

**STATE OF INDIANA – COUNTY OF WABASH  
IN THE WABASH CIRCUIT AND SUPERIOR COURTS**

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**Notice of Proposed New Rule or Amendment(s) to Local Court Rule(s)  
August 31, 2022**

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In accordance with Trial Rule 81 of the Indiana Court Rules, the Wabash Circuit and Superior Courts hereby give notice to the bar and the public that the Courts propose to amend the Local Rule(s) for the courts of record of Wabash County, effective January 1, 2023.

All new text is shown by **bold** and deleted text is shown by ~~strikethrough~~. LR85-JR00-2 is new. Supreme Court approval is required for Local Rules concerning LR 85-TR-79-10 & LR 85-CR-2.2-2 and will not take effect until approved by the Supreme Court.

Notice has been given to the public by posting on the website of the Wabash County Clerk and at the Indiana Judiciary webpage for Local Rules (<https://www.in.gov/courts/publications/local-rules/>), and by furnishing a copy to the officers of the Wabash County Bar Association. A paper copy of the proposed amended local rule(s) will be made available for viewing in the office of the Clerk of Wabash County, 69 West Hill Street, Wabash, IN 46992 during normal business hours.

The time period for the bar and the public to comment shall begin on August 31, 2022, and shall close on September 30, 2022. The proposed amendments to the rule will be adopted, modified or rejected before October 28, 2022, and, if required, the final version of the rule will be submitted to the Indiana Supreme Court for review and approval not later than November 1, 2022.

Comments by the bar and the public should be made in writing to:

Hon. Robert R. McCallen, III, Judge of the Wabash Circuit Court or Hon. Benjamin DR Vanderpool, Judge of the Wabash Superior Court, Attn: Public Comment on Local Rules, Wabash County Courthouse, 69 West Hill, Wabash, IN 46992.

DATED this 31<sup>st</sup> day of August, 2022, on behalf of the Judges of Wabash County.

\_\_\_\_\_/S/\_\_\_\_\_  
Robert R. McCallen, III, Judge  
Wabash Circuit Court

**LR85-AR00-8      Retention/Destruction of Evidence Schedules**

(A) In all cases, the Court shall proceed pursuant to these rules unless the Court directs a longer retention period after motion by any party or on its own motion.

(B) Retention Period for Evidence Introduced in Civil cases, including Adoption, Paternity, and Juvenile proceedings. All models, diagrams, documents or material admitted in evidence or pertaining to the case placed in the custody of the Court Reporter as exhibits shall be taken away by the parties offering them into evidence, except as otherwise ordered by the Court, four (4) months after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the Court Reporter for two (2) years from the termination of the appeal, retrial, or subsequent appeal and termination, whichever is later.

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

(C) Retention Periods for Evidence Introduced in Criminal, Misdemeanor, Class C and Class D Felonies **and Level 5 and Level 6 Felonies** and Attempts Misdemeanor, Class C and Class D Felonies **and Level 5 and Level 6 Felonies** and Attempts. All models, diagrams, documents or mater admitted in evidence or pertaining to the case placed in the custody of the Court Reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the Court, 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 conviction or sentence or post-conviction action is pending.

The Court Reporter shall retain the mechanical or electronic records or tapes shorthand or stenographic notes as provided by Administrative Rule 7.

(D) Retention Periods for Evidence Introduced In Criminal Class A and Class B Felonies, Murder and Attempts Class A and Class B Felonies, **Level 1, 2, 3 and 4 Felonies**, Murder, and Attempts. All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the Court Reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the Court, 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.

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

(E) 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 briefly 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.

(F) Notification and Disposition. In all cases, Court shall provide actual notice, by mail, to all attorneys of record and to parties only if unrepresented by Counsel, that the evidence will be destroyed by a date certain if not retrieved before that date. Counsel and the parties have the duty to keep the Court informed of their current addresses and notice of the last current address shall be sufficient. Court Reporters should maintain a log of retained evidence and scheduled disposition date and evidence should be held in a secure area. AT the time of removal, detailed receipts shall be given to the Court Reporter by the party receiving and removing the evidence and the receipt will be made part of the Court's file.

(G) In all cases, evidence which is not retaken under notice should be disposed of by the Sheriff 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.

(H) Biologically Contaminated Evidence. A party who offers biologically contaminated evidence must file a pre-trial notice with the trial Court and serve all the parties so that the Court can consider the issue and rule appropriately before trial. A party can show contaminated evidence or pass photographs of it to the jury, but no such evidence, however contained, shall be handled or passed to jurors or sent to the jury room.

*(Amended effective \_\_\_\_\_, 2022)*

### **LR 85-TR 79-10 Selection of a Special Judge Pursuant to Trial Rule 79(H)**

Pursuant to TR 79(D) - Within seven (7) days of the notation on the Chronological Case Summary (CCS) of an Order granting a change of judge or an order of disqualification, the parties may agree to the appointment of an eligible special judge. An eligible special judge is a judge, a full-time judicial officer, or a senior judge assigned to the Court. The agreement of the parties must be in writing and filed in the Court where the case is pending.

If the selection of a special judge is not agreed upon, then the remaining full-time judge in the County shall be named as special judge.

If that judge cannot serve, then the Clerk shall appoint a special judge, on a rotating basis, from the remaining full-time judges **or full-time judicial officers (as defined in TR 79(J))**, within the district as follows:

Adams Circuit Court; Adams Superior Court; Huntington Circuit Court; Huntington Superior Court; Wells Circuit Court; and Wells Superior Court. The Clerk shall also maintain a list for appointment of full-time judges who have agreed to serve as special judge from the following contiguous counties: Grant, Miami, Fulton, Kosciusko, and Whitley; and a list of senior judges who have agreed to serve as special judges. If that judge cannot serve, then the Clerk shall continue the appointment process until a special judge is selected. If no judge is eligible to serve as special judge, or if the particular circumstances of the case warrants the selection of a special judge by the Indiana Supreme Court, then the Court shall certify that fact to the Indiana Supreme Court.

*(Amended effective \_\_\_\_\_, 2022)*

### **Criminal Rules (CR)**

## **LR 85-CR2.2-2 Selection of Special Judges**

In any criminal case in which a special judge must be appointed, the Clerk of the Court shall select the Special Judge in accordance with the following procedures: If the Special Judge is required to be appointed on a case in the Wabash Circuit or Superior Court, then the remaining full-time judge in the County shall be named as Special Judge. If that judge cannot serve, then the Clerk shall appoint a Special Judge from the following contiguous counties: Fulton, Grant, Huntington, Kosciusko, Miami, and Whitley; the Adams Circuit and Superior Courts; the Wells Circuit and Superior Courts; **or full-time judicial officers of the respective counties**; and, a list of senior judges who have agreed to serve as special judges.

*(Amended effective \_\_\_\_\_, 2022)*

## **Jury Rules (JR)**

### **LR85-JR00-2 Notice/Summons of Jurors**

Wabash County uses the two-tier process for sending notice/summons to prospective jurors.

*(Added effective \_\_\_\_\_, 2022)*