

Date: February 1, 2019

TO: THE MUNCIE BAR ASSOCIATION AND THE GENERAL PUBLIC

**Notice of Proposed Amended Local Rule Court Rules  
February 1, 2019**

The Delaware County Board of Judges pursuant to Trial Rule 81 give notice to the bar and the public of their proposed amended Local Rules to be effective **March 4, 2019**. All new text is shown by underlining and deleted text is shown by ~~striketrough~~. Supreme Court approval is required for Local Rules concerning assignment of cases and caseload allocation.

The time period for the bar and the public to comment shall begin on February 1, 2019, and shall close on March 4, 2019. The proposed amended rules will be adopted, modified or rejected before March 4, 2019, and changes made if required after the comment period has ended.

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

The Honorable Marianne Vorhees, Presiding Judge of the DELAWARE Circuit Court c/o Emily M. Anderson, Court Administrator, Attn: Public Comment on Local Rules, DELAWARE County Justice Center, 100 W. Washington Street, Muncie, Indiana. Or, e-mail to: [eanderson@co.delaware.in.us](mailto:eanderson@co.delaware.in.us)

A paper copy of the proposed amended local rule will be made available for viewing in the office of the Clerk of Delaware County, Delaware County Courthouse, 100 W. Main Street, Muncie, Indiana and the Delaware County Clerk's Filing Office, Delaware County Justice Center, 100 W. Washington Street, Muncie, Indiana during normal business hours. Persons with Internet access may view the proposed amended Local Rules at the following websites: [www.co.delaware.in.us/clerk](http://www.co.delaware.in.us/clerk) and [www.courts.IN.gov/rules/local](http://www.courts.IN.gov/rules/local)

**DELAWARE COUNTY BOARD OF JUDGES**

\_\_\_\_\_/s/  
Marianne Vorhees, Presiding Judge  
Delaware Circuit Court No. 1

\_\_\_\_\_/s/  
Kimberly S. Dowling, Judge  
Delaware Circuit Court No. 2

\_\_\_\_\_/s/  
Linda Ralu Wolf, Judge  
Delaware Circuit Court No. 3

\_\_\_\_\_/s/  
John M. Feick, Judge  
Delaware Circuit Court No. 4

\_\_\_\_\_/s/  
Thomas A. Cannon Jr., Judge  
Delaware Circuit Court No. 5

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

**I. Discovery**

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

In all filed juvenile delinquency cases, unless relieved by court order, the prosecuting attorney shall, ~~within thirty (30) at least twenty-one (21) days after~~ prior to the initial fact-finding hearing ~~in any delinquency action filed against the child~~, furnish the attorney for the child the following:

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

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

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

In all filed juvenile delinquency cases, unless relieved by court order, counsel for the child shall, ~~within thirty (30) at least fourteen (14) days after receiving the discovery from the State of Indiana in any delinquency action filed against the child~~ prior to the fact-finding hearing, furnish the attorney for the State of Indiana the following:

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

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

## **II. Motions in Limine**

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

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

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

*(Amended effective \_\_\_\_\_, 2019)*

**LR18-AR01-DLR-0011**  
**Attorney Fees in Probate Matters**

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

1. To establish uniformity in determining a fair and reasonable fee for supervised and unsupervised estates, guardianships, wrongful death actions, and minor's claim settlements in Delaware County, Indiana.
2. To provide a guideline to assist all judges of the Circuit Court of Delaware County in determining fair and reasonable fees.
3. To furnish a guideline to attorneys so that attorneys can forecast to their clients the fees the estate may incur before the administration commences.
4. To assist the legal profession in arriving at a fair and reasonable fee for estate work. This schedule is not a minimum fee schedule but a maximum fee schedule. The Court recognizes that every attorney and personal representative has a right and an obligation to request a fee which is fair and reasonable for the estate work performed, taking into account the provision in the Rules of Professional Conduct which applies to all attorneys admitted to practice in Indiana. Fees should always bear a reasonable relationship to the services rendered. In an uncomplicated estate, a reasonable fee may be less than the maximum fees listed in the following schedule and should not be based solely upon the percentages set out in said schedule.

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

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

Personal Representative and Attorney Fee Schedule

I. Administration of the Gross Estate.

A. Gross Estate Services include, but will not necessarily be limited to, opening the estate and

qualifying the personal representative; preparing and filing the inventory; collecting assets; paying claims; preparing and filing non-extraordinary petitions (including but not limited to petitions to sell real or personal property, petitions to deliver personal property to beneficiaries, petitions to abandon real or personal property, and petitions for appointment of appraisers);; preparing and filing the final report; obtaining an order approving the final report; distributing assets to beneficiaries; obtaining discharge of the personal representative; preparing and filing the supplemental report after distribution; and preparing and serving all necessary notices on interested parties, including readily ascertainable creditors of the estate, during the estate proceeding.

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

C. Maximum Fees for Administering the Gross Estate: the Court may approve the following maximum fees:

1. Individual Personal Representative:

Fair Market Value Of Probate Estate Including Income	Percent Rate For Individual Personal Representative	Percent Rate For Professional Services of Attorney
First \$25,000.00	4%	8%
Next \$25,000.00	3%	6%
Next \$50,000.00	2 ½%	5%
Next \$900,000.00	1 ½%	3%
Next \$1,500,000.00	1%	2%
Excess of \$2,500,000.00	½%	1%

Where the attorney acts as both the attorney and Personal Representative, the above schedule will be applied.

2. Corporate Personal Representative

Fair Market Value Of Probate Estate Including Income	Percent Rate For Corporate Personal Representative	Percent Rate For Professional Services of Attorney
First \$25,000.00	6%	6%
Next \$25,000.00	5%	5%
Next \$50,000.00	4%	4%
Next \$900,000.00	3%	3%
Next \$1,500,000.00	2%	2%
Excess of \$2,500,000.00	1%	1%

D. Non-Probate Assets.

Non-probate assets are those assets for which the attorney representing the personal representative

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

#### E. Additional Fees.

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

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

#### F. Unsupervised Estates.

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

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

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

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

If the fee requested to administer the Gross Estate conforms to the Guideline in Paragraph I. (C), the Court may waive a hearing on the Petition.

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

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

Attorneys shall file the following "Instructions to Personal Representative of Unsupervised Estate" along with the Petition and other paperwork file to open the Estate. The Court may decide not to sign the

Order appointing the Personal Representative if the Attorney does not provide an executed copy of the Instructions:

COURT'S INSTRUCTIONS TO PERSONAL REPRESENTATIVE  
OF UNSUPERVISED ESTATE

Please read carefully before you date and sign. One copy of this form must be filed with the Court. Keep one copy for your records.

Introduction:

You have been appointed as the personal representative of the estate of a deceased person. By your appointment, the Court has placed in you the highest trust that you will perform your duties in the best interests of all beneficiaries and creditors of the estate. It is important that you fully realize your duties and responsibilities. Listed below are some, but not all of them.

You must be represented at all times by an attorney of record approved to so act by written order of the Court. Your attorney is required to reasonably supervise and guide your actions as personal representative unless and until that attorney is permitted by order of the Court to withdraw from representing you.

Your attorney is required to notify the Court in the event that you are not timely performing or improperly performing your fiduciary duties to the beneficiaries and creditors of the estate and by signing these Instructions you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice it will set the matter for hearing and require you to personally appear and account to the Court for all actions taken or not taken by you as personal representative.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, you, as personal representative, are ultimately responsible to see that the estate is properly and promptly administered, and you are personally liable for incorrect distributions, payments, or acts, as well as any unpaid taxes or costs of administration.

As personal representative, it is your responsibility to:

1. Inspect all documents and personal papers of the decedent and retain anything pertinent to tax reporting, location and value of assets, debts or obligations of or to the decedent, or any other items of significance to administration of the estate of the decedent.
2. Locate, collect and maintain all property owned by the decedent.
3. Keep motor vehicles and real estate insured and protected.
4. Immediately fill out a change of address at the post office to have the decedent's mail forwarded to you.
5. Determine the values of all assets on the date of death, obtaining appraisals if needed.

6. Inventory the contents of any safety deposit box.
7. Collect any proceeds of life insurance on the life of the decedent which is payable to the estate. Obtain Form 712 from the insurance company, if needed for taxes.
8. Sign your name as "Personal Representative for the Estate of (name of decedent)" on accounts and securities which are registered to the estate.
9. Open a separate checking account in your name as "personal representative for the estate of (the decedent)", and NEVER CO-MINGLE your funds or anyone else's funds with this account. Always make estate expenditures by check and retain proof of payment. Make sure the bank is willing to return cancelled checks to you if needed. Obtain a federal I.D. number for the checking account. Do not use your Social Security number or decedent's Social Security number.

It is recommended by the court that you leave the checkbook with your lawyer so that the lawyer can aid you in maintaining accurate records of receipts and expenditures for final accounting purposes.

- A. DO NOT put any of your funds or *anyone* else's funds in the estate checking account.
  - B. Always pay for estate expenses by checks from the estate checking account. Do not pay any expenses with cash,
  - C. Keeps records of all deposits including the identity of the person or entity paying the money into the estate.
10. Determine all debts that the decedent owed. Look through decedent's tax returns and other papers. Talk to anyone who knew decedent's business. Consult your attorney as to payment of debts, costs of administration, bond premiums, and funeral bills. Some debts may be unenforceable. Some may have priority over others.
  11. Have your attorney provide written notice of the administration of the estate to all known creditors of the estate.
  12. NEVER borrow estate property or put it to your own personal use.
  13. Within two (2) months of your appointment, you should prepare a Verified Inventory of the assets of the estate conforming with the requirements of I.C. 29-1-7.5-3-2 and have it available to be furnished to distributees on request.
  14. DO NOT distribute any estate assets until assets (including personal property) are appraised, and consult with your attorney prior to making any distribution.
  15. Prepare and file income tax returns for the tax year in which the decedent died and any returns *for* prior years if needed. Timely prepare and file any estate or fiduciary income tax returns and pay taxes as they come due.

16. After you fully complete the estate administration you must file a closing statement with the Court verifying that all proper claims, expenses and taxes have been paid, that all assets have been properly distributed, and that a copy of the closing statement has been sent to all distributees, fully accounting for all assets, expenses and distributions made to the beneficiaries.

17. Notify the Court and your attorney of any change in your address or telephone number.

18. Keep a record of the time you spend working on the estate. You are entitled to a reasonable fee, unless you waive a fee. Time records will help the Court determine your fee.

19. Always contact your attorney for advice if you are unsure as to any act as personal representative. Have your attorney counsel you in relation to the estate and explain anything that you do not fully understand.

*I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or improperly performing my fiduciary duties to the beneficiaries and creditors of the estate even if such information would be otherwise confidential.*

*I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.*

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*Signature, Personal Representative      Signature, Personal Representative*  
*Print, Personal Representative                      Print, Personal Representative*

*I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a personal representative of an unsupervised estate.*

\_\_\_\_\_  
*Signature, Attorney*

\_\_\_\_\_  
*Print, Attorney*

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

Attorneys shall file the following "Instructions to Personal Representative of Supervised Estate" along with the Petition and other paperwork filed to open the Estate. The Court may decide not to sign the Order appointing the Personal Representative if the Attorney does not provide an executed copy of the Instructions:

**COURT'S INSTRUCTIONS TO PERSONAL REPRESENTATIVE  
OF SUPERVISED ESTATE**

Please read carefully before you date and sign. One copy of this form must be filed with the Court. Keep one copy for your records.

## Introduction:

You have been appointed as the personal representative of the estate of a deceased person. By your appointment, the Court has placed in you the highest trust that you will perform your duties in the best interests of all beneficiaries and creditors of the estate. It is important that you fully realize your duties and responsibilities. Listed below are some, but not all of them.

This is a SUPERVISED ADMINISTRATION. This means that your actions are supervised almost entirely by the court; therefore, before you take any action of importance to the Estate, such as the transfer or sale of assets, you must first seek the permission of the court. If you have any questions as to whether to seek court permission, you should discuss this with your attorney before taking any action,

You must be represented at all times by an attorney of record approved to so act by written order of the Court. Your attorney is required to reasonably supervise and guide your actions as personal representative unless and until that attorney is permitted by order of the Court to withdraw from representing you.

Your attorney is required to notify the Court in the event that you are not timely performing or improperly performing your fiduciary duties to the beneficiaries and creditors of the estate and by signing these Instructions you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice it will set the matter for hearing and require you to personally appear and account to the Court for all actions taken or not taken by you as personal representative.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed, Although your attorney will file all papers with the Court, you, as personal representative, are ultimately responsible to see that the estate is properly and promptly administered, and you are personally liable for incorrect distributions, payments, or acts, as well as any unpaid taxes or costs of administration.

As personal representative, it is your responsibility to:

1. Inspect all documents and personal papers of the decedent and retain anything pertinent to tax reporting, location and value of assets, debts or obligations of or to the decedent or any other items of significance to the administration of the estate of the decedent.
2. Collect proceeds of life insurance on the life of the decedent which is payable to the estate. Obtain Form 712 from the insurance company, if needed for taxes.
3. Sign your name as 'Personal Representative for the Estate of (name of decedent)' on accounts and securities which are registered to the estate.
4. Locate, collect and maintain all property owned by the decedent. Keep motor vehicles and real estate insured and protected. Inventory the contents of any safe deposit box.

5. Prepare an inventory describing all property belonging to the estate, with date of death values, no later than two (2) months after your appointment, and file it with the Court and serve a copy on all known heirs; beneficiaries and distributees of the estate. Obtain appraisals if necessary.

6. Open a separate checking account in your name as "personal representative for the estate of (the decedent)", and NEVER CO-MINGLE your funds or anyone else's funds with this account. Always make estate expenditures by check and retain proof of payment. Make sure the bank is willing to return cancelled checks to you if needed. Obtain a federal I.D. number for the checking account. Do not use your Social Security number or decedent's Social Security number. It is recommended by the court that you leave the checkbook with your lawyer so that the lawyer can aid you in maintaining accurate records of receipts and expenditures for final accounting purposes.

A. DO NOT put any of your funds or anyone else's funds in the estate checking account.

B. Always pay for estate expenses by checks from the estate checking account. Do not pay any expenses with cash.

C. Keeps records of all deposits including the identity of the person or entity paying the money into the estate.

7. Ascertain all debts that the decedent owed. Look through decedent's tax returns and other papers. Talk to anyone who knew decedent's business. Consult your attorney as to payment of debts, costs of administration, bond premiums, and funeral bills. Some debts may be unenforceable, some may have priority over others. DO NOT MAKE any distribution to an heir or devisee without prior consent from your attorney. Always obtain receipts for all distributions made.

8. Immediately fill out a change of address at the post office to have the decedent's mail forwarded to you.

9. Prepare and file income tax returns for the tax year in which the decedent died and any returns for prior years if needed. Timely prepare and file any estate or fiduciary income tax returns and pay taxes as they come due.

10. Have your attorney provide written notice of the administration of the estate to all known creditors of the estate.

11. If the decedent owned a business or was involved in contracts which were not yet fully performed have your attorney obtain directions from the Court as to those matters.

12. DO NOT MAKE any distribution of personal property or real estate to an heir or devisee without prior Court order.

13. NEVER borrow estate property or put it to your own personal use.

14. Accounting:

Indiana law requires the estate to be closed within one (1) year of your appointment as personal representative. Before the estate can be closed, you must file with the Court a final accounting of your actions as personal representative.

A. Have your attorney file your final accounting, consisting of three (3) schedules, after the administration of the estate has been completed.

B. The first schedule must include all assets listed on the inventory, any income and additional assets obtained during administration, and any adjustments to the inventory.

C. The second schedule must be an itemized list of expenditures. Documentation for each expense shall include: (a) the payee; (b) check number or other identifying number on the instrument; (c) the amount disbursed; and (d) if the reason for disbursement is not apparent from the description of the payee, a description of the reason for the disbursement sufficient to substantiate the reason for the disbursement as part of the administration of the estate. Cancelled checks or facsimile copies of paid checks for each expenditure must be attached as evidence of payment, or in the alternative, an Affidavit in Lieu of Vouchers must be filed.

D. The third schedule must be a recapitulation indicating the remaining estate property after subtracting expenditures. A proposed distribution must be furnished to all interested parties, including beneficiaries of the estate.

15. After the Court approves your final account, make distribution to the proper people and file a supplemental report with the Court, attaching receipts, or in the alternative, an Affidavit in Lieu of Vouchers must be filed.

16. Notify the Court and your attorney of any change in your address or telephone number.

17. NEVER pay yourself or your attorney any fees from the assets of the estate without a prior Court Order, unless your attorney confirms to you that the law or local court rules allow you to reimburse yourself from estate assets for necessary expenses that you previously paid with your personal funds.

18. Keep a record of the time you spend working on the estate. You are entitled to a reasonable fee, unless you waive a fee.

19. Always contact your attorney for advice if you are unsure as to any act as personal representative. Have your attorney counsel you in relation to the estate and explain anything that you do not fully understand.

20. Do not sell an estate asset without prior Court Order unless the Will, in very specific terms, authorizes sale without court order, Consult your attorney about this.

*I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or improperly performing my fiduciary duties to the beneficiaries and creditors of the estate even if such information would be otherwise confidential.*



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

### **III. Guardianship**

#### **A. Fees**

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

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

#### **B. Attorney's Obligation**

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

#### **BC. Instructions Required in Guardianships over the Estate.**

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

### **COURT'S INSTRUCTIONS TO GUARDIANS**

Read carefully, date and sign one copy and return it to the court within ten (10) days. Keep a copy for your records.

You have been appointed guardian of an individual who, because of age or some incapacity, is unable to care for his or her own financial and/or personal affairs. It is important that you understand the significance of this appointment and your responsibility as guardian.

Upon being appointed guardian, you are required to post a bond in the amount set by the court and to take an oath to faithfully discharge your duties as guardian. The bond assures the court that you will properly protect the assets of the protected person.

Listed below are SOME of your duties. These apply whether or not the protected person is your relative. Ask the attorney for the guardianship to fully explain to you each of the items below and to inform you about other duties you have in your particular circumstances. Although the attorney will file all the papers with the court, the ultimate responsibility to see that all reports and papers are accurately prepared and filed rests with you.

As guardian, you are required:

1. To file with the court, within ninety (90) days after your appointment, a verified inventory of all property belonging to the protected person.

2. To file with the court, within thirty (30) days of the first anniversary of your appointment and, thereafter, every two (2) years, a verified account, this details all property and income received by, and all expenses paid from, the guardianship.

A. Vouchers or receipts or, in the alternative, an Affidavit in Lieu of Vouchers should be attached in order to verify each expenditure.

B. The present residence and general welfare of the protected person must be stated.

C. A report from the treating physician is required if the incapacitated person is an adult.

3. To pay bond premiums and court costs as they become due,

4. To file federal and state tax returns and to pay taxes for the protected person in a timely fashion.

5. To open an account, in your name as guardian, in which all of the cash assets of the protected person are deposited. This account shall be used for all payments and disbursements on behalf of the guardianship and the protected person. Cancelled checks or other written proof of payment should be maintained.

6. To obtain approval from the court to litigate matters concerning guardianship assets.

7. To file a final accounting upon termination of the guardianship. This should detail all property and income received and all expenses paid, with receipts to verify each expenditure.

A guardian is obliged to encourage self-reliability and independence of the protected person and to consider recommendations relating to the appropriate standard of support.

You must protect and preserve the protected person's property and conserve any property of the protected person in excess of the protected person's needs. Accurate accounts must be kept and guardianship funds should never be combined with your personal funds.

You may not make expenditure of investments from guardianship funds without court approval.

Unauthorized use of guardianship assets may result in personal liability and/or criminal prosecution.

If any questions arise during the guardianship, you should consult with your attorney.

GUARDIANS:  
A GUIDE TO PERFORMING YOUR FIDUCIARY DUTIES  
I. INTRODUCTION

You have just taken an oath to faithfully discharge your duties as a guardian. This oath was intended to impress upon you that you have been placed in a position of the utmost trust and responsibility.

Most guardians are given the power and duty to handle an incompetent person's financial affairs. Occasionally, however, the court appoints a guardian when the incapacitated adult or minor has no assets or the powers granted the guardian do not encompass the property of the incapacitated person. If

your appointment does not include control of any financial affairs, then your duties are limited to the specific purpose for which the guardianship was established.

Most of the remainder of this guide pertains to guardians who are appointed for the purpose of managing the property of a protected person. The specifics of your duties to handle the protected person's property will be discussed shortly, but you'll go a long way toward success by simply remembering that the property you will be handling is not your own. You must handle the property of the protected person as you would have the protected person handle your property.

## II. SPECIFIC DUTIES

The person over whom you have been appointed guardian is under some disability which prevents him from competently handling his financial affairs. Your job is to handle this aspect of life for him. There's really nothing mysterious about what you'll be doing. Just as you personally have an income, pay bills, buy clothing and pay taxes, the protected person will in all likelihood have an income, owe bills, need clothing and be required to pay taxes. The only difference between the two of you is that you can handle these tasks on your own while the protected person requires your assistance to accomplish them,

Indiana Law specifically details the duties of the guardian. We now turn to an examination of that law.

### A. BOND

In order to protect the protected person, every guardian must post a sufficient bond with the court before undertaking his duties. The amount of the bond is fixed at an amount equal to all of the protected person's personal property, plus the annual rental value of any real estate. While there is no exception to the bond requirement, there may be an alternative. If the protected person owns assets above and beyond those necessary to provide for his needs, you may petition the court for permission to place the excess funds in a restricted account. Typically, a restricted account is a Certificate of Deposit with the following words typed on the face of the document: "not to be cashed without order of Delaware Circuit Court No. \_\_\_\_". If the guardianship is over a minor, the following words may be added: "or upon protected person reaching the age of 18". Provided there exist no other reasons for requiring bond, the restricted funds will then be exempt from the bond requirement.

Finally, you may be wondering why the court may have required only a minimal bond upon your appointment. The reason is simple—neither the court nor you are yet fully aware of the extent of the protected person's assets. Upon your filing of an inventory, the bond may be adjusted accordingly.

### B. INVENTORY

Indiana Law requires that every guardian of another persons' property file an inventory of that property within ninety (90) days of the date of his appointment. The inventory serves an important purpose: it appraises both you and the court of the extent of the protected person's property.

The inventory which you file must contain every item of the protected person's property which shall come to your possession or knowledge. The property must be classified as to its type (e.g., stocks, bank accounts, real estate) and, if encumbered by a mortgage or other lien, this fact must also be noted.

The fair market value of each item of the protected person's property must be indicated in the inventory. Many items, such as bank accounts, will pose no valuation problems. However, where there is

reasonable doubt as to the value of property, the law permits the employment of a disinterested appraiser to assist in the valuation process. If an appraiser is employed, his name and address must be indicated on the inventory.

### C. TAKING POSSESSION OF THE PROTECTED PERSON'S PROPERTY

Your letters of guardianship represent your authority to act for the protected person. By representing these to persons or institutions who may be holding the protected person's property, you will be permitted to take that property into your possession.

The phrase "take possession" should not be construed literally. It is not intended that you run out and gather everything the protected person owns so that you can store it in your basement. Rather, you need to contact the persons or institutions holding your protected person's property, either show them or provide them with your copies of your letters, and arrange for the funds or property to be held in the protected person's name with your name listed as guardian. So that no one except you can draw on said funds, do not surrender the original copy of your letters of guardianship—certified copies of your letters may be obtained from the Delaware County Clerk's Office.

### D. PAYING THE PROTECTED PERSON'S BILLS AND EXPENSES

Your primary purpose as guardian of an adult incompetent's estate is to manage his financial affairs. As part of your management responsibility you will be required to pay all valid bills, expenses and claims of the protected person while constantly bearing in mind your duty to preserve the assets of your protected person.

In order to pay these bills, a checking account must be open. This account will be in your name as guardian. The fact that it is a guardianship account must be clearly stated on the face of each check. The bills and expenses which a particular protected person incurs will vary according to the circumstances. If your protected person lives in his own home, there will be utility and other bills associated with home ownership. On the other hand, if the protected person resides in a nursing home, these bills may be eliminated and included in a single monthly payment to the nursing home.

In addition to the ordinary and necessary expenses of your protected person, extraordinary claims may have to be paid on occasion. For example, a hospital might present you with a bill for services which it claims to have provided the protected person prior to your appointment as guardian or an individual might approach you and claim that the protected person owes him money on a contract.

The question which you should ask when presented with any bill, expense or claim on your protected person's property is whether the obligation is valid. Your resolution of this inquiry is critical for, if you negligently honor an invalid claim, the court may hold you personally liable for the amount of the protected person's funds expended.

You may also find it necessary or desirable to provide your protected person with a periodic allowance. Once again, since you have a duty to preserve the assets of the protected person, you must take care that the purpose for which the allowance is desired is a valid one.

In either case, whether you are paying bills or are desirous of providing a periodic allowance, you should consult with your attorney. If there is any question as to the legitimacy or necessity of a bill or claim, authority should be obtained from the court before making payment.

These responsibilities as they relate to a minor are different from those of an adult. A minor's guardian has all the responsibility and authority of a parent and, therefore, is personally responsible for the financial support of the minor. As a general rule, the guardian may not spend the minor's funds, but, instead, must preserve them. Only upon a showing to the court that the parents' income is insufficient to provide for the minor's support will the court approve the expenditure of the minor's funds.

#### E. THE CURRENT REPORT

The law requires that you file a written report of your activities as guardian within thirty (30) days of the first anniversary of your appointment. Thereafter, such reports are due every two years. You fulfill this duty by filing a current report and accounting. If all of a minor's assets are in a restricted account, the court may waive this accounting requirement.

The current report should contain all information pertinent to the protected person's condition, including his or her present residence and general welfare. If the protected person is an adult, a report of the treating physician verifying the incapacitated state of the person and propriety of the living arrangements must be included with the current report.

Regarding the accounting, the current report must include three schedules. The first will show the total amount of the protected person's property included in the inventory and any additional assets received to the date of the accounting. The second schedule must list all expenditures which were made on behalf of the protected person and, if such amounts are approved by the court, they will be credited against the amount of property for which you are chargeable. Finally, the third schedule will be a recapitulation, and it will show the balance on hand after subtracting the credits you are claiming from the total amount of the property which has come into your hands. The balance on hand should list what assets you still hold. In order to verify your expenditures made on behalf of the protected person, you are required to attach cancelled checks or an Affidavit in Lieu of Vouchers, to the current report.

By now you should have realized that accurate record keeping is essential to the preparation of an acceptable current account. Remember that YOU are responsible for the protected person's property and that you are held personally liable for the expenditures of any amount which cannot be substantiated.

#### F. THE FINAL REPORT

A written Final Report is required in all guardianships. Most guardianships are established because of the protected person's age: he is either too young (under eighteen) and, therefore, legally disqualified from handling his own financial affairs or old age has in some way deprived him of the ability to handle this aspect of his life. Therefore, most guardianships terminate either upon the protected person's reaching majority or upon death.

When it is time to terminate the guardianship, you will need to file a final report. The report must indicate the reason for terminating the guardianship and must detail the disposition which you propose to make of the protected person's assets.

If the protected person is living, a hearing will be set to review the Final Report. A copy of the report must be furnished to the protected person and the protected person can file written objections before the hearing date. The court will examine the report to assure that your proposed disposition of the protected person's property is acceptable. The final account will be examined to assure that the expenditures which you made since the last accounting are permissible. Assuming the court approves, you will then be discharged from your duties and the guardianship will be closed.

### III. CONCLUSION

As guardian, you may be faced with difficult decisions as to how you should be handling the affairs of your protected person. You should realize that you need not make these decisions alone. If there is an expenditure which you desire to make or a sale of any of the protected person's personal or real property, you should consult with your attorney who will petition the court for its approval. If the court agrees with your proposal, it will enter an order to proceed. If the court disagrees, then an expenditure or sale for which you might have been held personally liable will have been avoided.

You are encouraged to contact your attorney to assist you with your duties. Since Indiana law and Delaware County Court policy forbids employees (including judges and court personnel) from practicing law, an attorney will be your sole source for counseling on legal matters.

Finally, don't be overwhelmed by your duties. Remember that the property you'll be handling is not yours, and if you handle the protected person's affairs as you would have him handle yours, then you should not have any problems.

*I acknowledge receipt of a copy of the above instructions and have read and will follow these instructions carefully. I agree to properly carry out my duties.*

\_\_\_\_\_  
*Signature, Guardian*

\_\_\_\_\_  
*Signature, Guardian*

\_\_\_\_\_  
*Print, Guardian*

\_\_\_\_\_  
*Print, Guardian*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

*I acknowledge that I have carefully and completely discussed the above Instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a guardian of an incapacitated person.*

\_\_\_\_\_  
*Signature, Attorney*

\_\_\_\_\_  
*Print, Attorney*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

If a Guardian is required to deposit Guardianship Assets into a restricted account, the Attorney shall file, within Ten (10) Days after the Order is entered requiring the restricted account, the following Undertaking and Obligation:

*ATTORNEY'S UNDERTAKING AND OBLIGATION*

STATE OF INDIANA                    )  
  )SS:                    IN THE DELAWARE CIRCUIT COURT NO.  
COUNTY OF DELAWARE        )                    CAUSE NO.:

*IN THE MATTER OF THE  
GUARDIANSHIP:*

*ATTORNEY'S UNDERTAKING AND OBLIGATION*

*I, the undersigned guardian, having been appointed by the Delaware Circuit Court No. \_\_\_ on this date, hereby authorize my attorney, \_\_\_\_\_, to deposit all of the net guardianship assets, in the amount of \$\_\_\_\_\_, in an account or in a court approved investment with my name as guardian with the restriction that withdrawal of principal or interest may be made ONLY on written order of Delaware Circuit Court No. \_\_\_\_.*

*Date:* \_\_\_\_\_  
*Guardian:*

*I, the undersigned, as an officer of this court and as attorney for the above guardian, hereby assume and undertake personal responsibility to the above-named protected person and to the Delaware Circuit Court No. \_\_\_; to make the restricted deposit above designated and to deliver copies of the SIGNATURE CARD and/or PASSBOOK and/or such other account or investment documents evidencing such restricted deposit, and the amount thereof, to the court within ten (10) working days from this date or to refund all of said funds to the court forthwith upon demand.*

*Date:* \_\_\_\_\_  
*Attorney for Guardian*  
*Address:*  
*Phone:*

IV. Fees for Compromising, Settling, or Trying a Minor's Claim.  
Fee requests to compromise, settle, or try a minor's claim should not exceed the fee limitations imposed by the Court for representing the client in a wrongful death action; however, the attorney may

request reimbursement for suit costs and pre-trial discovery in addition to those fees.  
(Amended effective \_\_\_\_\_, 2019)

**LR18-JR00-DLR-0021**  
**Jury Management**

~~—The following local rule regarding jury management is now adopted by the undersigned Judges of Delaware County.~~

**~~A. Uniform Jury Selection.~~**

~~—The jury administrator and the supervising judge under the plan will provide a uniform system of jury selection for the courts ensuring that persons selected for jury service are selected at random from a fair cross section of the population of Delaware County. A computerized jury selection system will be fair and will not violate the rights of persons with respect to impartial and random selection of prospective jurors.~~

**~~B. Jury Selection Plan.~~**

~~—The jury administrator, under the supervision of the supervising judge, shall prepare a written plan for the selection of grand and petit jurors in the county. The plan must be designed to achieve the objectives of, and otherwise comply with Indiana Jury Rules. The Jury Selection Plan of the jury administrator is attached hereto and marked as Delaware County Jury Selection Plan.~~

**~~C. Master List.~~**

~~—The jury administrator shall compile and maintain a master list consisting of the approved Jury Pool Master List for Delaware County.~~

**~~D. Juror Service.~~**

~~—Names must be drawn for juror service quarterly, based on a calendar year commencing in January.~~

- ~~1. —The jury administrator shall create and file an alphabetical list of names drawn under this section. The alphabetical list may be in the form of a serial listing or discreet computer record filed together to constitute the alphabetical list. Names may not be added to the alphabetical list, except by order of the court. Neither the names drawn nor any list compiled from the alphabetical list may be disclosed to any person other than by order of the supervising judge.~~
- ~~2. —Names must be drawn randomly pursuant to Jury Rule 3.~~
- ~~3. —Names drawn from the master list may not be returned to the master list until all nonexempt persons on the master list have been called.~~

**~~E. Random Drawing of Names.~~**

- ~~1. —The master list will contain names in a sequential order, such as a numeric sequence, and drawn randomly from the Jury Management System through INCITE.~~

**~~F. Jury Qualification Form~~**

~~—The provisions of Jury Rule 4 will be followed in that not later than 7 days after the date of the drawing of names from the master list, the jury administrator shall cause to be mailed to each person whose name is drawn a juror qualification form.~~

- ~~1. —The form will be designed to reflect the prospective juror's name, address, and age.~~
- ~~2. —Whether the prospective juror is a citizen of the United States and a resident of the county; is able to read, speak and understand the English language.~~

3. — Has any physical or mental disability impairing the person's capacity to render satisfactory jury service

4. — If a prospective juror is unable to fill out the form, another person may fill out the form for the prospective juror. If the form is completed by a person other than a prospective juror, the form must indicate that another person has done so and the reason for doing so.

5. — If it appears there is an omission, ambiguity, or error in a returned form, the jury administrator shall resend the form, instructing the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury administrator not later than 10 days after its second receipt.

6. — A prospective juror who fails to return a completed juror qualification form as instructed may be directed by the jury administrator to immediately appear before the jury administrator to fill out a juror qualification form.

### **G. Disqualification for jury service**

— The supervising judge or the jury administrator shall determine solely on the basis of information provided on a juror qualification form or interview with a prospective juror whether the prospective juror is disqualified for jury service.

1. — The jury administrator shall enter this determination in the space provided on the juror qualification form or electronically and on the alphabetical list of names drawn from the master list.

2. — The ISSUING judge, upon request of a prospective juror, shall determine on the basis of information provided on the juror qualification form, correspondence from the prospective juror, or an interview with the prospective juror whether the prospective juror may be excused from jury service. The jury administrator shall enter this determination in the space provided on the juror qualification form.

3. — A person who is not disqualified for jury service may be excused from jury service only upon a showing of undue hardship, extreme inconvenience, or public necessity, until the time of the next drawing when the person is summoned. Appropriate records must be maintained by the jury administrator to facilitate summoning.

### **H. Exemption**

— A person who has completed a term of jury service in the twenty-four (24) months preceding the date of the person's summons may claim exemption from jury service.

### **I. Deferral**

— The judge or judges' designee may authorize deferral of jury service for up to one (1) year upon a showing of hardship, extreme inconvenience, or necessity. Deferral requests made after the issuance of summons for prospective jury duty must be approved by the Issuing Judge. The Issuing Judge may determine if the deferral request may be made by fax or in person. Deferrals may be given one (1) time per year.

— Upon receipt of an order for a grand jury, the jury administrator shall draw at random from the qualified Grand Jury Master List twenty (20) qualified jurors and direct them to appear before the supervising judge. The supervising judge shall randomly select six (6) jurors after explaining to the twenty (20) prospective jurors the duties and responsibilities of a grand jury.

— The names of qualified jurors drawn and the contents of the jury qualification forms completed by those jurors may not be made available to the public until the period of service of those jurors has expired. However, attorneys in any cases in which these jurors may serve may have access to the information.

**~~K. Preservation of Record~~**

~~After the period of service for which names were drawn from the master jury list has expired, and all persons selected to serve as jurors have been discharged, all records and papers compiled and maintained by the jury administrator or the clerk must be preserved by the clerk of the courts for the period prescribed by rule of the Indiana Supreme Court. The records and papers must be available for public inspection at all reasonable times.~~

**LR18-JR00-DLR-0022**  
**Jury Selection Plan**

1. ~~The Master Jury List will be created each year during the month of November containing the citizens of Delaware County from Bureau of Motor Vehicles and Indiana Department of Revenue lists for the county eighteen (18) years of age and older. The court administrator will be referred to as the “jury administrator” throughout this plan.~~
2. ~~To create the Master List, the names of persons from the Bureau of Motor Vehicles and Indiana Department of Revenue lists for the county eighteen (18) years of age and older will be provided by the Indiana Supreme Court. Data Processing will retrieve the information through the internet website for INCITE.~~
3. ~~During the first week of the second month of each quarter, the jury administrator will cause a draw of 2,500 names for petit jurors and 100 names for grand jurors from the Master List. Jury Questionnaires will be mailed and processed. A quarterly master list will be kept of all qualified jurors. A separate list of those persons excused from jury service will be maintained in a numerical table.~~
4. ~~To perfect the issuance of a Venire, the court personnel will submit a Venire Order with the cause number, name of case, the number of names to be called, and the date and time of the trial.~~
5. ~~Those persons selected from the random draw will be temporarily removed until all non-exempt persons have been called. All persons seated for jury service within the quarter will be removed permanently from the year’s list, along with those excused or deferred pursuant to statute.~~
6. ~~Non-exempt persons who request to be excused from jury service should first initiate the call through the Office of Court Services. Requests not included, per statute, shall be referred to the issuing court.~~
7. ~~The number of petit jurors that constitutes a panel for criminal C felony offenses and higher (filed prior to July 1, 2014); and Murder or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony offenses, (filed after July 1, 2014) shall be fifty (50) names. An *additional* number of names may be issued for specific cases requiring a larger pool of prospective jurors. The number of petit jurors that constitutes a panel for civil cases shall be thirty five (35) along with class D felonies (filed prior to July 1, 2014); and Level 6 offenses (filed after July 1, 2014); and misdemeanors.~~
8. ~~The number of grand jurors to be drawn for service will be twenty (20). The procedure for selection shall be the same as the petit jury draw with Data Processing providing the key number and the random selection of numbers to be used.~~

**LR18-AR00-DLR-0031**  
**Executive Organization**

**A. Board of Judges.**

~~———— The five judges of the Delaware Circuit Court shall constitute the Board of Judges.~~

**B. Presiding Judge.**

~~———— At the annual fall meeting the Board of Judges shall select from among themselves a presiding judge of the court. The presiding judge shall be selected for a minimum term of twelve (12) months, whose one year term shall begin the following January 1st. If available, the judge whose term as presiding judge has just ended shall serve as acting presiding judge when the presiding judge is unavailable. The presiding judge shall, as delegated by the Board of Judges:~~

- ~~1. ——— Direct preparation of the agenda and minutes of the Board of Judges meetings;~~
- ~~2. ——— Preside over the Board of Judges meetings and call special meetings as necessary;~~
- ~~3. ——— Ensure efficient operation of the court system and compliance with these Rules;~~
- ~~4. ——— Submit the annual budget for the court system, as approved by the Board of Judges, to include operation of the Delaware Circuit Court’s Probation Department;~~
- ~~5. ——— Present to the Board of Judges recommendations as to appointments or selections required of a circuit court judge;~~
- ~~6. ——— Direct preparation and circulation of all annual reports for the court system and amendments to these Rules;~~
- ~~7. ——— Maintain and distribute to the other judges policy manuals covering bond schedules, juror excuses, caseload allocation schedules and other matters pertaining to the day-to-day operation of the court system; and~~
- ~~8. ——— Perform other duties as directed by the Board of Judges or as set out in these Rules.~~

**C. Quarterly Meeting.**

~~———— The Board of Judges shall meet the months designated below to make policy decisions, provide educational reports, and review operations of the court system. The Director of Court Services, hereinafter referred to as the “court administrator” will be required to attend these meetings and participate in discussions. The meeting will be held during the months of January, April, July, October, and December on the 3rd Wednesday at Noon. A schedule of said meeting dates will be delivered each January by the Office of Court Services to each judge, chief adult probation officer, chief juvenile probation officer, and CASA Director.~~

**D. Fall Meeting.**

~~———— Each fall (October) the Board of Judges and the court administrator shall attend an extended meeting to discuss:~~

- ~~1. ——— Selection of the next presiding judge;~~
- ~~2. ——— Implementation of the next annual budget as approved by the County Council;~~
- ~~3. ——— Allocation of caseload;~~
- ~~4. ——— The annual reports and performance of the Adult and Juvenile Probation Department, and the Office of Court Services.~~

**E. Decisions.**

~~Whenever an action of the entire court is required, including selection of a presiding judge under I.C. 33-33-18, the judges herein shall act in concert. If the judges disagree, the decision of the majority of the judges controls. Local Rules shall be made by a vote of the majority of the Board of Judges.~~

~~LR18-AR00-DLR-0032~~  
~~Caseload Allocation~~

**~~A. Purpose.~~**

~~First and foremost, the judicial officers of Delaware Circuit Court shall make thoughtful, timely, reasoned and just decisions. The allocation of caseload must reflect this purpose.~~

**~~B. Procedure.~~**

~~The Board of Judges annually shall:~~

- ~~1. Review and analyze the statistics on current workload and case flow within the Delaware Circuit Court.~~
- ~~2. Give due weight to the expertise of each judge, the stress associated with certain caseloads, and the goal of keeping each judge competent in all areas of the law.~~
- ~~3. Analyze whether the current allocation is providing excellent public service. There shall be a presumption in favor of the current allocation in order to preserve public confidence in the system; promote stability for the employees of the court system, and avoid inefficient use of personnel, time and resources to effectuate change.~~

**~~C. Individual Case Transfer.~~**

~~Nothing in this Rule shall preclude the transfer of an individual case from one division of the Circuit Court to another division to promote efficiency and provide for timely resolution of cases. The transferring judge shall direct the Clerk to resubmit the case for transfer to a specific division as designated in the Local Rules of Criminal, Civil, and Small Claims Procedures. In all Orders of Transfer, provisions shall be made to ensure all applicable costs and fees be allocated to the proper cause of action.~~

*(Amended effective January 1, 2018)*

**LR18-AR00-DLR-0033**  
**Rules of Practice**

**A. Purpose.**

~~Local rules of practice and procedure now in existence and not inconsistent with Administrative Rules will continue to be in existence. Any new local rule will be promulgated pursuant to Trial Rule 81.~~

**B. Procedure.**

~~Each year the Board of Judges shall review the local rules and shall consider changes and additions suggested by the Delaware County Bar, the prosecuting attorney, the public defender, and the clerk of courts.~~

**C. Adoption.**

~~On July 1, 2000, and thereafter as amended, the Local Rules of Practice and Procedure for the Delaware Circuit Court are adopted and effective in all divisions of the Delaware Circuit Court. A copy of the Local Rules shall be forwarded to the Office of Court Services, the Clerk, and the President of the Delaware County Bar Association.~~

*(Amended effective January 1, 2018)*

**LR18-AR00-DLR-0034**  
**Budgetary Matters**

**~~A. Budgets.~~**

~~—The Board of Judges shall direct the preparation of one unified budget for all divisions of the Court, the Probation Department and the Office of Court Services to be funded from the county general fund upon approval of the County Council, and a separate budget for Title IV-D Court. The Title IV-D Court shall remain separate and apart from the unified budget. The Board of Judges shall further direct the preparation of additional budgets for programs funded by User Fee income upon approval by the County Council.~~

**~~B. Annual Procedure.~~**

~~—Each year the Board of Judges shall establish a schedule of budget preparation, review and submission with the goal of providing for the effective functioning of the Court, as follows:~~

- ~~1. —Each judge, CASA Director, and the chief probation officer shall submit written budget requests to the court administrator. These requests shall be specific and well justified in light of the past year's expenditures and the future needs of the offices. Any request shall be submitted by May 15.~~
- ~~2. —The Board of Judges shall meet to review the budget requests from the chief probation officer, the court administrator, and CASA Director to establish budget priorities, and to adopt the annual budgets for submission to the County Council.~~
- ~~3. —The budget proposals as adopted by the Board of Judges shall be prepared by the court administrator and signed by the presiding judge for submission to the County Council.~~

**~~C. Allocation of Resources.~~**

~~—The Board of Judges shall establish guidelines for allocation of individual line items in the yearly budget approved by the County Council.~~

**~~D. Claims.~~**

~~—Claims shall be submitted to the Office of Court Services for approval by the court administrator and subsequent submission to the Auditor's Office. The court administrator may approve all proper payroll claims and may approve all purchase, travel and training claims not exceeding maximum amounts set by the Board of Judges from time to time. Any claim exceeding these guidelines must be submitted to the Board of Judges for approval.~~

**~~E. Transfers Within Budget Categories.~~**

~~—If the court administrator determines that a transfer is necessary within budget categories, the court administrator shall direct the Auditor's Office to perfect said transfer, following consultation with the presiding judge.~~

**~~F. Transfers Between Budget Categories.~~**

~~—If the court administrator determines that a transfer between budget categories is necessary, a written proposal shall be submitted to the presiding judge for approval prior to submission to the County Council.~~

**~~G. Additional Appropriation.~~**

~~———— If the court administrator determines that an additional appropriation is necessary, a written proposal shall be submitted to the Board of Judges.~~

**~~H. Mandate.~~**

~~———— No individual judge shall exercise mandates for the adequate provision of court services, personnel, or other expenditures without consultation with the entire Board of Judges. The Board of Judges may exercise mandate authority upon vote of a majority.~~

*(Amended effective January 1, 2018)*

**LR18-AR00-DLR-0035**  
**Personnel**

**A. General Organization.**—The Delaware Circuit Court employs personnel, as follows:

1. **Court Divisions**
  - ~~Official Court Reporter~~
  - ~~Assistant Court Reporter~~
  - ~~Court Secretary~~
  - ~~Court Bailiff~~
  - ~~Master Commissioner~~
  - ~~Juvenile Magistrate~~
2. **Adult Probation Department**
  - ~~1 Chief Probation Officer~~
  - ~~1 Assistant Chief Probation Officer~~
  - ~~Adult Probation Officers~~
  - ~~Secretaries to assist probation officers~~
  - ~~User Fee Clerk/Secretary~~
3. **Juvenile Probation Department**
  - ~~Juvenile Probation Officers~~
  - ~~Secretary for Juvenile Probation~~
  - ~~User Fee Clerk/Secretary for Juvenile Probation~~
4. **Office of Court Services**
  - ~~Court Administrator~~
  - ~~Administrative Assistant~~
  - ~~Jury Administrative Assistant (full time or part time)~~
5. **CASA Office**
  - ~~Director~~
  - ~~Volunteer Coordinator~~
  - ~~Support Staff (full time or part time)~~

**B-1. Court Division.**

—The Delaware Circuit Court shall have five court divisions as follows:—Delaware Circuit Court shall become Delaware Circuit Court No. 1; Delaware Superior Court No. 2 shall become Delaware Circuit Court No. 2; Delaware Superior Court No. 1 shall become Delaware Circuit Court No. 3; Delaware Superior Court No. 3 shall become Delaware Circuit Court No. 4; Delaware Superior Court No. 4 shall become Delaware Circuit Court No. 5. Pursuant to IC 33-33-18-7, the judge of each court division shall have the sole authority to employ an official court reporter, an assistant court reporter, court secretary or secretaries, and a court bailiff to serve at the pleasure of the judge.

—The Board of Judges shall appoint and employ master commissioners to full time and/or part-time positions. The commissioner will not be entitled to practice law. The appointments will be for a two (2) year term. The duties of the master commissioner will be as set out in the Terms of Employment of a Master Commissioner. The juvenile magistrate will be responsible for all juvenile cases, guardianship cases related to CHINS cases, and protective order hearings related to juveniles at the request of the sitting judge.

## **~~B-2. Court Divisions – Title IV-D Court.~~**

~~—The Board of Judges shall have the sole authority to employ Title IV-D Court personnel and the judge with juvenile jurisdiction shall have the right to terminate their employment after consulting with the Board of Judges. All employees of the Title IV-D Court serve at the pleasure of the Board of Judges. As directed by the Board of Judges, the judge with juvenile jurisdiction shall supervise employees of the Title IV-D Court, and may delegate certain supervisory responsibilities to the staff or designee as set out in the Delaware County Circuit Court Personnel Policy and Procedures.~~

### **~~C-1. Adult Probation Department.~~**

~~—The Board of Judges shall have the sole authority to employ Probation Department personnel and to terminate their employment. All employees of the Probation Department serve at the pleasure of the Board of Judges. The Board of Judges shall advertise the position of chief probation officer and assistant chief probation officer with the Delaware County Probation Department, and interview and screen applicants for said position. The chief probation officer shall advertise any other available probation position and interview and screen applicants as directed by the Board of Judges. The chief probation officer shall provide to the Board of Judges a written summary of qualified applicants, with a recommendation of three applicants to be hired by the Board of Judges.~~

### **~~C-2. Juvenile Probation Department.~~**

~~—The Board of Judges shall have the sole authority to employ Juvenile Probation Department personnel and the supervising judge exercising juvenile jurisdiction shall have the authority to terminate their employment. All employees of the Juvenile Probation Department serve at the pleasure of the Board of Judges. The Board of Judges shall advertise the position of Chief Probation Officer, and interview and screen applicants for said position. The Chief Probation Officer shall advertise any other available probation position and interview and screen applicants as directed by the Board of Judges. The Chief Probation Officer shall provide to the Board of Judges a written summary of qualified applicants, with a recommendation of three applicants to be hired by the Board of Judges. As directed by the supervising judge exercising juvenile jurisdiction, the Chief Probation Officer shall supervise employees of the Juvenile Probation Department, and may delegate certain supervisory responsibilities to the staff and other employees as set out in the Delaware County Circuit Court Personnel Policy and Procedures.~~

### **~~D. Office of Court Services.~~**

~~—The Board of Judges shall have the sole authority to employ personnel in the Office of Court Services and to terminate their employment. The court administrator shall advertise an available position and interview and screen applicants as directed by the Board of Judges. The court administrator shall provide to the presiding judge a written summary of qualified applicants, with the court administrator's recommendation of three applicants to be hired by the Board of Judges. Employees of the Office of Court Services shall be supervised by the Director of Court Services/Court Administrator.~~

### **~~E. CASA.~~**

~~—The Board of Judges shall have the sole authority to employ personnel in the CASA Office. The Director of CASA shall advertise an available position and screen applicants as directed by the Board of~~

~~Judges. The Director shall provide to the judge with juvenile jurisdiction a written summary of qualified applicants, with the Director's recommendation of three applicants to be hired by the Board of Judges. Employees of the CASA Program shall be supervised by the Director. All applicants may be required to take a skills test.~~

**F. Personnel Policy.**

~~—The Board of Judges shall maintain a written personnel policy setting forth policies and procedures regarding the recruitment, selection, management, and termination of employees and the conditions and expectations of their employment. Each employee shall be given a copy of the personnel policy when employment begins.~~

*(Amended effective January 1, 2018)*

**LR18-AR00-DLR-0036**  
**Administrative Management**

**~~A. Management Team.~~**

~~————The court administrator, chief probation officer, and CASA director, and presiding judge shall constitute a management team for administrative issues. The team coordinates personnel policy issues and fiscal issues, identifies issues or procedures that may impact outside specific divisions, maintains consistency on administrative issues among the divisions, and addresses other issues and projects within the discretion of the presiding judge.~~

*(Amended effective January 1, 2018)*

**LR18-AR00-DLR-0037**  
**Office of Court Services**

**~~A. Establishment and Purpose.~~**

~~—The Board of Judges has established an Office of Court Services to coordinate jury management records, statistics compilation, court security, financial planning and budget management, case flow management, and public information and education for the Delaware Circuit Court.~~

**~~B. Director of Court Services – Court Administrator.~~**

~~—As directed by the Board of Judges, the court administrator shall prepare and monitor the court's budgets; coordinate continuing education and training for court personnel; assist in researching, defining, developing and implementing new programs and procedures; attend and coordinate Board of Judges meetings, coordinate and implement court security plans and perform other duties as required.~~

**~~C. Other Personnel.~~**

~~—The Board of Judges, through the court administrator, shall hire additional administrative aides, clerical staff and bailiffs as needed to provide services to the Court.~~

**~~D. Financial Planning and Budget Management.~~**

~~—The Office of Court Services shall be responsible for the preparation, monitoring and coordination of all budgets of the Delaware Circuit Court. All required fiscal reports are prepared for review by the Board of Judges. This office serves as primary liaison with the Auditor's Office, and prepares and submits payroll, claims and employee status reports as required. This office oversees maintenance and service of equipment.~~

**~~E. Jury Management.~~**

~~—The Office of Court Services is responsible for all functions pertaining to the provision of jury panels for the divisions of the Delaware Circuit Court.~~

**~~F. Records Management.~~**

~~—The Office of Court Services is responsible for compiling and reporting all statistical information regarding caseloads and case movement in the divisions of the Delaware Circuit Court. A written report summarizing the activity operation of the court shall be delivered to the Board of Judges by March 31 of each year.~~

**~~G. Case Flow Management.~~**

~~—The Office of Court Services is responsible for assessing case flow and workload distribution to the divisions of the Delaware Circuit Court, and provides supplemental staff when needed and/or available.~~

**H. Public Information and Education.**

~~\_\_\_\_\_ The Office of Court Services serves as liaison officer between the Delaware County Clerk and the Board of Judges. File stamps are maintained in the Filing Office to facilitate receipt of pleadings and correspondence for local attorneys. File stamps are also maintained in the individual court divisions. Mail receptacles are provided in the Office of Court Services for local attorneys to collect daily distribution of court documents. All questions regarding new filings or other procedures regarding the court shall be brought to the attention of the court administrator by the designated representative of the Delaware County Clerk.~~

*(Amended effective January 1, 2018)*

**LR18-AR00-DLR-0038**  
**Probation Department**

**~~A. Establishment and Purpose.~~**

~~As required by Indiana law, the Board of Judges has established a Probation Department to serve all divisions of the Delaware Circuit Court. The Probation Department staff conducts interviews and investigations, prepares Pre-Sentence and Juvenile Reports, and oversees probationers and juveniles for compliance with court orders. These activities are conducted with the goals of rehabilitating offenders and protecting society. Further, the Probation Department develops and maintains community-based alternate correction programs.~~

**~~B. Chief Adult Probation Officer.~~**

~~As directed by the Board of Judges, the chief adult probation officer shall oversee the efficient operation of the adult probation department; assist in the hiring and discharge of personnel; evaluate and train department employees; compile statistics and create required reports; monitor budget expenditures and outline budget requests; maintain written policies and procedures for the department as provided by the Board of Judges; and perform other duties as required.~~

**~~B-1. Chief Juvenile Probation Officer.~~**

~~As directed by the Board of Judges, the chief juvenile probation officer shall oversee the efficient operation of the juvenile probation department; assist in the hiring and discharge of personnel; evaluate and train department employees; compile statistics and create required reports; monitor budget expenditures and outline budget requests; maintain written policies and procedures for the department as provided by the Board of Judges; and perform other duties as required.~~

**~~C. Procedures.~~**

~~The Probation Department shall maintain a written policy, procedure and training manual which sets forth the manner of operation of the department and the duties of each officer or staff member.~~

**~~D. Statistics and Reports.~~**

~~The Probation Department shall maintain all statistical reports and records required by law and necessary for compliance with grant or program authorities. A written report summarizing the activity and operation of the Probation Department shall be delivered to the Board of Judges by March 31st of each year.~~

**~~E. Fees and Costs.~~**

~~Court-ordered supervision fees shall be collected by designated staff pursuant to an established system of financial records management. This system, subject to State Board of Accounts audit, shall delineate special funds accounts, maintenance of daily collections and ledgers, and proper deposit and disbursement of funds. An internal audit will be conducted any time the collection clerk or staff responsible for the collection of fees terminates employment.~~

**LR18-TR79-DLR-0051**  
**Civil Practice and Procedure**

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

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

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

**B. Assignment - Civil.**

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

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

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

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

### **C. Assignment – Juvenile.**

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

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

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

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

### **D. Maintaining Separate Lists.**

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

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

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

### **F. Forfeiture Proceedings**

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

*(Amended effective June 4, 2013; further Amended effective January 1, 2018; further Amended effective \_\_\_\_\_, 2019)*

**LR18-AR00-DLR-0052**  
**Allocation and Assignment of Cases**

**Circuit Court No. 1**

**Criminal:** The following case numbers shall be used for crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (class A felony), FB (class B felony), FC (class C felony), FD (class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C Felonies or D Felonies. The following case numbers shall be used for crimes committed on or after July 1, 2014: F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); F5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Levels 1, 2, 3, 4, 5 and 6 felonies.

**Civil:** PL (Civil Plenary), CC (Civil Collection), CT (Civil Tort), DR, DC, DN (Domestic Relations), ~~MF (Mortgage Foreclosure)~~, AD (Adoption), MI (Miscellaneous –excluding Specialized Driving Privilege Cases, Waiver of Reinstatement Fees Cases), ES, EM, EU, GU, TR (Probate), PO (Protective Orders) .

**Circuit Court No. 2**

**Criminal:** The following case numbers shall be used for crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (class A felony), FB (class B felony), FC (class C felony), FD (class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C Felonies or D Felonies. The following case numbers shall be used for crimes committed on or after July 1, 2014: F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); F5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Levels 1, 2, 3, 4, 5 and 6 felonies.

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

**Civil:** PL (Civil Plenary), CC (Civil Collection), CT (Civil Tort), DR, DC, DN (Domestic Relations), ~~MF (Mortgage Foreclosure)~~, AD (Adoption), MI (Miscellaneous - excluding Specialized Driving Privilege Cases, Waiver of Reinstatement Fees Cases), GU-with related juvenile cases ONLY, RS (Reciprocal Support), PO (Protective Orders).

**Circuit Court No. 3**

**Criminal:** The following case numbers shall be used for crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (class A felony), FB (class B felony), FC (class C felony), FD (class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C Felonies or D Felonies. The following case numbers shall be used for crimes committed on or after July 1, 2014: F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); F5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Levels 1, 2, 3, 4, 5 and 6 felonies.

**Civil:** PL (Civil Plenary), CC (Civil Collection), CT (Civil Tort), DR, DC, DN (Domestic Relations), ~~MF (Mortgage Foreclosure)~~, MI (Miscellaneous, Specialized Driving Privilege Cases, Waiver of Reinstatement Fees Cases), MH (Mental Health), PO (Protective Orders), XP (Expungement).

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

**Criminal:** The following case numbers shall be used for crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (class A felony), FB (class B felony), FC (class C felony), FD (class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C Felonies or D Felonies. The following case numbers shall be used for crimes committed on or after July 1, 2014: F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); F5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Levels 1, 2, 3, 4, 5 and 6 felonies.

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

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

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

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

**Juvenile:** NONE

**Civil:** PL (Civil Plenary), CC (Civil Collection), CT (Civil Tort), DR, DC, DN (Domestic Relations), ~~MF (Mortgage Foreclosure)~~, AD (Adoption), MI (Miscellaneous - excluding Specialized Driving Privilege Cases, Waiver of Reinstatement Fees Cases) PO (Protective Order), SC (Small Claims)

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

**Criminal:** The following case numbers shall be used for crimes committed on or before June 30, 2014: Felonies, which include MR (Murder), FA (class A felony), FB (class B felony), FC (class C felony), FD (class D felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Murder, or A, B, C Felonies or D Felonies. The following case numbers shall be used for crimes committed on or after July 1, 2014: F1 (Level 1 felony); F2 (Level 2 felony); F3 (Level 3 felony); F4 (Level 4 felony); F5 (Level 5 felony); F6 (Level 6 felony), MC (Miscellaneous Criminal), and misdemeanors in conjunction with Levels 1, 2, 3, 4, 5 and 6 felonies.

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

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

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

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

**Juvenile:** NONE

PL (Civil Plenary), CC (Civil Collection), CT (Civil Tort), DR, DC, DN (Domestic Relations), MF (Mortgage Foreclosure), MI (Miscellaneous – excluding Specialized Driving Privilege Cases, Waiver of Reinstatement Fees Cases), PO (Protective Order), SC (Small Claims), ES, EU, EM, GU, TR (Probate), TS (Tax Sale), TP (Tax Deed Petition).

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

*(Amended effective January 1, 2018; further Amended effective \_\_\_\_\_, 2019)*

**LR18-AR00-DLR-0061**

**Local Rule Governing the Storage, Processing, Disposition  
of Drug Forfeitures**

~~—The Judges of the Delaware Circuit Court hereby issue the following Local Rule in relation to storing, processing, disposition of drug forfeitures:~~

**A. Assets**

1. ~~—The assets seized by state, city, county, and town law enforcement officers pursuant to I.C. 34-24-1-1 and I.C. 34-24-1-2 shall be inventoried and kept until adjudication of the civil drug forfeiture case pursuant to I.C. 34-24-1-2. For racketeering forfeitures, see I.C. 34-24-2-2.~~

2. ~~—The State of Indiana shall file the forfeiture action as a miscellaneous civil (MI) action in the Circuit Court Division where the State either has filed or is required to file the related criminal action per Local Rule. If the State does not intend to file a criminal action, the State shall then file the forfeiture as a miscellaneous (MI) action in the court where the criminal case would have been filed.~~

**B. Adjudicated Drug Forfeitures**

1. ~~—All drug forfeitures must be adjudicated pursuant to I.C. 34-24-1-4. See I.C. 34-24-2-1 et seq. for racketeering forfeiture procedures. See I.C. 34-24-1-9 for situations where the prosecuting attorney determines that the evidence should be turned over to the Department of Justice.~~

2. ~~—Pursuant to I.C. 32-24-1-3 (a), if the respondent has filed an answer, the court shall schedule a hearing to determine the legitimacy of the forfeiture by a preponderance of the evidence. Pursuant to I.C. 32-24-1-3(d), if the respondent does not file an answer in a timely manner, the court, upon proper motion, shall enter judgment in favor of the State.~~

3. ~~—As part of any judgment in favor of the state, city, or county, the court shall determine the amount of law enforcement costs, which shall include the costs of the police agencies as well as the costs of prosecuting the civil and criminal actions. See I.C. 34-6-2-73. “Any excess in value of the proceeds or the money over the law enforcement costs [shall] be forfeited and transferred to the Treasurer of State for deposit in the common school fund.” I.C. 34-24-1-4(d)(2) (D).~~

**C. Non-Cash Assets**

1. ~~—Non-cash assets may be delivered for a period not to exceed three years to the city, county, or town law enforcement agency, which seized the property. After that period, the property shall be delivered to the Sheriff for public sale. I.C. 34-24-1-4(e).~~

2. ~~—An inventory of such assets should be made (which should correspond with the property booked into the property room), and the property delivered to the Sheriff for the next public sale. Public Sales should occur at least once a year.~~

3. ~~—In each action, the State shall file with the Court a report of the sale of all such property, together with proposed disposition in accord with the original determination of law enforcement costs, including those due the Criminal Justice Institute Grant Fund Program Income Account. The Court shall review and approve the report. The forfeiture order allowing use of non-cash assets shall require the sale thereof and a report to be made to the Court within three years. The cash shall be receipted into the Clerk’s trust account for payment into the appropriate general fund account of the city, county, or town, and, when appropriate, to the State Treasurer for the common school fund. Cash ordered forfeited by the Court should likewise be receipted into the Clerk’s trust account. When the monies are paid over to the appropriate general fund, the receipt (from the city) or the quietus (from the county) should be filed~~

with the Court, as well as the receipt from the State Treasurer in the case of payment to the Common School Fund.

*Note: At present, federal forfeiture funds shared with a local law enforcement agency are to be sent to the governmental unit of which that agency is a part. Disbursement of the funds is to be by the fiscal body of that unit (City Council for Muncie, County Council for Delaware County) in accord with Federal guidelines.*

#### **D. Attorney Fees**

—The Prosecuting Attorney shall enter into a written compensation agreement with an attorney retained to bring an action under the forfeiture statute. The attorney retained shall not serve as a deputy prosecutor in any county. The compensation agreement may be a contingency fee agreement limited as follows:

1. —The contingency fee may not exceed Thirty Three and One Third percent (33 1/3 %) of the first Ten Thousand Dollars (\$10,000.00) of proceeds or money obtained under a settlement or judgment.
2. —The contingency fee may not exceed Twenty Percent (20%) of the part of the proceeds or money obtained under a settlement or judgment that is more than Ten Thousand Dollars (\$10,000.00) and less than One Hundred Thousand Dollars (\$100,000.00).
3. —The contingency fee may not exceed Fifteen Percent (15%) of the part of the proceeds or money obtained under a settlement or judgment that exceeds One Hundred Thousand Dollars (\$100,000.00).
4. —The contingency fee agreement may establish a minimum fee not to exceed One Hundred Dollars (\$100.00).
5. —A court may authorize a compensation agreement between the Prosecuting Attorney and an attorney retained to bring an action under this Rule that exceeds the limits established above if the court finds that the issues presented in the particular forfeiture action are unusually complex or time consuming as compared with other forfeiture actions.
6. —In any event, the fee in each forfeiture case shall be conditioned on court approval using the factors established in Rule 1.5(a) of the Rules of Professional Conduct.

#### **E. Clerk Trust Account**

—The Clerk shall also make quarterly trust fund reports of receipts and disbursements to the courts, the prosecutor, the state, city, county, and town law enforcement agencies, and the fiscal bodies and fiscal officers of the units of government involved.