

**LOCAL RULES
FOR ELKHART COUNTY, INDIANA
EFFECTIVE JANUARY 1, 2024**

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PREAMBLE

The Rule of Law is the keystone to American Democracy. These Rules are enacted to further that cause. The Rules have the force of law. They are required of all who enter the courts both represented and not represented. The Rules may be waived, suspended, or modified if the court finds “**the interest of justice so require.**” *Rules of Trial Procedure. Rule 81 (H).*

Our Supreme Court has unanimously stated in **J.T.D. and J.S. and DCS v N.E., 21 N.E.3d 824, (Ind) 12/4/14.**

“...and like all local rules, it is binding on the courts and litigants.”

LOCAL AND ADMINISTRATIVE RULES

Rule LR20-TR1-101. Intent and Scope of Local Rules

These local rules are adopted by the Courts of the 34th Judicial Circuit pursuant to the authority of Trial Rule 81, Indiana Rules of Trial Procedure. They are intended to supplement those Rules as well as the Indiana Rules of Criminal Procedure, the Indiana Small Claims Rules, the Indiana Jury Rules, the Indiana Rules of Evidence, the Indiana Rules of Post Conviction Relief, the Indiana Alternative Dispute Resolution Rules, the Indiana Trial Rules De Novo, the Indiana Rules of Professional Conduct, the Indiana Rules of Access to Court Records and the Indiana Administrative Rules and shall be construed to secure the just, speedy and efficient determination of every action.

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

- (1) Elkhart Circuit Court (hereinafter “Circuit Court”).
- (2) Elkhart Superior Courts (hereinafter “Superior Court”).

These rules apply to any structure, facility or building, individual room in another structure, including, but not limited to rooms used in the Elkhart County Correctional Facility and the Elkhart County Juvenile Detention Center that are used to conduct court proceedings in Elkhart County. Such facilities are collectively termed “court complexes in Elkhart County” in these Rules.

Rule LR20-AR00-102. Conduct, Dress, Video/Virtual Hearings, Live Streaming and Courthouse Policies

102.1. Professional Conduct

It is intended that the business of the Courts of the 34th Judicial Circuit will be conducted by Judicial Officers in accordance with the Indiana Code of Judicial Conduct and that lawyers practicing in these Courts will do so in accordance with the Indiana Rules of Professional Conduct.

The term “Judicial Officer“ means a Judge, Magistrate Judge, Senior Judge, Pro Tem Judge and Temporary Judge.

Nothing contained in these rules is intended to limit the jurisdiction and authority of any judicial officer of Circuit Court or Superior Court acting within the law and rules promulgated by the Indiana Supreme Court.

In an individual case, a Judicial Officer, upon motion of any party or on the court’s own motion, may suspend or modify any of these local rules should the interests of justice so require pursuant to Indiana Rule of Trial Procedure Rule 81 (H).

102.2. Behavior in the Courthouse

While in any court complex in Elkhart County, the following behavior is prohibited:

- (1) Lawyers and litigants shall not lean on the bench, podiums and shall not sit or lean on counsel tables or the jury box.
- (2) Lawyers, litigants, and spectators shall refrain from unnecessary conversation in the courthouse or in the courtroom that would disturb the proceedings. Any necessary conversation in the courthouse or in the courtroom shall be conducted at a sufficiently low voice level as not to interfere with the conduct of trials, hearings, or other proceedings before the court.

(3) Lawyers, litigants, and spectators shall not enter the courtroom with food or beverages unless authorized by the Judicial Officer presiding in the courtroom.

(4) Lawyers, litigants, and any other person in the courtroom shall not talk to the court reporter during the hearings in which they are not participating.

(5) Lawyers, litigants, and any other person shall not chew gum or tobacco in the courthouse.

102.3. Appearance and Dress

Every person who enters a court complex in Elkhart County should be appropriately dressed. Lawyers should appear for court proceedings in professional attire; litigants, witnesses and spectators should appear in appropriate attire. Examples of clothing that is inappropriate and is prohibited from being worn during court proceedings includes, but is not limited to:

- (1) Hats or caps
- (2) Outer garments such as topcoats, overcoats, jackets, or overshoes
- (3) Clothing that exposes the midriff
- (4) Shorts of any kind
- (5) Sleeveless shirts (that is “muscle shirts” and “tank tops”)
- (6) Shower shoes (that is rubber “flip-flops”)
- (7) Suggestive or otherwise inappropriate clothing (that is, poorly fitting, slovenly, or uncleanly)
- (8) Pajamas

102.4. Prohibited Items

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

102.4.1. Weapons

No attorney, litigant, witness, or spectator may possess firearms, knives, or other deadly weapons while in or around the courthouse complexes within Elkhart County without the prior written authorization of a Judge. However, a law enforcement officer who is not a litigant in a pending matter and who is appearing as a witness may retain possession of their issued firearm while in the courthouse so long as the law enforcement officer advises, and receives the permission of, the supervisor of the courthouse security detail upon entering the courthouse complex or has prior authorization from a Judge of one of the Courts. In addition, if the law enforcement officer is responding to a call inside the courthouse complex as to the need for law enforcement or protection services, then they may retain their weapons.

102.4.2. Cameras, Telephones, and Other Items

Cellular telephones, smart phones, and personal digital assistants (PDAs) are permitted in the court complexes in Elkhart County except where restricted by individual courts as determined by the presiding Judicial Officer. Such restrictions will be posted at each court entrance restricting use of those devices when mandated. Audible noise shall be disabled or switched to vibrate mode prior to entering a courtroom when permitted in the courtroom.

Cameras, video cameras, or any devices capable of audio and visual recording except those devices imbedded in smart phones are not permitted in the courtroom or those embedded in court technology.

102.4.3. Photographs

The taking of photographs, sound recording (except by official court reporters in the performance of their duties), broadcasting by radio, television, telephone, or any other means, in connection with any judicial proceeding in the environs of the court complex in Elkhart County as allowed by Judicial Conduct Rule 2.17 and the Elkhart County Court's Administrative Rule III or as required by court streaming as authorized by the Indiana Supreme Court. The incidental use of cameras and other recording devices is permitted in investiture, ceremonial, training, marital, or other non-judicial proceeding at which a judicial officer may permit the taking of photographs, broadcasting, live streaming, televising, or recording. The same is allowed after adoption hearings after the court has concluded its official duties and the court has officially declared itself off the official record. A judicial officer, by specific order, may allow the use of cameras or audio/visual recording equipment in a judicial officer's courtroom in an individual case so long as authorized by the Supreme Court of Indiana.

102.4.4. Limitations on the use of Cameras, Telephones, Personal Digital Assistants (PDAs) and other electronic devices

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

Further exception being use of the device for court business related activities, such as, access to personal calendars, court records and counsel's case files. This does not restrict use of notebooks, tablets, laptops, or other portable computing devices recognizing many individuals have paperless offices.

All persons authorized by this Rule to bring electronic devices into Courthouse complexes are strictly prohibited from using such devices for any improper or unlawful purpose, including without limitation the taking of any photographs, videos or moving pictures, recording audio or video, and texting. In the interests of privacy, safety and justice, a judge or any Judicial Officer, a bailiff or a duly authorized court security officer may prohibit an individual who is otherwise allowed to possess an electronic device in a Courthouse complex from bringing an electronic device into any portion of a Courthouse complex; provided that if a security officer prohibits an individual from bringing an electronic device into a Courthouse complex, the security officer will prepare a written report detailing the reason and concern and shall distribute a copy to the Sheriff and to the appropriate judicial officer. By written authorization, a judicial officer may permit an expert witness or other person to utilize an electronic device in a specifically designated area within a Courthouse complex. Nothing in this rule is intended to prevent an individual from using a cellular telephone in the case of a legitimate emergency involving the personal health or safety of that individual or a third party.

102.4.5. Enforcement

The Sheriff of Elkhart County (hereinafter "Sheriff"), courthouse security personnel, and the bailiffs of each of the Courts are authorized to monitor and enforce compliance with these Rules of Conduct and Dress. Any person violating the rules regarding photography, cameras, cellular telephones, PDAs or other electronic devices shall be subject to immediate confiscation of the camera, cellular telephone, PDA or

electronic device and a fine of up to and including one-thousand five hundred dollars if a camera or device makes an audio or visual recording, or a telephone or PDA creates an audible noise, in a courtroom of a courthouse complexes within Elkhart County while court is in session, which penalty shall be imposed at the discretion of the judicial officer in whose courtroom the violation occurred or whose court proceeding was disrupted.

102.4.6. Consent to Search

All persons entering any of the courthouse complexes within Elkhart County are required to pass through a magnetometer/x-ray screening point and to comply with all reasonable requests of courthouse security personnel, including a reasonable search of their person and effects to ensure that the person is complying with this Rule.

The Sheriff, law enforcement officers, or court security personnel may detain any person who they have reason to believe possesses any weapon or other prohibited item in violation of this Rule for a period sufficient to obtain name, address, date of birth, social security number, and/or to seize any weapon or other prohibited item.

102.5. Video/Virtual Hearings and Live Streaming of Court Proceedings

A. The appearance of counsel, litigants, witnesses, and other persons required to appear in court proceedings (referred to as participants) may appear by video conference or phone conference at the discretion of the judicial officer presiding over the court proceeding and as allowed by the Indiana Rules of Trial Procedure, the Indiana Administrative Rules or any other Rule, Order or Directive of the Indiana Supreme Court. The judicial officer may designate the hearing *in person* or *virtual* in the notice of hearing. The judicial officer may modify or terminate the video or phone appearance in the judicial officers' sound discretion at any time including during a proceeding.

B. Live Streaming of court proceedings is allowed at the discretion of the judicial officer presiding over the court proceedings and as allowed by the Indiana Rules of Trial Procedure, the Indiana Administrative Rules or any other Rule, Order or Directive of the Indiana Supreme Court. The judicial officer may modify or terminate the live stream in the judicial officers' sound discretion at any time including during a proceeding.

C. Sections 102.1 Professional Conduct and 102.3 Appearance and Dress apply to video or phone hearings.

D. Participants appearing by video are required to use an appropriate background or situate themselves in a location with an appropriate background. Guidelines for an appropriate background include, but are not limited to backgrounds that are:

1. clear or clear from clutter.

2. Colors or images that do not distract from the proceeding including but not limited to free from pictures, posters, signage, lettering, etc., that contain offensive or inflammatory language or display images that are pornographic, offensive, or otherwise inappropriate for a courtroom environment.

The judicial officer has final discretion to determine if a background is appropriate and allowed for a court proceeding, including, but not limited to termination of the hearing.

E. The location of the remote area is required to be quiet without background noise or interference from other individuals not involved in the proceeding. The setting should be as close as possible to the dignified and serene environment of the courtroom.

F. Participants should not eat, drink, smoke, talk to other people or engage in any other activities that would not be acceptable if the participant were in the courtroom. Participants should speak slowly, never interrupt a speaker, and only speak when prompted to speak. Microphones should be on mute until the case is called by the court.

G. The participants are responsible for accessing the virtual hearing. The Court will send by e-notice the log in instructions to participants. Participants are required by the Rules of Trial Procedure to have on file an email address and updates to same, if no e-mail address is available then such log in instructions are sent by the mail notice system as any other notice or order of the court pursuant to TR 86. The Court and its staff have no obligation or responsibility to contact the participants once the court has issued the log in instructions.

H. Participants logging into a virtual hearing must use a username or display name that is appropriate and not offensive in nature, this display name should be some combination of the participant's first and last name.

I. Attorneys are required to appear by video and audio. Attorneys are required to have adequate internet bandwidth and connectivity to allow them to transmit without distortion. Attorneys unable to meet these requirements will not be allowed to participate in video/virtual court proceedings.

J. Attorneys and their clients are required to appear together from the same location for hearings that the court designates as an *Essential Hearing* in the notice of the hearing. Examples include but are not limited to felony criminal pleas and sentencing hearings, submission of Divorce Decrees or any complex matter. Exceptions will be considered upon a properly filed Motion giving detailed information as to the requested exception. If the court has not issued the *Essential Hearing* designation, then the attorney and client may appear from separate locations. Examples include, but are not limited to status conferences, administrative or procedural hearings.

K. A criminal defendant must submit a written waiver, may be included in the plea agreement, to sentencing by video/virtual hearing and specifically waiving an in-person hearing. The court may take oral waivers at its discretion. [Consent to Remote Hearing Form](#)

L. Unrepresented participants must follow these rules except for Sections I and J. Unrepresented participants should make every effort to appear by video and appear by audio only if they are not successful in logging in to the court hearing by video or they do not have equipment (phone or computer) that has video capability.

M. Exhibits may only be submitted upon approval of the court and submitted in such manner as directed by the court.

N. Recording of video/virtual Hearings are prohibited.

O. In summary: decorum, dress and behavior on a virtual hearing should be the same as an in-person hearing.

Rule LR20-AR00-103. Court Hours and Scheduling

103.1. Court's Hours of Operation

103.1.1. Judicial Days

The Courts shall be in session Monday through Friday, legal holidays excluded, and during such other hours as each court may, from time to time, direct.

103.1.2. Legal Holidays

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

103.1.3. Emergency Closure

When weather conditions or other emergencies arise, the individual court may be closed at the direction of the Judge of the Circuit Court or a Judge of the Superior Court. If a closing is announced, the Court and the Clerk of the Court shall make reasonable effort to notify attorneys and litigants scheduled to attend court on that date or time.

103.2. Daily Calendar

Each regularly presiding Judicial Officer will maintain a separate calendar. The calendar of cases set for hearing on a given day will be posted to effectuate knowledge for all citizens except as restricted by statute or Rules of the Indiana Supreme Court.

103.3. Hearing on Matters Other Than Trials

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

103.3.1. Scheduling Uncontested or Routine Matters

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

103.3.2. Scheduling Contested or Complicated Matters

Other matters that will require a hearing reasonably estimated to last more than twenty (20) minutes will be scheduled as the Court's calendar allows. Counsel or a party proceeding without an attorney should contact the chambers of the assigned Judge or other Judicial Officer as appropriate to arrange for an appropriate hearing date and time.

103.4. Trials

Trial settings will be scheduled by the Judge or other Judicial Officer as appropriate. Counsel or a party proceeding without an attorney should submit a proper pleading to request a trial date, to schedule a pre-trial conference or case management conference.

103.5. Prompt Appearance at Hearings and Trials

Prompt appearance at the time scheduled for all hearings and trials is important for the Court, counsel, and parties. Should an occasion arise when counsel or a party proceeding without an attorney reasonably anticipates that the person will be late for a scheduled hearing or trial, they shall immediately notify the court.

103.6. Penalties for Failure to Comply

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

Rule LR20-AR00-104. Court Sessions and Management

104.1. Circuit Court

The calendar year term of the Circuit Court shall be yearly.

104.1.1. Petit Jury

A petit jury shall be called to serve directed by the court.

104.2. Superior Court

104.2.1. Division Assignments

The term of the Superior Court is a calendar year.

The Elkhart Superior Court consists of six (6) judges.

A. There is established a criminal division. Three (3) judges of the Elkhart Superior Court shall serve in the criminal division. Elkhart Superior Court 1; Elkhart Superior Court 3; Elkhart Superior Court 4 are the superior courts of the criminal division.

B. There is established a family division. One (1) judge shall serve in the family division. Elkhart Superior Court 6 is the superior court of the family division.

C. There is established a civil division. Two (2) judges shall serve in the civil division. Elkhart Superior Court 2 and Elkhart Superior Court 5 are the superior courts of the civil division.

D. There is established a small claims and misdemeanor division pursuant to Indiana Code 33-29-2. The administrative judge, in consultation with the judges of Elkhart Circuit Court and the Elkhart Superior Court may assign judicial officers as allowed by law.

A newly appointed or elected judge assumes the division assignment of the judge whom the judge replaces.

104.2.2. Petit Jury

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

Rule LR20-TR40-105. Transfer and Assignment

105.1. Circuit Court Transfer and Assignment

The Circuit Court shall have the authority to transfer cases among and between the Judges of the Elkhart Circuit Court or the Elkhart Superior Court or to other Judicial Officers, including Magistrate Judges, Senior Judges, and Temporary Judges to effectuate the timely processing of cases. The Court may on its own or after an approved request by any party set a case for hearing.

105.2. Superior Court Transfer and Assignment

The Superior Court Judges shall have the authority to transfer cases among and between the Judges of the Elkhart Circuit Court or the Elkhart Superior Court or to other Judicial Officers, including Magistrate

Judges, Senior Judges, and Temporary Judges to effectuate the timely processing of cases. The Court may on its own or after an approved request by any party set a case for hearing. Indiana Code 33-29-1-9 and Indiana Code 33-29-1-10

105.2.1. Assignment of Cases in Superior Court

All Superior Court cases (except Small Claims and Traffic & Misdemeanor) will be assigned to a particular Judge or other Judicial Officer of the Superior Court upon filing pursuant to the division assignment and local filing rule. Each Judicial Officer will be responsible for the management of the Judicial Officers' assigned caseload.

105.3. All Entries by Assigned Judge

After the assignment of a case to a Judge or other Judicial Officer, all pleadings, proposed entries, proposed orders, and any other case filings shall be submitted to the assigned Judge or other Judicial Officer.

Rule LR20-AR1-106. Caseload Allocation Plan for Elkhart County

106.1. Criminal: Assignment Of Criminal Cases

A. Elkhart Circuit Court

- Grand Jury cases
- Murder charges
- Attempted murder cases, except child victim cases
- Manslaughter cases, except those in which a child is the victim.
- Vehicular homicide cases
- Robbery cases
- Reckless homicide cases
- Fifty percent (50%) of all Level 1, 2, 3, 4 and 5 controlled substance sale cases.
- Fifty percent (50%) of all Level 1, 2 and 3 possession cases.
- Burglary cases
- Welfare fraud cases
- Forgery cases
- Level 5 felony theft cases
- Arson cases
- Level 5 felony cases not otherwise specifically assigned to a court pursuant to this rule.
- Level 6 felonies: Forty percent (40%) not otherwise specifically assigned to a court pursuant to this rule.

B. Elkhart Superior Court 1. D01

- Rape cases, except child victim cases
- Sexual battery cases, except child victim cases
- Criminal recklessness cases, except when a child is the victim.
- Level 5 battery and Level 6 domestic battery cases, except child victim cases

- Domestic Battery misdemeanor cases including those previously filed in the three city courts.
- Level 3 and 4 felony cases which are not specifically assigned to a court pursuant to this rule.
- Strangulation cases

C. Elkhart Superior Court 2. D02

- Commercial Court Cases
- 35% Plenary (PL)
- 35% Tort (CT)
- 50% Mortgage Foreclosure (MF)
- 50% Mental Health
- All Estates (ES)
- All Estates Unsupervised (EU)
- All Estates Miscellaneous (EM)
- All Trusts (TR)
- Miscellaneous Civil 50% Except Grandparent Visitations, Name Changes, Specialized Driving Privileges, Lifetime Rescission requests, BMV Fee Waiver.
- No other Juvenile or Civil type cases.
- Red Flag (RF) (Civil)

D. Elkhart Superior Court 3. D03

- Child victim cases except murder
- Fifty percent (50%) of all Level 1, 2, 3, 4 and 5 controlled substance sale cases.
- Fifty percent (50%) of all Level 1, 2 and 3 possession cases.
- Kidnapping and Confinement cases
- Level 1 and 2 felony cases which are not specifically assigned to a court pursuant to this rule.
- Failure to Register as a Sex or Violent Offender all levels.
- Public Indecency; Nudity; Voyeurism and other offenses with sexual implications not otherwise assigned to a court by this rule.
- Non-support cases all levels
- Sixty percent (60%) of Level 6 felonies: not otherwise assigned to a court pursuant to this rule.
- Red Flag (RF) Criminal

E. Elkhart Superior Court 4. D04

- All cases assigned to the Elkhart County Problem Solving Drug Court
- Level 6 felony substance abuse and substance abuse related cases including Level 4, 5 and 6 possession cases and Level 6 controlled substance sales cases: not including Level 1,2, and 3 possession cases and not including Level 1, 2,3, 4 and 5 controlled substance sales cases.

- Habitual Traffic Offender (HTV)

F. Traffic and Misdemeanor Court

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

106.1.1. Assigning New, Subsequent, And Recharged Cases

A. Subsequent cases

1. Except for cases assigned to the Elkhart County Drug Court, if the defendant in a pending criminal case is charged with new offenses that carry no greater penalty than the pending charges, the subsequent charges must be filed in the same court hearing the original case.

2. If a new case carrying greater penalties is filed against the defendant in a pending case, the original case must be transferred to the court hearing the subsequent case except domestic battery cases.

3. A pending case is a case that has not yet had a final disposition. In cases that have a final disposition and defendant is under a withheld sentence and a new case is filed in a different court pursuant to the filing order, the court that has the withheld case may transfer the case to the court that has the new case, and that court shall accept the transfer.

B. Sealing and Expunging Conviction Records- all sealing of records and expunging of convictions filed under Indiana Code 35-38-9-4 and 35-38- 9-5 shall be filed in the same court as the underlying case. If more than two underlying cases are being expunged, the petitioner shall pick between the court where one of the underlying cases originated. If not practicable, then petitioner shall pick between any Circuit or Superior court. The sitting judge of a court that no longer hears criminal cases pursuant to this Rule may transfer the Sealing or Expungement case to a Criminal Division Court. The sitting judge of any court may assign the case to an appointed judicial officer.

C. Recharged cases – Any pending case that is later recharged as murder must be transferred to Circuit Court.

D. All cases in which juvenile court jurisdiction is waived to adult court shall be filed in a Criminal Division Court based upon this Rule with the most serious level criminal act alleged to be determinative.

E. All charges of escape, including Level 5 and Level 6 felonies, shall be filed in the court that committed the defendant to the facility or community correction program from which the defendant allegedly escaped except if that court no longer hears criminal cases pursuant to this Rule. Such cases shall be filed in a Criminal Division Court wherein the committing offense has been transferred. If the committing offense has not been transferred, then the charge shall be filed in a court that currently hears that same type of underlying charge.

All charges of failure to appear shall be filed in the court in which the defendant failed to appear except if that court no longer hears criminal cases pursuant to this Rule, then the charge shall be filed in the court wherein the underlying case has been transferred. If the underlying case has not been

transferred, then the charge shall be filed in a court that currently hears that same type of underlying charge.

106.2. Civil And Juvenile: Assignment Of Civil And Juvenile Cases

A. Elkhart Circuit Court

- 30% Plenary (PL)
- 30% Tort (CT)
- 100% Tax Sales (TS)
- 100% Tax Petitions (TP)

B Elkhart Superior Court 1 D01

- Protective Orders (PO) related to criminal law cases In Superior Court 1 that are pending or under supervision
- No other Civil or Juvenile types of cases

C. Elkhart Superior Court 2 D02

- Commercial Court Cases
- 35% Plenary (PL)
- 35% Tort (CT)
- 50% Mental Health
- 50% Mortgage Foreclosure (MF)
- All Estates (ES)
- All Estates Unsupervised (EU)
- All Estates Miscellaneous (EM)
- All Trusts (TR)
- Miscellaneous Civil 50% Except Grandparent Visitations, Name Changes, Specialized Driving Privileges, Lifetime Rescission requests, BMV Fee Waiver
- No other Juvenile or Civil type cases
- Red Flag (RF) (Civil)

D. Elkhart Superior Court 3 D03

- 50% Mental Health
- No other Civil or Juvenile case types except Miscellaneous Civil (MI) involving the Forfeiture or Seizure of Property and Plenary (PL) cases involving Forfeiture or Seizure of Property
- Red Flag (RF) (Criminal)

E. Elkhart Superior Court 4 D04

- No Civil or Juvenile Cases Except as follows:
- Expungements (XP)
- Miscellaneous Civil (MI): as follows allowed: Specialized Driving Privileges, BMV Fee Waiver Requests, Lifetime Rescission Requests

F. Elkhart Superior Court 5 D05

- 50% Mortgage Foreclosure (MF)
- 35% Plenary (PL)
- 35% Tort (CT)
- 100% Collections (CC)
- 50% Miscellaneous Civil (MI) Except Grandparent Visitations, Name Changes, Specialized Driving Privileges, Lifetime Rescission requests, BMV Fee Waiver
- 100% Small Claims SC See Section 110.3 below
- 100% Evictions EV
- No other Juvenile or Civil type cases

G. Elkhart Superior Court 6 D06

- All Juvenile Paternity (JP)
- All Domestic Relations with children (DC)
- All Domestic Relations without children (DN)
- All Reciprocal Support (RS)
- All Adoptions (AD)
- All Guardianships (GU)
- All Protection Orders (PO) except those filed in Elkhart Superior Court related to a pending criminal case or a criminal case under supervision.
- Juvenile Chins (JC)
- Juvenile Delinquency (JD)
- Juvenile Status (JS)
- Juvenile Miscellaneous (JM)
- Juvenile Termination (JT)
- Juvenile Protection (JQ)
- Miscellaneous Civil (MI) limited to Grandparent Visitation and Name Change
- No other civil type cases

106.3. Caseload Allocation Plan

Calculated on 2019 filings in that the pandemic impacted filings although the filings continue to trend upward to pre-pandemic levels, this is the best estimate of caseloads in the completely reorganized court system.

Judicial Officer	Circuit	Superior 1	Superior 2	Superior 3	Superior 4	Superior 5	Superior 6
Elizabeth Bellin Juvenile							5.00
Dean Burton Civil	1.25		.50	.50		2.75	
Eric Ditton Criminal					5.00		
James Fox Title IV-D							5.00
New Appointed Judicial Officer							5.00
New Appointed Judicial Officer		2.25			2.75		
Total days reported for all additional judicial officers	1.25 days	2.25 days	One half day. 50	One half day .50 day	7.75 days	2.75 days	15 days
Have calculated for WCL	1.25	1.45	1.10	1.10	2.75	1.55	4.00
Need for each court	1.40	1.66	1.16	1.19	3.11	1.66	4.12
Utilization totals	1.12	1.14	1.05	1.08	1.13	1.07	1.03

Rule LR20-AR1-107. Implementation of Divisions

The judges of the Elkhart Circuit and Elkhart Superior Courts are authorized to transfer cases to effectuate implementation of the Divisions herein established.

Rule LR20-AR00-108. Organization of the Circuit

The Circuit Court participates in the Divisional Court process in Elkhart County by hearing a proportional share of all criminal cases in Elkhart County and participate in all court functions as described below in LR20-AR00-109.

Rule LR20-AR00-109. Organization of the Superior Court

109.1. Divisions

The Elkhart superior court consists of six (6) judges.

(a) Three (3) judges of the Elkhart superior court shall serve in the criminal division. Elkhart Superior Court 1; Elkhart Superior Court 3; Elkhart Superior Court 4 are the superior courts of the criminal division. There are two (2) appointed judicial officers assigned to the criminal division.

(b) One (1) judge shall serve in the family division. Elkhart Superior Court 6 is the superior court of the family division. There are three (3) appointed judicial officers assigned to the family division.

(c) Two (2) judges shall serve in the civil division. Elkhart Superior Court 2 and Elkhart Superior Court 5 are the superior courts of the civil division. There is one (1) appointed judicial officer assigned to the civil division.

109.2. Problem-Solving Court

Problem-solving: Drug Court is established in the Elkhart Superior Court 4.

109.3. Misdemeanor and Small Claims Division

There is established a small claims and misdemeanor division pursuant to Indiana Code § 33-29-2. Traffic violations, infraction and ordinance violation are heard in the Misdemeanor and Small Claims Division. The administrative judge after consultation with the judges of Elkhart superior Courts and the judge of the Elkhart Circuit Court may assign an appointed judicial officer. Cases in the Misdemeanor and Small Claims Division shall not be deemed assigned to the judge sitting, nor any other judge, except upon proper motion for change of venue.

109.4. Magistrate Judges

Magistrate Judges appointed pursuant to Indiana Code § 33-23-5 shall continue in office until removed by the judges of the Elkhart Superior Court and the Elkhart Circuit Court. Indiana Code § 33-23-5-8.5 provides that a Magistrate Judge has the same powers as a judge except for the mandate of funds. Indiana Code 33-23-5-8.5.

A. Any Court may, with or without the consent of the parties, assign to a Magistrate or other appointed judicial officers the responsibility to hear specific currently disputed matters.

B. The Magistrate, or other appointed judicial officers, shall, with reasonable promptness, hear such matters and shall issue findings and orders as allowed by law.

C. Complaints regarding the timeliness of any disposition shall be made to the referring court.

D. All filings related to any matter referred to a Magistrate, or other appointed judicial officers must be made to the Clerk of the Court or court staff and forwarded to the Magistrate, or other appointed judicial officers.

E. No change of venue from a Magistrate, or other appointed judicial officers shall be granted. A change of venue from the referring court or the appointed judicial officer may be sought under applicable Trial Rules.

F. Referral of a matter to a Magistrate, or other appointed judicial officers does not operate as an appointment of a special judge, temporary judge, or a judge pro tempore.

109.5. Appointment of Court Administrator and Administrative Judge

A. The Elkhart Superior Court judges and the Elkhart Circuit Court judge may appoint a Court Administrator. The Superior and Circuit Court judges must determine the duties of the Court Administrator.

B. The Superior and Circuit judges shall appoint one of their members, by a majority determination, as the Administrative Judge for the Superior Courts and the Circuit Court and determine a term of service for the Administrative Judge.

C. The Administrative Judge shall supervise the Court Administrator.

D. The Administrative Judge shall, from time to time, but at least annually, report and make recommendations to the Superior Court judges and the Circuit Court judge concerning: an annual budget; appointments or selections that are required of a superior court or circuit court judge under any statute; and evaluation of the Court Administrator.

E. The Administrative Judge, after consultation with the judges of the Superior Courts and Circuit Court, may determine for the efficient operation and conduct of the Superior and Circuit Courts, the assignment of cases and magistrate judges, including assigning specific cases normally assigned to a division to a judge or magistrate judge in another division. A judge may be assigned cases in other divisions. A magistrate judge may be assigned cases in other divisions. Calculations of the various Weighted Judicial Measures of the courts, judges, magistrate judges or other appointed judicial officers involved should be considered in any such readjustment and assignment of cases.

F. Any action of the Administrative Judge may be modified by majority of the Superior and Circuit Court judges.

Rule LR20-AR15-110. Court Reporter

Court reporter services in the Elkhart County Courts shall be governed by following local rule.

110.1. Definitions: See AR 15

110.2. Salaries And Per Page Fees

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

B. The maximum per-page-fee a court reporter may charge for the preparation of a county or state indigent transcript shall be four dollars (\$4.00) and an expedited rate of six dollars (\$6.00) per page; the court reporter shall submit a claim directly to the county for the preparation of any county indigent transcripts.

C. The maximum per-page-fee a court reporter may charge for copies is two dollars (\$2.00) per page.

D. An additional labor charge approximating the hourly rate based upon the court reporter's annual court compensation may be charged for the time spent binding the transcript and exhibits.

E. Each court reporter shall report, at least on an annual basis, all transcript fees for the preparation of either 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.

F. Once an original or a copy of a transcript or other recording has been purchased by an individual or party, that person has the right to reproduce the transcript as needed to comply with the Indiana Rules of Trial Procedure, Indiana Rules of Evidence or Elkhart County Local Rules without further financial obligation to the court reporter

110.3. Private Practice

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

- 1) The reasonable market rate for the use of equipment, workspace, and supplies.
- 2) The method by which records are to be kept for the use of equipment, workspace, and supplies; and
- 3) The method by which the court reporter is to reimburse the court for the use of the equipment, workspace, and supplies

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

Rule LR20-AR15-111. Exhibits and Court Reporter Records

111.1. Court Reporter Records

A. The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

B. Courts should photograph as much evidence as possible, and courts and parties reminded of the requirements of Appellate Rule 29(B).

111.2. Exhibits

A. After being marked for identification, exhibits that are offered or admitted into evidence shall be placed in custody of the Court Reporter unless otherwise ordered by the Court.

B. In non-criminal cases, after a case is decided and no appeal is taken, or after all appeals are exhausted, an attorney may request in writing the return of the exhibits which are the property of their client. A detailed receipt shall be filed by the Court Reporter evidencing the return of any exhibits. If no request is made within four (4) months after the above stated period, the Court Reporter may, with Court approval, dispose of the exhibits. If an appeal, retrial, or subsequent appeal has been taken then the exhibits are retained by the Court Reporter for two (2) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is latest.

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

After being marked for identification, exhibits that are offered or admitted into evidence shall be placed in custody of the Court Reporter unless otherwise ordered by the Court. They shall be retained for three (3) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for three (3) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

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

After being marked for identification, exhibits that are offered or admitted into evidence shall be placed in custody of the Court Reporter unless otherwise ordered by the Court. They shall be retained for twenty (20) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for twenty (20) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.

111.5. Non-documentary and Oversized Exhibits

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

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

111.6. Notification and Disposition

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

[Notice of Intent to Destroy-Criminal B and A Level, 123 Felony, Murder](#)

[Notice of Intent to Destroy-Criminal C D and Level 4 5 6 felonies](#)

[Notice of Intent to Destroy Misdemeanor cases](#)

[Notice of Intent to Destroy Infractions and Ordinance Violations](#)

[Notice of Intent to Destroy Civil matters](#)

[Evidence Retention Log](#)

B. The notice referred to above shall be actual notice, provided by the Clerk to the Plaintiff upon the initiation of an action and issued to the Defendant(s) pursuant to Trial Rule 4, or sent at the time a party first appears in a case in all cases filed after the effective date of this Rule. The notice referred to above, for all civil cases filed prior to the effective date of this Rule, may be actual notice, if possible issued

at the time of a final disposition in the case or, if a final disposition has been entered prior to the effective date of this Rule, at the time the evidence is scheduled for destruction: Provided, however, that for those civil cases in which a final disposition was entered at the trial level more than ten (10) years prior to the effective date of this notice, or with respect to which it is not possible to give actual notice, the Court shall annually issue notice of intent to destroy evidence by publication in a newspaper of general circulation within Elkhart County, posting at the County Courthouse(s).

For all civil cases initiated after the effective date of this rule, the party initiating the action must provide to the Clerk of the Court, at the time the case is initiated or at any time additional defendants are added to the case, a sufficient number of copies of the notice for service upon each defendant, as well as a copy to be returned to each Plaintiff and a copy for the Court's file. For all civil cases initiated prior to the effective date but disposed of after the effective date of this rule, the Court must be provided with enough copies of the notice for service on all parties participating in all matters at which tangible evidence was offered or admitted. Actual notice may be accomplished by electronic mail if so, authorized by the local electronic filing rules.

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

D. Notwithstanding any provision of this rule to the contrary, the Judge of the Elkhart Circuit Court and the Judges of the Elkhart Superior Court shall have the authority to order the destruction of any evidence that is compromised by age, damage, lack of case identifiers or inadvertent destruction.

111.7. Biological Contaminated Evidence

A party who offers biologically contaminated evidence must file a pretrial notice with the trial court and serve all the parties so that the Court may consider the issue and rule appropriately before trial. Contaminated evidence may be presented to the court as the court may direct, but such contaminated evidence should not be handled or passed to jurors or sent into the jury room unless the court has determined the contaminated evidence has been rendered safe. The court may order photographs or other electronic presentation of the contaminated evidence be substituted for presentation to the jury.

LOCAL CIVIL RULES

Rule LR20-TR77-201. Filing, Pleading, and Motions

201.1. Paper Filing

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

201.2. Filing with the Clerk

Regarding paper and electronically filed pleadings, hereinafter referred to as “all pleadings,” pleadings shall be filed with the Clerk, not directly with the Court, unless otherwise required by the Indiana Rules of Court.

201.3. Format of Pleadings

All pleadings, motions, and other documents shall be prepared in accordance with the applicable provisions of the Indiana Rules of Trial Procedure, the Rules of Access to Court Records and any other applicable rules of court or administrative rules. For uniformity and convenience, the following requirements shall also be observed:

201.3.1. Paper when allowed

Pleadings, motions, and other documents shall be either legibly printed or typewritten on white opaque paper so that it is readable. The paper should be eight and one-half inches (8 ½”) in width and eleven inches (11”) in length as required by Administrative Rule 11 and of such strength to withstand being electronically scanned. Any copies, when required, be on white paper of sufficient strength and durability.

201.3.2. Style, Margins, Spacing, and Font on Paper and Electronic Documents

Printing shall be on one side of the paper.

Margins shall be at least one inch (1”). If typewritten, the lines shall be double spaced except for quotations, which shall be indented and single-spaced. Type face shall be twelve (12) font size or larger within the body of the document and ten (10) font size or larger in the footnotes. The font type must be legible and script type shall not be used. Italicized type may be used for quotations, references, or case citations.

201.3.3. Caption

Every pleading shall contain a caption setting forth the name of the Court, the title of the action and the case number. If a special judge has been assigned to the case, the pleading should also identify the special judge.

201.3.4. Title

All pleadings or motions shall only include one issue. Motions that make multiple requests are not allowed in that the electronic filing system automatically generates the chronological case summary entry. Only one entry is possible for each pleading.

201.3.5. Format and Layout

A judicial officer may designate forms and layout for pleadings and motions to promote clarity, efficiency, and judicial economy, and to ensure compatibility and appropriate interface with the Odyssey case management systems. Pleadings not conforming to the designated form or layout may be stricken by the Court pursuant to Trial Rule 88.

201.3.6. Signature, Verification, and Other Requirements

Parties and their counsel are required to comply with the verification requirements of Trial Rule 11, and either the moving party or the party's attorney of record shall sign, as allowed by Trial Rule 86, all pleadings, and motions before filing with the Clerk of the Court. Every motion, petition, or other pleading filed with the Clerk shall contain the name, organization, physical address, telephone number, and electronic address of the filing party or an attorney for that party. The Clerk shall not accept any motion, petition, notice or other pleading for filing from an unrepresented litigant unless the unrepresented litigant's current address, phone number and electronic address appear on the pleading, and an opposing party may serve notices and responses on an unrepresented litigant at any address the party has provided on a pleading.

201.3.7. Restricted Access

Where a motion, petition, or other pleading is excluded from public access under the Rules to Access to Public Record, the parties and their counsel are required to comply with the filing requirements of Trial Rule 5(G).

201.4. Forms

201.4.1. Chronological Case Summary

The Chronological Case Summary (CCS) entry is electronically generated utilizing the proper text code.

201.4.2. Hearing Dates and Date Lines

Hearing dates for filings requiring Court action shall be obtained from the Court Clerk or Court Staff as directed by each Judicial Officer and incorporated in the CCS entry at the time the motion or other pleading is filed. If no date is obtained prior to the filing, there should be a date and time blank line. All date lines that are left blank should be in the format "Date: (blank line) _____ and not: "(blank line) ____ date of (blank line) _____" this allows the Court and Clerk to utilize the automated date stamp available in the Odyssey Case Management System.

201.4.3. Proposed Forms of Order

Proposed forms of order are required for all Motions or other pleadings when there is a request for the court to act in some manner.

Rule LR20-TR4-202. Service of Process

202.1. Summons, Complaint, and Appearance

The party filing the initial pleadings (summons, complaint, appearance, excreta) shall (unless exempted) be filed by way of the Indiana E-Filing System and pursuant to Trial Rules 4 and 86.

(A) By Certified Mail, Private Process, Publication, other Methods. The initiating party must file a Certificate of Issuance of Summons. If the certified mail service of process is utilized, the initiating party must cause the return receipt card to be returned to the initiating party, not returned to the Clerk, the initiating party then files same with the Clerk.

(B) By Elkhart County Sheriff. Once the signed Summons is returned from the Clerk and the fee for Service of Process by Sheriff has been paid to the Clerk, it is the initiating party's obligation to deliver the document(s) to the Elkhart County Sheriff to be served. It is the requesting party's responsibility to provide the Elkhart County Sheriff with three copies of any document(s) to be served along with a proof of payment for this service. Documents may be hand-delivered or mailed to the Elkhart County Sheriff. See Trial Rule 4.12.

Once the document(s) are served by the Elkhart County Sheriff, the Elkhart County Sheriff shall forward the document(s) to the Clerk for entry into the Chronological Case Summary.

If the Elkhart County Sheriff service method is utilized, the initiating party is not required to file a Return of Service.

202.2. Certificate of Issuance of Summons. See Trial Rule 86(G)(2)

Once service is initiated, a Certificate of Issuance of Summons must be filed. [Certificate of Issuance of Summons](#)

202.3. Return of Service

After proof of service is returned to the initiating party, a Return of Service must be filed so that it will appear on the Chronological Case Summary. [Return of Service Form](#) Note: if e-filing the Return of Service, the filer must specify in the comment field the name of the document(s), the party's name who service was attempted on, and an indication whether service was either served or not served.

202.4. Serving Non-Registered Persons

A person who has not registered or otherwise cannot access the IEFIS but who is entitled to service of a paper or pleading in a matter shall be served in accordance with Trial Rule 4.

202.5. Method of Service on items other than Summons

Counsel or an unrepresented party submitting a motion, petition, notice, pleading or proposed order shall indicate the method of service of process.

202.6. Service by the Clerk

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

202.7. Service

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

202.8. Documents

The official record of any document submitted is the electronic version of the document, the Clerk shall convert any paper document submitted to an electronic version as soon as same is received by the Clerk.

Rule LR20-AR00-203. Court Files

No paper Court file nor any part thereof may be removed from the custody of the Court Clerk by any person, including any attorney or Judge of this or any other Court, except upon authorization by the regularly presiding Judicial Officer to which the case is assigned and then only upon such terms and conditions as may be provided by the Judicial Officer in the Order for authorization.

Rule LR20-TR7-204. Motions

204.1. Scheduling Motions for Hearings

Except for motions to correct error or not likely to require a hearing, all motions shall be scheduled for hearing as directed by each Judicial Officer. It shall be the responsibility of the moving party or counsel for the moving party to secure the date and time of the hearing from the Clerk or Court personnel who

maintain the calendar for each Judicial Officer. It shall also be the responsibility of the moving party or counsel for the moving party to coordinate the hearing date with all opposing counsel or unrepresented parties.

204.2. Motions to Correct Error

It is within the sound discretion of the assigned Judicial Officer whether a hearing shall be held on a motion to correct error; however, any party may request a hearing upon a motion to correct error by filing a written request by separate motion at any time before the Court has ruled upon such Motion.

204.3. Oral Arguments on Motions and Other Pleadings

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

Rule LR20-TR55-205. Motion for Default Judgment

205.1. General Requirements

In addition to the specific requirements set out below in sections 205.2 – 205.6, a Motion for Default Judgment shall generally include the following attachments and information:

1. Affidavit of Debt. The Affidavit of Debt shall include the following information as known or requested by the moving party.
 - a. The default date.
 - b. The unpaid balance of the account; and,
 - c. Any fees, including attorney's fees or late fees, separately enumerated.
2. Supporting Documentation. The following supporting documents shall also be provided:
 - a. Affidavit of Attorney's Fees and be accompanied by the written instrument or citation to other authority allowing for recovery of attorney's fees.
 - b. Affidavit of Non-Military Service, including the Service Members Civil Relief Act Status Report from the Department of Defense.
 - c. Written instrument allowing for the recovery of any other amounts sought, including interest rates and other fees; and,
 - d. Attachment showing method of computation used to arrive at the amount requested.
3. Court costs shall not be added into a general judgment. A separate award and judgment for court costs is required.

205.2. Affidavit of Debt: Assignments

- A. If the plaintiff is not the original creditor, the Affidavit of Debt shall include:
 1. A statement by plaintiff (or plaintiff's counsel, if plaintiff is represented by counsel), that the statute of limitations to bring an action to collect the defendant's debt has not expired; and,
 2. Attached exhibits, which must include:
 - a. A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt, and no signed writing

evidencing the original debt ever existed, then a charge-off statement or monthly statement recording the most recent purchase transaction, payment, or balance transfer shall be attached.

b. A chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor, identifying the debtor's name and/or account number with specificity; and,

c. A certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to the plaintiff, identifying the debtor's name and/or account number with specificity.

205.3. Insurance Subrogation Cases

In cases involving a personal injury and/or property damage subrogation claim, a Motion for Default Judgment shall include the following additional attachments and information:

A. Affidavit including:

1. Date of the occurrence; and,
2. Amount of damages requested.

B. Copies of all relevant medical bills paid, consistent with Access to Court Records Rules.

C. Copies of all relevant repair estimates.

D. Affidavit of Non-Military Service.

E. Copies of all relevant checks, deposits, receipts, and other similar documents written by the insurance company; and,

F. An attachment entitled "Computation of Damages," showing method of computation used to arrive at the amount requested.

205.4. Loan Installment Contract / Repossession Cases

In cases involving loan installment contracts or repossession, a Motion for Default Judgment shall include the following additional attachments and information:

A. A copy of the original signed contract, which must contain a signature of the defendant.

B. Documents showing:

1. If the personal property was repossessed and sold, the date and place of sale.
2. Gross amount from sale of personal property.
3. All deductions (itemized) from gross sale amount; and,
4. Any other deductions made (itemized).

C. An itemization of all amounts paid on the contract by the debtor.

D. Affidavit of Attorney's Fees or other fees must be accompanied by the written instrument or citation to other authority allowing for recovery of attorney's fees.

E. Affidavit of Non-Military Service.

205.5. Credit Card Cases

In cases involving a credit card debt, a Motion for Default Judgment shall include the following additional attachments and information:

A. Affidavit of Debt must include:

1. Charge off date.
2. Original credit card company.
3. Unpaid balance.
4. Date of last payment and amount.
5. Date account was opened.
6. Account number, consistent with Rules to Access to Court Records.
7. Date debtor defaulted on the account.
8. Interest rate requested.
9. Type of account (That is, Visa, department store); and,
10. Late fees, over-limit fees, and any other fee requested, along with a monthly breakdown of each amount.

B. Affidavit of Attorney's Fees must be accompanied by the written instrument or citation to other authority allowing for recovery of attorney's fees.

C. Actual credit card monthly billing statement from the date of last payment or last purchase (whichever is later), showing:

1. original creditor.
2. Debtor's name.
3. Debtor's address.
4. Date of last payment and/or purchase.
5. Interest rate; and,
6. All fees requested.

D. Affidavit of Non-Military Service; and,

E. Attachment showing method of computation used to arrive at the amount requested.

205.6. Medical Bills

In cases involving medical bills, a Motion for Default Judgment shall include the following additional attachments and information:

A. Affidavit of Debt must include:

1. original provider and date for each service.
2. Name of the individual to whom each service was provided.
3. Unpaid balance.

4. Date account was closed.
5. All accounts and account numbers consistent with Access to Court Records Rules.
6. Date debtor defaulted on account(s).
7. Interest rate sought (if any).

B. Affidavit of Attorney's Fees or any other fees must be accompanied by the written instrument or citation to other authority allowing for recovery of attorney's fees.

C. Copy of each medical bill showing the date and amount of each service, original provider, and to whom the service was provided.

D. Copy of all assignments (from original provider to Plaintiff);

E. Copy of the contract (if any);

F. Affidavit of Non-Military Service; and,

G. Documentation showing secondary liability if judgment is sought against a person to whom services were not provided (this must be provided for each date of service).

Rule LR20-TR7-206. Other Motions and Hearings

206.1. Motions to Amend Pleadings

All motions to amend pleadings must contain a written representation of the moving party's attorney that the attorney has advised opposing counsel of the substance of the motion and that opposing counsel either consents or objects to the motion or that the motion may be submitted for ruling by the Court without hearing or briefing. Upon being advised of opposing counsel's objection, the moving party's attorney shall request a date for hearing.

206.2. Motions Not Likely to Require Hearing

The following motions may be granted without a hearing and without a response from the non-moving party:

A. Motion for Initial Enlargement of Time for Answer.

B. Motion to Dismiss complaint by Plaintiff when no answer has been filed.

C. Motion to Dismiss Counterclaim by Defendant when no reply has been filed.

D. Motion to Amend any pleading; such motions may be summarily granted or denied unless the Court determines that a hearing should be scheduled.

E. Unopposed motion and joint motions.

206.3. Briefs and Memoranda Regarding Motions

If a party desires to file a memorandum in support of any motion, the memorandum should be filed simultaneously with the motion.

206.4. Motions to Strike or to Insert New Matter

Subject to Trial Rule 12(F), every motion to insert new matter or to strike out any part or parts of any pleading, deposition, report, order, or other document in a case shall be made in writing and shall set forth the words sought to be inserted or stricken. Each set of words to be inserted or stricken shall be in a separate specification and each specification shall be numbered consecutively.

206.5. Initial Enlargement of Time for Answer

An initial written motion for enlargement of time to file an Answer shall be automatically allowed for an additional thirty (30) days from the filing of the motion, or until two (2) days before the Case Management Conference, if set by the court, whichever is earlier. This rule shall not apply if the defendant requesting the motion has already been defaulted. For this rule to be applicable, the motion must be filed on or before the original due date. The motion shall include: the date on which the Defendant was served with the Complaint and Summons; the date Defendant's response to Plaintiff's Complaint is due; a statement that the motion is filed prior to the original date Defendant's response is due; a statement that the Defendant has not been defaulted; the date on which the Case Management Conference, if set by the court, is currently set to be conducted; and the new proposed deadline for the Defendant to file the Answer (which shall be at least two days before the scheduled Case Management Conference, if set by the court).

206.6. Enlargement/Modification of Time/Deadlines for All Matters Other Than an Initial Enlargement to Answer a Complaint

A motion for enlargement of time to file any response (other than to file an Initial Enlargement to Answer a Complaint as permitted in section 206.5 of this rule), and a motion to modify any other deadline (other than hearing dates or trial dates) shall be verified, shall state the grounds for the requested relief with particularity, shall state the date the original response is due, shall state the new date the moving party proposes for the response is to be due, shall list all future conferences, hearings and trial dates set in the case, and shall state whether the other parties agree with or object to the motion. The motion shall be in the form provided at [Motion for Enlargement, Modification of Time or Deadline](#). A proposed order that is substantially similar to the form set out in [Order on Enlargement, Modification of Time or Deadline](#) Order Amending Deadlines, modified for the particular motion, shall also be filed. A party's failure to strictly comply with these requirements may subject the motion to summary denial. Motions to modify court conferences, hearing dates and trial dates are governed by Local Rule LR20-TR53.5-210.

206.7. Motions Must Be Filed Separately

Motions must be filed separately from other pleadings, proposed Orders, and other motions. Otherwise, such motions are considered "dual pleadings," and will be stricken from the Record.

206.8. Trial Rule 12 Defenses

A motion to dismiss asserting Trial Rule 12 defenses must be filed separately from the Answer. The Court will not rule on defenses asserted under Trial Rule 12 until the party who raised the defense files a motion separate from its Answer.

Rule LR20-TR56-207. Motion Practice Regarding Dispositive and Other Complex Matters

207.1. Scope of Rule

This rule applies to:

- A. Trial Rule 12 Motions.
- B. Trial Rule 37 Failure to Make or Cooperate in Discovery.
- C. Trial Rule 56 Motions for Summary Judgment.
- D. Trial Rule 65 Injunctions and Restraining Orders.
- E. Motions to Exclude under Indiana Rule of Evidence 702(a) and 702(b); and

F. Other complex or Dispositive Motions

207.2. Separate Documents

- A. Motions must be pled separately, but alternative motions may be filed in a single pleading if each is named in the title following the caption.
- B. The following documents must be filed separately:
 - 1. Motion for Summary Judgment.
 - 2. Memorandum in Support.
 - 3. Designation of Evidence and Table of Contents.
 - 4. Response Memorandum; and
 - 5. Reply memorandum.
- C. If no evidence is designated, no separate Designation of Evidence or Table of Contents is required.

207.3. Summary of Argument Required

The Memorandum in Support of Motions for Summary Judgment and Response Memorandum must contain a Summary of Argument not to exceed two pages and located at the beginning of the Memorandum.

207.4. Time Limit for Filing a Motion, Response, or Reply

- A. All motions are subject to the deadlines provided by statute and the Indiana Rules of Trial Procedure.
- B. RESPONSES: A party must file any response brief to a motion (other than Motions for Injunction Relief or Restraining Orders) within 30 days after the motion is served. Any response to a Motion for Injunctive Relief or for a Restraining Order must be filed within 7 days after the motion or application is served.
- C. REPLIES. The moving party must file any reply brief within 10 days after the response is served.
- D. EXTENSIONS. The Court may extend a deadline, if allowed by law.
- E. SUR-REPLY. Sur-Replies are disfavored and will only be permitted with leave of the court in extraordinary circumstances. A Request to file a Sur-Reply must be filed no later than five (5) days after service of a Reply. Entry of service of notice of denial is not required. A Sur-Reply may not be filed with, nor attached to, the Request. If the Request is granted, the Sur-Reply must be filed within 10 days after the Request was granted.
- F. SUMMARY RULINGS. The Court may rule on a motion summarily if an opposing party does not file a response before the deadline.

207.5. Page Limits

- A. RULE. Supporting and response briefs (excluding tables of contents, tables of authorities, and appendices) must not exceed twenty-five (25) pages. Reply briefs must not exceed twenty-five (25) pages. A Sur-Reply must not exceed five (5) pages.
- B. EXCEPTION. The Court may allow a party to file a brief exceeding these page limits for extraordinary and compelling reasons. But if the Court permits a brief to exceed twenty-five (25) pages, it must include:

1. a table of contents with page references.
2. an issue statement; and
3. a table of authorities, including.
4. all cases (alphabetically arranged), statutes, and other authorities cited in the brief; and
5. references to where the authorities appear in the brief.

207.6. Motions to Strike Designations Submitted in Support of or Opposition to Motions for Summary Judgment and Motions to Strike Summary Memoranda

- A. At the time a Response to Motion for Summary Judgment is filed, the non-moving party's Motion to Strike, if any, must also be filed.
- B. Upon a motion, the Court may permit a party to file a Supplemental Designation of Evidence in support of the Reply Memorandum.
- C. A party objecting to such a Supplemental Designation must file its Motion to Strike, if any, within seven (7) days of the Motion to File a Supplemental Designation of Evidence.
- D. A Motion to File a Supplemental Designation of Evidence must not exceed the page limits outlined in E.
- E. At the time a Reply Memorandum is filed, the moving party's Motion to Strike, if any, must also be filed.
- F. A Motion to Strike and supporting argument must not exceed the page limits outlined in section 207.5.
- G. Any opposition to a Motion to Strike must not exceed the page limits outlined in section 207.5 and must be filed no later than seven (7) calendar days after the Motion to Strike is filed.

207.7. Formatting

A. Pagination

1. All the pages of each document listed in section 207.2 must be separately and consecutively paginated.
2. Every page of each document must contain a page number, beginning with page two (2).
3. The page numbers may be affixed to a page by type, stamp, or handwriting.
4. Page numbers must appear in the bottom of the page and must be formatted to indicate each page number in relation to the total of the pages in the document (e.g., "Page 1 of 14"; "1 of 14"; "p. 1/14"; "p. 1 of 14").

B. Designation of Evidence and Table of Contents

1. The first item set out below the caption of the case in the Designation of Evidence and Table of Contents must be the Table of Contents.
2. The Table of Contents must clearly designate each Exhibit relied upon in the Motion or Response.
3. Each Exhibit must be affixed with a Title and Exhibit Letter. No document or individual page may be designated as evidence that does not contain an Exhibit Letter and short Title.

4. The Table of Contents must contain the beginning and ending page number for each Exhibit.

5. The entire Designation of Evidence and Table of Contents must be consecutively paginated (that is: “Bates-stamped”) in the manner described in section 207.7, beginning with the caption on page 1.

C. Exhibit Designation and Titles

1. Exhibits within the Designation of Evidence and Table of Contents must begin with the letter “A” and proceed through the alphabet.

2. The Exhibit Title must identify the specific document by its content, such as “Affidavit of Mary Rose”; “Credit Card Statements 2007-2019”; and “Deposition of John Henry.”

3. The Exhibit Letter and Title of the Exhibit must match the Exhibit Letter and Title as stated in the Table of Contents.

4. If a document is authenticated or referenced by an Exhibit, it must be marked as a subpart to that Exhibit and must be specifically and accurately referenced in the authenticating or reference document.

5. As with each Exhibit, each subpart to an Exhibit must be identified in the Table of Contents.

6. If any document contains an Exhibit Letter or Exhibit Number from an earlier filing, the earlier letter or number must be removed to avoid confusion. However, when necessary to authenticate an earlier document, the earlier letter or number must remain on that document, and the Exhibit must also contain and be identified in the Table of Contents by the new Exhibit Letter.

7. Citations must be to the page number referenced in the Table of Contents.

D. Designation of Evidence Earlier Filed. Documents that are designated as evidence that have already been filed or issued in the case, such as the Complaint, Answer, Orders, the relevant portions of another party’s designated evidence, extra, must be listed and included in the Designation of Evidence and Table of Contents and assigned an Exhibit Letter and short Title as required in section 207.3 (3).

207.8. Enforcement of Rule

A. VIOLATIONS OF THIS RULE. If a party files any document in violation of this Rule, the Court, in its discretion, may issue an appropriate order.

B. DEFECTIVE FILING. If the Court strikes, as a defective filing, a party’s Motion, Designation of Evidence and Table of Contents, Memorandum, or other filing related to this Local Rule, the Court may allow the party to cure the defective e-filing within One hundred twenty (120) hours. If the party submits a cured document within one hundred twenty (120) hours of the striking Order, excluding days the Court is closed, the document is deemed timely filed as of its original filing.

C. LATE FILINGS. Any motions, memoranda, or other documents filed within forty-eight (48) actual (not Court business) hours of a hearing generally pertaining to the subject matter of the hearing may be stricken in the discretion of the Court.

Rule LR20-TR-86-208. Proposed Orders

208.1. Matters in which Proposed Orders are Required

A. Prior to entry by the Court of orders granting motions, the moving party shall, unless the Court directs otherwise, furnish the Court with proposed orders in the following matters:

1. enlargement of time
2. continuance

3. default judgment
 4. compel discovery
 5. dismissal
 6. appointment of receiver
 7. appointment of guardian
 8. appointment of personal representative
 9. immediate possession of real estate
 10. immediate possession of personal property
 11. petition for certification of interlocutory appeals
 12. staying further proceedings by reason of bankruptcy, appeal, or other grounds
 13. request for hearing
 14. extensions of dispositive motion filing deadlines and resetting the dispositive motion hearing and other hearings [Motion and Order on Enlargement, Modification of Time or Deadlines](#)
 15. attorney's withdrawal of appearance
 16. other orders, judgments, or decrees as the Court may direct
- B. This local rule does not apply to judgments on general verdicts of the jury or upon a decision announced by the Court. Failure to comply with this local rule may result in the motion being summarily denied.

208.2. Form

All proposed orders shall:

- A. be a document that is separate and apart from the motion.
- B. contain all relevant detail of the relief granted by the order (a single statement, such as "Motion granted" is not sufficient in detail);
- C. contain the proper caption of the case.
- D. contain page numbers that appear in the bottom of the page and must be formatted to indicate each page number in relation to the total of the pages in the document (e.g., "Page 1 of 14", "1 of 14", "p.1/14", "p.1 of 14").
- E. at the right margin contain a line for the signature of the judge on the last page of the proposed order under which shall be typed "Judge, Elkhart Superior Court" or "Magistrate, Elkhart Superior Court", or "Judge, Elkhart Circuit Court", or "Magistrate, Elkhart Circuit Court", whichever is applicable or other title of appointed judicial officer. it is also preferred that this line include the judicial officer's name.
- F. at the left margin of the judge's signature line, contain a date line, stating the following: "Date: (blank line) _____"; and,
- G. provide approximately two inches of blank space provided between the last typed paragraph of the proposed order and the date and signature lines.

208.3. Orders Following Other Hearings

As directed by the Court, a party or an attorney for a party shall prepare a proposed order based on the decision rendered by the Court. The party so directed shall prepare the proposed order in a timely manner and, upon filing, shall advise the chambers of the applicable judicial officer that the proposed order has been prepared and filed. Unless otherwise directed or given leave of the Court, proposed Orders in emergency matters shall be filed within forty-eight (48) hours after a hearing; proposed Orders in other matters shall be filed within seven (7) days as computed by Indiana Trial Rule 6.

208.4. Proposed Orders on Motions for Summary Judgment

Proposed orders on motions for summary judgment, when appropriate, may contain the following language permitted in Trial Rule 56 (C): “there is no just reason for delay and the Court expressly directs entry of final judgment as to less than all the issues, claims or parties.”

Rule LR20-TR53.1-209. Failure to Rule –Informal Procedure

If a Judge or Magistrate fails to set a motion for hearing or fails to rule on a motion within the time period specified in Trial Rule 53.1(A), and if no action has been taken as provided in Trial Rule 53.1(D) or (E), an interested party may seek an informal resolution of the Judge’s failure by making an ex parte request to the Administrative Judge of Elkhart Circuit and Superior Court. If the Judge who has failed to rule is the Administrative Judge of the Elkhart Circuit and Superior Court, an interested party may make the request to one of the other Judges of the Elkhart Circuit and Superior Court.

Rule LR20-TR53.5-210. Continuances of Hearings and Trials

210.1. Motion

A motion for continuance of a court conference, hearing or trial, unless made during the conference, hearing or trial, shall be verified, stating the grounds with particularity, and shall state whether the other parties agree with or object to the motion. The motion shall include a list and a description of all deadlines and conferences, hearings/trial dates presently set in the case. [Motion and Order for Enlargement, Modification of time or Deadlines](#)

210.2. Party Signing Requirement

The Court, in its discretion, may require any written motion or stipulation for continuance to be signed by the party requesting the continuance, in addition to the party’s attorney’s signature.

210.3. By Stipulation of Counsel

The stipulation to continue the conference, hearing or trial of any pending matter shall state, with particularity, the grounds for the continuance and must be signed by all attorneys of record.

210.4. Time for Filing

Motions or stipulations for continuance of a conference, hearing or trial shall be filed as soon after the cause for continuance or delay is discovered, and no later than seven (7) days before date set, unless the reason is shown by affidavit to have occurred within the seven (7) day period.

210.5. Court’s Discretion

The Court in its discretion may grant or deny a motion or stipulation for continuance of a conference, hearing or trial.

210.6. Rescheduling

All matters continued shall be rescheduled as determined by the Court.

Rule LR20-TR00-211 Attorney's Fees and Court Costs

211.1. Motion for Attorney Fees

A. No order granting a request for attorney fees shall be made unless fees are allowable under applicable law and there has been evidence furnished by testimony or affidavit of the attorney. The testimony or affidavit shall include:

1. the attorney's bar license number.
2. identity of the party represented by the requesting attorney.
3. the attorney's hourly rate.
4. the total of the fees requested.
5. the amount of time expended and a general description of each time entry.
6. the fact that the services and time were reasonably necessary considering the nature and complexity of the matter; and,
7. a statement regarding reasonableness of the fees requested, including the usual and customary charges.

B. Exception to this requirement shall be when a request is made for a standardized attorney fee for bringing a Rule to Show Cause.

211.2. Attorney Fees per contract

In instances where the fee is allowable under contract, an attorney's affidavit must also be accompanied by the contract language showing that attorney's fees are recoverable. The contract shall be attached to the affidavit as an exhibit.

211.3. Court Costs

Court costs shall not be added into a general judgment. A separate award and judgment for court costs is required.

211.4. Judicial Notice

Judicial notice of reasonable fees shall not be taken. In any event, the award of attorney fees shall be within the sound discretion of the Court. At the time judgment is entered, the Court may award up to an additional two (2) hours of reasonably anticipated post-judgment collection-related attorney's fees.

211.5. E-Filing "Convenience Fee"

E-Filing Service Providers (EFSP's) charge varying rates in the form of a "convenience fee." All EFSP's are required to collect this fee (which, in 2019, was approximately 3.5%) when e-filing. The EFSP's then forward this amount to the State to help defray the costs related to the credit card processing fees incurred by the State's system. Some EFSP's will charge an additional fee on top of this convenience fee. Convenience fees shall not be recoverable as part of court costs. Convenience fees may otherwise be recoverable by contract or statute. In instances where the fee is allowable under contract, the request must also be accompanied by the contract language showing the fee is recoverable. The contract shall be attached to an affidavit as an exhibit.

Rule LR20-AR8-212. Court Designation

212.1. Court Designation

Documents should designate the court in which the matter is filed.

212.2. Case Designation

At the time of filing, the party initiating the case should properly designate the case type in the case number pursuant to Administrative Rule 8.

212.2.1. Failure to Designate

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

212.2.2. Advice and Assistance.

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

Rule LR20-ACR4-213. Access to Court Records is governed by Access to Court Records Rules

Click here: [Access to Court Record Rule](#)

Rule LR20-TR3.1-214. Appearance and Withdrawal of Appearance of Counsel

214.1. Appearances

Counsel and unrepresented parties appearing after the filing of the original complaint shall forthwith notify all other counsel of record and unrepresented parties of such appearance and file proof of such notice. Each counsel or party shall file an appearance form that includes a mailing address, telephone number, cellular phone numbers and email address. The notice may include a post office box but must include a physical street address. The form may be found at: [Indiana Rules of Trial Procedure Appendix B](#) of those Rules of Trial Procedure.

214.2. Withdrawal of Appearance

Unless authorized by the party in open Court or in writing or upon appearance of other counsel, an attorney will be permitted to withdraw his appearance for a party only after filing a Motion to Withdraw and providing the party ten (10) day notice pursuant to Trial Rule 3.1(H). Click here: [Rules of Trial Procedure](#)

214.3. Contact Information

A. In cases where the withdrawal of appearance shall leave the client unrepresented, the Motion to Withdraw must contain the address, telephone number, cellular number, and email address of the client where service of documents can be delivered, or other notice can be provided.

B. The notice must include.

1. The present status of the case.
2. Any scheduled hearing dates.
3. Of client's duty to keep court informed of client's mailing address, email address, and telephone number.
4. That client will be held to the same standard of conduct as a licensed Indiana attorney; and,

5. That the client should act promptly to secure new counsel.

C. Automatic Withdrawal. There is no longer an automatic withdrawal in a civil law case.

Rule LR20-TR41(E)-215. Dismissal for Lack of Prosecution

215.1. Initiated by Court

Notice of Trial Rule 41(E) hearings for dismissal due to lack of prosecution will be routinely issued and served upon affected parties and counsel.

215.2. Initiated by Parties

Nothing in Rule 205.1 above shall affect the right of any party to file a motion pursuant to Trial Rule 41. Unless otherwise directed by the regularly presiding Judicial Officer.

Rule LR20-TR12-216. Pleading and Motions under Trial Rules 12 and 56

216.1. Supporting Memorandum of Law

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

216.2. Hearing; Hearing Date; Opposing Memorandum

Hearing dates should be requested by the parties.

216.3.1. Notice to Parties in Mortgage Foreclosure (MF) Causes of Action

A party filing a mortgage foreclosure (MF) cause of action shall cause to be served on the resident a copy of the Notice Concerning Mortgage Foreclosure, [Mortgage Foreclosure Notice](#). Should the plaintiff fail to comply with the rule, the Court may refuse to enter default judgment, refuse to grant judgment on the pleadings or take similar action until compliance is demonstrated. Additionally, should plaintiff's failure to comply with this rule result in additional costs to the defendant, the Court may order the plaintiff to pay reasonable expenses, including attorney fees, that are related to the plaintiff's noncompliance. For further information see: Indiana Code 32-30-10.5.

216.3.2. Notice to Unrepresented Parties Regarding Trial Rule 56 Motions

Notwithstanding any other rule of court, if a party is proceeding as unrepresented and an opposing party file a motion for summary judgment, counsel for the moving party must serve a notice upon the unrepresented party. [Summary Judgment Notice](#)

216.4. Required Notices to Parties

216.5. Appearance by Counsel at Scheduled Hearings

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

Rule LR20-TR55-217. Default Judgments

217.1. Proper Service

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

217.2. Affidavit for Judgment by Default

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

217.3. Affidavit of Attorney Fees

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

Rule LR20-TR26-218. Discovery Requests

218.1. Filing with the Court

As required by the Trial Rules, requests for discovery shall be served upon the parties and should not be filed with the Court unless in connection with a dispute concerning compliance with prior discovery requests. The procedure for addressing discovery disputes is outlined in Rule 218.4 below.

218.2. Format of Discovery Requests

Parties shall utilize digital format in discover matters including, but not limited to interrogatories, requests for production, requests for admissions and other requests for discovery.

218.3. Interrogatories

All interrogatories to parties propounded pursuant to Trial Rule 33 shall be signed and dated by the propounding party.

218.4. Scheduling of Depositions

Pursuant to their obligations under the Indiana Rules of Professional Conduct attorneys shall make a good faith effort to schedule depositions in a way that avoids scheduling conflicts. Unless agreed by counsel or otherwise authorized by the court, no deposition shall be scheduled on less than ten (10) days' notice.

218.5. Discovery Disputes

To promote the orderly and expeditious handling of cases to trial readiness, counsel shall attempt in good faith to resolve all disagreements between or among themselves concerning the necessity for and scope of discovery, the necessity to seek sanctions, and protection against discovery under Trial Rule 26 through Trial Rule 37. After personal consultation and good faith attempts to resolve differences as to the foregoing matters, counsel for any or all parties may move to compel discovery, invoke sanctions, or seek protection against discovery as aforesaid. As a part of such motion, the party shall recite the date, time,

and place of the personal consultations and the names of the participants. If counsel for any party advises the Court in writing that counsel for any other party has refused or delayed consultation hereby contemplated, the Court shall take such action as is appropriate to preclude, obviate, or avoid further delay. Where an objection is raised during the taking of a deposition which threatens to prevent the completion of the deposition and which counsel have a good faith belief is susceptible to resolution by the court without the submission of written materials, any party may recess the deposition for the purpose of submitting the objection by telephone or other electronic means as allowed by the court to a judicial officer for a ruling *instanter*, subject to the availability of and within the discretion of the judicial officer. Prior to contacting a judicial officer for such a ruling, all parties shall in good faith confer or attempt to confer to resolve the matter without court intervention and, if court action is necessary, the parties shall inform the judicial officer of the efforts taken to attempt to resolve the matter.

Rule LR20-TR16-219. Pre-trial Procedures

219.1. Purpose of Pre-trial Procedure

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

219.2. Pre-trial Conference

A pre-trial conference of Court and counsel may be scheduled by the Court on its own motion or at the request of counsel for any party in any civil case in which, in the discretion of the Court, possible problems can be identified, the course and progress of the case, the necessity, sequence, and scope of discovery should be anticipated, planned, scheduled, or estimated for the orderly and expeditious handling of it by Court and counsel. At the pre-trial conference, the Court may designate deadlines for discovery, dispositive motions, or alternative dispute resolution. The Court may also provide the parties with proposed dates for trial, additional pre-trial conferences, and/or require the filing of a pre-trial order. Notice as directed by the judicial officer conducting the conference.

219.3. Alternative Dispute Resolution

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

One or more of the parties may request that the Court order the parties engage in ADR. Such a request must be in writing and must be accompanied by a memorandum informing the Court of the nature of the case, the attorneys or unrepresented litigants involved, and a history of the settlement negotiations that have taken place to that date and that the previous settlement negotiations made in good faith have failed.

At any mediation or settlement conference, counsel for each party shall be present, in person, virtually or as ordered by the court and each party or a designated representative having complete authority to settle the matter in question shall be present in person, virtually or as ordered by the court. Any party intending to appear by a designated representative shall advise all other parties to the mediation or settlement conference of that fact and of the identity of the designee not fewer than ten (10) days prior to the commencement of the mediation or settlement conference. Failure to participate in good faith in person, virtually or as ordered by the court may result in sanctions.

219.3.1. Mortgage Foreclosures on Real Estate

Settlement Conferences pursuant to Indiana Code 32-30-10.5-10 shall be conducted.

219.4. Adequate Preparation for Pre-trial Conference

The purpose of the pre-trial conference is to narrow and simplify the issues for trial and to expedite the trial, counsel shall report for such conference with the Judicial Officer after full preparation including an adequate meeting of counsel as contemplated by Trial Rule 16(c). In all cases counsel shall be prepared to indicate to the Court whether the case may be tried to a jury of six and whether the Judicial Officer may conduct all the voir dire examination of prospective jurors or the initial voir dire examination with supplemental inquiry by counsel.

219.5. Completion of Discovery

In cases in which a preliminary pre-trial conference has been held under Rule 219, discovery shall be made in accordance with the scheduling thereof then ordered. In cases in which no preliminary pre-trial conference has been held, all discovery shall be completed prior to the pre-trial conference and no discovery shall be conducted thereafter unless, upon motion or stipulation showing good cause therefore, an order is entered permitting further discovery within time to be prescribed by the Court.

219.6. Attendance by Trial Counsel Required

Unless otherwise directed by the Court, each pre-trial conference shall be attended without exception by any party proceeding as an unrepresented litigant and at least one of the attorneys for each of the parties who will participate in the trial of the case and who shall be authorized to deal comprehensively with all subjects on the agenda. Attendance may be in person, virtually or as ordered by the court. Failure to participate in good faith is subject to sanctions.

219.7. Failure to Attend

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

219.8. Setting for Trial

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

Rule LR20-TR39-220. Scheduling Trials

220.1. Trial Settings

All cases scheduled for trial shall be ready for trial on the date scheduled unless otherwise directed by the Court. Where multiple trials are set on one day, all trial settings shall be considered first settings and the parties shall be ready for trial on the date scheduled unless the parties have been advised of a notice of priority as described in Rule 220.2 below.

220.2. Notice of Priority

At the time of setting the case for trial, upon motion of either party and for good cause shown, the Court may order that the parties are entitled to notice of priority. Where notice of priority has been ordered for multiple trials set on the same day, the case assigned a second setting shall stand for trial if the parties are given forty-eight (48) hours prior notice and cases assigned a third subsequent setting shall stand for trial if the parties are given seven (7) days' notice or as ordered by the court.

220.3. Continuances of Trial Settings

All motions for continuances shall be in writing and shall set forth specifically the grounds asserted for such motion. Unless otherwise directed or excused by the Court, all attorneys of record and parties

proceeding unrepresented shall appear before the Court on the date of the trial setting or as directed by the Court. The Court may assign a new trial setting on the date of the original trial setting, or on the date a continuance is granted, or as otherwise directed by the Court.

220.4. Imposition of Costs for Late Settlement

If a civil case is settled less than forty-eight (48) hours prior to the time it is scheduled for trial, or is settled after (ten) 10:00 a.m. on the Friday prior to a Monday trial setting (or a Tuesday is after a Monday that is a legal holiday) any costs incurred by the Court as a result of the late settlement of the case may be assessed as allowed by law against the parties in a manner the Court deems appropriate.

Rule LR20-TR51-221. Trial Procedures

222.1. Exhibits

221.1.1. Marking in Advance

All exhibits shall be submitted through the Evidence Portal adopted by the Elkhart County Courts as stated in the Elkhart County Courts Administrative Rules. All exhibits shall be marked in advance of trial or as directed by the presiding judicial officer.

221.1.2. Custody of Official Court Reporter

After being marked for identification and offered into evidence, all exhibits, and proposed exhibits necessary to the record on appeal shall be placed in the custody of the Official Court Reporter who shall be responsible for their safekeeping until otherwise ordered by the judge.

221.1.3. Return to Parties

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

221.1.4. Disposal

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

221.2. Instructions Requested at Commencement of Trial

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

221.3. Objections to Admissibility of Evidence

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

Rule LR20-TR76-222. Change of Venue

222.1. Payment of Transfer Fee

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

222.2. Failure to Pay Fee

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

Rule LR20-TR79-223. Special Judge Selection

223.1. Selection of Agreed Special Judge

Within seven (7) days of the notation in the Chronological Case Summary of a judge granting a motion for change of judge or recusing or disqualifying from a case pursuant to Trial Rule 79(C) or otherwise, the parties shall attempt to select a special judge by agreement. As required by Trial Rule 79(D), the parties shall have seven (7) days within which to file a written agreement:

223.2. When No Agreed Special Judge

When a change of judge has been granted and the parties are unable to agree upon a special judge or have agreed to proceed directly under this subsection: a. If the case is in the Elkhart Superior Court 2, it must be transferred to Elkhart Superior Court 5. b. If the case is in Elkhart Superior Court 5, it must be transferred to Elkhart Superior Court 2.

223.3. Failure of Special Judge to Accept or to Qualify; Failure to Meet Selection Deadlines

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

Rule LR20-TR63-224. Senior Judges, Temporary Judges, and Judges Pro Tempore

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

Rule LR20-TR69-225. Proceedings Supplemental; Other Collection Remedies

225.1. Post-Judgment Proceedings

Post-judgment proceedings shall not be instituted until thirty (30) calendar days have elapsed since the entry of a final decree or judgment in the records of the Clerk of the Court. The Court may waive this requirement where it is shown that a party will be unduly harmed by its enforcement or where a rule of court or statute specifically provides otherwise.

225.2 Filing of Proceedings Supplemental and Interrogatories

Motion for Proceedings Supplemental and Orders for Proceedings Supplemental shall not include Interrogatories to the garnishee-defendant. Interrogatories to the garnishee-defendant shall be served as allowed for any other Discovery. Interrogatories shall not be returned to the court, but to the Party issuing the interrogatories and only filed with the court upon application for garnishment or other final order. They shall be filed in normal course by e-file if the party is represented by counsel and may be filed in paper only if party is not represented by counsel.

225.3. Notification of Appearance; Local Counsel

If at the time of filing of a proceeding supplemental or any time thereafter, counsel for the moving party or a party proceeding without an attorney determines that he or she will not attend the hearing in person, counsel or the moving party shall notify the Court in writing of the substitute or local counsel who will attend the hearing. Failure to comply with these notification procedures may be enforced by direct contempt of court.

225.4. Special Post-Judgment Procedures

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

225.5. Penalties for Failure to Comply

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

225.6. Notice of Debtor Rights

All parties filing a Verified Motion for Proceeding Supplemental under Trial Rule 69 shall include either on the order page, or on a separate page a [Notice of Debtor Rights](#), with conspicuous language as to a defendant's right to appear before a judicial officer.

Rule LR20-AP9-226. Appellate Records

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

Rule LR20-AR00-227. Electronic Endorsement of Mental Health Commitments

227.1

All applications for Emergency Detention must comply with Indiana Code 12-26-6, At the discretion of the judicial officer, an application may be submitted to the court in electronic format. A judicial officer authorized to issue a warrant in the county in which the individual whose detention is sought is present may endorse the application electronically. The original Emergency Detention application documents and a record of electronic transmission must be maintained by the sending party.

227.2

All seventy-two (72) hour Mental Health Commitments signed by any Judicial Officer shall be filed in Civil Division the next regular business day.

LOCAL CRIMINAL RULES FOR ELKHART COUNTY SERIES 300

Rule LR20-CR00-301. Criminal Cases

301. Intent of the Local Criminal Rules

Criminal cases shall be governed by this rule which is adopted to conserve the time of the Court and counsel and to expedite and assure the disposition of criminal cases within the constraints imposed by Criminal Rule 4 and is intended to provide a routine procedure for the advancement of cases from filing to disposition. They shall be construed to secure the just, speedy, and efficient determination of every action

Rule LR20-CR21-302. Application of Local Rules

The local administrative and trial rules shall apply to all criminal proceedings so far as they are not in conflict with any other Rule of Trial Procedure; the Rules of Criminal Procedure or any other Rules promulgated by the Indiana Supreme Court.

Rule LR20-CR2.2-303. Assignment of Criminal Cases

303.1. Grand Jury Proceedings and Indictments

303.1.1. Convening a Grand Jury

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

303.1.2. Docketing Grand Jury Proceedings

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

303.1.3. Pre-indictment Challenges to Subpoenas or Proceedings

All pre-indictment challenges to grand jury subpoenas or grand jury proceedings shall be made in writing and filed with the clerk and shall recite all pertinent facts including the grand jury number, the date of service of the subpoena, the appearance or production date of the subpoena, and the law. Motions to quash or limit a grand jury subpoena shall be filed and served upon the Prosecuting Attorney no later than seven (7) days prior to the appearance or production date unless good cause exists for a later filing. Upon the filing of any motion to quash or limit a grand jury subpoena, the court will endeavor to rule upon the motion on or prior to the return date of the subpoena.

303.1.4. Persons Authorized to Appear before Grand Jury

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

303.1.5. Assignment of Grand Jury Indictments

Indictments issued by the Grand Jury shall be filed in the Elkhart Circuit Court.

Rule LR20-CR13-NAFC-304. Selection of Special Judges in Criminal Cases

304.1. Appointment of Judges

When the appointment of a special judge is required under Criminal Rule 13 of the Indiana Rules of Criminal Procedure or an order of disqualification or recusal is entered in a case, or where a change of judge is granted pursuant to Indiana Post-Conviction Remedy Rule 1(4)(b), the provisions of this Rule constitute the exclusive manner for the selection of special judges in circuit and superior courts in all criminal proceedings in Elkhart County.

- A. If the case is in the Elkhart Circuit Court, then it must be transferred to Elkhart Superior Court 3.
- B. If the case is in Elkhart Superior Court 3, it must be transferred to Elkhart Circuit Court.
- C. If the case is in Elkhart Superior Court 1, it must be transferred to Elkhart Superior Court 4.
- D. If the case is in Elkhart Superior Court 4, it must be transferred to Elkhart Superior Court 1.

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

Rule LR20-CR2.1-305. Appearance, Withdrawal, and Presence of Defendants

305.1. Written Appearance

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

305.2. Withdrawal of Counsel

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

305.3. Personal Presence of Defendants

All felony defendants shall be present in Court at every stage of the proceedings conducted in open Court. All felony defendants shall be personally present at every stage of the proceedings including hearing on motions unless otherwise agreed upon or at the direction of the court or in emergency situations as determined under Administrative Rule 17.

305.4. Presence of Traffic and Misdemeanor Defendants

Traffic and Misdemeanor defendants represented by counsel, upon request of counsel and leave of the Court, may be excused from appearing in Traffic and Misdemeanor Court as the court may direct. A traffic and misdemeanor defendant who is excused under this rule stipulates that notice to the attorney of the next court date requiring the defendant's presence shall constitute notice to the traffic and misdemeanor defendant.

305.5. Witness Subpoena; Release

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

Rule LR20-CR00-CRDD-306. Criminal Discovery Disclosure

306.1. General Discovery

A. Unless circumstances exist that justify an in-camera review, in any criminal case, each party shall routinely provide copies of the following:

1. The names, dates of birth and last-known addresses of all persons whom that party may call as witnesses, together with any written or recorded statements the person may have made, any memoranda containing substantially verbatim reports of any oral statements the person may have made, or, if neither exist, a summary of the anticipated testimony of each potential witness.
2. Copies of statements of any co-defendant.
3. Copies of reports of experts made in connection with the case, including results of physical or mental examinations, scientific tests, experiments, or comparisons.
4. Any books, papers, documents, photographs, videotapes, audio recordings, or tangible objects which the party may introduce at hearing or trial.
5. A record of prior criminal convictions of any witnesses called by that parties.

B In addition to the matters described in Section A of this Rule, the State shall disclose:

1. Copies of any written or recorded statements made by the defendant, summaries of any oral statements made by the defendant, and a list of witnesses to the making and acknowledgment of such statements; and
2. Any other evidence which tends to negate the guilt of the defendant as to the offense charged or to mitigate the punishment of the defendant upon conviction.
3. In addition to the matters described in Section A of this Rule, the defendant shall disclose any defense, procedural or substantive, which the defendant intends to assert at hearing or trial.
4. A party seeking discovery shall prepare any discovery document so that answers may be made on the original discovery document or if an electronic document in such format that answers may be added to the electronic document. Discovery requests and responses shall not be filed with the Court or Clerk unless a dispute arises regarding said discovery.
5. Providing discoverable material shall be a continuing obligation of all parties and each party shall promptly provide any new material for which disclosure is required under this rule.
6. A court may make more specific orders for additional discovery after a hearing on any appropriate motion filed by either party.
7. A court may exclude from evidence any materials not properly disclosed to the other party unless the interest of justice so dictates and may impose further sanctions for any party's unjustified failure to comply with this rule.

306.2. Written Motion

No written motion is required for Discovery, except:

- A. To compel compliance under this Rule.
- B. For additional discovery not covered under this Rule.
- C. For a protective order; or
- D. For an extension of time.

306.3. Discovery Deadlines

All discovery shall be completed by the Omnibus date unless extended for good cause shown. However, the parties shall have a continuing obligation to disclose evidence and discovery required by these rules or by law.

306.4. Notice Required

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

306.5. Waiver

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

306.6. Requirements of Defendants

After the formal charge has been filed, upon written motion by the State and hearing, the Court may require the accused, among other things, to:

- A. Appear in a lineup.
- B. Speak for identification by witnesses to an offense.
- C. Be fingerprinted.
- D. Pose for photographs not involving re-enactment of a scene.
- E. Try on articles of clothing.
- F. Allow the taking of specimens of material from under his/her fingernails.
- G. Allow the taking of samples of his/her blood, hair, and other materials of his/her body that involve no unreasonable intrusion.
- H. Provide a sample of defendant's handwriting.
- I. Submit to a reasonable physical or medical inspection of his/her body. Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the State to the accused and defendant's counsel, who shall have the right to be present. Provision may be made for appearances for such purposes in an order admitting the accused to bail or pre-trial release.

306.7. Additions, Limitations, and Protective Orders

306.7.1. Discretionary Disclosures

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

306.7.2. Denial of Disclosure

The court may deny disclosure authorized by this Rule after hearing on the matter, if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure to counsel and only if the interests of justice so allow.

306.7.3. Matters Not Subject to Disclosure

306.7.3.1. Work Product

Disclosure hereunder shall not be required of legal research of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the State or members of its legal or investigative staffs, or of defense counsel or counsel's staff. That is work product.

306.7.3.2. Informants

Disclosure of an informant's identity shall not be required where there is a paramount interest in non-disclosure and a failure to disclose will not infringe the Constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial.

306.7.4. Protective Orders

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

Rule LR20-CR00-307. Dispositive Motions, Motions to Suppress, Other Motions

307.1. Motions to be in Writing

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

307.2. Hearings on Motions

The court will not ordinarily set for hearing any motion to dismiss, motion to suppress, motion in limine (where the grounds therefore are known prior to trial), or other such dispositive motion, unless the motion contains a factual explanation as to why the granting of such is appropriate and is accompanied by a sufficient memorandum of law. Unless good cause is shown, the responding party opposing such dispositive motions shall file no later than fifteen (15) days a response which contains a factual explanation as to why denying the motion is appropriate accompanied by a sufficient memorandum of law. Such motions, filed after the omnibus date, may not be given a hearing prior to trial.

Rule LR20-CR00-308. Plea Agreement Deadlines

308.1. Plea Agreement Date – Felony Cases

In all criminal prosecutions, the Judicial Officer may assign a date that will serve as the plea bargain deadline date. The Judicial Officer may also assign a record date, trial date, and other dates as may be appropriate. If the parties have not reached a plea agreement by the omnibus date, the court may hold a pre-trial conference as early as that day.

308.2. Plea Agreement Date – Traffic and Misdemeanor Division

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

Rule LR20-CR00-309. Miscellaneous Criminal Rules

309.1. Determination of Probable Cause

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

309.2. Dismissal

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

309.3. Withdrawal of a Public Defender Appointment

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

Rule LR20-CR26-310 Pretrial Release

A Pretrial Release program is established pursuant to Criminal Rule 26. Screening shall consist of at least one State-approved pretrial risk assessment instrument and such other risk assessment instrument(s) that may be approved and required by the judges of the Circuit and Superior Courts of Elkhart County.

A person booked in for an alcohol-related offense becomes eligible for screening pursuant to the chart established for release eligibility in Indiana Code 35-33-1-6.

310.1. Pretrial Services under Rule of Criminal Procedure 26

It is the responsibility of Pretrial Services to conduct face-to-face (or virtual in declared emergencies under Administrative Rule 17 or as allowed by the court) pre-trial assessments on all defendants in the Pretrial Release Program target population, provide written release recommendations to the court prior to Initial Hearings, and to monitor any defendants released into the community under pre-trial conditions.

310.2. Purpose

The purpose of the Elkhart County Pretrial Release Program is to assist the courts in making pre-trial release decisions that are prompt and equitable for all defendants, regardless of their ability to pay a monetary bond. The Elkhart County Pretrial Release Program will provide information to the court that will aid in determining effective release conditions that promote community safety and provide appropriate monitoring to support a defendant's ability to meet court obligations.

310.3. Goals

Pretrial Services seek to accomplish the following goals:

- A. Maximize public safety.
- B. Maximize the defendant's appearance in court.
- C. Maximize the defendant's release and appropriate pre-trial placement.
- D. Inform release/hold decisions with risk information.

310.4. Manual

A *Pretrial Release Program Policy and Procedure Manual* is established. Available at the Problem-Solving Court Office.

310.5. Pretrial Release Recommendation Guide And Matrix

Indiana Risk Assessment-Pretrial Assessment Tool (IRAS-PAT) LEVEL	Non-Violent Level 6 Felony	Violent or Drug-Related Level 6 Felony
LOW	Release on own Recognizance LEVEL 1 SUPERVISION	Release on own Recognizance LEVEL 2 SUPERVISION
MODERATE	Release on own Recognizance OR BOND LEVEL 2 SUPERVISION	Release on own Recognizance OR BOND LEVEL 2 SUPERVISION
HIGH	BOND LEVEL 3 SUPERVISION	BOND LEVEL 3 SUPERVISION

310.6. Definition of Pretrial Release Levels

Level 1 Supervision

- Defendant will only receive telephone and text court reminders. No face-to-face appointments.
- One (1) phone check-in per month.
- Monthly criminal record checks.
- Other conditions pursuant to a court order.

Level 2 Supervision

- At least one (1) face-to-face appointment with Case Manager every month.
- One (1) phone check-in per month.
- Monthly criminal record checks.
- Other conditions pursuant to a court order.

Level 3 Supervision

- At least two (2) face-to-face appointments with a Case Manager every month.
- One (1) phone check-in per month.
- Monthly criminal record checks.
- Other conditions pursuant to a court order.

The Court may add release conditions to the Pretrial Release Order. When the Court adds additional release conditions, the judicial officer needs to specify the frequency and duration of the condition. Additional release conditions may include, but are not limited to:

- Day reporting
- Home/work contacts by case manager
- Electronic Monitoring/Geo-Fencing/Home Detention/No Contact Orders/Trespass Order
- Drug screens (payable by the Defendant,)/portable breath testing (PBT)

Overrides

Occasional override of the IRAS-PAT risk level is allowed. The prosecuting attorney and/or public defender/defense attorney may make their own recommendations to the court regarding release/release conditions at the Initial Hearing.

310.7. Review

The Court may, at a hearing, review the defendant's pretrial release/detention status and/or conditions of release.

After the initial hearing, the Prosecuting Attorney or defendant, by written motion, may request a hearing to review the defendant's pretrial release/detention status and/or conditions of release.

Rule LR20-CR26-311. Other Bond Issues

311.1. Identity

If the identity of the arrestee is unknown (this includes, but is not limited to, those individuals who refuse to cooperate in their identification, individuals who possess conflicting identification, and individuals whose identifying information cannot be verified or there is good cause to believe that the arrestee is on probation, home detention/house arrest, parole, pretrial release or bond for a pending criminal offense; shall be held without bond until the person is brought before a judicial officer for a meaningful hearing.

311.2. Probable Cause Review

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

- A. Order the arrestee held without bond until the person is brought before the Court for a hearing to consider release conditions; or

- B. Set a bond in accordance with the attached monetary bond schedule; or
- C. releases the arrestee according to the release/detention matrix.

311.3. Intoxication

A person arrested for an alcohol related offense shall be detained until their blood/breath alcohol level reaches .05 or below. The jail may utilize the chart in Indiana Code 35-33-1-6 to determine the number of hours needed to reach that level.

For the purposes of this provision, “intoxicated” means under the influence of:

- A. alcohol
- B. a controlled substance (as defined in Indiana Code 35-48-1)
- C. a drug other than alcohol or a controlled substance
- D. a substance described in Indiana Code 35-46-6-2 or IC 35-46-6-3
- E. a combination of substances described in subdivisions (1) through (4);
- F. any other substance, not including food and food ingredients (as defined in Indiana Code 6-2.5-1-20), tobacco (as defined in Indiana Code 6-2.5-1-28), or a dietary supplement (as defined in Indiana Code 6-2.5-1-16); so that there is an impaired condition of thought and action and the loss of normal control of a person’s faculties. Indiana Code 9-13-2-86.

311.4. Sex Offender

In accordance with Indiana Code 35-33-8-3.5(c), a Court may not admit a sexually violent predator defendant, a person charged with child molesting, or a person charged with child solicitation to bail until the Court has conducted a bail hearing in open Court.

311.5. Domestic Violence

In accordance with Indiana Code 35-33-8-6.5, a Court and/or the Elkhart County Jail may not release a person arrested for a crime of domestic violence on bail until at least eight (8) hours from the time of the person’s arrest.

311.6. Risk

The following three (3) risk categories are established:

- A. Low
- B. Moderate
- C. High

311.7. Categories

The following five (5) offense categories are established:

- A. Category 1: Murder and Treason; all Level 1 and Level 2 felonies; more serious Level 3, 4 and 5 felonies.
 - 1. Against a person; or
 - 2. Involving the possession and/or use of a firearm; or
 - 3. Involving drug dealing; or
 - 4. Involving possession with intent to deal; or

5. Residential burglary; or

6. Arson

B. Category 2: More serious Level 6 felonies and more serious misdemeanors:

1. Against a person or animal; or

2. Involving the possession and/or use of a firearm; or

3. Resisting law enforcement: with a vehicle or resulting in injury

C. Category 3: All other Level 3, 4 and 5 felonies

D. Category 4: All other Level 6 felonies

E. Category 5: All other misdemeanors

311.8. Category 1

All persons charged with a Category 1 Offense, regardless of risk level, shall be held in custody until reviewed by a judicial officer.

311.9. Category 2

A. A person charged with a Category 2 Offense, who is determined to be either moderate or high risk shall be held in custody until reviewed by a judicial officer.

B. A person charged with a Category 2 Offense, who is determined to be low risk may be released on their own recognizance and shall be supervised through the pretrial release program.

311.10. Category 3

A. A person charged with a Category 3 Offense, who is determined to be high risk shall be held in custody until reviewed by a judicial officer.

B. A person charged with a Category 3 Offense, who is determined to be moderate or low risk may be released on their own recognizance and shall be supervised through the pretrial release program.

311.11. Category 4

A. A person charged with a Category 4 Offense, who is determined to be high risk shall be held in custody until reviewed by a judicial officer.

B. A person charged with a Category 4 Offense, who is determined to be moderate or low risk may be released on their own recognizance and shall be supervised through the pretrial release program.

311.12. Category 5

A person charged with a Category 5 Offense, regardless of risk level, shall be released on their own recognizance unless otherwise directed by a judicial officer.

311.13. Notice/Promise to Appear

All persons released prior to initial hearing shall be provided a Notice/Promise to Appear and an initial court hearing date.

311.14. Request Deviation

If the Prosecuting Attorney of Elkhart County, after a review of all the circumstances of a case, believes that the release/detention decision should deviate from the matrix or bond schedule, the Prosecutor may request, in writing, such a deviation.

311.15. Violations

Any violation of any condition may result in the revocation of bond or recognizance and issuance of an arrest warrant.

311.16. No Bail

If a Court has not established bail in a particular case, no bail shall be set for the following offenses until such time as the person arrested has been brought before a neutral and detached Judge or Magistrate within the County of Elkhart, State of Indiana:

- A. all offenses if the offender is on probation
- B. all felonies
- C. all misdemeanors involving possession or delivery of a firearm as proscribed by Indiana Code. § 35-47
- D. all misdemeanors involving domestic battery as proscribed by Indiana Code 35-42-2-1.3
- E. all misdemeanors involving invasion of privacy as proscribed by Indiana Code. 35-46-1-15.1 f. all misdemeanors involving operating while intoxicated proscribed by Indiana Code. 9-30-5 et seq.

311.17. Fifteen (15) Day Hold

An offender who is subject of a fifteen (15) day hold that was issued by a judge or magistrate shall be brought before a judge or magistrate for hearing within fifteen (15) days of the order as required by Indiana Code 35-33-8-6. If a judge or magistrate enters no order setting bail at the hearing or any time prior to the expiration of the fifteen (15) day hold, the court shall also indicate in the bail order that the fifteen (15) day hold terminates.

311.18. Advisory Monetary Bail for cases not subject to Pretrial Release

A Felony \$150,000.00	LEVEL 1 FELONY \$150,000.00
B Felony \$75,000.00	LEVEL 2 FELONY \$100,000.00
C Felony \$5,000.00 (SUSPENDIBLE) \$10,000.00 (NONSUSPENDIBLE)	LEVEL 3 FELONY \$ 75,000.00
D Felony \$ 3,000.00 (SUSPENDIBLE) \$5,000.00 (NONSUSPENDIBLE)	LEVEL 4 FELONY \$ 10,000.00 LEVEL 5 FELONY \$ 5,000.00 LEVEL 6 FELONY \$ 3,000.00 MISDEMEANORS A \$1,500.00 MISDEMEANORS B \$1,000.00 MISDEMEANORS C \$ 500.00

Rule LR20-AR00-312. Problem Solving Court-Drug Court

- A. Upon admission into the Elkhart County Drug Court, participants may be assessed a drug court administration fee for the initial drug court services. Participants admitted to the Elkhart County Drug Court may be assessed a user fee for each month of their participating in the Elkhart County Drug Court beginning the second month of participation.

- B. Participants admitted to the Elkhart County Drug Court may be responsible for all chemical testing fees. Participants may be responsible for the cost of any confirmatory test.
- C. Participants may be assessed a fee for services received because of referrals made by the Court including, without limitation, mental health services, substance abuse and addictions health services, and monitoring services. Fees for those services are payable to the entity providing the services. All Elkhart County Drug Court fees shall be collected and utilized in accordance with Indiana Code 33-23-16-23.

Specific fees to be paid per Administrative Code of the Elkhart County Courts see: [Fee Schedule](#)

LOCAL RULES FOR FAMILY COURT AND ORDERS OF PROTECTION FOR ELKHART COUNTY (400 SERIES)

Rule LR20-FL00-401. Authority.

401.1. Authority

These rules shall govern the practice and procedure in family law cases in the Elkhart Family Law Courts unless otherwise stated and are created to foster the healthy and child-centered functioning of families.

401.2. Incorporation of other Rules

All other local rules herein are incorporated by references in all instances except where they conflict with these Rules in Series 400. In those circumstances the Rule 400 Series will be followed.

401.3. Judicial Officers in Family Court

- A. Judge of Elkhart Superior Court 6
- B. Three (3) appointed judicial officers.

Rule LR20-TR81.1-402. Family Court

402.1. Identification of Family Cases

Upon the filing of any case or the filing in an existing case, in the Family Division, the Clerk or other individual identified by the Court shall conduct a name search, the results of that name search shall be provided to the judicial officer to whom the filing is assigned. That Judicial Officer shall determine if Trial Rule 81.1 Family Procedures should be followed. That Judicial Officer should consult with any other Judicial Officer that may already be hearing other cases concerning the same family and determine if bundling should occur and if so, which Judicial Officer should proceed with the bundled cases or in the alternative to bundling close coordination of the cases. If bundling does occur the court shall issue an order in all bundled cases pursuant to Trial Rule 81.1. The Judge of Superior Court 6 has final authority on bundling.

The Elkhart Office of Family Court Services has the authority to issue required forms in this process.

402.2. Consideration of Bundling

Any party, including by not limited to Guardian Ad Litem, CASA, attorney's representing a party or any other professional involved with the children and family may initiate a request for review of cases for bundling. Such Motion for Consideration of Bundling should be filed in each case contemplated for bundling.

The Elkhart Office of Family Court Services has the authority to issued required forms.

Rule LR20-TR79-403. Special Judge Selection

403.1. Selection of Agreed Special Judge

Within seven (7) days of the notation in the Chronological Case Summary of a judge granting a motion for change of judge or recusing or disqualifying from a case pursuant to Trial Rule 79(C) or otherwise, the parties shall attempt to select a special judge by agreement. As required by Trial Rule 79(D), the parties shall have seven (7) days within which to file a written agreement.

403.2. When No Agreed Special Judge

When a change of judge has been granted and the parties are unable to agree upon a special judge or have agreed to proceed directly under this subsection, then the Clerk of the Court shall transfer the case to one of the other judicial officers within Elkhart County on a rotating basis as follows: Elkhart Circuit Court, Elkhart Superior Court 1, Elkhart Superior Court 2, Elkhart Superior Court 3, Elkhart Superior Court 4, Elkhart Superior Court 5.

403.3. Failure of Special Judge to Accept or to Qualify; Failure to Meet Selection Deadlines

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

Rule LR20-TR63-404. Senior Judges, Temporary Judges, and Judges Pro Tempore

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

Rule LR20-FL00-405. Problem Solving Settlement Conferences

405.1. When required

A Problem-Solving Settlement Conference is required after filing in Domestic Relations (DR), Domestic Relations with Children (DC), Domestic Relations without Children (DN), Juvenile Paternity (JP), Juvenile Chins (JC), Guardianship (GU) and Adoption (AD), Grandparent Visitation, and Change of Name cases.

405.2. Statement in Pleadings

A statement in a filing that a problem-solving settlement conference is anticipated or is scheduled is acceptable in a request for hearing. All individuals are advised that the Courts do not favor requests for waiver from the requirements of this rule, and that waiver requests should be sought only in exceptional instances and not as a matter of course. Failure to address the issue of a problem-solving settlement conference in any manner is cause for the court to require, within a stated period, an explanation of the failure to address the required problem-solving settlement conference.

405.3. Court ordered Problem Solving Settlement Conferences

The Court may order a Problem-Solving Settlement Conference, assisted or unassisted, at any time in the proceedings and may require same prior to the setting of a hearing.

Rule LR20-FL00-406. Triage of Family Law Cases

406. Three Pathways

406.1.

Applied to Domestic Relations (DR) Domestic Relations with Children (DC), Domestic Relations without Children (DN), Juvenile Paternity (JP), Guardianship (GU), Adoption (AD), Grandparent Visitation, and Change of Name cases.

- A. Streamlined: This track requires little exercise of discretion or where the parties have reached full agreement or require less than fifteen minutes of the judicial officer's time.

B. Tailored Services: These cases, while not suitable for the streamlined track, are typical and do not include sensitive matters or issues likely to need expert or specialized training to be adequately addressed. Virtually all these cases will be suitable for some form of facilitated settlement: Alternative Dispute Resolution

C. Judicial/Specialized: Cases involving domestic violence, child abuse, substance abuse, or mental health issues require specialized knowledge and expertise to handle them safely and appropriately. These cases benefit from a greater degree of judicial involvement. Such cases can be suitable for a facilitated settlement if the facilitator has sufficient training and if appropriate safeguards are taken (such as shuttle mediation, staggered arrival and departure times, separate waiting areas); some form of alternative dispute resolution may be preferable since litigation can be traumatizing.

406.2. Triage Questionnaire

Triage Questionnaire Domestic Relations with Children and Juvenile Paternity cases is required: [Triage Questionnaire for DC and JP cases](#)

Triage Questionnaire is required in Guardianship cases: [Triage Questionnaire for GU cases](#)

A Compliance Checklist. Is also required: [Compliance Checklist](#)

406.3. Cooperation Required

All individuals shall provide information as requested and complete all forms and documents designated by Elkhart Family Court Support Services and the Court.

Elkhart Family Court Support Services and the Court shall with due notice provide such forms and documents in a format most likely to assist the Elkhart Family Court Support Services and the Court in the timely execution of this Rule.

Rule LR20-FL00-407. Guardian Ad Litem

A. The Courts of Elkhart County reserve the right to appoint guardian ad litem to represent the interests of minors and incapacitated persons. Authority to appoint a GAL is found in Indiana Code 31-15-6-1; Indiana Code 31-17-6-1 or by Order of the Court. See also Indiana Code 31-9-2-50.

B. Appointment. When the Court is required by statute, or when the Court, in its discretion, finds that it is appropriate to do so, the Court Shall appoint guardian ad litem. The guardian ad litem shall be a party to the proceeding.

C. Duties. The guardian ad litem's duties shall include:

1. Performance of all duties required by law, which include to represent and protect the best interests of the child(ren); and

2. When possible, submit a written report of the guardian ad litem's findings and recommendations to the Court prior to the matter being heard by the Court. The attorneys and pro se litigants shall receive a copy of the report in accordance with the applicable Trial Rules regarding service.

D. Fees. GAL fees may be split evenly between the parties or by percentage of income on the most recent child support worksheet or as the court may determine. Reallocation of payment of GAL fees will be considered upon request or on the Court's own motion in making such decisions the Court will consider all relevant factors. The Court may reallocate the parties' share of the total guardian ad litem fees at the conclusion of the case or other appropriate time. The Court will order payment of reasonable GAL fees. The GAL may work-out payment agreements with the parties. The Court, when necessary, will enforce payment of reasonable GAL fees.

E. The Court may order the parties to pay a retainer to the guardian ad litem to be held in trust pending approval of guardian ad litem fees. The Court may order an additional retainer or fees to be paid by the parties to the guardian ad litem during the pendency of the case.

F. Term of Service The guardian ad litem shall serve until discharged by Court order. The guardian ad litem may at any time petition for removal from service. The parties may also petition for removal of the guardian ad litem. It shall be within the Court's discretion whether just cause exists for such removal.

Rule LR20-PTG-408. Parenting Time Guidelines

408.1. Mediation

If there is a disagreement concerning parenting time, then the parents shall enter mediation pursuant to Indiana Parenting Time Guidelines Section 1 (E) (2) prior to filing with the court.

408.2. Exceptions

The Court may excuse the requirement for good cause shown. There must be a detailed written statement of sufficient fact and weight for the court to waive this rule. All individuals are advised that the Courts do not favor requests for waiver from the requirements of this rule, and that waiver requests should be sought only in exceptional instances and not as a matter of course.

408.3. Child Hesitation

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

408.4. Relocation

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

408.5. Withholding Support or Parenting Time

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

408.6. Enforcement of Parenting Time

Court orders regarding parenting time must be followed by both parents. Unjustified violations of any of the provisions contained in the order may subject the noncompliant parent to sanctions and may result in Modification of Custody after full hearing on such matters.

408.7. Attorney Fees

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

(\$500.00) and two-hundred-fifty dollars (\$250.00) for each subsequent appearance on that Rule to Show Cause.

Rule LR20-FL00-409. Website Work for Parents

Upon completion of triage by the Elkhart Office of Family Court Services or the Court, the Court may require parents to complete the following:

- A. Dissolution of Marriage. [Up to Parents](#) within fifteen (15) days of notice of this requirement.
- B. Legal Separation. [While we Heal](#) within fifteen (15) days of notice of this requirement.
- C. Paternity. [Proud to Parent](#) within fifteen (15) days of notice of this requirement.
- D. Agreed Commitments. Following completion of the website work required by this rule, the parents shall merge or exchange their chosen Commitments from their website work into a set of Agreed Commitments.
- E. Proof of Compliance.

Proof of compliance is required within 20 days of Notice of this requirement by filing with the court the Agree Commitments document. Compliance Checklist required ([Insert Link](#))

Rule LR20-FL00-410. Transparenting, Seasons and Peaceful Parenting Classes

- A. Dissolution of Marriage and Legal Separation. Mandatory Attendance. In all dissolution and separation cases where the parties have any children together under the age of eighteen (18), both parties shall complete the Elkhart County Transparenting class. Any children six (6) years of age through seventeen (17) years of age shall complete the Elkhart County Seasons class. The court may order any party to attend additional parenting, co-parenting, or parenting enrichment classes in post-decree matters.
- B. Paternity. Upon adjudication of paternity, the court shall order the parties to attend and complete the Peaceful Parenting class unless circumstances prohibit said attendance. In all paternity cases the court may order any party to attend and complete additional parenting, co-parenting, or parenting enrichment class.
- C. Proof of Compliance. In all dissolution of marriage and legal separation cases, the parties must enroll in said classes within fifteen (15) days of the filing or service of the petition. The agency providing the Transparenting and Seasons classes shall provide notice of enrollment and completion of same in a timely manner. In paternity cases the parties must enroll in Peaceful Parenting within fifteen (15) days of order of the court to attend the program. The agency providing Peaceful Parenting shall provide notice of enrollment and completion of same in a timely manner.

Rule LR20-FL00-411. Parenting Plan

411.1.

The Indiana Parenting Time Guidelines provide useful outlines of the minimum time each parent should have with the children to maintain frequent, meaningful, and continuing contact with them. Those Guidelines state that it is preferable that parents design their own parenting plan and turn to the Guidelines if they are unable to create their own parenting time agreement. See: [Parenting Time Guidelines](#)

411.2. Parenting Plan

A Parenting Plan is required. [Parenting Plan](#)

Rule LR20-FL00-412. Case Captioning of Family Cases

412.1. Dissolution, Separation, Custody and Support Cases

Pleadings in dissolution, separation, custody, and support proceedings shall be captioned with non-adversarial language in case captioning and pleadings. To facilitate the problem solving and cooperative model, parties shall be referred to using non-adversarial language; that is, “child” “mother,” “father,” “putative father,” “guardian,” “de facto custodians,” “intervenor” and similar non-adversarial language should be used instead of “petitioner,” “respondent,” “plaintiff,” or “defendant,” and “versus” should not be used in the captions of any family cases involving children. Caption shall be: In Re Marriage of (blank line) _____.

All pleadings in marital dissolution and separation cases without children may be captioned, "In Re the Marriage of (blank line) _____ and using “Husband” and “Wife” as non- adversarial language.

In same sex marriages non-adversarial language followed by the person’s name, such as: “Husband Smith” and “Husband Jones” or “Wife Smith” and “Wife Jones.”

Pleadings should include when requested the preferred pronoun of a party.

412.2. Paternity Cases

Pleadings in paternity proceedings will be captioned with non-adversarial language in case captioning and pleadings. To facilitate the problem solving and cooperative model, parties shall be referred to using non-adversarial language; that is, “child” “mother,” “father,” “putative father,” “guardian,” “de facto custodians” “intervenor” and similar non-adversarial language should be used instead of “petitioner,” “respondent,” “plaintiff,” or “defendant,” and “versus” should not be used in the captions of any family cases involving children. Caption shall be: In Re Paternity of (blank line) _____.

Rule LR20-TR3.1-413. Appearance and Withdrawal of Appearance of Counsel

413.1. Appearances

Counsel and unrepresented parties appearing after the filing of the original complaint shall forthwith notify all other counsel of record and unrepresented parties of such appearance and file proof of such notice. Each counsel or party shall file an appearance form that includes a mailing address, telephone number, cellular phone numbers and email address. The notice may include a post office box but must include a physical street address.

413.2. Withdrawal of Appearance

Unless authorized by the party in open Court or in writing or upon appearance of other counsel, an attorney will be permitted to withdraw his appearance for a party only after filing a Motion to Withdraw and providing the party ten (10) days’ notice pursuant to Trial Rule 3.1(H).

413.3. Contact Information

In cases where the withdrawal of appearance shall leave the client unrepresented, the Motion to Withdraw must contain the address, telephone number, cellular number, and email address of the client where service of documents may be delivered, or other notice can be provided.

413.4. Content of Notice

- A. The present status of the case.
- B. Any scheduled hearing dates.

- C. Of client's duty to keep court informed of client's mailing address, email address, and telephone number.
- D. That client will be held to the same standard of conduct as a licensed Indiana attorney; and,
- E. That the client should act promptly to secure new counsel.

413.5. No Automatic Withdrawal

There is no automatic withdrawal in a family law case.

Rule LR20-TR4-414. Service of Process.

414.1. Summons, Complaint, and Appearance

Summons: Dissolution of Marriage with Children, Required [Summons Divorce with children](#)

Summons: Dissolution of Marriage without Children, Required [Summons Divorce without children](#)

Summons: Paternity Required, [Summons Paternity](#)

Highlights Summary [Highlight of Family Law](#)

The party filing the initial pleadings (summons, complaint, appearance, etc.) shall (unless exempted) file by way of the Indiana E-Filing System and pursuant to Trial Rules 4 and 86.

- A. By Certified Mail, Private Process, Sheriff (excluding the Elkhart County Sheriff), Publication, other Methods. The initiating party must file a Certificate of Issuance of Summons as set forth in section B of this Rule, below. If the certified mail service of process is utilized, the initiating party must cause the return receipt card to be returned to the initiating party, not returned to the Clerk.
- B. By Elkhart County Sheriff. Once the signed Summons is returned from the Clerk and the fee for Service of Process by Sheriff has been paid to the Clerk, it is the initiating party's obligation to deliver the document(s) to the Elkhart County Sheriff to be served. It is the requesting party's responsibility to provide the Elkhart County Sheriff with three copies of any document(s) to be served along with a proof of payment for this service. Documents may be hand-delivered or mailed to the Elkhart County Sheriff. See Trial Rule 4.12.

Once the document(s) are served by the Elkhart County Sheriff, the Elkhart County Sheriff shall forward the document(s) to the Clerk for entry into the Chronological Case Summary.

If the Elkhart County Sheriff service method is utilized, the initiating party is not required to file a Return of Service.

414.2. Certificate of Issuance of Summons. See Trial Rule 86(G)(2)

Once service is initiated, a Certificate of Issuance of Summons must be filed. [Certificate of Issuance of Summons](#)

414.3. Return of Service

After proof of service is returned to the initiating party, a Return of Service must be filed so that it will appear on the Chronological Case Summary. Note: if e-filing the Return of Service, the filer must specify in the comment field the name of the document(s), the party's name who service was attempted on, and an indication whether service was either served or not served.

414.4. Serving Non-Registered Persons

A person who has not registered or otherwise cannot access the Indiana E Filing System (IEFS) but who is entitled to service of a paper or pleading in a matter shall be served in accordance with Trial Rule 4.

414.5. Method of Service on items other than Summons

Counsel or an unrepresented party submitting a motion, petition, notice, pleading or proposed order shall indicate the method of service of process.

414.6. Service by the Clerk

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

414.7. Service

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

414.8. Documents

The official record of any document submitted is the electronic version of the document, the Clerk shall convert any paper document submitted to an electronic version as soon as same is received by the Clerk.

Rule LR20-TR26-415. Discovery: Disclosures Required in Child Support and Maintenance: Financial Disclosures

415.1. Discovery:

- A. Personal, Federal, and State, tax returns for three (3) years preceding the filing of the petition for dissolution of marriage with all pertinent forms W-2, 1099, K-1 and other schedules, and the most recent employment pay stub, with year-to-date gross earnings and written employment contract(s), if any.
- B. Tax returns and financial statements for five (5) years preceding the filing of the petition for dissolution of marriage for all corporations, or partnerships, or other business entities in which either marital partner has any ownership or membership interest.
- C. Statements from all banks, brokerage firms, investments firms, or mutual funds for three (3) months prior to and including the month in which the petition for dissolution of marriage is filed in which either marital partner has any interest, either alone or together with any other person, to include all checking, savings, certificate of deposit, treasury bills, stocks, bonds, or other forms of intangible assets.
- D. Copy of deed to marital residence, or any other real estate in which a marital partner has any legal or equitable interest, whether alone or with others, including but not limited to any corporate deeds.
- E. Amortization schedule or statement of balance for month in which the petition for dissolution of marriage was filed for any mortgage, land contract, or other lien on any real estate in the name of a marital partner, whether the marital partner has a sole or partial ownership interest.
- F. Copies of appraisals of real estate, or personal property in which a marital partner holds an interest, prepared within two (2) years from date of petition for dissolution of marriage.
- G. Statement of pension, profit sharing, individual retirement account, ESOP, or other form of tax deferred compensation plan maintained by or for a marital partner, for the month in which the petition for dissolution of marriage was filed.

H. Declaration sheet and schedule of cash value for all insurance policies owned by or for which any marital partner is the beneficiary which have a cash surrender value.

I. Copies of the most current statements of debt for the three (3) months preceding and including the month in which the petition was filed.

J. At least sixty (60) days prior to the final hearing the parties shall exchange copies of all business valuations, real estate appraisals, and personal property appraisals that will be offered into evidence at the final hearing.

K. Each party shall make his or her initial disclosures based on information reasonably available to him or her and no party is excused from making disclosures because he or she has not fully completed his or her investigation of the case or because he or she challenges the sufficiency of the other party's disclosure or because the other party has not made the required disclosure.

L. Interrogatories:

1. Interrogatories and Request for Production of Documents shall be tailored to the case in which they are served and numbered consecutively to facilitate response.

2. The recipient of Interrogatories may file a Motion for Protective Order (Trial Rule 26(C)) or a Motion to Strike specific interrogatories after fully complying with Trial Rule 26(F). Any such Motion shall be scheduled for hearing and does not extend the time for answering unobjectionable Interrogatories.

3. Any party desiring to serve interrogatories more than fifty (50) Interrogatories, or twenty-five (25) Request for Production of Documents shall either:

a. File a stipulation of the parties, agreeing to the additional interrogatories; or

b. If an agreement cannot be obtained, file a written motion requesting leave of the Court to serve more than fifty (50) interrogatories or twenty-five (25) Request for Production of Documents; the motion shall set forth those additional proposed interrogatories, and shall explain their necessity; full compliance with Trial Rule 26(F) is required.

M. Trial Rule 26

1. The informal resolution requirement of Trial Rule 26(F) shall be strictly enforced. The Court may deny any discovery motion filed pursuant to Trial Rule 27-37, if the moving party has not complied fully with Trial Rule 26(F).

2. Upon strict compliance with Trial Rule 26(F), the Court may take any appropriate action or schedule a hearing.

3. If an attorney sends at least one email and makes at least one telephone call seeking a discovery dispute conference, but opposing counsel does not respond within seven days from the last attempt, it shall be presumed that reasonable efforts have been made and a Motion to Compel may be filed. Such efforts and their results should be clearly stated in the Motion to Compel. Sanctions for the non-responding party and attorney fees will be considered when appropriate.

415.2. Disclosure by the Parties

Upon the filing of a petition for dissolution of marriage or paternity action, the parties shall have a duty of reciprocal discovery and, unless otherwise ordered by the Court, shall provide the other party with copies of the following documents and things within thirty (30) days:

415.3. Continuing Duty to Disclose

Duties of disclosure set forth by the Court's reciprocal discovery order shall be continuous. Supplementation shall be required not fewer than ten (10) days prior to trial showing any changes in the status of assets and debts as of the month of or one (1) month prior to trial, the most recent of which documents and things are available.

415.4. Utilization of Indiana Rules of Trial Procedure

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

- A. A detailed financial disclosure is not always needed in every case, especially those cases in the Streamlined Pathway or in other pathways when there are little financial resources and minimal debt. The standard Financial Disclosure herein adopted is to be utilized when requested by a party or by court order and direction. Utilization of this financial disclosure may be addressed in the court's initial case management order and request for the standard financial disclosure herein adopted should be made in initial pleadings with the court.
- B. Any party seeking an initial order of child support or spousal maintenance, or the modification of an existing order of support or maintenance shall provide their most recent Federal Income Tax Return, three (3) most recent paycheck, verification of insurance premiums for the child(ren) portion of health care if not disclosed in the paycheck and verification of childcare expenses. Responding parent is required to provide the same information upon request prior to filing or after filing within fourteen (14) days.
- C. A party seeking an order which deviates from the Child Support Schedule calculation shall set forth facts supporting the deviation.
- D. The Elkhart Office of Family Court Services may provide updated template Standard Financial Disclosure Statement.

415.5. Support and Maintenance Standards

- A. Parents should freely exchange the following information with or without request. In family matters such as this full and complete disclosure of parents' financial means is required in that Indiana has adopted an Income Shares Model with the stated goal of the child receiving the same proportion of parental income that the child would receive if the parents lived together. The Indiana Child Support Guidelines are presumed to apply to all case types when child support is an issue. The Court may only deviate from the Guidelines if there are sufficient good reasons on the record.
- B. If not previously disclosed, at least seven (7) business days before a scheduled hearing regarding provisional orders, establishment of child support or modification of child support (except support matters enforced by the State), each party shall deliver to all parties to the case the following materials:
 1. Their three (3) most recent pay stubs for all employers.
 2. Their most recent W-2s, 1099s, and federal income tax returns with all schedules and attachments.
 3. Documentation regarding work related childcare expenses.
 4. Documentation regarding health insurance premiums.
 5. Documentation regarding child support orders for other children.
 6. Proposed Child Support Obligation Worksheets.

7. Financial Declaration Form; and
8. Any exhibit or document that each party intends to submit to the Court.

C. Temporary maintenance shall equal thirty-three and one-third percent (33-1/3%) of the parties' combined net income (net income is defined as gross income minus deductions for any other prior court ordered child support, legal duty of support, other orders of maintenance paid, income producing expenses, and federal, state, or local taxes paid). Any order for temporary maintenance shall expire ninety (90) days after the date upon which the order becomes effective. A party seeking an extension of an order for temporary maintenance shall file an appropriate petition and at a hearing shall show good cause for the extension.

D. Maintenance paid to a party shall be deducted from the payor's income and added to the recipient's income, and determinations of child support and attorney fees obligations shall be based on those incomes as so adjusted.

E. If both a support order and a maintenance order are entered, the parties shall recalculate support promptly after ninety (90) days to reflect the expiration of the maintenance order. The parties shall calculate support during both the maintenance period and thereafter and shall file the results with the Court.

F. Income Withholding Orders must use form found at [Income Withholding Order](#)

G. Counsel must provide parents with payment information by providing web address: [Child Support Payments](#) or [Child Support Payments](#)

415.6. Medical insurance

Whichever party can provide the most comprehensive policy of medical insurance for the child(ren) at the lowest cost shall provide said insurance. The amount of the insurance premiums shall then be allocated between the parties on the percentage of income basis. If the non-custodial parent pays the insurance premiums, then that parent shall receive credit against support paid each week in the amount of that parent's allocated portion of medical insurance. If the custodial parent pays the medical insurance premiums, then that parent shall receive an additional amount of support each week equal to the non-custodial parent's percentage of medical insurance premiums. Child Support Guideline 7 "Reasonable Cost" paragraph delineates the two reasons allowed to waive this requirement.

415.7. Educational expenses through grade 12

A Guidelines-based support order shall encompass all ordinary educational expenses through the high school level. If appropriate, extraordinary educational expenses for children who have not yet completed high school, including private school tuition and costs of tutoring, shall be determined as an addition to support and shall be divided between the parties in proportion to their respective weekly adjusted incomes.

415.8. Educational expenses after grade 12

Post high school educational expenses shall be determined as either an addition to, or in lieu of support. Except in unusual circumstances, an award of such expenses shall be limited to the lesser of:

- A. The actual annual expenditures for tuition, room board, books, transportation, fees, and miscellaneous expenses for the student; or
- B. The annual cost of tuition, room, board, books, transportation, fees, and miscellaneous expenses which would be incurred by an Indiana resident attending the Bloomington campus of Indiana University as a resident student. The Custodial parent and the child shall be responsible for making, timely applications for all scholarships and grants for which the child might be eligible.

Other than in exceptional circumstances, gifts and trust funds intended for college, scholarships and grants shall be deducted from the educational expenses. All educational tax benefits (that is, Hope Scholarship Credits and Lifetime Learning Credits) shall be applied by the party receiving them to the payment of educational expenses. Thereafter, the child shall be responsible for twenty-five percent (25%) of the remaining expenses, and the balance shall be divided between the parties in proportions to their respective weekly adjusted income. Except in unusual circumstances, the amount of support determined under the Guidelines shall be wholly abated when the child is not in residence. The child shall execute all documents, and perform any and all other acts, reasonably necessary to afford both parents access to all available information regarding, grades, attendance, financial awards, grants and scholarships, and school disciplinary matters.

415.9. Income Tax Benefits

The parties shall allocate income tax benefits for a minor child equitably, but in such a manner as to maximize tax benefits. A non-custodial party shall claim such tax benefits only if that party shall have paid ninety-five percent (95%) [Indiana Code 31-16-6-1.5 (d)] due through the end of the affected calendar year by January 31 of the following year. Both parties shall execute any forms necessary to carry out the requirements of this paragraph. A party's refusal to sign such forms may be punishable by contempt or by imposition of other sanctions, including modification of the current support obligation to recapture any tax benefit lost by the non-custodial parent.

415.10. Arrears Statement

All petitions to abate or modify child support orders which are filed by child support payor shall include a statement of the amount of the arrearage, if any, owed by petitioner in child support, and in the payment of the Clerk's annual fee for the collection and distribution of child support

415.11. Verification of Income

So long as one or more the parties' children remain unemancipated or the beneficiary of an order for contribution to educational needs, the parties shall, upon request by either of them, exchange verification of income in the form of his or her most recent federal income tax return. Such income tax return shall be complete and include all attachments thereto. Such exchange shall be required no more often than once annually. Such exchange shall be concluded within two weeks of the making of such request. If either party had not filed a federal income tax return for the tax year last concluded, that party shall provide the other with that federal income tax return described above, together with written verification of current income. Such verification may include a paycheck stub disclosing a year-to-date income or a current profit and loss statement reflecting self-employment or partnership income. It is the purpose of this rule to foster the exchange of accurate and complete income information in order to avoid needless litigation. This rule shall be liberally construed to achieve those ends.

415.12. Six Percent Rule effective until such time that the Indiana Child Support Guidelines are modified in that the proposed amendment to those Guidelines eliminates the six percent rule.

For purposes of this rule, healthcare expenses shall accumulate on a calendar year basis. The six percent (.06) deductible contemplated by the Rule shall be prorated for the balance of the calendar year in which the first support order in this case is entered, or in which the subject dissolution is granted, whichever is applicable. This proration shall be calculated by multiplying the total child support due from both parents by six percent (.06), dividing the product by three hundred sixty-five (365), and multiplying the result by the number of days remaining in the year in question. As a rule, in the event of a modification of an existing child support order, any resulting change in the six percent (.06) deductible shall become effective

at the beginning of the next succeeding calendar year. The trial court may deviate from this general rule to avoid manifest injustice.

415.13. Income Tax Returns

In all actions in which a child support order remains in effect, either party shall, upon demand, provide the other party with a copy of his or her most recent federal income tax return, together with all schedules and other attachments. The party supplying the income tax return may redact any portions thereof which relate solely to the computation of the income of any other person. Nothing in this rule shall require any person to provide more than one such copy during each calendar year; however, nothing in this rule shall infringe upon the right of any person to engage in appropriate discovery pursuant to the Indiana Rules of Trial Procedure.

415.14. Child Support Worksheet

At least seven (7) days prior to hearing in all matters regarding child support issues, the parties shall file:

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

415.15. Standard Financial Disclosure Statement

A Standard Financial Disclosure [Financial Disclosure Form](#) is required upon request of any party or at the direction of the Elkhart Family Court Services or any Judicial Officer.

Rule LR20-TR58-416. Hearings

416.1. Hearings and Orders

After the requirements of Sections Problem Solving Settlement Conference, ADR requirements and Triage, have been met, where applicable, hearings on uncontested petitions for dissolution, applications for provisional relief, rules to show cause, petitions to modify, and other matters appropriate for summary consideration and disposition shall be set for summary disposition at such regular times and days as the court determines and at other available times as the calendar of the Court permits.

416.2. Trial Rule 58

- A. Counsel shall prepare proposed orders as may be required by the Court, such as orders granting or denying routine motions and agreements.
- B. Proposed orders and proposed findings of fact and conclusions of law shall be served upon the opposing party or counsel, consistent with the Trial Rule regarding service.
- C. Counsel of record shall be and remain informed of all action and filings made in all matters pending in which they are counsel of record.
- D. All proposed Qualified Domestic Relations Orders (QDRO) shall be signed by all parties or their attorneys, and when possible pre-approved by the Plan Administrator. Any dispute regarding a proposed QDRO shall be set for hearing upon request of a party.
- E. If the parties reach an agreement on any or all issues, the terms of the agreement shall be reduced to writing and signed by all parties or their counsel, including the State if it has intervened and the Guardian Ad Litem if one has been appointed. The signed agreement shall be e-filed with the Court. A separate proposed Order including the relevant portions of the agreement in imperative form shall

also be e-filed. The proposed Order shall include instructions regarding the distribution and delivery of the Order pursuant to Trial Rule 72(D).

F. In the event a money judgment is to be rendered against any party by agreement such as a child support arrearage, property equalization payment, and/or attorney fees, a Notice of Judgment shall be e filed.

Rule LR20-TR16-417. Case Management

A. The Court may hold a Case Management Conference at any time. At a Case Management Conference, the Court will address and very likely order Problem Solving Settlement Conference, Alternative Dispute Resolution including, but not limited to mediation, set discovery dates, Pre-Trial Conference and Trial Dates at the Court's discretion.

B. At any time, the court may direct the parties to submit a detailed statement of contentions, each parties' position on those contention, witness lists with summaries of each witnesses anticipated testimony, each exhibit that may be offered at trial, same submitted electronically as directed by the court.

Rule LR20-FL00- 418. Required Pretrial Meeting

In each family law case expected to proceed to trial on any contested matter, at least twenty-one (21) days prior to the trial date or as the court may order, the parties and their respective counsel (if any) shall meet in person. The purpose of this meeting shall be.

A. to explore whether settlement is possible, and if so, to attempt to reach a settlement; and

B. if settlement is not possible or efforts to reach a settlement are fruitless, to prepare a joint pretrial order containing:

1. All stipulations.
2. Each party's contentions of facts that are in dispute and require resolution by the court. Each party's proposed resolution of contested issues.
3. Where applicable, each party's statement of marital assets and debts, including any exhibits that will be offered in support of these figures.
4. The identity of each witness and the factual issue(s) about which the witness is expected to testify; that is, a summary of the expected testimony.
5. The expected length of trial.
6. All proposed trial exhibits with numbers or letters.
7. Whether mediation, arbitration, or another form of alternative dispute resolution may be appropriate in the opinion of either party.

Rule LR20-FL00-419. Pretrial Conferences

On request of any party, or on by the court, a pre-trial conference shall be set prior to the trial date. Not fewer than seven (7) days or as the court may order, prior to the pre-trial conference, the parties shall exchange Pretrial Statements.

419.1. Pretrial Statements

Pre-trial Statements shall be prepared by each party prior to the pre-trial conference and shall address the following, exchanged between the parties, and submitted to the court:

A. Identification and valuation of assets.

B. Identification and valuation of liabilities.

- C. Statement of each party's contentions.
- D. Copies of all proposed exhibits.
- E. Summaries of witness testimony.

419.2. Pretrial Order preparation

The pretrial order shall contain any information required elsewhere in these rules. The pretrial order shall be prepared as follows:

- A. In cases where counsel has appeared for both parties, counsel shall prepare and jointly sign the proposed pretrial order.
- B. In cases where counsel has appeared for one party, the attorney shall prepare the proposed pretrial order and secure the signature of the party appearing unrepresented.
- C. In cases where both parties are unrepresented, they shall jointly prepare and sign the proposed pretrial order.
- D. In the event one party or counsel refuses or fails to sign the proposed pretrial order, the party or counsel filing the order shall certify to the court in writing at the time of filing the order the circumstances surrounding the refusal or failure of the other party or counsel to sign the order. The pretrial order required by this rule shall be filed with the Court no later than fourteen (14) days, or such time as the court may order, before the scheduled trial date.

419.3. Contents of Pretrial Order

- A. Verified Financial Statement.
- B. Identification of contested issues, including custody, parenting time, support, post-secondary educational assistance, and rehabilitative maintenance.
- C. Proposal for resolution of contested issues.
- D. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.
- E. The names of witnesses to be called during the trial and the general nature of their expected testimony.
- F. Such other matters as may aid in the disposition of the action.

419.4. Trial Submissions

The Pretrial Order shall be filed with the Court at least five (5) days or as ordered by the court, before the date of trial.

Rule LR20-FL00-420. Two-Party Auction

- A. If the parties are unable to divide personal property and household goods by agreement, the method of division shall be by the private two-party auction, which shall be conducted by the lawyers for the parties or a Magistrate in a timely manner on such terms as the Magistrate deems appropriate.
- B. Either party may initiate a two-party auction at any point in the proceedings upon application to the court. Upon application, the non-possessory party may have reasonable access to the personal property to comply with this rule.

- C. Prior to the auction, the two parties are ordered to prepare and submit one itemized list of all household goods and personal property noting, items of a separate nature (e.g., premarital, extended family gifts, inheritance, disposed of or disputed items, etc.).
- D. A party who intentionally fails to cooperate or participate in the inventory and auction process will be subject to sanctions.
- E. At the conclusion of the auction, the Magistrate or lawyer conducting the auction shall immediately provide copies of all pages indicating the auction results to the parties, and the said results shall promptly be filed with the appropriate court.

Rule LR20-FL00-421. Decree Provisions

- A. Each decree of dissolution of marriage shall contain provisions that:
 - 1. Requires compliance with the applicable Indiana statute governing relocation of the residence of children. That provision shall also make specific reference to that statute to assist lay persons in reviewing it.
 - 2. Requires compliance with Indiana Rules that requires parents to notify the other parent, and the court of any change in address, phone number or email address.
 - 3. That states the use of child tax exemptions or other child governmental benefits and notifies parents of the 95% Rule in utilization of child tax exemptions.
 - 4. That notifies the parents of their responsibility to attempt Problem Solving Settlement Conferences and Cooperation with one another before filing with the court.
- B. Attach a current Child Support Obligation Worksheet.

Rule LR20-FL00- 422. Attorney Fees

422.1.

- A. In the absence of contradictory evidence, a reasonable initial attorney fee shall be \$1,200.00. Allocation of this fee between the parties shall be calculated using the linked form: [Attorney Fee Calculator](#)
- B. In the absence of contradictory evidence, a reasonable attorney fee for prosecution of a family law related rule to show cause shall be a minimum of five hundred dollars (\$500.00) for one court appearance. A minimum of two hundred and fifty dollars (\$250.00) will be added for each additional court appearance on the same rule to show cause.

Rule LR20-TR65-423. Compliance with Trial Rule 65

- A. No application for a temporary restraining order not authorized pursuant to Indiana Code 34-26-5 or 6 shall issue without strict compliance with the requirements of Trial Rule 65.
- B. 410.4 TRIAL RULE 65 (E) (1)
 - 1. Temporary Restraining Order-Marital Property if there is an allegation that an injury would result to the moving party if no immediate order were issued. Such allegations should be detailed and substantial.
 - 2. Temporary Restraining Order-Relocation of Children may be issued if there is an allegation that removal of children would result if no immediate order were issued. Such allegations should be detailed and substantial.

3. Preparation of Temporary Restraining Order. Like all other motions, a proposed order must be filed for the court's consideration.
4. All Orders Granting Temporary Restraining Orders without notice shall be set for hearing as soon as practical.

C. Motions Alleging Emergencies

1. Trial Rule 65(B)(1) and (2), and current case law, including *In Re: Anonymous*, 729 N.E.2d 566 (Ind. 2000), shall govern all motions alleging an emergency where Court action is sought without notice. Strict construction and application of Trial Rule 65(B) shall be required.
2. Emergency relief may also be sought upon notice. The Court will review such motions and may set them upon summary hearing or other expedited hearing.

Rule LR20-FL00-424. Alternative Dispute Resolution Fee

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

Rule LR20-FL00-425. Title IV-D Court

425.1. Organization of Title IV-D Child Support Court

- A. The IV-D Child Support Court (hereinafter IV-D Court) is established by Elkhart County pursuant to Title IV, Section D, of the Federal Social Security Act and Indiana Code 31-25-4-15 for the purpose of providing for paternity establishment, establishment of child support orders, enforcement of child support orders and collection of past due support for Title IV-D Program participants.
- B. In all cases in which the Title IV-D Child Support Division of the Elkhart County Prosecutor's Office (hereinafter IV-D Office) has intervened, all child support issues shall be deemed automatically referred to the IV-D Court.
- C. In a case in which child support issues are deemed automatically referred to the IV-D Court, the underlying cause if not already transferred to Elkhart Superior Court Six under the implementation of the Family Court Division shall be transferred to Elkhart Superior Court Six.
- D. All new causes filed by the IV-D Office after January 1, 2005, shall be filed in Elkhart Superior Court 6 and the Judge of Elkhart Superior Court 6 shall supervise the administration of the IV-D Court.
- E. The State's Title IV-D Office is exempt from filing fees.

425.2. Assignment of Judicial Officer(s) to IV-D Court

The Judge of the Family Court Division of the Elkhart Superior Court shall assign a Judicial Officer(s) to hear IV-D matters.

425.3. Responsibilities of IV-D Judicial Officer(s)

The IV-D Judicial Officer(s) appointed by the judge and assigned to hear IV-D matters Court have the authority to preside over actions under Title IV-D of the Social Security Act.

425.4. New Paternity Cases

Paternity cases filed by the Elkhart County Prosecutor's Office Title IV-D shall be filed in Elkhart Superior Court 6.

425.5. Reciprocal Support Paternity Cases. Reciprocal Cases (RS)

All new reciprocal support non-paternity cases shall be directly filed Elkhart Superior Court 6.

425.6. Filing of New Paternity Reciprocal Cases (RS)

All new reciprocal support cases shall be filed in Elkhart Superior Court 6.

425.7. IV-D Petitions for Support in favor of a third-party custodian(s)

All new IV-D Petitions for Support in favor of a third-party custodian(s) shall be filed in Elkhart Superior Court 6.

425.8. IV-D Petitions for Support for a Child

All new IV-D Petitions for Support for a child paternity case, Dissolution Cases, Guardianship cases shall be filed in Elkhart Superior in Court 6.

Rule LR20-JV00-NAJV-426. Juvenile Detention and Protective Custody Hearings

- A. Detention Hearing: Minor allowed to cross-examine and confront witnesses, to be represented by counsel and present relevant evidence.
- B. Protective Custody Hearing: Minor, parent, guardian or custodian allowed to cross-examine and confront witnesses, to be represented by counsel and present relevant evidence.

Rule LR20-JV00-NAJV-427. Juvenile Initial Hearings

- A. Juvenile Initial Hearings - Delinquency/CHINS
 - 1. Initial hearings shall be held pursuant to law.
 - 2. Upon denial of petition, the Court will set the matter for fact finding hearing.

Rule LR20-JV00-NAJV-428. Juvenile Dispositional, Modification of Disposition, Progress Reports, Placement Review Hearings

- A. Parties shall inform the Court within seven (7) days or such time as the Court determines, If the party intends to call witnesses other than Probation or the Indiana Department of Child Services staff at such hearings; and said party shall inform the opposing counsel and the guardian ad litem or non-represented party within the same time limits.
- B. The Court may reschedule such hearings if sufficient time is not available at the scheduled time.

Rule LR20-JV00-NAJV-429. Juvenile Waiver of Jurisdiction, Violation of Probation, Delinquency and Termination of Parental Rights

- A. Initial hearings shall be held on such petitions.
- B. Upon denial of same, the Court shall set the matter for fact finding.

Rule LR20-JV00-NAJV-430. Juvenile Reports, Assessments and Evaluations.

- A. All Indiana Department of Child Services, Probation and Court Appointed Special Advocate (CASA) reports, court ordered assessments and evaluations shall be electronically filed with the Court not later than 4:00 p.m. on the Friday before the scheduled hearing.

B. All such reports shall be served on all parties including CASA, if appointed, as soon as, available, the latest being by 4:00 p.m. on the Friday before the scheduled hearing.

Rule LR20-JV00-NAJV-431. Juvenile Court Scheduling

A. All scheduling shall be done by Court staff. Specific dates for hearing may be requested.

B. The Court shall set fact finding hearings or evidentiary hearings in first and second settings. If a matter is set for hearing and is resolved before the evidentiary hearing, then the parties shall notify the Court and all witnesses, probation officers or caseworkers that the matter has been resolved. Any second setting shall be prepared to proceed to evidentiary hearing with notice of seven (7) days prior to the scheduled setting. All parties shall be responsible for determining the order of cases and shall be prepared to try their cases on the dates scheduled.

Rule LR20-JV00-NAJV-432. Juvenile Court Additional Procedures, Fact Finding or Other Evidentiary Hearings

A. A writ of attachment for an absent witness shall not be issued unless the party calling said witness files an affidavit showing:

1. The materiality of the testimony of the witness.
2. The expected testimony of the witness; and
3. Certification that the absent witness was served with process more than three (3) days earlier or that for good and sufficient cause the witness was served with process less than three (3) days earlier.

B. Only one attorney for each party shall examine or cross-examine a witness, except by permission of the Court.

C. No person shall withdraw any original pleading, paper, record, model, exhibit, or other document from the custody of the Clerk or other officer of the Court having custody thereof, except upon order of the Court and upon leaving a proper receipt with the Clerk or other officer.

D. Counsel for a party shall be responsible for preparing and filing summons, citations, notices, or other documents for which forms may be obtained from the Clerk of the Court. These forms shall include any names, addresses, electronic address, cell phone number and other descriptive information, such as place of employment, necessary to effect service of said document.

E. CASA's, foster parents, school personnel, institutional placement staff and any others the Court may determine will be invited by the Court to give reports and testimony as to a minor at dispositional, progress report, placement review or other hearing where such testimony is admissible under the law.

Rule LR20-JV00-NAJV-433. Expungement of Juvenile Records

A. In order to ensure that the information necessary for the consideration of an expungement is available to all parties, petitions to expunge may only be filed using State forms; specifically:

1. A verified Petition for Expungement of Juvenile Delinquency Records may only be filed using State form D-16.04; and
2. A verified Petition for Expungement of Juvenile Child in Need of Services Records may only be filed using State form C-14.06.

B. Petitions for Expungement must be served on the prosecuting attorney when the expungement of delinquency records is sought and served on the Indiana Department of Child Services (DCS) when the expungement of a CHINS record is sought.

C. Unrepresented litigants seeking expungement shall complete the form provided by the Juvenile Court Clerk and serve the petition of the Prosecuting Attorney or the DCS; mailboxes in the Juvenile Clerk's Office may be used for the service.

ELKHART SUPERIOR COURT SMALL CLAIMS COURT LOCAL RULES

Rule LR20-SC01-501. Scope

These rules shall govern the practice and procedure for the Elkhart Superior Small Claims Court. These rules apply only to Small Claims (SC) cases. The small claims rules promulgated by the Indiana Supreme Court are hereinafter referred to as Indiana Small Claims Rule. The Indiana Rules of Trial Procedure are hereinafter referred to as Indiana Trial Rules. The Local Civil Rules of the Elkhart Superior and Circuit Courts are hereinafter referred to as Elkhart County Local Civil Rules.

Rule LR20-SC00-502. General Procedure

A. Conflict of Rules. All cases in the Elkhart Superior Small Claims Court shall be governed by the Small Claims Rules promulgated by the Indiana Supreme Court, and the Local Rules set forth herein. In instances where the Local Rules conflict with the Rules promulgated by the Indiana Supreme Court, the Supreme Court Rules shall control.

B. Filing Documents

1. Parties Represented by Attorneys. The filing of documents by an attorney shall be done pursuant to the provisions of Ind. Trial Rule 86, the Indiana Rules on Access to Court Records, and such other rules as promulgated by the Supreme Court.

2. Unrepresented Parties. The filing of documents by an unrepresented party (also referred to as a self-represented party and pro se litigant) is not subject to the electronic filing requirements of Trial Rule 86. The filing of documents by an unrepresented party is subject to the requirements of the Indiana Rules on Access to Court Records, and such other rules as promulgated by the Supreme Court.

3. Confidential Information. The filing of documents containing confidential information is subject to the requirements of the Indiana Rules on Access to Court Records, and such other rules as promulgated by the Supreme Court. Confidential information includes, but is not limited to, medical records, medical bills, complete social security numbers, and complete account numbers for financial records such as bank accounts. Attorneys and unrepresented parties are required to file a Public Access Version and Non-Public Access Version of documents containing confidential information.

C. Appearance by Spouse. Except for Proceedings Supplemental and Contempt hearings or as otherwise ordered by the Court, when legally married spouses are co-plaintiffs or co-defendants in a case, the appearance of one (1) spouse at a hearing shall be considered and treated as if both spouses are present. The appearing spouse shall verify under oath that no divorce or legal separation case has been filed or is pending, and that the spouses are living together.

D. Unrepresented Party's Current Addresses. All parties are required by Trial Rule 3 (A)(1) to provide a mailing address, phone number and e-mail address. Notices and Orders from the Court are sent to an unrepresented party at the most recent e-mail address, if no e-mail address, then to a mailing address, contained in the chronological case summary. An unrepresented party is solely responsible to keep their addresses updated in the chronological case summary for all cases in which they are a party.

E. Advisement of Rights all self-represented litigants shall be provided an Advisement of Rights as adopted by the Elkhart Superior Court in the initial pleadings by the Plaintiff if represented by counsel

or by the Clerk of the Court or Court Staff if not represented by counsel and at each subsequent hearing.
[Notice of Debtor Rights](#)

Rule LR20-SC00-503. Forms

- A. Court's Forms. The Court in conjunction with the Clerk of the Circuit and Superior Courts has prepared forms for use by parties, the Clerk, and the Court. All parties shall use the forms as drafted. The use of a modified or altered form may result in the pleading or motion being struck from the record or denied. Copies of the forms as updated from time to time can be obtained at the Access to Justice Center and online at: [Elkhart County Courts](#)
- B. Signature Line. All proposed orders and forms requiring the signature of a judicial officer shall have a signature line for "Judicial Officer Elkhart Superior Court".

Rule LR20-AR00-504. Hearing Calendars

- A. General Procedure. Upon the filing of a Notice of Claim, the case will be set on the small claims calendar.
- B. Claims Calendar. No trial will be held on a case scheduled on the small claims calendar. A case scheduled on the small claims calendar is for the purpose of determining whether the defendant contests the claim, and for the parties to attempt to resolve the case by settlement.
- C. In all cases wherein both parties are self-represented litigants, If the defendant contests the claim, the court may order immediate or later mediation without cost to the parties through the Elkhart Center for Community Justice.
- D. If a defendant fails to appear for a small claims calendar hearing, a default judgment may be entered in favor of the plaintiff against the defendant.
- E. If the plaintiff fails to appear for a small claims calendar hearing the case may be dismissed with or without prejudice.
- F. Trial Calendar. If the Notice of Claim is set on the trial, all parties shall be prepared for trial and presentation of evidence at that hearing. The parties are responsible for requesting the appropriate amount of time for the trial.

Rule LR20-TR4-505. Service of Claims and Counterclaims

- A. Notice of Claim. A defendant shall be served with a Notice of Claim consistent with the provisions of Trial Rule 4.1 through Trial Rule 4.17, at least ten (10) days prior to the scheduled hearing on the claims calendar, and twenty (20) days prior to the scheduled hearing on the trial calendar.
- B. Notice of Counterclaim. A plaintiff shall be served with a Notice of Counterclaim consistent with the provisions of Trial Rule 5, at least twenty (20) days prior to the scheduled hearing on the claims calendar or trial calendar.
- C. Petition for Emergency Possessory Order. A Notice of Claim and Verified Petition for Emergency Possessory Order may be served on a defendant fewer than twenty (20) days before the emergency possession hearing. Service of the Notice of Claim and Verified Petition for Emergency Possessory Order shall be done consistent with the provisions of Trial Rule 4.1 through Ind. Trial Rule 4.17.
- D. Failure to Timely Serve a Notice of Claim or Notice of Counterclaim.
 - 1. A party is entitled to a continuance of a trial if they have not been timely served with a Notice of Claim or Notice of Counterclaim.
 - 2. No default judgment shall be granted on a claim if the defendant has not been timely served with the Notice of Claim.

3. No default judgment shall be granted on a counterclaim if the plaintiff has not been timely served with the Notice of Counterclaim.

Rule LR20-SC12.1-506. Change of Judge

Change of Judge shall be controlled by Small Claim Rule 12.1 Any such Motion granted shall follow LR20-TR79-223.

Rule LR20-SC5-507. Counterclaims Over Small Claims Court Jurisdiction

- A. Counterclaims in Excess of the Court's Monetary Jurisdiction. A defendant who has a counterclaim more than the monetary jurisdiction of the Small Claims Court and does not wish to waive the excess amount of the counterclaim, must file the counterclaim in a timely fashion as a separate case on the plenary docket of the Elkhart Superior Court Civil Division. Either party may then file a motion for consolidation pursuant to Trial Rule 21(B) in both pending cases.
- B. Counterclaims Outside the Court's Subject Matter Jurisdiction. A defendant who has a counterclaim outside the subject matter jurisdiction of the Small Claims Court must file the counterclaim in a timely fashion as a separate action on the plenary docket of the Elkhart Superior Court Civil Division. Either party may then file a motion for consolidation pursuant to Trial Rule 21(B).

Rule LR20-TR53.5-508. Continuances

- A. General Rule. Except as provided in paragraphs (B) and (D) below, each party to a case may be granted one (1) continuance as a matter of right without showing good cause. However, a continuance under this subsection shall not be granted within seven (7) days of the hearing or trial, unless approved by a Judicial Officer. All motions for continuance must be made in writing with service to all other parties. The party obtaining a continuance shall notify all other parties to the case in a timely fashion that the matter has been continued, and of the new date and time for the hearing or trial. On a showing of good cause, the Court may grant an oral motion for continuance at the beginning of a hearing or trial.
- B. Possession of Real Estate or Personal Property. Except on good cause shown and approval by a Judicial Officer, no continuance of a hearing or trial will be granted to a defendant where the case involves possession of real estate or personal property.
- C. Agreed Continuance. Any hearing or trial may be continued by agreement of the parties.
- D. Proceedings Supplemental. Except on good cause shown and approval by a Judicial Officer, no motion for continuance of a proceedings supplemental will be granted. The parties by agreement may continue a proceeding supplemental.

Rule LR20-TR41-509. Dismissal of Case

- A. Dismissal by Plaintiff. A case may be dismissed by the plaintiff at any time prior to the filing of a counterclaim, answer, motion for summary judgment, or other dispositive motion by the defendant.
- B. Dismissal by Stipulation. A case may be dismissed by filing a stipulation of dismissal signed by all parties.
- C. Failure to Prosecute or Failure to Comply with Rule or Order. Consistent with Ind. Trial Rule 41(E), the Court on its own motion may set a hearing for the purpose of dismissing a case if there has been no action on the case for a period of more than sixty (60) days, or if a party has failed to comply with a rule or order.

D. Failure to Appear. If the plaintiff on a claim or the defendant on a counterclaim fails to appear within the allotted time (fifteen (15) minute grace period) for a hearing on the claims calendar or for the trial, then the claim or counterclaim shall be dismissed without prejudice. The claim or counterclaim may be dismissed with prejudice upon a showing of good cause such as a prior failure to appear for a hearing on the claims calendar or for a trial.

Rule LR02-TR60-510. Default

A. Grace Period. All parties are granted a fifteen (15) minute grace period to appear for a hearing or trial. The failure of a party to appear within the grace period may result in the entry of a default judgment, dismissal of claim, granting or denying of a pending motion, dismissal of a proceedings supplemental, the entry of a garnishment order, or other sanctions, including the issuance of a body attachment.

B. Claim. If a defendant fails to appear within the allotted time for a hearing on the claims calendar or for a trial, then the plaintiff may be entitled to a default judgment on the claim. Before a default judgment is granted, the record must reflect proof of service of the Notice of Claim, and the plaintiff must file an Affidavit for Judgment by Default along with any other supporting documentation as required by the Court.

C. Counterclaim. If a plaintiff fails to appear within the allotted time for a hearing on the claims calendar or for a trial, then the defendant may be entitled to a default judgment on the counterclaim. Before the default judgment is granted, the record must reflect proof of service of the Notice of Counterclaim, and the defendant must file an Affidavit for Judgment by Default along with any other supporting documentation required by the Court.

D. Motion to Set Aside Default Judgment. A default judgment may be set aside according to the provisions of Small Claims Rule 10(C) and Ind. Trial Rule 60(B).

1. An expedited hearing on a motion to set aside default judgment will be set on the trial calendar.
2. In any case in which a motion to set aside default judgment has been filed, collection proceedings will not be stayed unless a motion to stay is filed and granted pursuant to Trial Rule 62(B).

E. Default on Proceedings Supplemental. Each party is granted a fifteen (15) minute grace period to appear for any proceedings supplemental. The grace period shall begin at the time scheduled for the proceedings supplemental. After the fifteen (15) minute grace period has elapsed the following rules shall apply:

1. If the judgment debtor has failed to appear, the judgment creditor may file a motion for sanctions against the judgment debtor.
2. If the judgment creditor has failed to appear or call the judgment debtor's case for the proceedings supplemental within the grace period, then the judgment debtor may leave the proceedings supplemental and shall not be subject to sanctions for failing to appear. The grace period for this purpose shall begin at the time scheduled for the proceedings supplemental or at the time the judgment debtor registers with the Small Claims Court, whichever is later. Prior to leaving court, the judgment debtor shall notify the Small Claims Court that the grace period has expired, and that the judgment debtor is leaving.

F. Default on Rule to Show Cause (Contempt). Each party is granted a fifteen (15) minute grace period to appear for any contempt. The grace period shall begin at the time scheduled for the contempt. After the fifteen (15) minute grace period has elapsed the following rules shall apply:

1. If the judgment debtor has failed to appear the judgment creditor may file a motion for sanctions against the judgment debtor.
2. If the judgment creditor has failed to appear or call the judgment debtor's case for the contempt within the grace period, the judgment debtor may leave and shall not be subject to sanctions for failing to appear. The grace period for this purpose shall begin at the time scheduled for the contempt or at the time the judgment debtor registers with the Small Claims Court, whichever is later. Prior to leaving court, the judgment debtor shall notify the Small Claims Court that the grace period has expired, and that the judgment debtor is leaving.

Rule LR20-SC10-511. Default Judgment

A. General Requirements. The following documents or information shall generally be a part of the chronological case summary at the time that a request for default judgment is filed. The documents or information may be filed prior to the request for default judgment, or as part of the Affidavit for Judgment by Default:

1. Proof of service of the Notice of Claim or Notice of Counterclaim in compliance with LR20-TR4-505.
2. Affidavit of Non-Military Service including the Service members Civil Relief Act Status Report from the Department of Defense.
3. If the claim includes prejudgment interest, a written calculation of the amount of interest. The calculation shall include the time and interest rate. If the interest rate is higher than the statutory rate for prejudgment interest, documentation shall be included that supports the use of a higher interest rate.
4. If the claim includes attorney fees, an attorney fee affidavit shall be filed along with documentation or legal authority (statute or case law) to support an award of attorney fees.
5. An Affidavit of Debt in a form that complies with the requirements of Small Claims Rule 2(B)(4)(b) [Affidavit of Debt](#) If the plaintiff is not the original creditor, then the Affidavit of Debt shall include additional information required by Small Claims Rule 2(B)(4)(c).
6. Any agreement, contract, lease, invoice, receipt, bill, or other written documentation that serves as a basis for the claim.
7. Copies of all assignments/transfers of the debt.
8. A proposed order for default judgment in a form approved by the Court.

B. Accounts. In cases involving accounts, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:

1. An Affidavit of Debt in a form that complies with the requirements of Small Claims Rule 2(B)(4)(b).
2. If the plaintiff is not the original creditor, then the Affidavit of Debt shall include the additional information required by Small Claims Rule 2(B)(4)(c).

3. If the plaintiff is not the original creditor, then a sworn statement by plaintiff or plaintiff's attorney that the statute of limitations on the claim has not expired.

4. Any agreement, contract, lease, invoice, receipt, bill or other written document that serves as a basis for the claim.

C. Medical Bills. In cases involving medical bills, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:

1. An account statement or other documentation from the medical provider which includes:

a. The name of the medical provider, and name of the patient or responsible party.

b. The unpaid account balance.

c. The account number consistent with the requirements of Indiana Access to Court Records Rule 5.

d. A detailed summary of the dates of service, charges for medical care and treatment, payments received by the medical provider, and any write-offs on the account.

D. Credit Cards. In cases involving credit cards, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:

1. The name of the original credit card company.

2. The unpaid account balance and charge off date.

3. Date and amount of the last payment.

4. The account number consistent with the requirements of Access to Court Records Rule 5.

5. Date the defendant defaulted on the account.

6. Interest rates(s) for the account.

7. Summary of fees assessed to the account, including but not limited to late fees and over limit fees.

8. Monthly billing statement for the last payment or last purchase, whichever is later. The statement should include the following information:

a. Defendant's name and address.

b. Date of last payment or purchase.

c. Interest rate and any fees.

9. An itemized statement for the amount requested as a judgment. The itemization shall include the amount charged to the account by the debtor, interest, and fees.

10. If the plaintiff is not the original creditor, then a sworn statement by plaintiff or plaintiff's attorney that the statute of limitations on the claim has not expired.

E. Landlord/Tenant Cases. In cases involving unpaid rent and/or damages to rental property, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:

1. Lease agreement.

2. Ledger or other summary of charges and payments.
3. Itemization of unpaid rent, late fees, and other damages.
4. A copy of the written notice to the defendant regarding disposition of the security deposit and itemization of damages.

F. Installment Loan Contract/Repossession. In cases involving installment loan contracts or repossession, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:

1. A copy of the original contract with the defendant's signature.
2. An itemization of all amounts paid on the contract by the defendant.
3. If the personal property was repossessed:
 - a. The date of repossession.
 - b. The current location of the property.
4. If the personal property has been sold:
 - a. The date and location of the sale.
 - b. The gross amount of the sale proceeds.
 - c. An itemization of all deductions/charges from the gross sale proceeds.
 - d. The amount of the gross sale proceeds applied to the account balance.
5. Copies of all notices to the defendant regarding repossession and/or sale of the vehicle.

G. Motor Vehicle Collision Cases. In cases involving property damage or personal injury arising out of a motor vehicle collision, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:

1. Any accident report by a law enforcement agency.
2. Medical bills for treatment of injuries consistent with Access to Court Records Rule 5.
3. An itemization of any claim for lost wages with supporting documentation.
4. An itemization of all claimed damages.
5. If the defendant was not the operator of the motor vehicle, documentation, and legal authority to support a claim against that person.

H. Unavailable Information or Documentation. If any of the information or documentation required by LR20-SC10-511(A) through LR20-SC-10- 511(G) is unavailable, the party requesting a default judgment shall file an affidavit that identifies the unavailable information or documentation and states why the information or documentation is unavailable.

Rule LR20-TR00-512. Attorney Fees

In General. Attorney fees may be awarded in a case if there is a written agreement for payment of attorney fees, or if based on legal authority such as a statute or case law. The amount of an attorney fee award shall be subject to the sound discretion of the Court. A request for an award of attorney fees at trial or as part of a default judgment shall include evidence as to the amount of the fees. Evidence of the amount of attorney fees shall either be in the form of an affidavit signed by the attorney, or testimony by the attorney under oath.

Rule LR20-SC16-513. Possession of Real Estate and Personal Property

- A. **Bifurcated Hearing.** Hearings in cases involving possession of real estate or personal property shall be bifurcated. The initial hearing for possession shall be set on the small claims calendar. A judgment regarding possession of real estate or personal property will be entered at the initial hearing. A separate damages hearing shall be scheduled for unpaid rent, property damage/repairs, cleaning expenses, and missing property. Any filed counterclaim for damages or refund of the security deposit shall be scheduled for hearing at the same time.
- B. **Lease and Notices.** Any written lease agreement for the real estate with the defendant, including extensions, modifications, amendments, or addendums shall be filed by the plaintiff with the Notice of Claim, along with any written notices of default that were sent to the defendant.
- C. **Verification of Ownership of Real Estate.** The plaintiff in a case for possession of real estate shall file a Verification of Ownership with the Notice of Claim. The Verification of Ownership shall be on a form approved by the Court [Verification of Ownership](#). The verification shall accurately identify the owner(s) of the real estate. If the owner of the real estate is a limited liability company (LLC) or similar entity, the verification shall include the name of the entity along with the name of the majority owner/shareholder of the entity.
- D. **Property Manager.** If the named plaintiff in a case for possession of real estate and/or damages is not the owner of the real estate, then the plaintiff shall be represented by an attorney.
- E. **Designated Employee.** If the named plaintiff in a case for possession of real estate is the owner of the real estate, then the plaintiff may be represented by a designated employee consistent with Indiana Small Claims Rule 8(C). A designated employee must be a full-time employee of the plaintiff and not a part-time employee, independent contractor, or agent. If the named plaintiff is a corporation, limited liability company (LLC), or limited liability partnership (LLP), then an individual with an ownership interest in the entity may serve as a designated employee.
- F. **Contract for Conditional Sale of Real Estate (Land Contract).**
1. If a plaintiff is requesting an order of possession with respect to real estate that is being purchased pursuant to a land contract, the Notice of Claim must clearly state that the real estate is subject to a land contract, and a copy of the contract shall be filed with the Notice of Claim.
 2. At the possession hearing the plaintiff has the burden of proving that the defendant has breached the land contract, and that forfeiture is an appropriate remedy.
- G. **Writ of Restitution (Assistance).** A party that is granted an order for possession of real estate or personal property may request a Writ of Restitution (Assistance) for the Sheriff to assist in obtaining physical possession of the real estate or property.
1. Unless otherwise authorized by the Court, a Writ of Restitution (Assistance) shall not be issued until seven (7) days after the order of possession is granted.
 2. All orders for possession of real estate and personal property shall expire thirty (30) days after the entry of the order.
- H. **Disposition of Personal Property.** If a tenant leaves personal property of value at a rental property after being evicted or otherwise vacating the rental property, then the landlord may dispose of the personal property in the following manner:
1. Using reasonable care the landlord may remove and store the personal property in a safe and secure location.

2. The landlord shall notify the tenant by first class mail to tenant's last known address that the personal property is being stored and will be available to the tenant for a period of fourteen (14) days from the date of the notice. The landlord shall cooperate with the tenant in deciding for the tenant to retrieve the personal property.

3. If the tenant has not retrieved the personal property after the fourteen (14) day period, the property shall be deemed abandoned, and the landlord may dispose of the property in a reasonable manner. This includes destroying the property having little or no value, selling the property or donating the property to a charitable organization. Proceeds from sale of the personal property shall be applied to any unpaid rent or other damages owed by the tenant to the landlord.

Rule LR20-SC11-514. Release of Judgment

A. Process and Procedures. The process and procedures for release of a judgment shall be pursuant to the provisions of Indiana Small Claims Rule 11(D).

B. Evidence. Records of the Clerk of the Circuit and Superior Courts are prima facie evidence regarding payment in full of a judgment, including accrued interest and court costs.

C. Interest Calculation. The date that a payment is entered as received by the Clerk of the Circuit and Superior Courts shall be the date of receipt for purposes of calculating post-judgment interest.

D. Objection to Release of Judgment. The Court may schedule a hearing on a verified objection to release of judgment filed by a judgment creditor, if the verified objection is filed within the (thirty) 30-day time requirement as set out in Small Claims Rule 11(D).

Rule LR02-TR69-515. Proceedings Supplemental

A. General Procedure. Proceedings supplemental to execution shall be governed by Trial Rule 69 and applicable statutes.

B. Ten Day Rule. A motion for proceedings supplemental may not be filed until ten (10) calendar days have elapsed since the date of judgment except by order of the Court. The following notice is required: [Notice of Debtor Rights](#)

C. Six Month Rule. Except by order of the Court, no proceedings supplemental may pend for more than six (6) months from the date of its filing. At the end of the six (6) month period, any pending proceedings supplemental shall be dismissed. Subsequent Proceedings Supplemental must follow the holding in *Branham v Varble & Norman Chastain*, 952 N.E.2nd 744 (Ind 2011) [Indiana Judicial Branch: Appellate Decisions](#) that states in part that no subsequent proceedings supplemental may be filed without alleging new facts; that is, the Motion must set forth circumstances that have changed since the last hearing regarding the defendant's financial status.

D. Scheduling. All proceedings supplemental shall be scheduled on the small claims calendar. The judgment debtor shall be served with the proceedings supplemental and order to appear at least twenty (20) days prior to the scheduled date for the proceedings supplemental.

E. Conduct of Proceedings Supplemental. A judgment debtor or judgment creditor may request that the proceedings supplemental be conducted before an appointed judicial officer.

F. Proceedings Supplemental Report. Following a proceeding supplemental, the judgment creditor shall file a chronological case summary entry form notifying the Court regarding the results of the proceedings supplemental. The report shall be filed no later than one (1) business day after the proceedings supplemental.

G. Bank Interrogatories. Except by order of the Court, a judgment creditor may not submit garnishment interrogatories to more than two (2) banking institutions for a proceeding supplemental.

H. Proceedings Supplemental During Pendency of Garnishment Order. If a garnishment order has been issued and the judgment remains unsatisfied, an additional proceeding supplemental directed to the judgment debtor or to another garnishee defendant may only be filed by order of the Court.

I. Agreements to Appear. In any proceedings supplemental the parties may agree to reset the proceedings supplemental without a court order to appear. If either party fails to appear at the reset proceedings supplemental, the proceedings supplemental shall be dismissed and no sanctions shall be issued against either party for the failure to appear.

Rule.LR02-TR64-516. Contempt/Rule to Show Cause/Body Attachment/Writ of Attachment.

A. Contempt. When a judgment, debtor or garnishee defendant fails to appear, as ordered for a proceedings supplemental or other hearing, the judgment creditor may file a Motion for Rule to Show Cause (Contempt) as to the party that failed to appear as ordered. The Motion for Rule to Show Cause must be filed within thirty (30) days of the party's failure to appear for the proceedings supplemental or other hearing.

B. Body Attachment/Writ of Attachment. A body attachment/writ of attachment may be requested and issued only when:

1. The judgment debtor or garnishee defendant was personally served with notice of the contempt hearing. Personal service for purposes of this rule includes delivery of the notice of hearing to the judgment debtor or garnishee defendant in person by a sheriff or private process server, or certified mail delivery signed by the judgment debtor or garnishee defendant.
2. Proof of service has been filed in the chronological case summary that the judgment debtor or garnishee defendant was personally served with notice of the contempt hearing.
3. The judgment debtor or garnishee defendant fails to appear at the contempt hearing.
4. A request for body attachment/writ of attachment is filed within thirty (30) days after the scheduled contempt hearing.
5. The judgment creditor properly completes and files all pleadings and forms required by the Court. The pleadings and forms include for each judgment debtor or garnishee defendant:
 - a. One (1) Request for Body Attachment/Writ of Attachment
 - b. One (1) Writ of Attachment which must include a statement setting a bond for release. The bond amount shall be set at the lesser of five hundred dollars (\$500.00) or the total amount remaining unpaid on the judgment, including costs and interest.
 - c. A Warrant Information Card, including the judgment debtor's or garnishee defendant's social security number and/or date of birth.

C. Procedure When Judgment Debtor/Garnishee Defendant is in Custody.

1. If a judgment debtor or garnishee defendant is in the custody of the Elkhart County Sheriff pursuant to a body attachment/writ of attachment, then a hearing shall be held within forty-eight (48) hours, excluding weekends and holidays, following the person being taken into custody.

2. Notice of the hearing will be given to the judgment creditor by telephone or email at the phone number or address as listed for the judgment creditor in the chronological case summary.
3. If the judgment debtor or garnishee defendant is released from detention on a bond, the judgment creditor, judgment debtor, garnishee defendant, or third party may file a request for hearing to determine disposition of the bond proceeds.

D. Procedure When Judgment Debtor/Garnishee Defendant Appears in Court. When the Court is notified that a judgment debtor or garnishee defendant with a pending body attachment/writ of attachment has appeared prior to being taken into custody, the Court will notify the judgment creditor of the appearance of the judgment debtor or garnishee defendant by telephone at the phone number listed or the email address for the judgment creditor in the chronological case summary. If the judgment creditor does not appear within one (1) hour of having been called by the Court, the body attachment/writ of attachment shall be recalled, the judgment debtor or garnishee defendant shall be released, and the pending proceedings supplemental shall be dismissed.

E. Expiration and Recall of Writ of Attachment/Body Attachments.

1. A body attachment/writ of attachment expires one (1) year from the date of issuance.
2. If a judgment creditor intends to file a proceeding supplemental while a body attachment/writ of attachment is active, the judgment creditor shall first file a motion for recall of the body attachment/writ of attachment.
3. At any time while a body attachment/writ of attachment is active a judgment creditor, judgment debtor, or third party may file a motion for recall of the body attachment.

Rule LR02-TR69-517. Garnishment Orders

- A. General Procedure. All garnishment proceedings shall comply with Indiana Trial Rules 64 and 69 and applicable statutes.
- B. Requirements for Garnishment Order to Issue. A garnishment order shall not issue with respect to a judgment debtor's wages or other property without:
 1. An active proceeding supplemental as to the judgment debtor or waiver of notice by the judgment debtor.
 2. Proof of service on the garnishee defendant of the proceedings supplemental or interrogatories by certified mail, sheriff's service, or private process server.
 3. Verification of the judgment debtor's employment by answered interrogatories or other credible evidence, or the failure of the garnishee defendant to answer interrogatories regarding the judgment debtor's employment.
 4. Verification of the judgment debtor's ownership interest in a bank account by answered interrogatories or other credible evidence, or the failure of the garnishee defendant to answer interrogatories regarding the judgment debtor's bank account.
- C. Voluntary Garnishments. When a judgment debtor has entered into an agreement with the judgment creditor on a payment plan to satisfy the judgment and further agrees to the issuance of a garnishment order upon default, no garnishment order shall issue unless the following conditions are satisfied:
 1. There is an active proceedings supplemental pending against the judgment debtor and the garnishee defendant.

2. A motion is filed by the judgment creditor requesting the issuance of a garnishment order. A copy of the agreement shall be attached to the motion.

D. Stay. If a garnishment order is stayed at the request of the judgment creditor or because of a bankruptcy, then the judgment creditor shall file a Motion to Lift Stay before the garnishment order can be reactivated.

E. Release. Upon receipt by the judgment creditor or by the Clerk of the Circuit and Superior Courts, on the judgment creditor's behalf, of funds sufficient to satisfy the judgment, accrued interest, and costs, the judgment creditor shall immediately file a motion for release of the garnishment order and shall serve the garnishee defendant with a copy of the motion.

F. Issuance of Garnishment Order After Proceedings Supplemental Hearing. When a garnishment order is issued by the Court, the underlying proceedings supplemental shall be dismissed.

G. Issuance of Garnishment Order Prior to Rule to Show Cause Hearing. When a garnishment order is issued prior to a hearing on a Motion for Rule to Show Cause, any scheduled hearing on the Motion shall be cancelled and the Motion for Rule to Show Cause shall be dismissed.

H. Exemption Hearings.

1. The Court will schedule an expedited hearing on a request by the judgment debtor or third party to exempt funds in a bank account from garnishment. The judgment debtor or third party shall bring to the hearing the last three (3) bank statements for the account and any documentation which demonstrates the source of funds in the account such as pay stubs or social security records.

2. If a hearing is scheduled when the judgment debtor requests an exemption to modify the garnishment of wages, the judgment debtor shall bring to the hearing their three (3) most recent pay stubs, a family budget showing income and expenses for the household, and such other information as requested by the Court.

Rule LR02-TR64-518. Post Judgment Writs and Orders

A. Writs. Any request for a writ to satisfy a money judgment shall be scheduled for a hearing.

B. Order. All judgments are paid to the Clerk of the Court.

Rule LR02-SC00-519. Bankruptcy

A. Stay of Proceedings. Upon receiving notification that a judgment debtor has filed bankruptcy; the Court will issue an order to stay all proceedings in the case with respect to the judgment debtor.

B. Further Proceedings. If the bankruptcy is dismissed or a discharge is not granted, then the judgment creditor shall file a Motion to Lift Stay of Proceedings before taking any other action in the case against the judgment debtor. The motion shall include a copy of the dismissal from the bankruptcy court.

Rule LR02-SC06-520. Discovery

A party that intends to conduct discovery pursuant to Indiana Small Claims Rule 6 shall file a motion for approval of discovery. The proposed discovery request shall be filed with the motion for review by the Court. Copies of the motion and proposed discovery request shall be served to all parties consistent with Indiana Trial Rule 5. The time for responding to the discovery request shall not commence until such time as the Court approves the discovery request, in whole or in part.

LOCAL PROBATE AND ESTATE RULES FOR ELKHART COUNTY

Rule LR20-PR00-601. Notice

601.1. Attorney Responsibilities

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

601.2. Motions and Petitions to Accompany Notice

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

601.3. Service of Notice of Hearing

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

601.4. Notice of Opening of Estate

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

601.5. Notice of Insolvent Estate

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

601.6. Electronic Filing

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

601.7. Attorney and Personal Representative Fee Guidelines for Decedent’s Estates

A. Preamble. The Elkhart Circuit and Superior Courts have adopted these guidelines to achieve the following objectives:

1. Establish uniformity in determining a fair and reasonable fee for supervised estates.
2. Provide a guideline to assist the Court and interested parties in determining fair and reasonable fees.
3. Provide a guide to attorneys so they can discuss fees that may be reasonably incurred with their clients at the onset of administration.

4. Assist the legal profession to arrive at a fair and reasonable fee for employment in estate matters.

Every attorney and personal representative have an obligation to request a fee which is fair and reasonable for the work performed, considering the Rules of Professional Conduct applicable to attorneys admitted to practice law in the State of Indiana, and other relevant criteria. Except under extraordinary circumstances, a request for fees should not exceed the fees authorized in these guidelines. In an uncomplicated estate, fees should be less than those listed in these guidelines. Fees must always bear a reasonable relationship to the services rendered.

B. Principles Applicable to Fee Determinations. Although these fee guidelines have been promulgated by the Court for probate matters, it is important that attention be directed to the following criteria when seeking an award of fees:

1. The time and labor required, the novelty, complexity, or difficulty of the questions involved, the skill required to perform the services properly, including a determination as to how much of the attorney's time was devoted to ministerial functions.
2. The nature and extent of the responsibilities assumed by the attorney and the results obtained, including the considerations of the identity of the personal representative and the character of the probate and non-probate transferred assets.
3. The sufficiency of assets properly available to pay for legal services, and whether the attorney's duties are expanded by the existence of non-probate assets because of their inclusion for tax purposes.
4. The timeliness with which the necessary services are performed consistent with statutory requirements, Local Civil Rules of the Elkhart Circuit and Superior Court, Indiana Trial Rules, and applicable Rules of Professional Conduct; and
5. Attorneys shall discuss their fees and the fees of the Personal Representative at the time they are retained in all probate matters.

C. Attorney Fee Guidelines - General Administration:

1. Gross estate services are considered to normally include: probating the Will, opening of the estate, qualifying the personal representative, preparing and filing the Inventory, paying claims, collecting assets, preparing and filing non-extraordinary petitions, preparing and filing of Fiduciary Income Tax Return, preparing and filling all tax returns and schedules, obtaining Court Orders thereon, paying taxes, preparing and filing the Final Report, obtaining an Order approving same, distributing assets, obtaining discharge of the Personal Representative, and serving all notices on interested parties throughout the proceedings. This list shall not be considered exclusive.
2. Gross Estate Services-Minimum Fee of five hundred dollars (\$500.00) Plus:
3. Up to One hundred thousand dollars (\$100,000.) Not to exceed six percent (6%)
4. Next One hundred thousand dollars (\$100,000.) Not to exceed four percent (4%)
5. Next One hundred thousand dollars (\$100,000.) Not to exceed three percent (3%)
6. Next One hundred thousand dollars (\$100,000.) Not to exceed two percent (2%)
7. Over four hundred thousand dollars (\$400,000.) Not to exceed one percent (1%)
8. Miscellaneous-Extraordinary Services:

- a. Sale of Real Estate fees shall be based upon a reasonable hourly rate.
- b. Federal Estate Tax Returns: Fees for Federal Estate Tax Returns are allowed only if a return is required because of non-administered property and shall be based only on assets not listed on Indiana Inheritance Tax Schedule. A base fee of seven hundred and fifty dollars (\$750.00) or one percent (1%) is allowed for the first One hundred thousand dollars (\$100,000.) Of the non-administered assets of the gross estate as determined for Federal Estate Tax purposes plus: three-fourths ($\frac{3}{4}$) of one percent (1%) of the next one hundred and fifty thousand dollars (\$150,000) of non-administered assets of the gross estate, plus one half ($\frac{1}{2}$) of one percent (1%) on all non-administered assets of the gross estate more than two hundred and fifty thousand dollars (\$250,000.)
- c. Other than as provided above, fees shall be based upon a reasonable hourly rate.
- d. Attorney's expertise in probate matters will be considered by the Court in determining the applicable reasonable hourly rate.

D. Attorney Fee Guidelines - Wrongful Death Administration: The Court recognizes that in most instances a retainer or contingent fee agreement is an appropriate method by which legal services can be provided in wrongful death claims. Accordingly, fees shall be allowed under those agreements if, at the time of settlement of the claim, it is shown to the Court's satisfaction:

1. The personal representative was, prior to entering such agreement, fully informed as to all aspects of the arrangement.
2. The agreement is fair and reasonable; and
3. The fee sought is fair and reasonable.

E. Extraordinary Fee Requests.

1. Fee petitions requesting extraordinary fees must set forth services rendered with specificity. Extraordinary service may include sale of personal property, sale of real property, partial distributions, will contest actions, contesting claims, adjusting tax matters, contested hearings, petitions for instructions, heirship determinations, generating additional income for the estate, etc.
2. All petitions under this section will be set for hearing, with notice to all interested parties. If all interested parties sign a waiver and consent stating they have been advised that the additional fee request exceeds the Court's guidelines and that the services as detailed are extraordinary, the Court may, in its discretion, determine if whether a hearing is required.
3. A waiver and consent for allowing fees more than these Local Rule Guidelines shall not be merely a pro forma waiver and consent, but must be in substantially the form as set forth [Waiver and Consent to Allow Excess Fees](#)

F. Unsupervised Estates. The Court will not determine fees in an unsupervised administration.

G. Filing of Fee Petition. Before any fee is paid in a supervised estate, a petition for allowance of the fee shall be filed and determined by the Court. A request for fees will be considered only under the following circumstances:

1. The Final Report is ready to be filed, or
2. As necessary for purposes of an estate fiduciary income tax deduction, or
3. As necessary due to extraordinary circumstances.

H. Payment of Fees. Except where payment has been authorized under G.2 or G.3 above, fees are payable one half (1/2) upon approval of fee petition and one half (1/2) upon approval of the Final Report.

I. Personal Representative Fees

1. Professional: The Court will approve Personal Representative fees at the applicable prevailing rate, provided:

- a. Those rates are on file with and approved by the Court.
- b. The rate results in a reasonable fee considering all circumstances;
- c. A description of services rendered in support of a request for fees is filed.

2. Non-Professional: Fees for non-professional Personal Representative services may be allowed. However, such fees shall not exceed one half (1/2) the fee allowed the attorney, provided:

- a. The fee is reasonable considering all circumstances; and
- b. A description of services rendered, including time spent with hourly rate in support of the request is filed.

3. Attorney as Personal Representative: The Court discourages attorneys from assuming the dual role of attorney and Personal Representative in the same estate. When the attorney does serve as the Personal Representative, an additional amount not to exceed one-third (1/3) of the attorney fee may be allowed, provided:

- a. The fee is reasonable considering all circumstances; and
- b. A description of services rendered including time spent with hourly rate in support of the request is filed.

4. Fee Payments and Extraordinary Fee Requests: The Court will apply the same procedures to the allowance and drawing of Personal Representative fees and to a Personal Representative's extraordinary fee request as it does to attorney fee requests, as outlined above.

Rule LR20-PR00-602. Filing of Pleadings

602.1. Compliance

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

602.2. Paper Pleadings

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

602.3. Preparation of Orders

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

602.4. Signature and Verification

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

602.5. Attorney Information

Unless the Court approves in advance, no personal representative of an estate or guardian may proceed without counsel. Prior to filing any pleadings in a matter before the Court, all attorneys shall enter an

appearance in the given action and shall include in their appearance form the attorney's name, address, telephone number, and registration number to be retained within the electronic case management system.

602.6. Initial Petition

In addition to other relevant information, the initial petition, or the confidential information sheet to open an estate shall include the name, address, social security number, birth date, and telephone number of the personal representative. The initial petition to open a guardianship shall include all the same information of the proposed guardian.

602.7. Affidavit of Compliance

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

Rule LR20-PR00-603. Bond

603.1. General Statement

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

603.2. Bond Waived by Will

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

603.3. Heir or Legatee Fiduciary

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

603.4. Unsupervised Estate

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

603.5. Request for Service Without Bond

Where the heirs or legatees have filed a written request that the fiduciary serve without bond, the Court may set bond in an amount adequate to protect the rights of the creditors only.

603.6. Corporate Fiduciary

No bond shall be required in any estate or guardianship in which a corporate fiduciary that is qualified by law to serve in such capacity is appointed to be either the sole fiduciary or one of several co-fiduciaries.

603.7. Nonresident Fiduciary

A nonresident fiduciary shall post bond prior to qualification as required by statute.

603.8. Bond requirements

All bonds filed with the Court shall comply with the provisions of Indiana Code 29-1-11-1 et seq. The name and address of the insurance underwriter as well as the name and address of the insurance agency providing the corporate surety, shall be typed, or printed on all corporate bonds.

Rule LR20-PR00-604. Estate Inventory

604.1. Time Period for Preparation and Filing

An inventory shall be prepared by the fiduciary in an estate within two (2) months following the date of appointment of the fiduciary. In a supervised administration, the inventory shall be provided to interested parties upon request or may be filed with the Court. In an unsupervised estate, the inventory shall be provided to distributees upon request or may be filed with the Court.

604.2. Partial Inventory

In the event a partial inventory is prepared, all subsequent inventories must contain a recapitulation of prior inventories.

604.3. Sealed Inventory

If the personal representative wishes to file an inventory under seal, the Court may, in its sole discretion, seal such inventory. If the inventory is sealed, it shall be held and protected according to Court policy and procedures.

Rule LR20-PR00-605. Real Estate

605.1. Deed Requirements

A judge's signature is not required on a deed arising within an estate or guardianship. However, if a deed is submitted to the Court for approval, in either estate or guardianship proceedings, it shall be signed by the fiduciary and the signature notarized prior to its submission, unless the Court permits otherwise.

605.2. Unsupervised Estates

No Personal Representative's Deed shall be approved in unsupervised estates.

Rule LR20-PR00-606. Accounting

606.1. Failure to Close Within One Year

Whenever an estate cannot be closed within one (1) year, the personal representative shall file a statement with the Court stating the reasons why the estate has not been closed if requested by the Court. In addition, the Court reserves the power to require the personal representative to file an intermediate accounting with the Court.

606.6.1. Nonresident Fiduciary

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

606.2. Statutory Format

All accounts shall follow the prescribed statutory format. Informal, handwritten, or transactional accountings will not be accepted.

606.3. Payment of Court Costs

All court costs shall be paid, and all claims satisfied and released before the Court will hear a Motion on Final Account.

606.4. Inheritance or Estate Taxes

Before the Court will hear a motion to approve a final account, all Federal and State inheritance or estate taxes must be paid, and the estate must have received a closing letter from each appropriate taxing

authority acknowledging such payment and releasing the estate from further liability. The attorney for the estate, or the pro se fiduciary, is responsible for maintaining paper or electronic copy of such closing letter(s) and shall provide any copies to the Court upon request. Further, the petition to close the estate shall include affirmation that such income and other taxes as may be applicable to the estate either have been paid in full or that they will be paid in full.

Rule LR20-PR00-607. Unsupervised Administration

607.1. Administrative Records

The attorney for the estate in an unsupervised administration shall maintain and preserve, in paper or electronic format, records of notices delivered to distributees at the opening of the estate, the estate inventory, correspondence with each distributee during the administration of the estate and a full record of the final accounting including supporting statements, invoices, appraisals, and distribution reports. Such records will be supplied to the Court upon request.

Rule LR20-PR00-607.15 Fees of Attorneys and Fiduciaries

607.15. Approval

Fees paid to fiduciaries and to attorneys in the administration of a supervised estate or guardianship shall be reported to the Court with Motion on Final Account and such fees shall be subjected to approval by the Court at that time. No attorney or fiduciary fees will be determined or authorized for payment by the Court in any unsupervised administration of a decedent's estate.

607.2. Order on Closing

Even if not statutorily required, the Court may enter an Order approving the Closing Statement although an Order is not needed since such estate is closed by operation of law.

Rule LR20-PR00-608. Miscellaneous

608.1. Implementation of Rules

The Court may adopt procedures to effectuate implementation of these rules and the Court may, in its discretion, deviate from these rules when justice requires.

Rule LR20-PR00-609. Guardianships

609.1. Appearance of the Incapacitated Person

In all guardianship matters seeking to declare an adult incapacitated for any reason, the incapacitated person shall be present at the hearing or sufficient evidence shall be presented, by the petition, showing that the incapacitated person is unable to appear. The Court may at any time appoint guardian ad litem to investigate and protect the best interest of the incapacitated person.

609.2. Physician's Report

In all guardianship matters seeking to declare an adult incapacitated for any reason, a Physician's Report by the doctor treating the alleged incapacitated person, or such additional evidence as the Court shall require shall be presented to the Court at the time the petition is filed or on the hearing date. No determination will be made without a supporting medical report or testimony.

609.3. Appointment Without Notice

Pursuant to Indiana Code 29-3-3-4(a), no guardian of an adult shall be applied, or protective order entered without notice, except upon verified allegations that delay may result in immediate and irreparable injury to the person, or loss, or damages to the property.

609.4. Appointment for a Minor

In every petition for the appointment of a guardian of the person of a minor child, the following information shall be given:

- A. The child's present address.
- B. The places where the child has lived within the past two (2) years and the names and present addresses of the persons with whom the child has lived during that period.
- C. General information concerning school, health, excreta.
- D. Whether, to the petitioner's knowledge, any other litigation is pending concerning the custody of the child in this or in any other state.
- E. Whether, to the petitioner's knowledge, any person not a party to the guardianship proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child.

609.5. Statutory Sealed Affidavit

In every petition for the appointment or modification of a guardianship for a minor, the attorney representing the petitioner shall question the parties as to the circumstances that must be reported to the Court under Indiana Code 29-3-2-7, Indiana Code 31-14-14-6, Indiana Code 31-17-2-26, Indiana Code 31-17-4-11 and Indiana Code 31-17-5. Where appropriate, a sealed affidavit is to be filed with the Court in substantially the form as provided by the Court.

609.6. Petition to Open a Guardianship Estate

All petitions to open a guardianship shall provide an approximate value and description of the property of the incapacitated person or minor.

609.7. Inventory

An inventory shall be prepared by the fiduciary in a guardianship within ninety (90) days following the date of appointment, or within thirty (30) days in the case of a temporary guardianship. The inventory prepared for the guardianship shall be filed with the Court on or before the last day identified above for preparation of the inventory.

609.8. Guardian's Report

The Guardian's Report filed by the guardian of the person as opposed to the estate, shall provide the present residence of the protected person and a description of his or her general condition. If the protected person is an adult. A report of an attending physician shall be filed with the Guardian's Report attesting to the fact that the incapacity of the person continues, and that the living arrangements for the protected person are appropriate. The Guardian's Report is to be filed with the Court on the same schedule as required for accountings in compliance with Rule 609.9 following.

609.9. Accountings and Verification Required

When an individual or corporate fiduciary has been appointed to handle the financial affairs of a protected person, an accounting shall be filed within thirty (30) days after the first anniversary of the date the

guardianship letters were issued. Thereafter, unless a contrary order is issued by the Court, all accountings shall be filed biennially. All guardianship accountings shall contain a certification of an officer of any financial institution in which guardianship assets are held, verifying the account balance. All accounts shall follow the prescribed statutory format. Informal, handwritten, or transactional accounts will not be accepted.

609.10. Social Security Benefits

All Social Security or Medicare Benefits received on behalf of an incapacitated person shall be included and accounted for in the guardianship accounting unless Court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility, or because of the amount of such funds, the Court finds that such funds can only be used by the guardian or designated person for the benefit of, or use for such incapacitated person.

609.11. Compliance with Other Rules

Nothing herein shall be deemed as amending, superseding, or altering the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States of America, and every fiduciary and attorney shall comply with same, if applicable.

609.12. Financial Matters

Other than for routine matters, the guardian shall obtain Court approval prior to taking any action on any financial matter pertaining to carrying out the guardian's duties and responsibilities for the protected person.

Rule LR20-TR66-610. Receivership Estates

610.1. Proceedings to Which This Rule is Applicable

This rule is promulgated, for the administration of estates by receivers or by other officers appointed by the court pursuant to Indiana Trial Rule 66.

610.2. Inventory and Appraisal

Unless the Court otherwise orders, a receiver or similar officer, as soon as practicable after appointment and not later than twenty-eight (28) days after he or she has taken possession of the estate, shall file an inventory and an appraisal of all the property and assets in the receiver's possession or in the possession of others who hold possession as his or her agent, and in a separate schedule, and inventory of the property and assets of the estate not reduced to possession by the receiver but claimed and held by others.

610.3. Periodic Reports

Within twenty-eight (28) days after the filing of inventory, and at regular intervals of three (3) months thereafter until discharged, unless the Court otherwise directs, the receiver or other similar officer shall file reports of the receipts and expenditures and of his or her acts and transactions in an official capacity.

610.4. Compensation of Receiver, Attorneys and Other Officers

In the exercise of its discretion, the Court shall determine and fix the compensation of receivers or similar officers and their counsel and the compensation of all others who may have been appointed by the Court to aid in the administration of the estate, and such allowances or compensation shall be made only on petition therefore and on such notice, if any, to creditors, and other interested persons as the Court may direct.

Rule LR20-PR00-611. Miscellaneous

611.1. Filings and Orders

Prior to the filing of any Order, parties shall provide notice to all other parties involved in the matter and will have filed with the Court proper pleadings to support said Order. Parties will contact the Court to schedule a hearing for all matters filed with Court, requiring the same prior to the submission of any Order, parties will leave all matters requiring a hearing incomplete, all Orders submitted in final form prior to the day of the scheduled hearing, will be rejected. If a party wished to vacate a hearing and submit a final Order for approval of the Court, the party shall submit an additional Motion or pleading indicating the reason for vacating the hearing and submission of the Order.

611.2. Continuances

Parties requesting a continuance shall submit a Pleading or Motion to the Court and shall indicate whether they have contacted all other parties and shall indicate in the pleading or motion the agreement or opposition to the request for continuance.

Rule LR20-PR00-612. Sale of Assets

612.1. Sale of Personal Property

To the extent that the sale of assets is not authorized by the decedent's will, no Petition to Sell Personal Property in a supervised estate or guardianship shall be granted unless a written appraisal, prepared by a person competent enough to appraise such property and setting forth its fair market value, is filed with the Petition or was previously filed with the inventory. This rule shall not apply to the personal property which is sold at public auction.

612.2. Date of Appraisal

All appraisals required by 613.1 above shall be made within one year of the date of the Petition to Sell.

612.3. Exempt Assets

No written appraisal shall be required for the sale of assets which are securities traded on a recognized stock exchange. Such assets include, but are not limited to, stocks, bonds, and mutual funds.

(700 SERIES RESERVED)

LOCAL JURY RULES FOR ELKHART COUNTY

Rule LR20-AR00-801. Summoning Jurors

Jurors shall be provided Notice, provide jury qualification and questionnaire, and summoned as directed by the Jury Administrator as needed by the courts of Elkhart County. A two-tier system is employed, first tier is the Notice and qualification questionnaire document by mail or electronic means and the second tier is summons as a member of a jury panel.

Not later than two (2) weeks before a jury panel for jury selection is needed, the Jury Administrator or Bailiff assigned to each court shall mail, or cause to be mailed, the Summons of Jury Service which shall specify the specific dates for which the prospective juror shall report for jury service.

Rule LR20-AR00-802. Proposed Jury Instructions

- A. A court may require a party to submit any proposed instructions in electronic format that allows editing.
- B. In any civil case each party shall tender to the court all proposed preliminary and final instructions at least fourteen (14) days prior to the trial date in electronic format that allows editing.
- C. In any criminal case each party shall tender to the court all proposed preliminary and final instructions at least seven (7) days prior to the trial date in electronic format that allows editing.
- D. The Court may in its discretion permit the parties to submit additional proposed final instructions after the close of the evidence in electronic format that allows editing.
- E. Any proposed instruction shall contain a citation of legal authority for the proposed instruction. Indiana Pattern Jury Instructions shall be used wherever applicable. Failure to comply with this rule shall be deemed a waiver by a party of the right to tender instructions.
- F. A party submitting proposed instructions shall submit the proposal in two formats: One (1) the proposed instruction shall identify the party tendering the instruction and shall contain citations of authority. The second format of the instruction shall be prepared so as not to identify either the party proposing the instruction or the citation of authority. Both formats shall be submitted in electronic format that allows editing.
- G. A party proposing any instruction shall deliver a copy of such instruction to any other party.

LOCAL RULE FOR COURT FEES FOR ELKHART COUNTY

Rule LR20-AR00-901. Intent and Scope of Fee Schedule

The Courts adopt the following schedule of fees for referrals to offset the costs of court services and to reduce the burden on the County taxpayer. The Courts find that the following rules establish a reasonable schedule of user fees for the Courts of Elkhart County. Fees charged are stated in the Elkhart County Courts Administrative Rules: [Fee Schedule](#)

901.1. Urine Drug Screening Fees

Urine Drug Screening Fees payable to the Court laboratory for deposit with the auditor as follows: [Fee Schedule](#)

901.2. Transfer Fees

Transfer fees shall be payable to the Clerk of the Court as follows:

- A. Problem Solving Court Fee [Fee Schedule](#)
- B. Intra-State probation transfer fee [Fee Schedule](#)
- C. Inter-State probation transfer fee [Fee Schedule](#)

Rule LR20-AR00-902. Urine Drug Screening Fees

[Fee Schedule](#)

Rule LR20-AR00-903. Late Payment Fee for Court Costs, Fines and Civil Penalties

A. Pursuant to Indiana Code 33-37-5-22, the Courts of Elkhart County adopt a late payment fee in the sum of twenty-five (\$25.00) for defendants who have not tendered timely payment of costs, fines, or civil penalties.

B. For the purposes of this local rule, an individual who has committed a crime, violated a statute defining an infraction, violated an ordinance of a municipal corporation, or committed a delinquent act, is defined as a “defendant.”

Rule LR20-AR00-904. Court May Suspend Late Payment Fee

Notwithstanding LR20-AR00-903, the Court that imposed the costs, fine or civil penalty may suspend the late payment fee required by this Rule if the Court finds that the Defendant has demonstrated good cause for failure to make a timely payment of the previously assessed costs, fine or civil penalty and issues an order to that effect directing the Clerk of the Court to suspend the assessment and collection of the Late Payment Fee.

904.1. Assessment of Late Payment Fee

A defendant who is required to pay court costs (including fees), a fine, or civil penalty and who has not been determined by the Court imposing the costs, fine, or civil penalty to be indigent shall pay, in addition to the costs, fine or civil penalty, a late payment fee in the sum of twenty-five dollars (\$25.00) to the Clerk of the Court if the defendant fails to pay the costs, fine or civil penalty in full before the later of the following: (a) the end of the business day on which the Court enters the conviction or judgment; or (b) the end of the period specified in a payment schedule set for the payment of court costs, fines, and civil penalties adopted for the operation of the Courts of Elkhart County.

904.2. Clerk to Assess and Collect Late Payment Fee

When a defendant meets the criteria described in LR20-AR00-903, the Clerk shall assess and collect a late payment fee in the sum of twenty-five dollars (\$25.00) unless the late payment fee is suspended by Court order. The Clerk may take all appropriate steps to collect late payment fees, including without limitation the retention of legal counsel to effectuate collection proceedings.

LOCAL COURT SECURITY

Rule LR20-AR19-1000. Court Facility Security

Indiana Administrative Rule 19 requires that “each court shall develop and implement a court security plan to ensure security in court facilities”. The power to do so is derived in part from Indiana Constitution Article 3 § 1 and Ind. Const. Art. 7. In addition, Indiana Code § 35-47-11.1-4(5) creates an exception to the general rule prohibiting a political subdivision from regulating the possession and carrying of firearms, etc.

The Judges of the Elkhart Circuit and Superior Courts (“the Courts”) have promulgated this local court rule as required by Ind. Trial Rule 81. It is intended to provide for the orderly operation of the Courts, the safety of the public, the litigants, the witnesses, and the court staff.

A. Anyone entering the locations listed below (collectively “the courtroom facilities”) must consent to a search of their person, including any package, briefcase, or purse:

1. the Elkhart County Courthouse.
2. the Elkhart County Probation Department.
3. any other location where a judicial officer of any of the Courts maintains an office.
4. and any other location where a judicial officer conducts court proceeding.

B. If a courtroom facility has more than one entrance/exit, the Courts may designate one or more of the entrances/exits to be used only for restricted purposes.

C. Unless exempt under Paragraph 6, below, anyone entering a courtroom facility is prohibited from having any of the following in his or her possession while in the courtroom facility:

1. a loaded or unloaded firearm; or
2. a weapon, device, taser (as defined in Indiana Code 35-47-8-3) or electronic stun weapon (as defined by Indiana Code 35-47-8-1), equipment, chemical substance, or other material, including a knife, razor, box-cutter, and switchblade that in the manner it is used, or could ordinarily be used, is readily capable of causing serious bodily injury.

D. Anyone refusing to comply with this Order is to be denied entrance to the courtroom facilities.

E. Anyone violating this Order may be found to be in contempt of court and punished for that contempt pursuant to the inherent power of the Courts and/or pursuant to Indiana Code 34-47, Indiana Code 34-47-2, and/or Indiana Code 34-47-3.

E. The following individuals are exempt from this order:

1. a law enforcement officer, as defined in Indiana Code 35-31.5-2-185.
2. a judicial officer, as defined in Indiana Code 35-31.5-2-177.7.
3. a probation officer appointed pursuant to Indiana Code 11-13-1-1, who has satisfied all of the conditions listed in Indiana Code 11-13-1-3.5;
4. an employee of a locally or regionally operated Community Corrections Program, who is authorized to carry a firearm by his or her supervisor.
5. any other person authorized by a full-time judicial officers of the Courts shall be exempt until a full-time judicial officers of the Courts withdraw the exemption. The judicial officers are to

promptly provide the Elkhart County Sheriff with a copy of the authorization or the withdrawal of the authorization.

F. Any person listed in Paragraph 6 SHALL NOT BE EXEMPT whenever they or any member of their family is a party to any proceeding taking place. This does not include appearing in the individual's official capacity.

G. The statutes cited above may change from time to time. This local court rule shall automatically refer to the relevant statutes in effect at any given time.

This local rule, as adopted, has been placed in the Record of Judgments and Orders in the Office of the Clerk of the Elkhart Circuit Court.