

STATE OF INDIANA

# Local Court Rules

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Delaware Circuit Court

**Delaware County**  
**Effective**  
**1/1/2023**

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**Delaware County Court Rules**

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**LR18-SC00-DLR-0001**  
**Small Claims Practice and Procedure**

**A. Scheduling.**

1. The Clerk of the Court shall schedule an initial trial on the complaint. At the initial trial, the defendant shall admit or deny liability as to the claim.
2. If the defendant fails to appear at an initial trial after proper service, the plaintiff may request judgment. If the plaintiff fails to appear at the initial trial after proper notice, the court may dismiss the action without prejudice.
3. If the defendant appears and admits liability the parties may sign and file an Agreed Judgment.
4. If the defendant appears and denies liability, the court shall set the matter for a bench trial and notify all parties.

**B. Attorney Fees.**

A party who is represented by an attorney and is requesting attorney's fees shall present to the court a written affidavit detailing the time spent, services rendered, and hourly rate requested. There shall be a rebuttable presumption that a reasonable attorney fee based upon the amount of the judgment is as follows:

JUDGMENT	ATTORNEY FEE
Less than \$500.00	\$150.00
Over \$500.00 but less than \$1,250.00	\$250.00
Over \$1,250.00 but less than \$2,500.00	\$500.00
Over \$2,500.00 but less than \$4,000.00	\$800.00
Over \$4,000.00 but less than \$6,000.00	\$1,000.00
Over \$6,000.00 but less than \$10,000.00	\$1,200.00

**C. Continuances.**

A party seeking to continue a hearing date must file a written motion for continuance, and the court may grant the motion if the party seeking the motion shows good cause. Forms for continuance can be found in the Self Help Legal Center located in the lobby of the Justice Center or online on the County Clerk's and Courts' websites.

**D. Judgments.**

A party seeking a default judgment shall file an Affidavit of Non-Military Service and Competency. These forms can be found in the Self Help Legal Center located in the lobby of the Justice Center or online on the County Clerk's and Courts' websites.

**E. Proceedings Supplemental.**

If a party does not pay the judgment after its entry, the party seeking payment may file a Motion for Proceedings Supplemental and an Order to Appear in Court and Answer as to Wages, Assets, Property, and Income. The Clerk will provide a hearing date. The forms can be found in the Self Help Legal Center located in the lobby of the Justice Center or online on the County Clerk's and Courts' websites.

## **F. Contempt/Issuance of Body Attachment.**

The procedure to be used after a debtor fails to appear at a proceedings supplemental hearing shall be as follows:

- (1) If a debtor fails to appear at a hearing as ordered, the court shall not issue a writ of attachment unless the procedures set out in this rule are followed. The judgment creditor may file a motion for contempt citation against the debtor for failure to appear. The motion for contempt citation must be filed within thirty (30) days of the failure to appear. The motion for contempt citation shall include a clear statement of the facts alleged to constitute contempt including the date on which the contempt is alleged to have occurred.
- (2) The motion for contempt citation and order to appear must be delivered to the judgment debtor personally and proof of personal service must be filed with the court. Personal service includes certified mail signed by the judgment debtor.
- (3) If the judgment debtor fails to appear after being personally served with the motion for contempt citation and order to appear, the judgment creditor may file a request for body attachment. The request for body attachment must be filed within thirty (30) days of the debtor's failure to appear for the hearing in the contempt citation. The request for body attachment must reflect that the order to appear was personally served on the judgment debtor and must include telephone numbers at which the judgment creditor may be contacted as well as sufficient information to identify the debtor.
- (4) The writ of attachment shall contain identifying information regarding the judgment debtor including a current address, social security number or date of birth, and distinguishing physical features, if known. The writ shall also contain the date of issuance and in capital letters the following statement: **SERVE DURING THE COURT'S BUSINESS HOURS. DO NOT PLACE IN JAIL. BRING DIRECTLY TO COURT. THIS WRIT EXPIRES 180 DAYS FROM DATE OF ISSUANCE.**
- (5) Upon serving the writ, the law enforcement officer shall deliver the judgment debtor to court staff who shall attempt to contact the judgment creditor at the telephone numbers provided by the creditor and notify the creditor that the judgment debtor is present at the court. The creditor shall have two hours or until the close of business, whichever comes first, to appear before the court and question the judgment debtor. The court may permit the judgment creditor to question the debtor by telephone. If the judgment creditor cannot be reached or does not appear, the judgment debtor shall be released.

## **G. Bankruptcy Stay.**

Any party seeking a stay due to a bankruptcy filing should file a Notice to Stay the Proceeding stating that they have included the debt at issue with the bankruptcy court and include the bankruptcy cause number.

## **H. Releasing Judgments.**

A party shall file a Release of Judgment with the court after the opposing party has paid a judgment in full. These forms can be found in the Self Help Legal Center located in the lobby of the Justice Center or online on the County Clerk's and Courts' websites.

**I. Dismissals.**

The party who filed a Notice of Claim, Counterclaim, or Cross-Claim may file a written Motion to Dismiss the claim at any time before the court enters a judgment. These forms can be found in the Self Help Legal Center located in the lobby of the Justice Center or online on the County Clerk's and Courts' websites.

**J. Hearing Dates Following Dismissal.**

If the court dismisses a Notice of Claim upon the plaintiff's written request, and if a Counterclaim or Cross-Claim is still pending, the hearing will be held on the Counterclaim or Cross-Claim.

**K. Small Claims Manual.**

The Delaware County Small Claims Manual is available on the County Clerk and Courts' websites.

**L. Self-Help Forms.**

All Self-Help forms can be found in the Self Help Legal Center located in the lobby of the Justice Center or online on the County Clerk's and Courts' websites.

*(Amended effective January 1, 2020; further Amended December 14, 2020; further Amended January 1, 2022)*

**LR18-DR00-DLR-0002**  
**Domestic Relation Cases**

**I. Termination of Representative Capacity.**

A. After a court enters a Decree of Dissolution of Marriage, Legal Separation, or Paternity; after a court issues an order permanently modifying custody, or after a court issues an order modifying parenting time or child support, the representative capacity of all attorneys appearing on any party's behalf shall be deemed terminated upon:

1. The court entering an order withdrawing the attorney's appearance;
2. Expiration of the time for appealing the order had expired; or
3. Conclusion of any appeal related to the order.

B. Service of Pleadings.

If a party is not represented by counsel pursuant to Paragraph A above, the opposing party shall serve any pleadings directly to the party pursuant to the Indiana Rules of Trial Procedure.

C. Courtesy Copy.

If a party serves a pleading upon an attorney who no longer has a representative capacity in the case pursuant to Paragraph A, the court shall deem that service a courtesy copy only.

**II. Contested Hearings.**

A. If an attorney requests contested hearing time of Two (2) Hours or more in a Domestic Relations case; a Juvenile Paternity case; or in a Miscellaneous Case involving Custody, Child Support, or Parenting Time issues, the Court will set an Attorneys-only Pre-Trial Conference before setting a hearing date. The attorneys must meet with the judge or the judge's designee and hold a pre-trial conference. The attorneys shall bring their calendars and be prepared to set a hearing date.

B. During the Pre-Trial Conference, the Court will set a Settlement Conference date and a hearing date.

C. The attorneys and their clients are expected to attend the Settlement Conference in person and shall be prepared to discuss settlement of all or some of the issues between the parties. The attorneys must meet with the judge or the judge's designee during or at the conclusion of the Settlement Conference to discuss their progress.

D. Continuing a Settlement Conference date may cause the Court to continue the contested hearing date on the court's motion.

E. Contested hearing time is not to be used for settlement negotiations. The Court will expect the parties to begin promptly at the hearing time.

F. The Court may waive the requirements in this rule for good cause shown, or in an emergency situation.

G. The judge may implement this rule for any hearing of any length at his or her discretion.

### **III. Guardian Ad Litem**

#### **A. Appointment**

A party in a family law case may request the Court to appoint a Guardian Ad Litem (“GAL”) to represent the child or children’s interests. The Court may appoint the GAL, by order or after a hearing, and the GAL shall keep time records for all services rendered.

The parties may select either “Track One” or “Track Two” GAL Appointment, as set out in the next sections.

#### **B. “Track One” GAL Appointment.**

A “Track One” GAL Appointment is the traditional, full GAL Report with interviews of the parties, children, and other individuals who may have information relevant to the GAL’s investigation.

#### **C. “Track Two” GAL Appointment.**

A “Track Two” GAL Appointment requires the GAL only to interview the parties and the child or children and to provide written recommendations to the parties. The parties would then proceed to mediation. If mediation is not successful, either party may request the GAL to provide a full report, subject to Section D below concerning fees.

#### **D. Fees**

##### **Track One GAL Appointments**

For Track One appointments, the party requesting the GAL appointment shall pay the following fees in advance to the GAL, and the GAL shall have no obligation to commence work until the party pays the fees: \$2,000.00.

This is not the entire fee, and the party requesting the Track One GAL appointment may be required to pay additional fees to the GAL.

The party paying the fees may petition the court at any time for reimbursement or contribution from the other party toward GAL fees.

The attorney representing the party requesting the Track One GAL appointment shall meet with the client and review the Guidelines for GAL Appointments and Fee Acknowledgement found in the Delaware County Administrative Rules (DAR-0019). The attorney and party shall sign the Guidelines and Acknowledgement, and the attorney shall file it with the court along with the request for GAL.

##### **Track Two GAL Appointments**

For Track Two appointments, the party requesting the GAL appointment shall pay the following fees in advance to the GAL, and the GAL shall have no obligation to commence work until the party pays the fees: \$1,500.00.

It is anticipated that the GAL will complete the work necessary to make recommendations without exceeding \$1,500.00.

The party paying the fees may petition the court at any time for reimbursement or contribution from the other party toward GAL fees.

The attorney representing the party requesting the Track Two GAL appointment shall meet with the client and review the Guidelines for GAL Appointments and Fee Acknowledgement found in the Delaware County Administrative Rules (DAR-0019). The

attorney and party shall sign the Guidelines and Acknowledgement, and the attorney shall file it with the court along with the request for GAL.

### **Testimony in Court**

The courts do not anticipate that a GAL will attend a hearing or testify at a hearing. If a party requires the GAL to attend a hearing and/or to testify at a hearing, the party shall issue a subpoena to the GAL at least Ten (10) Days prior to the hearing date. The party issuing the subpoena is responsible to pay the GAL in advance for the time anticipated to attend the hearing.

### **Court Authority**

The court retains the authority to enforce orders to pay GAL fees until the parties pay the GAL fees as ordered in full.

*(Amended effective December 14, 2020, further Amended effective January 1, 2023)*



**LR18-JD00-DLR-0003**  
**Discovery and Motions in Limine**  
**In Juvenile Delinquency Cases**

**I. Discovery**

**A. Duty of the State of Indiana.**

In all filed juvenile delinquency cases, unless relieved by court order, the prosecuting attorney shall, at least twenty-one (21) days prior to the fact-finding hearing, furnish the attorney for the child the following:

1. The names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the fact-finding hearing, together with their relevant written or recorded statements.
2. Any written or recorded statements and any summaries of oral statements made by the child herein or any statements of others which contain a declaration of the child.
3. Those portions of the Grand Jury minutes which contain statements of witnesses whom the prosecutor intends to call and directly examine at the fact-finding hearing, which statements are probably within the control of the prosecution and which statements will relate to matters covered in the witness' testimony in this case, for the purpose of cross-examination and impeachment of such witness' credibility.
4. The relevant testimony which is reduced to writing of persons whom the prosecutor intends to call as a witness at the fact-finding hearing, but who did not testify before the Grand Jury.
5. Any reports or statements of experts made in connection with the case, including results of physical or mental examination and of scientific tests, experiments, or comparisons.
6. Any books, papers, documents, photographs or tangible objects, which the prosecuting attorney intends to use at the fact-finding hearing or which were obtained from or belong to the child or his family.
7. Any record or prior criminal convictions of persons whom the prosecutor intends to call as witnesses at the fact-finding hearing.
8. Any declarations against interest made by the child.
9. Any evidence the prosecutor might have, favorable to the child.
10. Copies of any photographs which the prosecution has in its possession which it intends to introduce as evidence.
11. Any description of the child's conduct, if any, that the prosecution intends to introduce as an implied admission.
12. Any promises, rewards, or inducements provided to prosecution witnesses or defense witnesses for the child.
13. Any victim's statement that was recorded or memorialized and that is under the State's control.
14. Any and all medical reports in appropriate cases.
15. That portion of police reports containing substantially verbatim statements of witnesses.
16. The delinquency record of the child, including arrests and adjudications.
17. Evidence of other crimes, wrongs, or acts pursuant to Evidence Rule 404(b).

The State shall also allow counsel for the child to examine any and all physical evidence, whether or not the prosecution intends to present the evidence at the fact-finding hearing, within thirty (30) days after the initial hearing.

### **B. Duty of Counsel for the Child**

In all filed juvenile delinquency cases, unless relieved by court order, counsel for the child shall, at least fourteen (14) days prior to the fact-finding hearing, furnish the attorney for the State of Indiana the following:

1. Any reports or results or testimony relative thereto, of physical or mental examination or of scientific tests, experiments or comparisons, or any other reports or statements of experts pertaining to this case.
2. A summary of any special or statutory defense(s), which the child intends to make at a hearing in this cause.
3. Names and last known addresses of persons the child intends to call as witnesses, together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements, and any record of prior delinquency adjudication known to the child.
4. Any books, papers, documents, photographs, or tangible objects the child intends to use as evidence or for impeachment at a hearing.

If the child is not represented by an attorney, the above requirements do not apply, and the parties must file written motions with the Court to request discovery.

## **II. Motions in Limine**

In all filed delinquency cases, unless relieved by court order, the following items are excluded from evidence, and the court prohibits any reference at the fact-finding hearing to the following. In addition, counsel and all witnesses may not refer to, mention, or testify about the following:

1. The fact that the child failed to make a statement either orally or in writing at the time of his arrest.
2. Any questioning of the child, or any statements which the child may have made while he was in the custody of the police, absent proof beyond a reasonable doubt that the statements were made freely and voluntarily and after a knowing and intelligent waiver of rights by the child.
3. Any previous arrest or detention of the child which did not result in a delinquency adjudication, or any other alleged offenses, purportedly involving the child, in which he was neither arrested nor charged.
4. Any prior delinquency adjudication of the child, except those which may be used for the purpose of impeachment.

The rule regarding Motions in Limine shall apply to cases in which the Child is not represented by an attorney.

*(Amended effective March 4, 2019)*

**LR18-JC00-DLR-0004**  
**Discovery and Motions in Limine**  
**In CHINS Cases**

**I. Discovery**

**A. Duty of Counsel for the DFC**

In all filed CHINS cases, unless relieved by court order, the attorney for the Indiana Department of Child Services (hereinafter **DCS**) shall, within fourteen (14) days after the initial hearing in any CHINS action filed, furnish the attorney for the parent(s), guardian(s) or custodian(s) (hereinafter **PGC**) the following:

1. The names and addresses of persons whom the **DCS** intends to call as witnesses at the fact-finding hearing, together with their relevant written or recorded statements.
2. Any written or recorded statements and any summaries of oral statements made by the *PGC* herein or any statements of others which contain a declaration of the *PGC*.
3. The relevant testimony which is reduced to writing of persons whom the **DCS** intends to call as a witness at the fact-finding hearing.
4. Any reports or statements of experts made in connection with the case, including results of physical or mental examination and of scientific tests, experiments, or comparisons.
5. Any books, papers, documents, photographs or tangible objects, which the **DCS** intends to use in the fact-finding hearing or which were obtained from or belong to the *PGC*.
6. Any record or prior criminal convictions of persons whom the **DCS** intends to call as witnesses at the fact-finding hearing.
7. Any declarations against interest made by the *PGC*.
8. Any evidence the **DCS** might have, favorable to the *PGC*.
9. Copies of any photographs which the **DCS** has in its possession which it intends to introduce as evidence.
10. Any description of the *PGC*'s conduct, if any, that the **DCS** intends to introduce as an implied admission.
11. Any promises, rewards, or inducements provided to **DCS** witnesses or *PGC* witnesses.
12. Any victim's statement that was recorded or memorialized and that is under the **DCS**'s control.
13. Any and all medical reports in appropriate cases.
14. That portion of police reports containing substantially verbatim statements of witnesses.
15. The criminal record of the *PGC*, including arrests and convictions.
16. Evidence of other crimes, wrongs, or acts pursuant to Evidence Rule 404(b).

The **DCS** shall also allow counsel for the *PGC* to examine any and all physical evidence, whether or not the **DCS** intends to present the evidence at the fact-finding hearing, within fourteen (14) days after the initial hearing.

**B. Duty of Counsel for the Parents/Guardians/Custodian**

In all filed CHINS cases, unless relieved by court order, counsel for the *PGC* shall, within twenty-one (21) days after receiving the discovery from the **DCS** in any CHINS action filed against the *PGC*, furnish the attorney for the **DCS** the following:

1. Any reports or results or testimony relative thereto, of physical or mental examination or of scientific tests, experiments or comparisons, or any other reports or statements of experts pertaining to this case.
2. A summary of any special or statutory defense(s), which the *PGC* intends to make at a hearing or fact-finding in this cause.
3. Names and last known addresses of persons the *PGC* intends to call as witnesses, together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements, and any record of prior criminal convictions known to the *PGC*.
4. Any books, papers, documents, photographs, or tangible objects the *PGC* intends to use as evidence or for impeachment at a hearing or trial.

***If the PGC is not represented by an attorney, the above requirements do not apply, and the parties must file written motions with the Court to request discovery.***

## **II. Motions in Limine**

In all filed CHINS cases, unless relieved by court order, the following items are excluded from evidence, and the Court prohibits any reference at fact-finding hearing to the following. In addition, counsel and all witnesses may not refer to, mention, or testify about the following:

1. Any questioning of the *PGC*, or any statements which the *PGC* may have made while he was in the custody of the police, absent proof beyond a reasonable doubt that the statements were made freely and voluntarily and after a knowing and intelligent waiver of rights by the *PGC*.
2. Any previous arrest or detention of the *PGC* which did not result in conviction, or any other alleged offenses, purportedly involving the *PGC*, in which he was neither arrested nor charged.
3. Any prior conviction of the *PGC*, except those which may be used for the purpose of impeachment.
4. The rule regarding Motions in Limine shall apply to cases in which the *PGC* is represented by counsel as well as those cases where the *PGC* is not represented by counsel.

*(As amended effective October 21, 2003; further Amended effective January 1, 2020)*

**LR18-CR00-DLR-0005**  
**Discovery and Motions in Limine in Criminal Cases**

**I. Discovery**

**A. Duty of the State of Indiana**

In all Murder, Class A, Class B, Class C, and Class D felony cases; and in all F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); L5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal), and misdemeanors filed in Muncie City Court or Delaware County Circuit Courts, unless relieved by court order, the Prosecuting Attorney shall, within thirty (30) days after the initial hearing furnish the attorney for the Defendant the following:

1. The names and addresses of persons whom the Prosecuting Attorney intends to call as witnesses at the trial, together with their relevant written or recorded statements.
2. Any written or recorded statements and any summaries of oral statements made by the accused herein or any statements of others which contain a declaration of the accused.
3. Those portions of the Grand Jury minutes which contain statements of witnesses whom the Prosecutor intends to call and directly examine at trial, which statements are probably within the control of the prosecution and which statements will relate to matters covered in the witness' testimony in this case, for the purpose of cross-examination and impeachment of such witness' credibility.
4. The relevant testimony which is reduced to writing of persons whom the Prosecutor intends to call as a witness at the trial, but who did not testify before the Grand Jury.
5. Any reports or statements of experts made in connection with this case, including results of physical or mental examination and of scientific tests, experiments, or comparisons.
6. Any books, papers, documents, photographs or tangible objects, which the Prosecuting Attorney intends to use in the trial or which were obtained from or belong to the accused or his family.
7. Any record or prior criminal convictions of persons whom the Prosecutor intends to call as witnesses at the trial.
8. Any declarations against interest made by the Defendant.
9. Any evidence the Prosecutor might have, favorable to the Defendant.
10. Copies of any photographs which the prosecution has in its possession which it intends to introduce as evidence.
11. Any description of the Defendant's conduct, if any, that the prosecution intends to introduce as an implied admission.

12. Any promises, rewards, or inducements provided to prosecution witnesses or defense witnesses.
13. Any victim's statement that was recorded or memorialized and that is under the State's control.
14. Any and all medical reports in appropriate cases.
15. That portion of police reports containing substantially verbatim statements of witnesses.
16. The criminal record of the Defendant, including arrests and convictions.
17. Evidence of other crimes, wrongs, or acts pursuant to Evidence Rule 404(b).

The State shall also allow counsel for the Defendant to examine any and all physical evidence, whether or not the prosecution intends to present the evidence at trial, within thirty (30) days after the initial hearing.

**B. Duty of Counsel for the Defendant.**

In all Murder, Class A, Class B, Class C, and Class D felony cases; and in all F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); L5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal), and misdemeanors filed in Muncie City Court or Delaware County Circuit Courts, unless relieved by court order, counsel for the Defendant shall, within thirty (30) days after receiving the discovery from the State of Indiana in any criminal action filed against the Defendant, furnish the attorney for the State of Indiana the following:

1. Any reports or results or testimony relative thereto, of physical or mental examination or of scientific tests, experiments or comparisons, or any other reports or statements of experts pertaining to this case.
2. A summary of any special or statutory defense(s), which Defendant intends to make at a hearing or trial in this cause.
3. Names and last known addresses of persons Defendant intends to call as witnesses, together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements, and any record of prior criminal convictions known to the Defendant.
4. Any books, papers, documents, photographs, or tangible objects Defendant intends to use as evidence or for impeachment at a hearing or trial.

**C. Duty When Defendant is Not Represented by Counsel.**

If a Defendant is not represented by an attorney, the above duties do not apply. The parties must file written motions with the court to request discovery.

#### **D. Protective Order Regarding Materials Received in Discovery**

In order to ensure a fair trial for both sides of the litigation as well as to provide for the protection and privacy of witnesses and victims, the Delaware County Circuit Court Board of Judges hereby adopts the following general Protective Order regarding discovery materials.

1. Discovery material shall not be used by any person for any purpose other than to prepare for trial in a charged action and shall not be publicly exhibited, shown, displayed, or disseminated, (including uploading it to an internet site or social media site) in any form or fashion except in judicial proceedings and/or disciplinary proceedings.
2. Counsel for the State and for the Defendant may display and review discovery materials with potential witnesses in the case, including expert witnesses. All witnesses who review discovery materials are bound by this Protective Order.
3. Once discovery material has been provided to the defendant, defense counsel, or the State no additional copy of the discovery material shall be made by the State, the defendant, the defendant's attorney, investigator, expert or any other representative or agent of the defendant without the permission of the Court, following notice to opposing counsel and opportunity to object. However, defense counsel may provide a copy of the discovery material to his/her client and the parties may copy discovery material for internal use to prepare for trial, subject to the restrictions in Paragraph 1 and 2 above.
4. The State shall not provide copies of evidence illegal to reproduce or distribute, such as child pornography. Where copying is illegal, impractical or where there is good cause to not produce copies of evidence and exhibits, parties may provide descriptions of the evidence and allow an opportunity for reviewing such evidence to opposing parties. The court may resolve disputes over timing and manner of discovery.
5. Defense attorneys of record shall make the defendant aware of the existence and content of this rule as well as the penalties for violating the provisions of the rule.
6. At the conclusion of the litigation, any and all copies of discovery material which are not entered into evidence, shall be returned to party from whom they were received or counsel shall keep them in a secure manner.
7. This Protective Order shall not terminate upon disposition of a case but shall remain in full effect until the court which disposed of the case enters a contrary order, or until the Board of Judges modifies this Protective Order.
8. Any violation of this Order may be punishable by contempt of court.

#### **II. Motions in Limine.**

In all Murder, Class A, Class B, Class C, and Class D felony cases; and in all F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); L5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Level 1, 2, 3, 4, 5 and 6 felonies, unless relieved by court order, the following items are excluded from

evidence, and the Court prohibits any reference at the fact-finding hearing to the following. In addition, counsel and all witnesses may not refer to, mention, or testify about the following:

1. The fact that the Defendant failed to make a statement either orally or in writing at the time of his arrest.
2. Any questioning of the Defendant, or any statements which Defendant may have made while he was in the custody of the police, absent proof beyond a reasonable doubt that the statements were made freely and voluntarily and after a knowing and intelligent waiver of rights by the Defendant.
3. Any previous arrest or detention of the Defendant which did not result in a conviction.
4. Any other alleged offenses, allegedly involving the Defendant, in which he or she was neither arrested nor charged.
5. Any prior conviction of the Defendant, except those which may be used for the purpose of impeachment.
6. The statutory penalty for the offense(s) charged, or any and all included offenses.

The rule regarding Motions in Limine applies in cases where Defendant is represented by counsel, and it also applies to cases where Defendant is not represented by counsel.

*(Amended effective January 1, 2018; further Amended effective January 1, 2020; further Amended effective January 1, 2022)*



**LR18-CR00-DLR-0006**  
**Criminal Practice and Procedure**

**A. Assignment of Cases.**

The following case numbers shall be used for crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (Class A felony), FB (Class B felony), FC (Class C felony), FD (Class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C felonies or D felonies. The following case numbers shall be used for crimes committed on or after July 1, 2014: MR (Murder); F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); L5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Level 1, 2, 3, 4, 5 and 6 felonies.

All felonies, charging Murder, Levels 1, 2, 3, 4, 5 and 6 will be assigned to the appropriate court based upon the month in which the offense is alleged to have occurred.

The following monthly rotation is now established, effective October 1, 2019:

- Circuit Court No. 2 - the first month (October 1, 2019)
- Circuit Court No. 3 - the second month;
- Circuit Court No. 4 - the third month;
- Circuit Court No. 5 - the fourth month;
- Circuit Court No. 1 - the fifth month.

Thereafter, the monthly rotation among the courts will continue in this sequence until further order.

**B. Standalone Misdemeanors and Misdemeanors Transferred from Muncie City Court.**

1. If a felony case is pending against a defendant, a misdemeanor shall be filed in or transferred into the Division of the Circuit Court that holds the highest pending felony charge, regardless of when the misdemeanor crime was allegedly committed.

2. If no felony cases are pending against the Defendant, the misdemeanor will be filed or transferred into in the Delaware Circuit Court No. 4 or No. 5 under the following rotation schedule:

- Circuit Court No. 4: January, March, May, July, September and November;
- Circuit Court No. 5: February, April, June, August, October, and December.

3. A “pending” case is a case not yet disposed of by guilty plea, jury trial, bench trial, bench disposition, or dismissal.

**C. Transfer and Reassignment.**

A judge may transfer and reassign to any of the other five Circuit Court Judges a pending case, by issuing a written order for transfer, and subject to the receiving court’s acceptance, unless the conditions below are met, and acceptance is not required.

If a Defendant charged with a pending felony case is later charged with a higher felony, the Court with the lower level felony shall transfer the lower level felony case to the court with the higher pending felony case, either on its own motion or at a party’s request.

A “pending” case is a case not yet disposed of by guilty plea, jury trial, bench trial, bench disposition, or dismissal.

If the case transferred is a Level 5 or Level 6 felony, the transferring court shall order the Clerk to transfer the case to the receiving court, and the Clerk shall transfer the case without an order of acceptance.

**D. Filing and Reassignment of Class Level 6 felony or D felony Cases.**

Any Level 6 felony or Class D felony case may be filed in the Division of the Circuit Court that holds another pending felony charge, regardless of when the Level 6 felony or Class D felony offense was allegedly committed.

**E. Re-filing by the State.**

In the event the State of Indiana dismisses a case and later re-files that case, the State shall file the case in the court which dismissal was taken.

In the event the State of Indiana dismisses a case, any subsequent related cases filed against such defendant within ninety (90) days shall be assigned to the court from which dismissal was taken.

**F. Additional Related Charges.**

If the State files additional related charges against a Defendant, after the case is initially assigned, the State shall file all additional related charges in the court of initial assignment.

**G. Additional Unrelated Charges.**

If a Defendant has allegedly committed multiple offenses in different months, the date of the highest-level alleged offense shall control the assignment. If a Defendant has committed the same level of felony in different months, the date of the first alleged offense shall control the assignment.

*(Amended effective January 1, 2022)*

**LR18-CR00-DLR-0006.5**  
**Criminal Case Reassignment and Special Judge Selection**

**A. Reassignment.**

If a judge grants a change of judge motion, or should a judge find it necessary to disqualify and assign a different judge to a case, the Clerk shall reassign the case as follows:

- Cases from the Delaware Circuit Court No. 1 shall be reassigned to the Delaware Circuit Court No. 2.
- Cases from the Delaware Circuit Court No. 2 shall be reassigned to the Delaware Circuit Court No. 3.
- Cases from the Delaware Circuit Court No. 3 shall be reassigned to the Delaware Circuit Court No. 4.
- Cases from the Delaware Circuit Court No. 4 shall be reassigned to the Delaware Circuit Court No. 5.
- Cases from the Delaware Circuit Court No. 5 shall be reassigned to the Delaware Circuit Court No. 1.

If the judge to whom the case is assigned cannot assume jurisdiction for any reason, the Clerk shall assign the case to the next judge in the consecutive order as set out above.

**B. Special Judge Assignment – Outside Delaware County**

If the Clerk is unable to assign a special judge under the provisions of Trial Rule 79(H), then the regular sitting judge shall direct the Clerk of Delaware County to select (on a rotating basis) one of the judges from the following available panel of judges:

- a. Presiding Judge, Blackford Circuit Court;
- b. Presiding Judge, Blackford Superior Court;
- c. Presiding Judge, Henry Circuit Court No. 1
- d. Presiding Judge, Henry Circuit Court No. 2;
- e. Presiding Judge, Henry Circuit Court No. 3;
- f. Presiding Judge, Jay Circuit Court;
- g. Presiding Judge, Jay Superior Court;
- h. Presiding Judge, Randolph Circuit Court;
- i. Presiding Judge, Randolph Superior Court;

If a special judge selected from the rotating list is ineligible for, disqualified from, or excused from appointment, then the regular sitting judge shall direct the Delaware County Clerk to select (on a rotating basis) the next judge on the list.

If the Clerk is unable to assign a special judge from the judges listed above, then the Clerk shall select a judge from the contiguous counties of Madison or Grant.

In the event that no judicial officer within the above list is eligible to serve as special judge, or if the case's particular circumstances warrant selection of a special judge by the Indiana Supreme Court, the judge of the court in which the case is pending shall certify the matter to the Indiana Supreme Court to appoint a special judge.

*(Amended effective February 1, 2017; further Amended effective January 1, 2018; further Amended effective March 16, 2018; further Amended effective October 9, 2018; further Amended effective October 1, 2019; further Amended effective January 1, 2020; further Amended effective January 1, 2022)*

**LR18-AR00-DLR-0007**  
**BAIL SCHEDULE**

This bail schedule shall apply as follows:

**To all crimes committed on or before June 30, 2014:** Felonies, which include MR (Murder), FA (Class A felony), FB (Class B felony), FC (Class C felony), FD (Class D felony), MC (Miscellaneous Criminal), and Misdemeanors in conjunction with Murder and Class A, B, C, or D felonies.

**To all crimes committed on or after July 1, 2014:** Murder, F1 (Level 1 felony), F2 (Level 2 felony), F3 (Level 3 felony), F4 (Level 4 felony), F5 (Level 5 felony), F6 (Level 6 felony), MC (Miscellaneous Criminal) and misdemeanors in conjunction with Murder and Levels 1, 2, 3, 4, 5 and 6 felonies.

**A. Felonies Alleged to Have Occurred Before July 1, 2014:**

Except for Class D felonies and misdemeanors, the Clerk may not accept a Ten Percent (10%) cash deposit in lieu of bond, except upon written Order of a Judge.

1. Unless otherwise ordered by the Court, there shall be **NO BOND** for the charge of Murder, except by the Court after a hearing.
2. The presumptive bond amount for bail on a Class A felony offense (except those involving Dealing in Controlled Substances, including Cocaine and Methamphetamine) shall be Thirty Thousand Dollars (\$30,000.00).
3. The presumptive bond amount for bail on a Class A or B felony offense for Dealing in Cocaine, Dealing in Methamphetamine, or Dealing in a Controlled Substance shall be Fifty Thousand Dollars (\$50,000.00) total, regardless of the number of dealing offenses charged.
4. The presumptive bond amount for bail on a Class B felony offense shall be Twenty Thousand Dollars (\$20,000.00).
5. The presumptive bond amount for bail on a Class C felony offense shall be Ten Thousand Dollars (\$10,000.00).
6. The presumptive bond amount for bail on a Class D Felony offense shall be Five Thousand Dollars (\$5,000.00). Defendant may post a Ten Percent (10%) cash deposit in lieu of bond in defendant's name only.
7. If the defendant has a prior felony conviction within the last Five (5) Years, bail shall be twice the amount unless otherwise specified in this section.
8. For any person charged with a Murder or a Class A, B, or C felony, *and* charged with being an Habitual Offender, bail is to be set at an additional Fifty Thousand Dollars (\$50,000.00).
9. For any person charged with a Class D felony, *and* charged with being an Habitual Offender, bail is to be set at an additional Ten Thousand Dollars (\$10,000.00).

**B. Felonies Allegedly Committed on and after July 1, 2014:**

1. Unless otherwise ordered by the Court, there shall be **NO BOND** for the charge of Murder except by the Court after a hearing.
2. Except as otherwise provided, the presumptive bond amount for bail on Level 1 felony offense shall be Fifty Thousand Dollars (\$50,000.00).
3. Except as otherwise provided, the presumptive bond amount for bail on a Level 2 or 3 felony offense for Dealing in Cocaine, Dealing in Methamphetamine, or Dealing in a Controlled Substance shall be Fifty Thousand Dollars (\$50,000.00) total, regardless of the number of dealing offenses charged.
4. The presumptive bond amount for bail on a Level 2 felony offense shall be Thirty Thousand Dollars (\$30,000.00).
5. The presumptive bond amount for bail on a Level 3 felony offense shall be Twenty Thousand Dollars (\$20,000.00).
6. The presumptive bond amount for bail on a Level 4 felony offense shall be Ten Thousand Dollars (\$10,000.00).
7. The presumptive bond amount for bail on a Level 5 or 6 felony offense shall be Five Thousand Dollars (\$5,000.00). Defendant may post a ten percent (10%) cash deposit in lieu of bond in defendant's name only.
8. If the defendant has a prior felony conviction within the last Five (5) Years, bail shall be twice the amount unless otherwise specified in this section.
9. For any person charged with a Murder or a Level 1, 2, 3, or 4 felony offense, *and* charged with being an Habitual Offender, bail is to be set at an additional Fifty Thousand Dollars (\$50,000.00).
10. For any person charged with a Level 5 or 6 felony offense, *and* charged with being an Habitual Offender, bail is to be set at an additional Ten Thousand Dollars (\$10,000.00).

**C. Misdemeanors**

1. For Class A misdemeanors, bail shall be Two Thousand Five Hundred Dollars (\$2,500.00). Defendant may post a Ten Percent (10%) cash deposit in lieu of bond in his or her name only.
2. For Class B misdemeanors, bail shall be One Thousand Dollars (\$1,000.00). Defendant may post a Ten Percent (10%) cash deposit in lieu of bond in his or her name only.
3. For Class C misdemeanors, bail shall be Five Hundred Dollars (\$500.00). Defendant may post a Ten Percent (10%) cash deposit in lieu of bond in his or her name only.
4. Trial De Novo: Any person filing a written request for a Trial De Novo resulting from a misdemeanor conviction from the Muncie City Court may file with the Delaware County Clerk a cash or surety bond in the defendant's name only fixed at Five Hundred Dollars (\$500.00). Filing of the bond stays the judgment of the Muncie City Court. During the period of the stay,

the defendant shall not be subject to incarceration or probation orders of the Muncie City Court. The defendant, if incarcerated pursuant to the judgment of the Muncie City Court, shall be released from incarceration after posting bond. If the defendant requesting the Trial De Novo does not file the bond, the judgment of the Muncie City Court is not stayed and the defendant shall remain incarcerated or subject to probation orders of the Muncie City Court.

**D. Provisions Applicable to All Offenses:**

1. Persons shall be held without bond until the Pre-Charge Initial Hearing who are arrested and in which:

- a. the true identity of a defendant is unknown; or
- b. there is good cause to believe the defendant is on probation, home detention/house arrest, parole, on bond, on pre-trial release to probation, or participating in the Forensic Diversion Drug Court Program or the Veteran's Court.

2. Delaware County Jail shall place a Fifteen (15) Day hold on any offender upon request by a Delaware County Probation Officer or a Parole Officer employed by the State of Indiana. If the officer fails to initiate probation or parole revocation proceedings within the Fifteen (15) Day period, the hold shall expire.

3. **Intoxication:** The Sheriff of Delaware County shall not release any person unless such person clearly manifests that they are in a state of sobriety at the time the provisions of this Order would otherwise permit release.

The Sheriff shall hold in custody any person who is under the influence of alcohol or controlled substances until such time it is determined, at the Sheriff's discretion, that the individual may be safely released without danger to self or others.

4. **Domestic Violence:** The Sheriff shall not release a person arrested on a charge involving domestic violence until Twelve (12) Hours has elapsed or until appearance in court, whichever is earlier. After Twelve (12) Hours, the person may post bail (1) pursuant to other provisions in this Bail Order, and (2) after signing a No Contact Agreement protecting the victim. If the person refuses to sign a No Contact Agreement, the Sheriff shall hold the person until brought to court.

5. **Overweight Trucking Violations:** The bail schedule as set out in this Order shall not apply to overweight trucking violations. Bail for such offenses shall be convened by I.C. 9-20-1, et seq.

6. **Full Cash Bond:** When any person proposes to post a full bond in cash or by certified check and the Clerk's Office is not open for business, the Sheriff shall accept the money or certified check and issue a release to the person making the payment. The bond must be placed in the name of the arrested person. The Sheriff shall deposit the money or certified check with the Clerk as soon as possible.

7. **10% Cash Bonds:** Except as otherwise permitted above, the Clerk may not accept a Ten Percent (10%) cash deposit in lieu of bond without a written Order of a judge. If the Court approves such a bond, the Clerk shall retain from the deposit an administrative fee of Ten Percent (10%) of the deposit, or Fifty Dollars (\$50.00), whichever is less, and a fee of Five

Dollars (\$5.00) pursuant to I.C. 35-33-8-3.2(d) to remit to the Board of Trustees of the Public Employees' Retirement Fund for deposit in the Special Death Benefit Fund. In addition, the Court may direct the Clerk to apply the balance of the deposit to pay any fine, court costs, public defender fees, probation user's fees, or restitution.

8. **Amount of Bail on Warrant:** If the bail is set at a probable cause hearing, the amount of bail set by the judge shall be endorsed upon the arrest warrant.

9. **Release of Bond:** The Clerk shall not release a cash bond, except upon a judge's written Order after judgment has been entered and any fines and costs imposed by the Court have been paid and satisfied.

10. This Order shall not be interpreted to limit judicial discretion.

11. If the Delaware County Prosecuting Attorney believes a higher bond is necessary for the safety of witnesses and/or protection of the community, the Prosecutor may request a deviation from the scheduled bond amount.

12. A judge may impose any or all of the following **Conditions of Release:**

- a. Report to the Probation Officer Supervising the Pre-Trial Release Program;
- b. Remain in the supervisory custody of a named responsible person;
- c. Live and stay at a specified address;
- d. Remain in the State of Indiana;
- e. Have no contact with the victim/complaining witness;
- f. Not use or possess alcohol;
- g. Not use or possess any controlled substances unless on order of a physician;
- h. Submit to drug/alcohol testing at your expense;
- i. Remain at residence other than at specified hours for specified purposes;
- j. Not possess a firearm or other dangerous weapon;
- k. Seek and maintain full time employment/student status;
- l. Undergo necessary medical or psychiatric treatment, including drug or alcohol abuse treatment;
- m. Commit no criminal offense.
- n. Comply with any other condition reasonably calculated to assure appearance in court as required or to assure the safety of any other person and the community.
- o. Defendant specifically agrees to waive extradition from any jurisdiction inside or outside the United States, wherever he/she may be found, and also agrees not to contest any effort to return him/her to the State of Indiana.

#### **E. Adjustment of Bonds.**

A court may adjust bond after a hearing pursuant to statute and upon motion by the State of Indiana or by the Defendant. The Probable Cause Order shall control the bail amount. If a defendant posts a bond prior to the court's entering a Probable Cause Order, overpayment may not result in a refund to the defendant.



If a defendant is arrested for a separate criminal offense while released on a prior posted bond, the Court may revoke the prior posted bond.

This Bail Schedule supersedes all prior Bail Schedules previously established by the Board of Judges of the Delaware Circuit Court.

*(Amended effective January 1, 2018; further Amended effective January 1, 2020)*

**LR18-AR01-DLR-0008**  
**Attorney Fees in Probate Matters**

The Delaware Circuit Court has prepared the following guidelines for fees in probate matters in an effort to achieve the following objectives:

1. To establish uniformity in determining a fair and reasonable fee for supervised and unsupervised estates, guardianships, wrongful death actions, and minor's claim settlements in Delaware County, Indiana.
2. To provide a guideline to assist all judges of the Circuit Court of Delaware County in determining fair and reasonable fees.
3. To furnish a guideline to attorneys so that attorneys can forecast to their clients the fees the estate may incur before the administration commences.
4. To assist the legal profession in arriving at a fair and reasonable fee for estate work. The Court recognizes that every attorney and personal representative has a right and an obligation to request a fee which is fair and reasonable for the estate work performed, taking into account the provision in the Rules of Professional Conduct which applies to all attorneys admitted to practice in Indiana. Fees should always bear a reasonable relationship to the services rendered.

In determining an appropriate fee, the attorney, client, and Court should consider the following criteria:

1. The time required; the novelty, complexity, or difficulty of the legal questions involved; and the skill required to perform necessary services properly.
2. Who served as personal representative. The Court may consider how much time the attorney devoted to legal matters and how much time the attorney devoted to ministerial functions during supervision and representation of the personal representative.
3. The total fair market value of the probate assets being administered.
4. The character of the probate and non-probate assets which are administered or transferred, including whether non-probate assets exist which must be included for federal or state estate tax purposes, and whether these non-probate assets require more work for the attorney.
5. Whether the probate assets are sufficient to pay for legal services or personal representative fees.
6. Timeliness in performing necessary estate services under statutory requirements, these rules, and the Rules of Professional Conduct.
7. Other factors deemed relevant by the attorney, personal representative, and/or the Court.

I. Administration of the Gross Estate.

A. Gross Estate Services include, but will not necessarily be limited to, opening the estate and qualifying the personal representative; preparing and filing the inventory; collecting assets; paying claims; preparing and filing non-extraordinary petitions (including but not limited to petitions to sell real or personal property, petitions to deliver

personal property to beneficiaries, petitions to abandon real or personal property, and petitions for appointment of appraisers); preparing and filing the final report; obtaining an order approving the final report; distributing assets to beneficiaries; obtaining discharge of the personal representative; preparing and filing the supplemental report after distribution; and preparing and serving all necessary notices on interested parties, including readily ascertainable creditors of the estate, during the estate proceeding.

B. Gross Estate Value means the fair market value of all assets in the decedent's name and included in the decedent's probate estate.

C. Maximum Fees for Administering the Gross Estate: The Court has established guidelines for attorneys and fiduciaries. See Fee Guidelines. The Guidelines are NOT a minimum fee, but a suggested maximum fee. Every attorney and personal representative has an obligation to request a fee which is fair and reasonable for the work performed, taking into account the Indiana Rules of Professional Conduct. In an uncomplicated Estate, fees should be less than the maximum fees listed in the Guidelines, and fees should always bear a reasonable relationship to the services rendered. The Fee Guidelines are found in the Delaware Circuit Court Administrative Rules under Administrative Rule DAR-0011.

D. Non-Probate Assets.

Non-probate assets are those assets for which the attorney representing the personal representative may assist the transferee of those assets in distribution. Non-probate assets include, but are not necessarily limited to: assets jointly owned which are transferred outside the estate administration; life insurance proceeds; annuities; retirement benefits payable to a named beneficiary other than the estate; and assets held in trust which are reportable on the federal transfer tax return or would be reportable if such return were required. Fee charges for assisting beneficiaries or transferees in transferring Non-Probate Assets shall conform to the hourly rate provision established by the Court in paragraph E below. Unless the will admitted to probate provides otherwise, fees generated by the attorney in administering Non-Probate Assets should be charged to the beneficiary or transferee, and not to the estate.

E. Additional Fees.

Fees computed pursuant to the Guidelines are intended to cover only the usual and ordinary services that are reasonably anticipated in handling the normal estate. Such fees do not contemplate all work which may become necessary in conjunction with administration, such as will contests; will construction; contested claims; family settlement agreements; death tax complications; petition for instructions; determination of heirship; generating additional income for the estate during administration; and other similar matters. The attorney shall detail the request for additional fees in a Petition to the Court for Additional Fees.

The Court will compensate attorneys for work involving extraordinary service at an hourly rate. The attorney's hourly rate should conform to the prevailing hourly rate for legal services provided in Delaware County, Indiana, at the time the attorney provided the extraordinary services. The Court reserves the right to review and adjust the hourly rate request after considering the attorney's expertise and the nature of the extraordinary services provided.

#### F. Unsupervised Estates.

The attorney and personal representative should negotiate fees for handling unsupervised estates. The Court shall not hear the requests for fees unless an objection to the closing statement is timely filed. In the absence of evidence to the contrary, the fees for handling unsupervised estates should not exceed eighty percent (80%) of the Fee Guidelines.

#### G. Petitions and Hearings on Fee Requests.

All requests for approval of estate fees in supervised estates shall be submitted to the Court in writing, along with an appropriate proposed order. Petitions for fees shall include affidavits in support thereof from the attorney and the personal representative and provide the following information:

1. Details as to the work done by the affiant.
2. Time spent to accomplish said work.
3. Hourly rate used to calculate fees.
4. Total amount of fees being requested.

If the petition to approve fees includes a request for additional fees, the Court will schedule a hearing on the petition, unless all interested parties execute a waiver and consent stating they have been advised that the fee request exceeds the Court's Guidelines for administering the Gross Estate and that the fee request is for additional services. If a waiver and consent form is filed with the petition for additional fees, the Court, at its discretion, may waive the requirement for hearing on the petition.

#### H. Instructions to Personal Representatives Required in Unsupervised Estates.

Attorneys shall file "Instructions to Personal Representative of Unsupervised Estate" along with the Petition and other paperwork file to open the Estate. The Court may decide not to sign the Order appointing the Personal Representative if the Attorney does not provide an executed copy of the Instructions. The Court's Instructions are found in the Delaware Circuit Court Administrative Rules under Administrative Rule DAR-0012.

#### I. Instructions to Personal Representatives Required in Supervised Estates.

Attorneys shall file the following "Instructions to Personal Representative of Supervised Estate" along with the Petition and other paperwork filed to open the Estate. The Court may decide not to sign the Order appointing the Personal Representative if the Attorney does not provide an executed copy of the Instructions. The Court's Instructions are found in the Delaware Circuit Court Administrative Rules under Administrative Rule DAR-0013.

#### J. Required Acknowledgement Concerning Attorney's Fees in All Estates:

Within Thirty (30) Days after the Court signs the Order Appointing Personal Representative in an estate, the Attorney shall file an Acknowledgement by Personal

Representative of Receipt of Local Rule Regarding Fees in Probate Matters. The Acknowledgement is found in the Delaware Circuit Court Administrative Rules under Administrative Rule DAR-0014.

## II. Wrongful Death Claim Administration.

If a wrongful death claim is settled before trial, the fee should not exceed thirty-three and one-third percent (33 1/3%) of the settlement amount.

If a wrongful death action proceeds to trial by court or by jury, the attorney fee should not exceed forty percent (40%) of the court or jury award.

If a wrongful death action is appealed after trial, the attorney fee should not exceed fifty percent (50%) of the court or jury award.

The fee guidelines for wrongful death actions does not preclude the attorney from recovering litigation expenses incurred in preparing for trial or in pre-trial discovery proceedings.

## III. Guardianship

### A. Fees

Attorneys should charge fees generated in guardianship proceedings at the customary and prevailing hourly rates in Delaware County for opening the guardianship; selling real or personal property; assisting the Guardian in filing the inventory and necessary accounting; and providing professional advice.

Attorneys shall submit petitions to approve attorney fees in writing in all cases, along with an appropriate proposed order. Petitions for fees for both the guardian and the attorney for the guardian shall include affidavits in support thereof and provide the same information as outlined in Paragraph I.G. above. The Court, at its discretion, may require a hearing on the fee request of the attorney or the Guardian.

### B. Attorney's Obligation

An attorney representing a guardian shall report to the Court, any failure by the guardian to perform his, her, or its fiduciary and statutory duties.

### C. Instructions Required in Guardianships over the Estate.

Attorneys shall, within Ten (10) Days after the Court signs the Order Appointing a Guardian Over the Estate of an Individual, file a copy of the following Instructions, along with the Two (2) Acknowledgements stating that the Attorney has given the Guardian a copy and has discussed the Instructions with the Guardian, and that the Guardian has reviewed the Instructions and agrees to comply with them. The Court's Instructions to

Guardians are found in the Delaware Circuit Court Administrative Rules under Administrative Rule DAR-0015.

D. Attorney's Undertaking and Obligation Required with Restricted Accounts.

If a Guardian is required to deposit Guardianship Assets into a restricted account, the Attorney shall file, within Ten (10) Days after the Order is entered requiring the restricted account, the Undertaking and Obligation which can be found in the Delaware Circuit Court Administrative Rules under Administrative Rule DAR-0016.

IV. Fees for Compromising, Settling, or Trying a Minor's Claim.

Fee requests to compromise, settle, or try a minor's claim should not exceed the fee limitations imposed by the Court for representing the client in a wrongful death action; however, the attorney may request reimbursement for suit costs and pre-trial discovery in addition to those fees.

*(Amended effective March 4, 2019; further Amended effective January 1, 2020)*

**LR18-JR00-DLR-0009**

**Jury Selection Plan**

1. Pursuant to Jury Rule 4, the Board of Judges have selected option (b) for summoning jurors to wit: Two tier notice and summons. The jury administrator may send summons at a later time. If the jury administrator sends the jury qualification form and notice first, the jury administrator shall summon prospective jurors at least one (1) week before service. Further details concerning jury selection procedures can be found in Delaware Circuit Court Administrative Rules.

**LR18-AR00-DLR-0010**  
**In Re: Court Reporters**

**Section One. Definitions**

The following definitions shall apply under this local rule:

1. *A court reporter* is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.
2. *Equipment* means all physical items owned by the court or other government entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, copy machines, fax machines, computer hardware, software programs, disks, tapes and any other device used for recording, 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.
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.
7. *Gap hours worked* means those hours worked in excess of the regular hours worked but hours not in excess of forty (40) hours per work week.
8. *Overtime hours worked* means those hours worked in excess of forty (40) hours per work week.
9. *Work week* means a seven (7) consecutive day week that consistently begins and ends on the same days through 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 of record in Delaware 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. The county indigent transcript will also include any requests from the local Prosecutor's Office.
12. *State indigent transcript* means a transcript that is paid for from state funds and is for the use on behalf of a litigant who has been declared indigent by a court.
13. *Private transcript* means a transcript that is paid for by a private party, but not limited to a deposition transcript.
14. *Expedited* means transcripts which are requested to be completed within three (3) days.
15. *Rush/Overnight* means transcripts which are requested to be completed within twenty-four (24) hours.

**Section Two. 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 inform the court reporter the manner in which the court reporter is to be compensated for gap and overtime hours, by receiving 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 \$5.00, including cover pages; \$1.00 per page for a paper copy of a



transcript provided to the Public Defender's Office or the Prosecutor's Office; and .50¢ per exhibit. The fee for an "expedited" transcript (preparation within three (3) days) on a county case shall be \$7.00 per page. The court reporter shall submit a claim voucher to the supervising judge for approval of payment by the county for the preparation of any county indigent transcripts.

3. If a court reporter is requested to prepare an indigent "rush/overnight" transcript (preparation within twenty-four (24) hours or less), the per page fee shall be \$8.00.

4. The maximum per page fee a court reporter may charge for the preparation of a State indigent transcript shall be \$5.00; and, \$1.00 per page for a paper copy of a transcript; and .50¢ per exhibit. The fee for a State Public Defender requested "expedited" transcript (preparation within three (3) days) on a State indigent case will in no event exceed \$7.00 per page. If a court reporter is requested by the State Public Defender to prepare an indigent "rush/overnight" transcript (preparation within twenty-four (24) hours or less), the per page fee shall be \$8.00.

5. The maximum per page fee a court reporter may charge for the preparation of a private transcript shall be \$5.25 with the court reporter being responsible for expenses as provided in Section Four (4), Paragraph Two (2). The fee for an "expedited" transcript (preparation within three (3) days) on a private case will be agreed upon between the court reporter and party requesting the same but in no event may exceed \$7.25 per page. The court reporter may charge up to \$1.00 per page for a paper copy of a transcript, or \$1.00 per page for an exhibit with the court reporter being permitted to use the court system's copy machine outside of regular work hours. If so requested by a party, an "original paper copy" generated from the computer may be reproduced and charged at one-half (½) the transcript fee.

6. If a court reporter is requested to prepare a private "rush/overnight" transcript (preparation within twenty-four (24) hours or less), the maximum per page fee shall be \$8.25.

7. An additional labor charge approximating the hourly rate based upon the court reporter's annual fixed compensation as reflected in the court budget, may be charged for the time spent binding the transcript and exhibit binders. The labor charge shall not exceed two (2) hours, unless unusual circumstances permit the submission of a recapitulation enumerating the hours spent beyond the two (2) hour base.

8. The Index and Table of Contents pages shall be charged at the per page rate being charged for transcript preparation either for county, state or private cases.

9. A minimum fee up to \$35.00 per transcript shall be allowed for transcripts under eight (8) pages.

10. The court reporter or designated court employee 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 Office of Judicial Administration. The reporting shall be made on forms prescribed by the Office of Judicial Administration.

11. The preparation of *any* transcript for payment shall not be performed during regular work hours, including but not limited to, transcribing, copying, or other functions related to the compilation of the transcript.

12. An electronic or digital copy of any transcript that has already been prepared will not be assessed a fee, unless the court reporter is supplying the disc, in which a fee of \$5.00 will be charged.

### **Section Three. Private Practice**

1. 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 work hours and the court reporter **will not** be allowed to utilize the court equipment to do so.

**Section Four. Supplies**

1. All supplies for *County or State indigent transcripts*, i.e. transcript paper, binders and copy paper shall be provided through the court system's office supply account.
2. All supplies for *Private transcripts*, i.e. transcript paper, binders and copy paper shall be the responsibility of the court reporter. The court reporter will not be allowed to charge for the cost of such supplies due to the allotted fee approved herein for the preparation of a private transcript.

*(As amended effective September 24, 2002, further amended July 13, 2018; further Amended effective January 1, 2020)*

**LR18-TR79-DLR-0011**  
**Civil Practice and Procedure**

The following local rule regarding selection of special judges where a special judge does not accept a civil case under TR 79(D), is now adopted by the undersigned judges of the Delaware Circuit Court, in conjunction with the other Courts of Administrative District 15.

**A. Conflicts by Circuit Court No. 2 Judge in DR (Domestic Relations) and JP (Juvenile Paternity) cases from Title IV-D Court.**

In DR (Domestic Relations) and JP (Juvenile Paternity) cases from Title IV-D Court where the Circuit Court No. 2 Judge has a conflict and enters an order of disqualification or recusal, and parties do not agree to a particular special judge pursuant to TR 79(D), the Clerk of Delaware County shall assign the case to the regular sitting Judge in Circuit Court No. 3. If that Judge is unable to serve as set forth in Trial Rule 79 (H), then the Clerk shall select a special judge pursuant to paragraph B or C of this local rule.

**B. Assignment - Civil.**

In civil cases where the appointment of a special judge is required under TR 76, or the presiding judge has disqualified or recused under TR 79(C), and parties do not agree to a particular special judge pursuant to TR 79(D); the regular sitting judge shall direct the Clerk of Delaware County to select (on a rotating basis) one of the judges from the following available panel of judges (omitting the judge from whom the change of venue is being taken):

- a. Presiding Judge, Delaware Circuit Court No. 1;
- b. Presiding Judge, Delaware Circuit Court No. 2;
- c. Presiding Judge, Delaware Circuit Court No. 3;
- d. Presiding Judge, Delaware Circuit Court No. 4;
- e. Presiding Judge, Delaware Circuit Court No. 5;
- f. Presiding Judge, Blackford Circuit Court;
- g. Presiding Judge, Blackford Superior Court;
- h. Presiding Judge, Henry Circuit Court No. 1
- i. Presiding Judge, Henry Circuit Court No. 2;
- j. Presiding Judge, Henry Circuit Court No. 3;
- k. Presiding Judge, Jay Circuit Court;
- l. Presiding Judge, Jay Superior Court;
- m. Presiding Judge, Randolph Circuit Court; and
- n. Presiding Judge, Randolph Superior Court.

If a special judge selected from the rotating list is ineligible for, disqualified from, or excused from appointment, then the regular sitting judge shall direct the Delaware County Clerk to select (on a rotating basis) the next judge on the list.

If all judges in Delaware County are ineligible to serve, the sitting judge shall direct the Clerk of Delaware County to select (on a rotation basis) one of the judges from the Administrative District (omitting all Delaware County judges).

In the event that no judicial officer within the above list is eligible to serve as special judge, or if the case's particular circumstances warrant selection of a special judge by the Indiana

Supreme Court, the judge of the court in which the case is pending shall certify the matter to the Indiana Supreme Court to appoint a special judge.

**C. Assignment – Juvenile.**

In juvenile cases where the appointment of a special judge is required under TR 76, or the presiding judge has disqualified or recused under TR 79(C), and parties do not agree to a particular special judge pursuant to TR 79(D); the regular sitting judge shall direct the Clerk of Delaware County to select (on a rotating basis) one of the following available judges:

- a. Presiding Judge, Blackford Circuit Court;
- b. Presiding Judge, Henry Circuit Court No. 1
- c. Presiding Judge, Jay Circuit Court; and
- d. Presiding Judge, Randolph Circuit Court;

If a special judge selected from the rotating list is ineligible for, disqualified from, or excused from appointment, then the regular sitting judge shall direct the Delaware County Clerk to select (on a rotating basis) the next judge on the list.

In the event that no judicial officer within the above list is eligible to serve as special judge, or if the case’s particular circumstances warrant selection of a special judge by the Indiana Supreme Court, the judge of the court in which the case is pending shall certify the matter to the Indiana Supreme Court to appoint a special judge.

**D. Maintaining Separate Lists.**

The Delaware County Clerk shall maintain separate civil and juvenile lists, in the rotation order as set forth in this Rule, from which the clerk may determine the appropriate appointment in civil and juvenile cases.

**E. Consent to Authority to Sit as Acting Judge**

The Judges in the Delaware County Courts consent to the judge of the Jay County Circuit Court and the judge of the Blackford County Superior Court, upon request, to sit as acting judge in these courts in any matter as if the judicial officer were the elected or appointed judge of the court, as provided in Administrative Rule 1. The authority to sit as acting judge in a Delaware County Court is granted even when the sitting judge is present and available.

**F. Forfeiture Proceedings**

If the respondent has filed an answer, the court shall schedule a hearing, upon the conclusion of any related criminal matter, to determine the legitimacy of the forfeiture by a preponderance of the evidence pursuant to I.C. 34-24-1-4.

**G. Protective Orders**

If a Protective Order is filed in a court and the judicial officer cannot rule on the ex parte request due to a conflict, the judicial officer shall instruct the Clerk to reassign the protective order pursuant to LR18-CR00-DLR-0006.5(A).

*(Amended effective June 4, 2013; further Amended effective January 1, 2018; further Amended effective March 4, 2019; further Amended effective January 1, 2020; further Amended December 14, 2020)*

**LR18-AR00-DLR-0012**  
**Allocation and Assignment of Cases**

Cases shall be filed per the following allocation:

**Circuit Court No. 1**

**Criminal:** Crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (Class A felony), FB (Class B felony), FC (Class C felony), FD (Class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C Felonies or D Felonies. Crimes committed on or after July 1, 2014: MR (Murder); F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); F5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal, Firearm Seizure – excluding Waiver of Reinstatement of Fees Cases), and misdemeanors in conjunction with Levels 1, 2, 3, 4, 5 and 6 felonies.

**Civil:** PL (Civil Plenary), CC (Civil Collection), CT (Civil Tort), DR, DC, DN (Domestic Relations), MI (Miscellaneous – excluding Specialized Driving Privilege Cases, excluding Judicial Review of Habitual Violator Suspension Cases), ES, EM, EU, GU, TR (Probate), PO (Protective Orders), PC (Post-Conviction Relief).

**Circuit Court No. 2**

**Criminal:** Crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (Class A felony), FB (Class B felony), FC (Class C felony), FD (Class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C Felonies or D Felonies. Crimes committed on or after July 1, 2014: MR (Murder); F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); F5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal – excluding Firearm Seizure, excluding Waiver of Reinstatement of Fees Cases), and misdemeanors in conjunction with Levels 1, 2, 3, 4, 5 and 6 felonies.

**Juvenile:** JP (Juvenile Paternity), JD (Juvenile Delinquency), JS (Juvenile Status), JM (Juvenile Miscellaneous), JC (Juvenile CHINS), JT (Juvenile Termination), JQ (Juvenile Protective Order), JM (Juvenile Miscellaneous).

**Civil:** PL (Civil Plenary), CC (Civil Collection), CT (Civil Tort), DR, DC, DN (Domestic Relations), AD (Adoption), MI (Miscellaneous - excluding Specialized Driving Privilege Cases, excluding Judicial Review of Habitual Violator Suspension Cases), GU-with related juvenile cases ONLY, RS (Reciprocal Support), PO (Protective Orders), PC (Post-Conviction Relief).

**Circuit Court No. 3**

**Criminal:** Crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (Class A felony), FB (Class B felony), FC (Class C felony), FD (Class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C Felonies or D Felonies. Crimes committed on or after July 1, 2014: MR (Murder); F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4

felony); F5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal, Waiver of Reinstatement of Fees Cases-excluding Firearm Seizure), and misdemeanors in conjunction with Levels 1, 2, 3, 4, 5 and 6 felonies.

**Civil:** PL (Civil Plenary), CC (Civil Collection), CT (Civil Tort), DR, DC, DN (Domestic Relations), MI (Miscellaneous, Specialized Driving Privilege Cases, Judicial Review of Habitual Violator Suspension Cases), MH (Mental Health), PO (Protective Orders), XP (Expungement), PC (Post-Conviction Relief).

#### **Circuit Court No. 4**

**Criminal:** Crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (Class A felony), FB (Class B felony), FC (Class C felony), FD (Class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C Felonies or D Felonies. Crimes committed on or after July 1, 2014: MR (Murder); F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); F5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal – excluding Firearm Seizure, excluding Waiver of Reinstatement of Fees Cases), and misdemeanors in conjunction with Levels 1, 2, 3, 4, 5 and 6 felonies.

**City Court:** Any criminal cases transferred from Muncie City Court may be filed in the Division of the Circuit Court that holds the highest pending felony charge, regardless of when the misdemeanor crime was allegedly committed.

If no felony cases are pending against the Defendant the misdemeanor will be filed in the Delaware Circuit Court No. 4 or No. 5 under the following rotation schedule:

- Circuit Court No. 4: January, March, May, July, September and November;
- Circuit Court No. 5: February, April, June, August, October, and December.

A “pending” case is a case not yet disposed of by guilty plea, jury trial, bench trial, bench disposition, or dismissal.

**Civil:** PL (Civil Plenary), CC (Civil Collection), CT (Civil Tort), DR, DC, DN (Domestic Relations), AD (Adoption), MI (Miscellaneous - excluding Specialized Driving Privilege Cases, excluding Judicial Review of Habitual Violator Suspension Cases) PO (Protective Order), SC (Small Claims), EV (Eviction), PC (Post-Conviction Relief).

#### **Circuit Court No. 5**

**Criminal:** Crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (Class A felony), FB (Class B felony), FC (Class C felony), FD (Class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C Felonies or D Felonies. Crimes committed on or after July 1, 2014: MR (Murder); F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); F5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal –

excluding Firearm Seizure, excluding Waiver of Reinstatement of Fees Cases), and misdemeanors in conjunction with Levels 1, 2, 3, 4, 5 and 6 felonies.

**City Court:** Any criminal cases transferred from Muncie City Court may be filed in the Division of the Circuit Court that holds the highest pending felony charge, regardless of when the misdemeanor crime was allegedly committed.

If no felony cases are pending against the Defendant the misdemeanor will be filed in the Delaware Circuit Court No. 4 or No. 5 under the following rotation schedule:

- Circuit Court No. 4: January, March, May, July, September and November;
- Circuit Court No. 5: February, April, June, August, October, and December.

A “pending” case is a case not yet disposed of by guilty plea, jury trial, bench trial, bench disposition, or dismissal.

**Civil:** PL (Civil Plenary), CC (Civil Collection), CT (Civil Tort), DR, DC, DN (Domestic Relations), MF (Mortgage Foreclosure), MI (Miscellaneous – excluding Specialized Driving Privilege Cases, excluding Judicial Review of Habitual Violator Suspension Cases), PO (Protective Order), SC (Small Claims), EV (Eviction), ES, EU, EM, GU, TR (Probate), TS (Tax Sale), TP (Tax Deed Petition), PC (Post-Conviction Relief).

1. Assignment of cases as heretofore set out will continue to be subject to all Local Rules regarding non-discretionary assignment of felony and misdemeanor cases.
2. Forfeiture Proceedings – The State of Indiana shall file the forfeiture action as a miscellaneous civil (MI) action in the Circuit Court Division where the State either has filed or is required to file the related criminal action pursuant to Local Rule. If the State does not intend to file a criminal action, or the criminal action has been filed with Muncie City Court, the State shall then file the forfeiture as a miscellaneous (MI) action in the Circuit Court where the criminal case would have been filed had it been filed in Circuit Court.

*(Amended effective January 1, 2018; further Amended effective March 4, 2019; further Amended effective January 1, 2020; further Amended December 14, 2020; further Amended March 1, 2021; further Amended effective January 1, 2022)*

**LR18-AR00-DLR-0013**  
**Local Rule Governing the Collection of**  
**Personal Property Taxes**

The Judges of the Delaware Circuit Court hereby issue the following Local Rule in relation to collecting personal property taxes:

**A. Using the Circuit Courts to Collect Personal Property Taxes:**

**1. Indiana Code Section 6-1.1-23-9:**

Pursuant to Indiana Code Section 6-1.1-23-9(c), the Treasurer files the record of delinquent personal property taxes with the Clerk of the Court, and the “amount of delinquent taxes, penalties, and collection expenses stated in the record constitute a debt of the named taxpayer.” The statute further provides, “This debt in all respects has the same force and effect as a judgment.”

The Treasurer shall not initiate any legal action in a court in Delaware County to enforce a judgment for delinquent personal property taxes except as provided by statute, as follows: (1) in order to obtain a court order restraining the taxpayer from transacting business in the county, pursuant to Indiana Code Section 6-1.1-23-10(b); (2) to request attorney’s fees pursuant to Indiana Code Section 6-1.1-23-10(e); or (3) to set aside a judgment for personal property taxes pursuant to Indiana Code Section 6-1.1-23-12.

A taxpayer may open a cause of action in the Delaware Circuit Courts to set aside a judgment for personal property taxes pursuant to Indiana Code Section 6-1.1-23-12.

**2. Clerk’s Duties:**

The Clerk of Delaware County shall not open for filing in the Circuit Courts in Delaware County any legal action to enforce a judgment for delinquent personal property taxes except as provided in Section A(1). If the Treasurer presents for filing in a Circuit Court a pleading related to personal property taxes, and if the Clerk is not certain whether to accept the pleading, or to open the case for filing, the Clerk shall consult with the Judge designated by the Board of Judges of the Delaware Circuit Court, who shall instruct the Clerk whether to accept the pleading or open the case for filing.

If the Designated Judge is not available and action is necessary before the Designated Judge becomes available, the Clerk shall refer the issue to the Court Administrator, who will consult with a judge of the Delaware Circuit Court.

**B. Adjudicating Attorney Fees for Collecting Personal Property Taxes:**

Pursuant to Indiana Code Section 6-1.1-23-1.5, the Treasurer may enter into a contract, subject to the county executive’s approval, for services considered necessary to collect delinquent personal property taxes.

Pursuant to Indiana Code Section 6-1.1-23-10(e), the Treasurer must file a petition in the Designated Judge’s Court for approval to pay attorney’s fees for legal services not related to formal judicial proceedings. The Treasurer shall file the petition in the “Miscellaneous” Docket for the Circuit Court in which the Designated Judge is serving. The Designated Judge shall approve the attorney’s fees for collecting personal property taxes before the Treasurer makes payment, in all cases not formally filed in a court.

In determining fees for collecting delinquent personal property taxes, the court will consider the contract executed by the Treasurer and the attorney pursuant to I.C. 6-1.1-23-1.5. The Court must also consider the factors established in Rule 1.5(a) of the Rules of Professional Conduct in determining the fees.



**LR18-DR00-DLR-0014**  
**Delaware County Eviction & Landlord/Tenant Relations**  
**Alternative Dispute Resolution Fund Plan**

**Preamble:**

The Delaware Circuit Courts have established the Program to foster landlord/tenant relations and to prevent evictions through alternative dispute resolution, including mediation.

The Delaware Circuit Court will use funds to provide opportunities for parties involved in eviction to mediate and settle their disagreements, when their economic circumstances would otherwise limit their access to registered mediators.

The Board of Judges adopts and incorporates by reference all provisions from the Rules for Alternative Dispute Resolution as adopted and amended from time to time by the Indiana Supreme Court.

This Local Rule shall apply to all Small Claims (“SC”) and Civil Plenary (“CP”) cases filed in the Delaware Circuit Courts in which a landlord is seeking to evict a tenant from a dwelling. It shall not apply to commercial real estate or mortgage foreclosures.

**1. Purpose**

Mediation under this section involves the confidential process by which a Mediator, appointed by the court, assists the litigants in reaching a mutually acceptable agreement. The role of the mediator is to assist in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise, and finding points of agreement as well as legitimate points of disagreement. Any agreement reached by the parties is to be based on the autonomous decisions of the parties and not the decisions of the mediator. It is anticipated that an agreement may not resolve all of the disputed issues, but the process can reduce points of contention. Parties and their representatives are required to mediate in good faith, but are not compelled to reach an agreement.

**2. Case Selection**

A landlord and/or a tenant, either before or after a case is filed, may request a referral and may elect to participate in the plan through PathStone Corporation. An attorney representing a party may request a referral through PathStone Corporation. A housing non-profit may request a referral to the Plan through PathStone Corporation.

If a case is referred for mediation after it has been filed, the case shall remain on the court docket and the trial calendar.

**3. Mediators**

The Plan Administrator will refer cases to attorneys who are registered with the Indiana Supreme Court, Office of Admissions and Continuing Education as civil mediators and who indicate their willingness to accept cases at a reduced rate.

The Plan Administrator will refer cases to such mediators on a rotating basis, considering any conflict of interest. The Plan Administrator will keep a current list of willing registered civil mediators on an Excel spreadsheet.

#### **4. Mediation Costs**

The Program costs are being funded through grants. The grant monies should primarily benefit cases involving minor children; cases where one or more party is representing him/herself; cases involving the elderly; cases where one party owns no property with significant value and has no substantial equity in real property; cases where either party is enrolled in or uses Section 8 vouchers; and cases where one or more parties is are classified as low or moderate income.

Every participant will have their income compared to the sliding fee scale to determine if a co-payment is required and what amount. The co-payment will be paid directly to the Delaware County Auditor's Office by the litigants before mediation is scheduled, and the Auditor will apply the payment to the Eviction ADR fund. Failure to pay will result in the mediation being cancelled.

#### **5. Report of Mediation**

Within three (3) days after the mediation, the mediator shall submit to the court, without comment or recommendation, a report of mediation status. The report shall indicate that an agreement was or was not reached in whole or in part or that the mediation was extended by the parties.

If an agreement is reached, in whole or in part, it shall be reduced to writing and signed by the parties and/or their counsel.

With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

In the event of any breach or failure to perform under the agreement, upon motion, and after hearing, the court may impose sanctions, including entry of judgment on the agreement.

#### **6. Optional Early Mediation**

Persons may agree to use the Program to mediate a dispute not in litigation. They shall enter the Program as provided in Section 2. Cases submitted to the Program through Optional Early Mediation are subject to the same rules as cases filed in the Delaware Circuit Courts.