Address: Telephone No. Work Address: Work Telephone No; and Work Hours.

LR21-FL00-9

ORDERS EXCLUDING A SPOUSE FROM THE RESIDENCE

A Restraining Order without notice which would evict a spouse from the marital residence may be issued only upon the following bases: there are alleged specific facts indicating more than a generalized fear of an adverse action; and there is evidence of actual or threatened physical or emotional abuse sufficient to find a risk of imminent danger; and the movant is physically available to testify unless there is a showing of exceptional circumstances precluding his or her availability or the applicant certifies to the Court the reasons supporting the claim why notice cannot be given.

In addition to the foregoing criteria, the court may consider any other relevant social or economic factors including whether either party has a reasonable alternative residence pending hearing on the provisional orders. In those circumstances where the court allows a party to be heard ex parte on the record and finds an emergency exists justifying issuance of an eviction order, the cause shall be set for preliminary hearing within ten (10) days with notice to all parties.

If an Order granting exclusive possession of the marital residence to one spouse is entered by the Court, such Order shall contain the following language: "The _____ hereby restrained from entering marital residence located at _____ and the Fayette County Sheriff's Department, Connersville Police Department, or other appropriate law enforcement agency shall use all reasonable force, including arrest, to remove a party from the premises upon presentation of such an Order."

LR21-FL00-10
CHILD CUSTODY AND VISITATION: REFERRALS FOR
INVESTIGATION AND REPORT

On motion of either party with the approval of the Court, or on the Court's own motion, contested matters involving child custody and visitation may be referred to appropriate sources for investigation and report to the Court.

All custodial evaluator reports or guardian ad litem reports which are court ordered regarding custody and/or visitation shall be admissible into evidence on the motion of either party without the evaluator needing to be present at the hearing. No part of this Rule is intended to supplant the right of either party to compel the attendance of the evaluator or other witnesses as set out in Ind. Trial Rule 45.

In all contested family law matters involving child custody or visitation, the provision of Ind. Trial Rule 35 providing for physical or mental examinations by a physician shall be extended to include examinations and evaluations by a psychologist, therapist or other qualified evaluator upon order of the Court.

LR21-FL00-11
FEES

Provisional attorney fees may be awarded based on evidence presented by way of Affidavit (or oral testimony if the Court shall allow) at the provisional hearing. Affidavits shall be admissible subject to cross examination. The following factors will be considered and should be included in any Affidavit submitted to the Court: the number and the complexity of the issues (e.g. custody dispute, complex asset valuation; the nature and extent of discovery; the time reasonably necessary for the preparation for or the conduct of contested pendente lite matters or final hearings. Other matters requiring substantial expenditure of attorney's time; the amount counsel has received from all sources; and the ability of the opposing party to pay the requested fees and the disparity of income between the parties.

When the Court finds that attorney's fees should be awarded, the Court may find as reasonable attorney fees an amount of up to Five Hundred Dollars (\$500.00) for provisional attorney fees in a "basic/routine" Dissolution of Marriage case.

Appraisal or accounting fees may be awarded based on evidence presented by affidavit (or oral testimony if the Court shall allow) at a preliminary hearing. The following factors will be considered: itemized list of property to be appraised or valued (e.g. Defined Benefit Pension, Business Real Estate, Furnishings, Vehicles, etc.); an estimate of the cost of the appraisals and the basis therefore; and the amount of a retainer required and the reason an expert is necessary.

There shall be a rebuttable presumption that attorney fees will be awarded to the prevailing party in all matters involving a contempt citation. An attorney may submit by affidavit (or oral testimony if allowed by the Court) along with an itemized statement his requested fee. Affidavits shall be admissible into evidence by the Court.

Final or interim attorneys fees may be awarded based on evidence presented by way of Affidavit (or oral testimony if allowed by the Court) at the final hearing or any interim hearing requested by either party. The same factors as set out above will be considered by the Court.

LR21-FL00-12 CHILD SUPPORT ORDERS

There is hereby created a rebuttable presumption that provisional child support orders shall be made retroactive to the date of the Initial Provisional Order Hearing. Such presumption may be rebutted upon a showing that such retroactivity is inappropriate under the facts of a particular case.

There is hereby created a rebuttable presumption that modification of post-decree child support orders shall be made retroactive to the Date of the first hearing on the petition for modification. This Rule shall not apply where a change of child custody is involved.

At least fourteen (14) days before the scheduled provisional or modification hearing, the parties shall exchange their three (3) most recent pay stubs, most recent W-2 and tax return, 1099's for income earned, and any documentation as to unemployment compensation or disability pay received within the last year

LR21-FL00-13 HELPING CHILDREN COPE WITH DIVORCE

A. Attendance at Class. When a petition for dissolution of marriage, for legal separation or to establish paternity is filed and there are minor children, before the marriage is dissolved or the separation is granted or the paternity finalized, both parties must attend a class on **HELPING CHILDREN COPE WITH DIVORCE**.

B. Location of Class. The class is conducted by Centerstone, a mental health facility located at 390 Erie Street, Connersville, IN 47331, and is held at that location. Classes meet only on the 3rd Wednesday of each month from 5:30 PM to 7:30 PM.

C. How to Sign up for the class and how to Contact Centerstone. After the filing of the petition each party to the proceeding must call Centerstone at (765) 983-8142 within twenty days. If you need immediate assistance call (765) 825-4124.

D. Certificate. After you successfully complete the class, Centerstone will mail the court clerk a certificate of attendance which will be put into the court's file.

E. Payment. Each party must pay Centerstone \$30.00 CASH.

F. Children Not to Attend. Do not bring any children to the class.

G. Clerk to Provide Copies. The clerk is directed to provide a copy of this rule to both parties.

H. Failure to Attend. If one party fails to attend the class, the other party may file a written motion with the court requesting that the court enter an order requiring the other party to comply with this rule or be subject to contempt of court.

(Amended effective July 8, 2014)

LR21-FL00-14 CONTACT WITH CUSTODIAL EVALUATORS

In the event a custodial evaluation is ordered by the Court, the Court shall direct the parties to contact the custodial evaluator to arrange for an appointment with the custodial evaluator. Other than making contact with the office of the custodial evaluator to arrange for the client's appointment with the custodial evaluator, counsel shall not initiate contact or otherwise communicate with the custodial evaluator until the custodial evaluator's report has been issued. Prohibited contact or communication shall include the sending of school records, medical records, affidavits, reports, or any other type of written record by the attorney to the custodial evaluator. Information which may be requested by the custodial evaluator shall be delivered or otherwise presented to the evaluator by the party and not counsel. In the event the custodial evaluator should contact counsel before the evaluator's report has been issued, such fact should be promptly conveyed to opposing counsel indicating the specific dialogue between counsel and the custodial evaluator. Following the issuance of the evaluator's report, the evaluator shall be deemed a witness and counsel shall be permitted ex parte communication with the evaluator at counsel's/client's expense.

LR21-FL00-15 DISSOLUTION PROCEDURE

Prior to commencement of a final dissolution hearing, the Parties shall prepare a joint exhibit setting forth all the marital property. This exhibit shall not only give a description of the property and debt but the agreed upon value of the property and amount of the debt. If the Parties can not agree upon a value or an amount then the exhibit shall set out each party's value or amount. In addition the exhibit shall state who is to receive the property or pay the debt or that the distribution of the items at issue.

LR21-FL00-16
TERMINATION OF REPRESENTATIVE CAPACITY

Upon the entry of final Decree of Dissolution of Marriage, Legal Separation, Paternity, or and Order of permanent modification of any custody, visitation and/or child support Order, the representative capacity of all attorneys appearing on behalf of any party shall be deemed terminated upon: An order of withdrawal; The expiration of time within which an appeal of such Order may be preserved or perfected pursuant to the Indiana Rules of Trial Procedure and/or the Indiana Rules of Appellate Procedure; or, The conclusion of any appeal of such Order commenced pursuant to Indiana Rules of Trial Procedure and/or the Indiana Rules of Appellate Procedure.

The service of any post dissolution pleadings upon any party not represented by counsel pursuant to the above paragraph shall be made upon that person pursuant to Indiana Rules of Trial Procedure.

Any copy served upon original counsel will be deemed to be a matter of professional courtesy only; however, such professional courtesy is encouraged and if a courtesy copy of such petition is sent to a representative, whether terminated or not, such shall be shown on a certificate of service.

FAYETTE JOINT LOCAL PROBATE RULES

LR21-PR00-1 ADOPTING OF LOCAL CIVIL RULES

All of the Local Civil Rules Approved by the Fayette Circuit and Superior Courts are to be considered a part of these rules.

LR21-PR00-2 APPOINTMENT OF PERSONAL REPRESENTATIVE-GUARDIAN

All applications filed for appointment of personal representatives of decedent's estate, for appointment of guardians of incompetents, proofs of wills, all partial and final accounts made and filed by trustees, personal representatives and guardians, and orders thereon, shall comply with the applicable Probate Law of this State, and, as near as practicable, they shall be made on or according to the forms prescribed by the Court.

LR21-PR00-3 PAYMENT OF COSTS

Publication costs shall be paid before any notice will be published. Any costs associated with or due prior to the filing of an Inheritance Tax Return shall be paid prior to the Court signing an order determining tax.

LR21-PR00-4 NOTICES

Any notice which is required to be given shall be prepared by the personal representative in a sufficient number so that the Clerk may make publication where required and to mail copies to all persons entitled to the same. If the notice requires a hearing date the personal representative shall clear the date with the Court prior to giving the notice to the Clerk except for final accounts which date shall be at least fourteen (14) days after the notice is first published. If notice is to be made by mail, the personal representative shall provide addressed, stamped envelopes. If notice is to be made by publication, the personal representative shall deliver a copy to the Connersville, News-Examiner after payment of costs.

LR21-PR00-5
SALE OF REAL ESTATE

All petitions filed for the purpose of procuring an order to sell real estate, in addition to accurately describing the real estate to be sold, shall state one or more statutory grounds as the basis therefore, and shall in all respects comply with the provisions of IC 29-1-15-11, et seq.

LR21-PR00-6
ACCOUNTS

All partial and final accounts filed by personal representatives, guardians, and trustees must be filed in duplicate. The Clerk shall place and keep one copy in the file of the estate or jacket containing the papers in the estate and the copy shall be placed in and made a part of the Records of Accounts as required by law to be kept by the Clerk.

LR21-PR00-7
INVENTORIES

All inventories filed by personal representative, guardian, commissioner or trustee, must be filed with the Clerk in duplicate. The original shall be placed by the Clerk in the jacket containing the papers in the estate or trust, and the copy shall be placed in, made a part of and remain in and constitute the Record of Inventories.

LR21-PR00-8
REPORTS

Personal representatives of decedent's estate, guardians, commissioners, receivers and trustees, in making reports or accounts to the Court, must make such statements and explanations therein as will enable the Court to determine the correctness of such reports and the true condition of the estate and the assets represented by them.

LR21-PR00-9
CREDITS

All items of credits for expenses, fees, and claims paid, and for legacies and distributive shares paid to beneficiaries, must be numbered consecutively from 1, upward, and the vouchers showing payments of such items must, likewise, be numbered, and arranged consecutively in proper numerical sequence, so as to correspond with the items in the report, and be so filed with the report so that the Court can readily check any of the items of credit with the vouchers.

Every item of credit must, in one or more words, show for what purpose the payment was made.

LR21-PR00-10
ESTATES – FEES

The calculation of fees of Personal Representative shall be on the form entitled Computation of Fees, which is now incorporated as a part of these rules, and affixed hereto and designated as Exhibit A.

Fees for the services of personal representatives of decedent's estates and their attorneys shall be based on the total gross value of the estate and shall be calculated according to the following schedule:

| | | <u>Attorneys Fees</u> | <u>Pers. Rep. Fees</u> |
|-------|-----------|-----------------------|------------------------|
| First | \$ 2,000 | \$200 | \$200 |
| Next | \$ 5,000 | 10% | 5% |
| Next | \$ 45,000 | 5% | 2.5% |
| Next | \$ 50,000 | 4% | 2% |
| Next | \$300,000 | 3% | 1.5% |
| Over | \$400,000 | 2% | 1% |

Fees herein computed are intended to cover the usual and ordinary services that are reasonably anticipated. If an attorney or personal representative is required to do extraordinary work, then they may petition the court for additional fees commensurate with the services rendered in addition to the basic fees.

If an inheritance tax is adjudicated without administration or the inheritance tax schedule lists assets which do not pass through the probate estate the personal representatives shall be entitled to a fee of one percent (1%) of such inheritance tax assets and the attorney shall be entitled to a fee of two percent (2%) of such inheritance tax assets.

If an attorney serves as personal representative and does not employ an attorney to perform the necessary legal services incident the duties of such personal representative, but he, or the legal firm of which he may be a member performs such legal services, then such attorney in such instance shall be allowed and paid, one-half of the allowable fees to the personal representative, and all of the allowable fees for the attorney for the personal representative.

Any fees in excess of the foregoing schedule should be fully explained in the account, or report, and the reasons stated for excessive amount.

LR21-PR00-11
ESTATES – TAXES

Every Final Account by a Personal Representative must state whether any inheritance tax is or is not payable on any part of the estate of the decedent. If inheritance tax is payable, the countersigned receipt showing payment of the tax must be filed with the report.

Such reports shall further state whether or not the estate is subject to liability for Federal Estate Tax, and if so, whether or not the same is paid. If liable, the report shall include a copy of the Federal State Tax Closing Letter, and receipt or canceled check for the payment of the tax.

LR21-PR00-12
CLAIMS

Any claim not approved by the personal representative within five (5) months of the first notice to creditors will be transferred to the civil docket. If the claimant is unrepresented a status conference will be held within 30 days after transfer. The claim will be set for trial within 60 days after transfer or the status conference.

LR21-PR00-13
GUARDIANSHIPS - ACCOUNTS

Reports or accounts by guardians and trustees must state and show all investments and securities in which the assets of the ward or trusts are invested, the market value thereof and the penal sum of bonds of guardians and trustees and names and addresses of sureties, and that they are amply solve, age of the ward, his residence address, and the residence address of the guardian.

LR21-PR00-14
GUARDIANSHIPS - FEES

In biennial, partial and final accounts the fees stated in the account for the services of guardians, trustees, and their attorneys shall be based on the total gross value of the assets, including personal property, real estates and income in possession or under the control and management of the guardian or trustee at the beginning to the period for which the account is made, as shown in the account, or at the end of such period if the same be larger than at the beginning of such period as shown by the account.

Guardianship fees shall be calculated according to the following schedules:

| <u>Total Value of Estate</u> | <u>Rate for Gdn. Or Trustee</u> | <u>Rate for Attorney</u> |
|------------------------------|---------------------------------|--------------------------|
| First \$25,000 | \$100 | \$50 |
| Next \$25,000 | \$50 | \$50 |
| Next \$50,000 | \$250 | \$50 |
| Next \$100,000 | \$500 | \$150 |
| Over \$200,000 | \$0 | \$200 |

The above fees are intended to cover only the usual and ordinary services, Guardianships and trusts which are complex may warrant the charging of additional fees commensurate with services, in which case the Guardian, trustee or his attorney shall file a petition for the allowance of such additional fees, accordingly specifically setting forth the nature of the services rendered, the time involved and the reasons why the same should generate additional fees. Please provide such additional information and supportive evidence as you think will enable the Court to weigh the Claim for fees.

The calculation of fees of guardians, trustees and their attorneys shall be on the form entitled Computation of Guardian and Trustee Fee, which is now incorporated as a part of these rules and is available from the Court.

LR21-PR00-15 TRUST

Except when required by IC 30-4-6 the Court will not docket any trust nor will it supervise the administration of any trust. On the effective dates of these rules all trusts now docketed will be removed except where IC 30-4-6 require the Court to continue jurisdiction. With respect to a decedent's estate docketed for the purpose of probate or administration which either establishes a trust or makes a devise to another trust, the Court will not continue jurisdiction over the administration of the trust after any distribution from the estate is made or delivered to the trustee. If the personal representative is the trustee he shall be discharged from liability as personal representative but not as trustee and the estate will be closed upon distribution of all the assets other than those to be held in trust.