

# **ELKHART COUNTY RULES OF COURT**

*(Updated October 4, 2016)*

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|----------------------------|---|
| <b>LR20-AR00-NADC-1</b>    | <b>DRESS AND CONDUCT</b>  |
| <b>LR20-AR00-NAFC-2</b>    | <b>FILING OF CASES</b>  |
| <b>LR20-CR2.2-NAFC-2.1</b> | <b>SELECTION OF SPECIAL JUDGES IN<br/>CRIMINAL CASES</b>  |
| <b>LR20-TR79-NAFC-2.2</b>  | <b>SELECTION OF SPECIAL JUDGES IN<br/>CIVIL CASES</b>   |
| <b>LR20-TR3.1-NAEA-3</b>   | <b>APPEARANCES</b>  |
| <b>LR20-TR00-NAFD-4</b>    | <b>FILING OF DOCUMENTS</b>  |
| <b>LR20-TR00-NAFD-4.5</b>  | <b>FACSIMILE ELECTRONIC FILINGS</b>   |
| <b>LR20-FL00-CVFL-5</b>    | <b>DOMESTIC RELATIONS MATTERS<br/>INVOLVING MINOR CHILDREN-<br/>COOPERATIVE FAMILY PRACTICE</b> |
| <b>LR20-FL00-CVFL-6</b>    | <b>ADDITIONAL DOMESTIC RELATIONS<br/>MATTERS</b>  |
| <b>LR20-FL00-CVDR-7</b>    | <b>SUPPORT AND MAINTENANCE<br/>STANDARDS</b>  |
| <b>LR20-TR16-NAHT-8</b>    | <b>HEARINGS/TRIALS</b>  |
| <b>LR20-TR00-NATP-9</b>    | <b>TRIAL PROCEDURES</b>   |
| <b>LR20-TR51-NAJI-10</b>   | <b>JURY INSTRUCTIONS</b>  |
| <b>LR20-TR00-NACE-11</b>   | <b>CUSTODY/DISPOSITION OF EXHIBITS</b>  |
| <b>LR20-TR00-CVSB-12</b>   | <b>SURETY ON BONDS</b>  |
| <b>LR20-CR00-CRBS-13</b>   | <b>CRIMINAL BAIL/BOND SCHEDULE</b>  |
| <b>LR20-CR00-CRDD-14</b>   | <b>CRIMINAL DISCOVERY DISCLOSURE</b>  |
| <b>LR20-AR15-NACR-15</b>   | <b>COURT REPORTERS</b>  |
| <b>LR20-TR00-NAGC-16</b>   | <b>GUARDIAN AD LITEM/CASA</b>   |
| <b>LR20- AR00-NAMC-17</b>  | <b>MAGISTRATE AND IV-D COMMISSIONER<br/>GUIDELINES</b>  |
| <b>LR20- JV00-NAJV-18</b>  | <b>CIRCUIT COURT JUVENILE DIVISION</b>  |
| <b>LR20-AR1E-19</b>        | <b>CASELOAD ALLOCATION PLAN</b>   |
| <b>LR-20-AR00-20</b>       | <b>ELECTRONIC ENDORSEMENT OF<br/>MENTAL HEALTH COMMITMENTS</b>                                  |

THE FOLLOWING RULES SHALL BE IN FULL FORCE AND EFFECT UNTIL AMENDED BY THE JUDGES OF THE COURTS OF ELKHART COUNTY.

### **LR20-AR00-NADC-1 DRESS AND CONDUCT**

- (A) Lawyers and litigants shall be appropriately attired during all court appearances.
- (B) Lawyers, litigants, and spectators shall at all times speak and behave in such a manner as to respect the dignity and authority of the Courts, Judges, Commissioners and all judicial personnel, and shall not lean on the bench nor sit on counsel tables
- (C) No person shall bring food or beverage into any courtroom without the prior approval of the judge, magistrate or commissioner of that court.
- (D) All cell phones, pagers and any other personal electronic devices shall be turned off during all court proceedings.

### **LR20-AR00-NAFC-2 FILING OF CASES**

#### **(A) GENERAL**

All new causes of action shall be docketed with the Clerk of the Court and shall comply with Trial Rule 77 and Administrative Rule 9.

#### **(B) COURT COSTS**

No cause shall be docketed or transferred without payment of the costs of the action, unless otherwise ordered.

##### **1) COLLECTION OF FEE FOR LATE PAYMENT**

- A) A late fee is assessed to the defendant if the defendant has:
- committed a crime;
  - violated a statute defining an infraction;
  - violated an ordinance of a municipal corporation; or
  - committed a delinquent act, and the defendant is required to pay:
    - court costs, including fees;
    - a fine; or
    - a civil penalty, and the defendant is not determined by the court imposing the court costs, fine, or civil penalty to be indigent.
- B) If the defendant fails to pay to the clerk the costs, fine, or civil penalty in full before the later of the following:
- The end of the business day on which the court enters the conviction or judgment.
  - The end of the period specified by the Court.
- C) The fee assessed is \$25.00 or, if amended, that sum allowed by I.C. 33-37-7-22.

- D) The court may, if the defendant has demonstrated good cause for failure to make a timely payment of court costs, a fine, or a civil penalty may suspend the payment of the late fee.

**(C) ASSIGNMENT OF CRIMINAL CASES**

**1) Criminal cases shall be filed in specific courts as follows:**

**a. Elkhart Circuit Court**

- All murder charges;
- All attempted murder cases, except child victim cases
- All manslaughter cases, except those in which a child is the victim
- All vehicular homicide cases
- All robbery cases
- All reckless homicide cases
- One-half (1/2) of all Level 1, 2, 3, 4, and 5 controlled substance sale and possession cases
- Juvenile cases (Magistrate)
- Grand Jury cases

**b. Elkhart Superior Court 1**

- All rape cases, except child victim cases
- all criminal deviate conduct cases, except child victim cases
- All sexual battery cases, except child victim cases
- All criminal recklessness cases, except when a child is the victim
- All Level 5 battery and Level 6 domestic battery cases, except child victim cases, and except those filed in the three (3) city courts sitting in Elkhart County, Indiana
- All Level 3 and 4 felony cases which are not specifically assigned to a court pursuant to this rule

**c. Elkhart Superior Court 2**

- All burglary cases
- All welfare fraud cases
- All forgery cases
- All Level 5 felony theft cases
- All arson cases
- All Level 5 felony cases which are not specifically assigned to a court pursuant to this rule

**d. Elkhart Superior Court 3**

- All child victim cases except murder
- One-half (1/2) of all Level 1, 2, 3, 4, and 5 controlled substance sale and possession cases
- All kidnapping and confinement cases
- All Level 1 and 2 felony cases which are not specifically assigned to a court pursuant to this rule

**e. Elkhart Superior Court 4**

- One-half (1/2) of all habitual traffic offender cases and one-third (1/3) of all other Level 6 felony and misdemeanor cases, except non-support cases and those filed in the three (3) city courts sitting in Elkhart County, Indiana.
- All infraction and county ordinance cases other than those filed in the aforementioned city courts

**f. Elkhart Superior Court 5**

- One-half (1/2) of all habitual traffic offender cases and one-third (1/3) of all other Level 6 felony and misdemeanor cases, except non-support cases and those cases filed in the aforementioned city courts

**g. Elkhart Superior Court 6**

- All non-support cases and one-third (1/3) of all Level 6 felony and misdemeanor cases, except habitual traffic offender cases and those cases filed in the aforementioned city courts

- 2) Assigning new, subsequent, and recharged cases:**
- a. **New cases** – New cases that may be filed in more than one court (e.g., Level 1, 2, 3, 4, and 5 felony and controlled substances cases) must be filed on a rotating basis.
  - b. **Subsequent cases** –
    - 1. If the defendant in a pending criminal case is charged with new offenses that carry no greater penalty than the pending charges, the subsequent charges must be filed in the same court hearing the original case.
    - 2. If a new case carrying greater penalties is filed against the defendant in a pending case, the original case must be transferred to the court hearing the subsequent case.
  - c. **Recharged cases** – Any pending case that is later recharged as murder must be transferred to Circuit Court.
  - d. **Exception-** Rule 2(B) 2 does not apply to domestic battery cases.
- 3) All cases in which juvenile court jurisdiction is waived to adult court shall be filed in the appropriate court as dictated by this rule.
- 4) All charges of escape shall be filed in the court which committed the defendant to the facility from which he or she allegedly escaped. All charges of failure to appear shall be filed in the court in which the subject order to appear was entered.
- 5) All requests for a jury trial in the Elkhart City Court shall be transferred to Elkhart Superior Court 5.
- 6) All other city courts receiving requests for jury trial shall be transferred to Elkhart Circuit Court for assignment to an appropriate court or magistrate.
- 7) All requests for trial de novo shall be referred to Elkhart Circuit Court for assignment to an appropriate court or magistrate.

**(D) ASSIGNMENT OF CIVIL CASES**

**1) Civil cases shall be filed in specific courts as follows:**

**a. Elkhart Circuit Court**

All civil filings with the exception of mental health cases and small claims.

Juvenile paternity except those filed in Superior Court 6.

Juvenile CHINS and termination cases (Elkhart Circuit Court, Juvenile Division).

**b. Elkhart Superior Court 1**

All civil filings with the exception of mental health cases and small claims.

Juvenile paternity except those filed in Superior Court 6.

**c. Elkhart Superior Court 2**

All civil filings with the exception of guardianships and small claims.

Juvenile paternity except those filed in Superior Court 6.

**d. Elkhart Superior Court 3**

All civil filings except guardianships and small claims.

**e. Elkhart Superior Court 4**

All civil filings except guardianship, estates, mental health paternity and dissolution cases.

**f. Elkhart Superior Court 5**

All civil filings except guardianships, estates, mental health paternity and dissolution cases.

**g. Elkhart Superior Court 6**

All civil filings except guardianships, estates and mental health.

**(E) DELINQUENT LISTS**

- 1) Any civil case pending for more than six months may be placed upon a Delinquent List pursuant to Trial Rule 41(E). Any case so listed shall, after 45 days, be dismissed at the cost of the filing party, except for good cause shown. Any case so dismissed shall be deemed to have been dismissed with prejudice as to all parties, unless otherwise ordered.
- 2) Any probate matter in which no filing has been made for more than one year may be placed upon a Delinquent List. If no action is taken within 45 days thereafter, the Court may require the personal representative to show cause why the Court should not impose an appropriate sanction against the personal representative.
- 3) Guardianships shall not be placed upon a delinquent list within two years after the issuance of letters of guardianship, the filing of an inventory, or the filing of a current account.

*(Amended effective July 1, 2014)*

**LR20-CR2.2-NAFC-2.1****SELECTION OF SPECIAL JUDGES IN  
CRIMINAL CASES**

When the appointment of a special judge is required under Criminal Rule 12 of the Indiana Rules of Criminal Procedure or an order of disqualification or recusal is entered in a case, or where a change of judge is granted pursuant to Indiana Post-Conviction Remedy Rule 1(4)(b), the provisions of this Rule constitute the exclusive manner for the selection of special judges in circuit and superior courts in all criminal proceedings in Elkhart County.

- a. If the case is in the **Elkhart Circuit Court**, it must be transferred to **Elkhart Superior Court 3**.
- b. If the case is in **Elkhart Superior Court 3**, it must be transferred to **Elkhart Circuit Court**.
- c. If the case is in **Elkhart Superior Court 1**, it must be transferred to **Elkhart Superior Court 2**.
- d. If the case is in **Elkhart Superior Court 2**, it must be transferred to **Elkhart Superior Court 1**.
- e. If the case is in **Elkhart Superior Court 4**, it must be transferred to **Elkhart Superior Court 5**.
- f. If the case is in **Elkhart Superior Court 5**, it must be transferred to **Elkhart Superior Court 4**.
- g. If the case is in **Elkhart Superior Court 6**, it must be transferred to **Elkhart Superior Court 4**.

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

The appointed judge under this local rule must accept the case unless:

- a. Disqualified under the Code of Judicial Conduct;
- b. Ineligible under the Trial Rules; or
- c. Excused by the Indiana Supreme Court.

*(Amended effective July 1, 2014)*

**LR20-TR79-NAFC-2.2****SELECTION OF SPECIAL JUDGES IN  
CIVIL CASES**

If a judge in Elkhart County grants a motion for change of judge under TR 76, or recuses or is disqualified under TR 79(C), and the parties are unable to agree to a judge, or the judge agreed upon does not accept the appointment within the time required by TR 79(D), the following local rule applies:

- a. If the case is in the **Elkhart Circuit Court**, it must be transferred to **Elkhart Superior Court 3**.
- b. If the case is in **Elkhart Superior Court 3**, it must be transferred to **Elkhart Circuit Court**.
- c. If the case is in **Elkhart Superior Court 1**, it must be transferred to **Elkhart Superior Court 2**.
- d. If the case is in **Elkhart Superior Court 2**, it must be transferred to **Elkhart Superior Court 1**.
- e. If the case is in **Elkhart Superior Court 4**, it must be transferred to **Elkhart Superior Court 5**.
- f. If the case is in **Elkhart Superior Court 5**, it must be transferred to **Elkhart Superior Court 4**.
- g. If the case is in **Elkhart Superior Court 6**, it must be transferred to **Elkhart Superior Court 4**.

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

The appointed judge under this local rule must accept the case unless:

- a. Disqualified under the Code of Judicial Conduct;
- b. Ineligible under the Trial Rules; or
- c. Excused by the Indiana Supreme Court.

*(Amended effective July 1, 2014)*

## **LR20-TR3.1-NAEA-3 APPEARANCES**

### **(A) ENTRY OF APPEARANCE**

- 1) Appearances shall be made in writing in the state prescribed appearance form in all cases. An attorney's appearance for a party shall not operate as an automatic enlargement of the time for filing a responsive pleading.
- 2) Appearances once entered remain on record until final disposition.
- 3) Appearances of attorneys at initial hearings in the Elkhart Circuit Court Juvenile Division shall continue through case closure, including violation of probation and modification of disposition hearings unless withdrawal of appearance is granted by the Court.
- 4) Attorney appointed under a CHINS cause number shall be presumed to represent the party under the corresponding Termination cause. The docket shall indicate such representation unless and until the Court is notified otherwise.

### **(B) WITHDRAWAL OF APPEARANCE**

- 1) An attorney's appearance for a party will be withdrawn if:
  - a. Another attorney simultaneously appears for the party;
  - b. The attorney provides satisfactory evidence that the party has discharged the attorney; or
  - c. The party acquiesces to the withdrawal.
- 2) In all other circumstances, an attorney seeking permission to withdraw an appearance shall file a written motion stating justification for the withdrawal. The attorney shall give the party 21 days' written notice of the attorney's intention to seek permission to withdraw. This notice shall (1) Inform the party that failure to secure new counsel may result in dismissal of the party's case or in entry of a judgment or ruling against the party, (2) set forth the date of any scheduled hearing or trial, and (3) include any other pertinent information. Except for good cause shown, an appearance will not be withdrawn within twenty-one days prior to commencement of a trial.
- 3) In keeping with the provisions of the Indiana Rules of Professional Conduct, an attorney's representation of a client in a given cause pending before an Elkhart County court of general jurisdiction shall be deemed concluded upon:
  - a. The entry of an order of court withdrawing that attorney's appearance in that matter for that client; or,
  - b. Resolution of all issues raised prior to, or during the course of, that representation. For purposes of this Rule, the term \_resolution\_ shall mean entry of a judgment or an appealable order determining such issues. Should an attorney wish to appear in a given cause a second, or subsequent, time, he or she must file a new appearance in conformity with the dictates of Trial Rule 3.1. This rule does not apply to small claims.



## **LR20-TR00-NAFD-4 FILING OF DOCUMENTS**

- (A) All documents filed with a court, including but not limited to any reports, modification petitions, memos, motions, orders and notices shall be labeled with the assigned sixteen [16] digit cause number of all causes to which such documents are intended to apply.
- (B) Appearances and pleadings not requiring immediate action by the Court shall be filed with the Clerk. Filings shall comply fully with the provisions of Trial Rule 77 and Administrative Rule 9 regarding confidentiality, and shall include the names, addresses, phone numbers, dates of birth and Social Security Account Number or Federal Tax Identification Number of the parties.
- (C) In civil cases, a party shall file the original of any pleading, motion, or other document plus only such additional copies as may be required for service on other parties. The filing party shall prepare all forms of summons and citations, provide all materials required for service, and shall provide all parties' names, addresses, telephone numbers, Social Security numbers and dates of birth. If the filing party requests a hearing, that party shall also provide an appropriate form of notice.
- (D) When a party requests any order other than a protective order, a preliminary injunction or a restraining order, that party shall tender two (2) copies of the requested order plus one (1) for each other party. When a party requests a protective order, a preliminary injunction, or a restraining order, that party shall tender six (6) copies of the requested order.
- (E) All motions to dismiss, motions for summary judgment motions for judgment on pleadings, and similar motions shall be accompanied by a memorandum of legal authority. Any response to such motions shall be accompanied by a similar memorandum.
- (F) All pleadings filed in a case while assigned to a magistrate must be file-marked in the appropriate court and then delivered to the magistrate's office by the attorney making the filing. The magistrate will make appropriate entries on the chronological case summary (CCS). Upon entry of an order by the magistrate or approval of an agreement of the parties on said issue(s), the case will be returned to the regular judge of the court, and filings thereafter will be filed with the regular judge of the court.
- (G) All pre-fact finding hearing motions and pleadings in juvenile delinquency cases shall be in writing and in compliance with the appropriate rules of procedure. All such motions shall be accompanied by a memorandum of authorities. Any responses to such motions shall be accompanied by a memorandum of authorities and shall be filed within seven (7) days if the child is in secure custody; or fourteen (14) days if not in custody upon the filing of such motions. The failure of either party to comply with this rule shall result in the denial of the motion or in the striking of the response, as appropriate.

**(H) PREPARATION OF DOCUMENTS**

The lawyer for a party or any party appearing pro se shall be responsible for preparing and filing summons, citations, notices or other documents for which forms may be obtained from the Clerk of the Court. These forms shall include any names, addresses and other descriptive information, such as place of employment, necessary to affect service of said document. Whenever a form of order is required, the parties shall tender to the Court an appropriate form.

**(I) PRO SE FILINGS/FORMS**

Copies of pro se forms prepared by the Indiana Supreme Court shall be located in the Offices of the Clerk of the Court. Upon request, copies of such forms shall be provided by the Clerk of the Court at the expense of the person requesting said form.

**(J) RECORD OF JUDGMENTS AND ORDERS**

The Record of Judgments and orders shall consist of original orders entered by the Court, all certified by the Judge for each day and placed in appropriate permanent binders.

**(K) COPIES DOCUMENTS FURNISHED BY THE CLERK**

On application of any person, the Clerk of the Court shall copy any pleading or order at the expense of the person requesting the copy. This rule shall not apply to actions to establish paternity, adoptions, juvenile proceedings or other actions which are not a matter of public record.

**(L) WITHDRAWAL OF ORIGINAL MATERIAL**

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

**LR20-TR00-NAFD RULE 4.5 FACSIMILE ELECTRONIC FILINGS**

No facsimile filings are allowed except with the express prior approval of the Court. If approval is granted, the filing shall be made to the number designated by the Court and the party making the filing shall otherwise comply with Administrative Rule 12. Initial filing of a cause of action by facsimile is not permitted.

**LR20-FL00-CVFL-5 DOMESTIC RELATIONS MATTERS INVOLVING  
MINOR CHILDREN-COOPERATIVE FAMILY PRACTICE**

**\*The Website [www.ElkhartFamilyLaw.gov](http://www.ElkhartFamilyLaw.gov) may be accessed through  
[www.ElkhartFamilyLaw.com](http://www.ElkhartFamilyLaw.com) or [www.ElkhartFamilyLaw.org](http://www.ElkhartFamilyLaw.org).**

**(A) Liberal Construction and Application.**

- (1) The Circuit and Superior Courts of Elkhart County are committed to a cooperative model for the handling of “family cases” by parents, attorneys, and judges. This Rule will be liberally construed and applied to promote the healthy and child-sensitive functioning of families.
- (2) “Family cases” are defined as all marital dissolution or separation, paternity and guardianship proceedings involving custody and parenting issues.
- (3) The adoption of this Rule does not affect a lawyer’s duty to act in compliance with the Indiana Rules of Professional Conduct, particularly the duty to act with reasonable diligence and promptness in representing a client.
- (4) **All support orders or modifications must be in writing and filed with and approved by the Court or will be invalid.**

**(B) Case Captioning.**

- (1) Parties in marital dissolution and separation and paternity cases shall not be captioned or designated as “petitioner,” “respondent,” “plaintiff,” or “defendant.”
- (2) In marital dissolution and separation cases on the date of the initial filing, all pleadings shall be captioned, “In Re the Marriage of \_\_\_\_\_, Husband [or Wife], and \_\_\_\_\_, Wife [or Husband].” The party filing the initial petition shall be named first.
- (3) Parties in paternity cases shall be captioned “In Re the Paternity of [name or initials of minor child] and designated as “mother,” “putative father,” and father.”

**(C) Duties of Attorneys and Parties in Family Cases.**

- (1) Attorneys and parties in family cases are expected to act with the courts as co-problem solvers, not mere problem-reporters. Attorneys shall both inform and remind their clients about the judicial expectations of cooperation in family cases, assist their clients to understand and observe these standards, and encourage clients to participate in co-parenting classes, counseling, mediation, and other appropriate problem-solving processes.

- (2) In order to establish and maintain an atmosphere which fosters cooperative problem-solving, all parties and attorneys shall:
  - (a) explore resources which may reduce conflict, build cooperation and protect children;
  - (b) attempt reasonable cooperative measures before resorting to the court;
  - (c) avoid disrespectful language and behavior; and,
  - (d) avoid unnecessary motions or petitions, hearing and arguments.
- (3) Website. Parties and counsel should visit the court's website link at [www.ElkhartFamilyLaw.gov](http://www.ElkhartFamilyLaw.gov)\* for more information on the procedures in use in Elkhart County in support of the cooperative handling of family cases.

#### *Commentary*

*The Circuit and Superior Courts of Elkhart County recognize that conflict in family cases is destructive and often dangerous. Litigating family cases does not end or resolve the conflict; it heightens the conflict. The cooperative model for handling family cases is implemented in order to minimize such conflict and, instead, foster the healthy and child-sensitive functioning of families.*

*Actions taken in the earliest stages of parents' separation and other family crises, whether those actions are helpful or destructive, often define much of the future of the family case and the family. Attorneys' language and conduct in these earliest days are often crucial to the future course of both the case and the future functioning of the family. Until the case is filed, the courts have no involvement and are powerless to help families. However, at such early stages, attorneys can either set a tone of beneficial cooperation or of destructive conflict for the families they touch.*

*All too often in family cases the courtroom becomes an arena in which the parties are subjected to criticism, sometimes even ridicule or similar abuse. Such conduct will not be tolerated. Attorneys have an ethical obligation to refrain from abusive conduct and other offensive tactics; to treat all parties, witnesses and all others involved in the legal process with courtesy and respect; and, to refuse to participate in any effort to embarrass or burden someone. The courts consider such conduct to be repugnant. So should the attorneys and all members of the family. Attorneys have an ethical obligation to consult with their clients about the means to be employed and clients normally defer to their attorney's special knowledge and skill in such matters. These rules and comments require that when doing so, the attorney should educate the client about the substantial risk that conflict presents for members of the family and of the benefits and opportunities for resolution through the cooperative model.*

*Family members who elect to pursue the path of conflict instead of cooperation are not acting in the best interests of the children; and, the courts should consider the decisions made by the parties in this regard as part of its evaluation of the children's best interests and in the allocation of attorney fees.*

*This cooperative model will require some fundamental changes in the local legal culture, including the manner in which attorneys approach family cases. While fundamental change does not occur overnight, it must begin now. The attorney's primary focus in family cases should be on defusing the underlying source(s) of conflict(s) by helping the family find ways to resolve issues by means which are less destructive than litigation.*

*As part of the cooperative model, the courts will expect all parties and attorneys to consistently observe:*

- (a) personal responsibility by acting on one's opportunities to solve problems and improve circumstances rather than merely reporting on the alleged fault in others;*
- (b) cooperation by sensibly defining and recognizing the best interests of all family members;*
- (c) courtesy by constant use of respectful language and behavior; and,*
- (d) focused attention on children's needs, including an awareness that parental conflict is dangerous to children.*

*As part of their duty to work as co-problem-solvers with the court in all family cases, if safe to do so, attorneys should;*

- (a) speak with their clients, as early as possible and as often as necessary, about the advantages and judicial expectations of safe cooperation in family cases;*
- (b) refer clients to all co-parenting classes, counseling, mediation, and other problem-solving processes that appear to counsel to be promising resources for their clients;*
- (c) work with other counsel to ensure safety in families where domestic violence has been, or reasonably could be, an issue;*
- (d) work with other counsel in all cases to reduce conflict, build cooperation, and protect children; and,*
- (e) avoid unnecessary motions and hearings.*

*Before any scheduled hearing:*

- (a) *An attorney should assess with a client whether the matter can safely be handled cooperatively and without adversarial motions, hearings and other formal proceedings. Unless safety or exceptional circumstances make cooperation unreasonable, counsel should handle the case in ways that avoid adversarial proceedings and maximize the parties' development of cooperative problem-solving.*
- (b) *An attorney should make reasonable efforts to determine if the other spouse, parent, or putative parent is represented or may be seeking representation. Unless doing so might create a danger or substantial prejudice to the client, or it is otherwise unreasonable to do so, the attorney should:*
  - (i) *confer with the other attorney or self represented litigant;*
  - (ii) *attempt in good faith to find cooperative resolutions to provisional matters, including peaceful separation, so that unnecessary provisional filings and hearings can be avoided; and,*
  - (iii) *refer parents to resources such as co-parent education, co-parent counseling, marital counseling, and mediation that can help them build cooperation.*
- (c) *If both parties elect to be self represented litigants, they shall have the same duties stated above.*

**(D) Initial and Provisional Hearings.**

Unless considerations of safety or other good cause make it unreasonable, before the date and time set for an initial or provisional hearing, counsel or self represented litigants shall meet with each other in a good-faith attempt to resolve all matters.

**(E) Mandatory Website Work for Parents.**

- (1) **Dissolution of Marriage.** In all dissolution cases where the parties have any children together under the age of 18, both parties shall complete the work on [www.UpToParents.org](http://www.UpToParents.org) within 15 days of initial filing or service.
- (2) **Legal Separation.** In all separation cases where the parties have any children together under the age of 18, both parties shall complete the work on [www.WhileWeHeal.org](http://www.WhileWeHeal.org) within 15 days of initial filing or service.
- (3) **Paternity.** In all paternity cases, both parents shall complete the work on [www.ProudToParent.org](http://www.ProudToParent.org) within 15 days of the court's finding of paternity.

- (4) **Agreed Commitments.** Following completion of the website work required by this rule, the parents shall merge or exchange their chosen Commitments from their website work into a set of Agreed Commitments.
- (5) **Proof of Compliance.**
- (i) **Dissolution of Marriage and Legal Separation.** In order to monitor compliance, within 20 days of the initial filing or service of an action for dissolution or separation, each party shall file a verified certification of their completion of the mandatory website work. A sample form is attached as Appendix “A”.
  - (ii) **Paternity.** In order to monitor compliance, within 20 days of the court’s finding of paternity, each party shall file a verified certification of completion of the mandatory website work. A sample form is attached as Appendix “B”.
  - (iii) **Failure to Comply.** Any party failing to timely file a certification may be subject to a contempt hearing.

*Commentary*

*The rule contemplates that, following completion of the website work required by this rule, the parents shall merge their chosen Commitments from their website work into a set of Agreed Commitments and review those Agreed Commitments before all hearings. If a hearing is held more than a year since the parents’ completion of the website work, they should redo the work and again merge their Commitments into a set of Agreed Commitments.*

(F) **Transparenting and Seasons Class.**

Information regarding required classes is available on the court’s website at [www.ElkhartFamilyLaw.gov](http://www.ElkhartFamilyLaw.gov)\*.

- (1) **Dissolution of Marriage and Legal Separation. Mandatory Attendance.** In all dissolution and separation cases where the parties have any children together under the age of 18, both parties shall complete the Elkhart County Transparenting class. Any children 6 years of age through 17 years of age shall complete the Elkhart County Seasons class. The court may order any party to attend additional parenting, co-parenting, or parenting enrichment classes in post-decree matters.
- (2) **Paternity.** Upon adjudication of paternity, the court shall order the parties to attend and complete the Transparenting class unless circumstances prohibit said attendance. Upon adjudication of paternity, where children 6 years of age through 17 years of age are involved, the court shall order that the minor children enroll and complete the Seasons class.

In all paternity cases the court may order any party to attend and complete additional parenting, co-parenting, or parenting enrichment class.

- (3) **Proof of Compliance.** In all dissolution of marriage and legal separation cases, the parties must enroll in said classes within 15 days of the filing or service of the petition. The agency providing the Transparenting and Seasons classes, pursuant to the order of court, shall provide a list of enrolled participants to each court on a not less than weekly basis.

*Commentary*

*It is recognized that this Rule may not be applicable in Uniform Interstate Family Support Act (UIFSA) cases.*

(G) **Parenting Plan Proposals**

- (1) The Indiana Parenting Time Guidelines provide useful outlines of the **minimum** time each parent should have with the children to maintain frequent, meaningful, and continuing contact with them.
- (2) Unless they have already executed and filed an Agreed Parenting Plan, the parties shall each prepare and exchange their written Parenting Plan Proposals utilizing the form attached as Appendix “C”. It is anticipated that this exchange of parenting plan proposals shall occur at least two (2) business days before the hearing.
- (3) The Parenting Plan Proposals, Agreed Commitments and other results generated as a result of the website work shall be inadmissible as evidence and unenforceable at any hearing or trial. The purpose of the Parenting Plan Proposals, Agreed Commitments and website work is to generate a culture of co-parenting for the long term benefit of families.
- (4) In the event the parties agree on only portions of a Parenting Plan, the parties shall submit the agreed upon portions of the Parenting Plan to the Court, and advise the Court of unresolved issues.

*Commentary*

*(1) Children whose parents live apart have special needs above and beyond those of other children, including the need for frequent, meaningful, and continuing contact with both parents. The courts expect separated and divorced parents, if safely possible, to work together to support children’s best possible relationships with each parent.*



(2) *Dedicated parents will do their best to:*

- (a) *Remember that their children's only job is to be children, not their messengers, spies, counselors, confidants, or carriers of their hurt.*
- (b) *Remember that their love for their children is greater than any issue they could have with each other.*
- (c) *Respect each other's parenting time while also being flexible so the children's lives can be as normal as possible.*
- (d) *Pay special attention to keep their appointments and schedules with each other and call promptly if any problems come up.*
- (e) *Educate their extended families and close friends that they need to make peace as well.*

(3) *Children shall have frequent, meaningful, and continuing contact with each parent. The Indiana Parenting Time Guidelines provide a useful outline of the minimum time that each parent should have with the children. It is the express preference of the Elkhart Circuit and Superior Courts that parenting plans, if safely possible, should:*

- (a) *exceed the Guideline minimums for the non-custodial parent;*
- (b) *fit the particular needs of the family; and,*
- (c) *encourage parents' use of sensibility, flexibility, and reasonableness to allow for cooperative accommodation of special needs and circumstances in family activities.*

(4) *Whenever parents need resources to reduce conflict, build cooperation, preserve family relationships, or respond to the needs of their children, they and their attorneys (if any), should use all resources that could help them. Such resources include:*

- (a) *redoing the website work from [www. UpToParents.org](http://www.UpToParents.org), [www.WhileWeHeal.org](http://www.WhileWeHeal.org), or [www. ProudToParent. org](http://www.ProudToParent.org);*
- (b) *additional co-parenting classes, including re-attending the basic class or attending high-conflict classes;*
- (c) *completing a new Parenting Plan Proposal;*
- (d) *mediation;*

- (e) *confidential therapeutic assessment of the parents to develop a set of recommendations for their improved interaction;*
- (f) *individual, joint, family or child counseling;*
- (g) *appointment of a parenting coordinator; and,*
- (h) *any other measure that might protect children, reduce conflict, or build cooperation.*

(5) *If parents nevertheless continue to have conflict and appear in court without an agreement about the resources they will use, the court may select the resources the parents will be ordered to use.*

**(H) Protocols after Initial Filing.**

- (1) **Duties Regarding Conferences.** Except in emergencies or when it is otherwise unreasonable to do so, counsel and self represented litigants shall make a reasonable attempt to have a personal or telephonic conference to resolve any issue before hearing or seeking any other relief through the court. Counsel and self represented litigants contacted for a conference shall make themselves reasonably available. The duty of a personal or telephonic conference shall be continuing.
- (2) **Substance of Conference.** In the conference, counsel and self represented litigants shall:
  - (a) attempt to resolve all matters at issue;
  - (b) confirm the parties' compliance with paragraphs (E), (F) and (G) of this Rule; and,
  - (c) discuss the resources they believe the parents could use to resolve current and future issues and to build cooperation, including any resources listed in Commentary paragraph (4) to paragraph (G) of this Rule.
- (3) **Cooperation Update - Mandatory.** All motions and pleadings other than the initial filings shall include a statement confirming compliance with items (1) through (2), above, including the date of the required personal or telephonic conference or shall recite the specific reasons for the lack of a conference.
- (4) **Failure of Compliance.** Failure to comply with this section may result in the denial of relief or a hearing until compliance is accomplished.

### Commentary

*Counsel and self represented litigants shall consult in advance of all court hearings and exchange suggestions for the future course of the case that would serve the best interests of all family members, except in the limited circumstances described above.*

*During a status conference:*

- (1) *the attorneys and self represented litigants will report on:*
  - (a) *the status of compliance with each provision of this Rule by the parties and their attorneys; and,*
  - (b) *parent progress in reducing conflict, building cooperation, preserving family relationships, and responding to the needs of the children.*
- (2) *where beneficial, the families will be referred for any necessary help; and,*
- (3) *the court will consider the future course of the case.*

#### **(I) Requirements before Custody Evaluations.**

Custody evaluations are sometimes divisive and produce less cooperation between parents. Custody evaluations shall be reserved for cases where the parents cannot resolve the issues. No custody evaluation may be requested, ordered or conducted unless and until all cooperative measures (including, but not limited to, co-parenting education, consultation with a parenting coordinator and mediation) have been exhausted, shown to be dangerous, likely to be unsuccessful, or otherwise unreasonable.

All requests for custody evaluations shall be in writing and shall state:

- (a) what specific issues are resolved and what specific issues remain unresolved;
- (b) what problem solving resources have been used to date (including any co-parenting education, consultation with a parenting coordinator or mediation); and
- (c) why no further cooperative measures can be expected to assist the parents in resolving all issues.

The court will not grant or order a custody evaluation except following a status conference in the presence of both parties and their attorneys, if any, during which the court has been satisfied that:

- (1) both parties have completed the requirements of paragraphs (E), (F) and (G) above; and,
- (2) the use of other resources including those listed in Commentary paragraph (4) to paragraph (G) of this Rule has been carefully considered and reviewed.

(J) **Form of Summons.**

(1) **Dissolution of Marriage and Legal Separation.** In dissolution and separation cases, the appropriate summons shall be used and shall be substantially the same as the forms which are attached as Appendix “D” or “D-1”.

(2) **Paternity.** In paternity cases, the summons shall be substantially the same as the form which is attached as Appendix “E”.

(K) **Parenting Coordinator.**

(1) **Definition.** Parenting Coordination will be in compliance with any Indiana Parenting Coordination Rules adopted by the Judicial Conference of the State of Indiana. The Parenting Coordinator shall make recommendations and work to resolve conflicts between the parents involving only custody and parenting issues. Such recommendations, negotiations, and education shall include strategies for enforcing any shared parenting plan, communication, and parenting time schedule, for minimizing child-related conflicts between the parties, and for eliminating unproductive or harmful behavior patterns by one or both parents. The Court retains exclusive jurisdiction and authority to determine issues of custody and parenting.

(2) **Appointment.** The Parenting Coordinator shall be appointed by the Courts. At any time after the filing of the petition for dissolution of marriage, legal separation or adjudication of paternity, by stipulation of the attorneys or by order of the court, the parties shall utilize the services of a Parenting Coordinator. The Courts shall also maintain a list of approved private parenting coordinators.

(3) **Inadmissibility and Confidentiality.**

(a) The matters and issues discussed with the Parenting Coordinator shall be confidential in nature and in the context of settlement negotiations. The work of the Parenting Coordinator and the discussions of the parties shall be inadmissible as evidence and unenforceable at any hearing or trial, except as provided in paragraph (4).

(b) However, this Rule shall not prohibit the Parenting Coordinator from making recommendations to the Court on other resources available to the parents, the need for a custody evaluation or the appointment of a guardian ad litem.

(4) **Agreements.** The Parenting Coordinator shall file all agreements signed by the parties and the Parenting Coordinator with the Court for approval.

(5) **Costs.** The Court may assess the costs of the Parenting Coordinator to the parties.

(L) **Enforcement.**

Upon the failure of any attorney or self represented litigant to comply with this Rule, the Courts may use, at their discretion, the variety of enforcement mechanisms available to them in the traditional system. These enforcement mechanisms include a finding of contempt, an award of attorney fees, postponement of hearing, denial of any requested relief, and an award of lost wages.

**The Court may waive provisions of the Rule when justice so requires.**

*(Amended effective August 1, 2012)*

*Commentary*

*This Rule and the enforcement thereof appear contradictory. However, the benefits of the overall concepts contained in this Rule, as well as the recognized and hoped for long-term advantages of implementing such a process, render its enforcement of vital importance. Families in conflict do not always fit well into the mold of the traditional adversary system. Nevertheless, it must be recognized that an attempt to reshape the model within which family law cases have traditionally occurred will require, on occasion, the use of those enforcement mechanisms which do not fall within a model of cooperation.*

*The Circuit and Superior Courts of Elkhart County recognize that, in order to utilize and reap the benefits of a cooperative family law system, attorneys and parties must be subject to the enforcement of these Rules, including but not limited to the award of attorney fees and sanctions. The courts also recognize that enforcement requires uniformity and consistent application of this Rule and its enforcement mechanisms.*

**\*The Website [www.ElkhartFamilyLaw.gov](http://www.ElkhartFamilyLaw.gov) may be accessed through [www.ElkhartFamilyLaw.com](http://www.ElkhartFamilyLaw.com) or [www.ElkhartFamilyLaw.org](http://www.ElkhartFamilyLaw.org).**

**APPENDICES**

**LR20-FL00-CVFL- 5 APPENDIX A  
CERTIFICATION OF COMPLIANCE IN DISSOLUTION CASES**

The undersigned, as the (select: Wife or Husband) in this cause, does hereby certify that:  
On (type date) I completed the mandatory website work as required by the Court and  
have attached my certificate to confirm the same.

I affirm under the penalties for perjury that the foregoing representations are true.

Date: \_\_\_\_\_  
(Type name), (select: Wife or Husband)

**LR20-FL00-CVFL- 5 APPENDIX B  
CERTIFICATION OF COMPLIANCE IN PATERNITY CASES**

The undersigned, as the (select: Mother or Father) in this cause, does hereby certify that:  
On (type date) I completed the mandatory website work as required by the Court and  
have attached my certificate to confirm the same.

I affirm under the penalties for perjury that the foregoing representations are true.

Date: \_\_\_\_\_  
(Type name), (select: Mother or Father)

**LR20-FL00-CVFL- 5 APPENDIX C  
PARENTING PLAN PROPOSAL**

In Re The (select: Marriage/Paternity) of: \_\_\_\_\_

Case No.: \_\_\_\_\_

(Select Mother's/Father's) Parenting Plan Proposal

**Parent’s Affirmation**

I hereby affirm under the penalties for perjury, that **before** preparing this proposal I have:

- 1. carefully read the Indiana Parenting Time Guidelines, including the Preamble and General Rules and understand that they reflect the **minimum** parenting time; and,
- 2. completed all the work assignments for parents at (select: [www.UpToParents.org](http://www.UpToParents.org) or [www.ProudToParent.org](http://www.ProudToParent.org) ); and,
- 3. enrolled in the parenting class required by the court.

Dated: \_\_\_\_\_, 20\_\_\_\_  
 \_\_\_\_\_  
 (Select: Mother/Father)

**Terms of This Proposal**

The following proposal for our children’s parenting plan for our children was prepared as part of the effort of both parents to devise a parenting plan to include decision making and living arrangements that will serve to nurture and protect our children as the years progress. This proposal was prepared and is submitted as required by the Elkhart County Rules of Court for cooperative family practice and is part of an effort to compromise and settle these and other issues which now exist between the parents. Unless all of the terms of the following proposal are accepted as shown by the signatures of both parents on page two (2), the following proposal and all of its terms are inadmissible as evidence for any purpose.

**Custody**

“Legal custody” of children means decision making responsibility for substantial matters that affect a child’s life, such as place of residence, school selection and other educational decisions, non-emergency healthcare and religious upbringing. Legal custody of our children shall be as follows:

- \_\_\_\_\_ Joint
- \_\_\_\_\_ Mother
- \_\_\_\_\_ Father

“Physical custody” means where the children primarily reside. Physical custody of our children shall be as follows:

- \_\_\_\_\_ Shared
- \_\_\_\_\_ Mother
- \_\_\_\_\_ Father

**Parenting Time Schedule**

The time for our children to be with each of us shall be as provided in the Indiana Parenting Time Guidelines as adopted by Elkhart County (“Guidelines”).

The following shall be (select: in addition to/excluded from) the time provided in the Guidelines:

Weekdays:

Weekends:

Holidays and Special Days:

Extended Parenting Time/Summer Vacation:

Other provisions of our parenting plan would be:

In the event of disagreement, we will speak to one another first to try to resolve any parenting issues and focus on the children's needs. If we are unable to resolve all the issues, then we will consider the following:

- A. Use of a parenting coordinator to work with us.
- B. Mediation.
- C. Use of other resources such as redoing website work at [www.UpToParents.org](http://www.UpToParents.org) or [www.ProudToParent.org](http://www.ProudToParent.org); additional co-parenting classes, including re-attending the basic class or attending high-conflict classes; and individual, joint, family or child counseling.

Dated: \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Select: Mother/Father)

(attorney's name)

Indiana Attorney No.:

(firm name)

Attorney for (select: Mother/Father)

(address)

(phone number)

**ACCEPTANCE**







If you do not file a written appearance with the Clerk and serve a copy on your spouse or your spouse's attorney, you may not receive notice of any further proceedings in this action. **If you do not make such an appearance, a final decree could be entered by default which grants the relief sought in your spouse's petition after the expiration of sixty (60) days from the date of the filing of the petition.** You are not required to file any written answer to respond to the petition; however, certain grounds for dismissal must be asserted in a timely fashion or are waived; and, if you have a claim for relief against your spouse you may be required to assert such a claim in a written pleading which must be filed with the Clerk and served on your spouse or your spouse's attorney.

The following manner of service of this SUMMONS is hereby designated:

(select): \_\_\_\_\_ Registered or certified mail (with addressed envelope) postage prepaid,  
return receipt #  
\_\_\_\_\_ Sheriff of Elkhart County  
\_\_\_\_\_ Private service by: \_\_\_\_\_

Date:

(Name of attorney for Filing Party) WENDY HUDSON  
Indiana Attorney No: (insert) CLERK, ELKHART CIRCUIT/SUPERIOR COURTS

(firm name)

Attorney for (select: Wife, Husband)

(address)

By:

Deputy Clerk

(phone number)

**PREPARATION DATA:**

All summons are to be prepared in triplicate with the original of each to be placed in the Court file with two copies available for service. If service is by certified mail a properly addressed envelope shall be provided for the party being served. Certified mail labels and return receipts must also be furnished for each mailing and the cause number must appear on each return receipt, which shall be returnable to the Clerk at the address of the Court.

**CLERK'S CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I mailed a copy of this Summons and designated documents to the party being served, \_\_\_\_\_, by \_\_\_\_\_ mail, requesting a return receipt, at the address furnished by the filing party.

WENDY HUDSON  
CLERK, ELKHART CIRCUIT/SUPERIOR  
COURTS

Dated: \_\_\_\_\_, 20\_\_\_\_.

BY:  
Deputy Clerk

**RETURN ON SERVICE OF SUMMONS BY MAIL**

I hereby certify that the attached return receipt was received by me showing that the Summons and designated documents mailed to the party being served, \_\_\_\_\_, was accepted by the party being served on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I hereby certify that the attached return receipt was received by me showing that the Summons and designated documents was returned not accepted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WENDY HUDSON  
CLERK, ELKHART CIRCUIT/SUPERIOR  
COURTS

Dated: \_\_\_\_\_, 20\_\_\_\_.

BY:  
Deputy Clerk

**RETURN OF SERVICE OF SUMMONS BY SHERIFF**

I hereby certify that I have served the within Summons and designated documents:

- 1) By delivering on \_\_\_\_\_, 20\_\_\_\_, a copy of this Summons and designated documents to each of the within named person(s).
- 2) By leaving on \_\_\_\_\_, 20\_\_\_\_, for each of the within named person(s) \_\_\_\_\_ a copy of the Summons and a copy of the designated documents at the respective dwelling house or usual place of abode, \_\_\_\_\_ in \_\_\_\_\_, Indiana, with a person of suitable age and discretion residing within, whose usual duties or activities include prompt communication of such information to the person served, or by otherwise leaving such process thereat, and by mailing a copy of the Summons without the designated documents to the said named person(s) at the address listed herein.
- 3) This Summons came to hand this date, \_\_\_\_\_, 20\_\_\_\_. The within named \_\_\_\_\_ was not found in my bailiwick this date, \_\_\_\_\_, 20\_\_\_\_.

ALL DONE IN ELKHART COUNTY, INDIANA.

SHERIFF OF ELKHART COUNTY, INDIANA

By: \_\_\_\_\_

**SERVICE ACKNOWLEDGED**

I hereby acknowledge that I received a copy of this Summons and copies of the designated documents at \_\_\_\_\_, Indiana, on this date, \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Select: Wife/Husband)



If you do not file a written appearance with the Clerk and serve a copy on your spouse or your spouse's attorney, you may not receive notice of any further proceedings in this action. **If you do not make such an appearance, a final decree could be entered by default which grants the relief sought in your spouse's petition after the expiration of sixty (60) days from the date of the filing of the petition.** You are not required to file any written answer to respond to the petition; however, certain grounds for dismissal must be asserted in a timely fashion or are waived; and, if you have a claim for relief against your spouse you may be required to assert such a claim in a written pleading which must be filed with the Clerk and served on your spouse or your spouse's attorney.

The following manner of service of this SUMMONS is hereby designated:

(select): \_\_\_\_\_ Registered or certified mail (with addressed envelope) postage prepaid,  
return receipt #  
\_\_\_\_\_ Sheriff of Elkhart County  
\_\_\_\_\_ Private service by: \_\_\_\_\_

Date:

(Name of attorney for Filing Party)  
Indiana Attorney No: (insert)  
(firm name)  
Attorney for (select: Wife, Husband)  
(address)  
  
(phone number)

WENDY HUDSON  
CLERK, ELKHART CIRCUIT/SUPERIOR

By:  
Deputy Clerk

**PREPARATION DATA:**

All summons are to be prepared in triplicate with the original of each to be placed in the Court file with two copies available for service. If service is by certified mail a properly addressed envelope shall be provided for the party being served. Certified mail labels and return receipts must also be furnished for each mailing and the cause number must appear on each return receipt, which shall be returnable to the Clerk at the address of the Court.

**CLERK'S CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I mailed a copy of this Summons and designated documents to the party being served, \_\_\_\_\_, by \_\_\_\_\_ mail, requesting a return receipt, at the address furnished by the filing party.

WENDY HUDSON  
CLERK, ELKHART CIRCUIT/SUPERIOR  
COURTS

Dated: \_\_\_\_\_, 20\_\_\_\_.

BY:  
Deputy Clerk

**RETURN ON SERVICE OF SUMMONS BY MAIL**

I hereby certify that the attached return receipt was received by me showing that the Summons and designated documents mailed to the party being served, \_\_\_\_\_, was accepted by the party being served on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I hereby certify that the attached return receipt was received by me showing that the Summons and designated documents was returned not accepted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WENDY HUDSON  
CLERK, ELKHART CIRCUIT/SUPERIOR  
COURTS

Dated: \_\_\_\_\_, 20\_\_\_\_.

BY:  
Deputy Clerk



**RETURN OF SERVICE OF SUMMONS BY SHERIFF**

I hereby certify that I have served the within Summons and designated documents:

1) By delivering on \_\_\_\_\_, 20\_\_\_\_, a copy of this Summons and designated documents to each of the within named person(s).

2) By leaving on \_\_\_\_\_, 20\_\_\_\_, for each of the within named person(s) \_\_\_\_\_ a copy of the Summons and a copy of the designated documents at the respective dwelling house or usual place of abode, \_\_\_\_\_ in \_\_\_\_\_, Indiana, with a person of suitable age and discretion residing within, whose usual duties or activities include prompt communication of such information to the person served, or by otherwise leaving such process thereat, and by mailing a copy of the Summons without the designated documents to the said named person(s) at the address listed herein.

3) This Summons came to hand this date, \_\_\_\_\_, 20\_\_\_\_. The within named \_\_\_\_\_ was not found in my bailiwick this date, \_\_\_\_\_, 20\_\_\_\_.

ALL DONE IN ELKHART COUNTY, INDIANA.

SHERIFF OF ELKHART COUNTY, INDIANA

By: \_\_\_\_\_

**SERVICE ACKNOWLEDGED**

I hereby acknowledge that I received a copy of this Summons and copies of the designated documents at \_\_\_\_\_, Indiana, on this date, \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Select: Wife/Husband)

**LR20-FL00-CVFL- 5 APPENDIX E**  
**SUMMONS AND NOTICE OF HEARING IN A PATERNITY CASE**

STATE OF INDIANA    IN THE [Title of Court]  
 COUNTY OF ELKHART                                        SS:

IN THE MATTER OF THE                                        Case No.  
 PATERNITY OF  
 CHILD  
 Female/Male [Name],

                                    Mother/Father/Putative Father,  
 and

[Name]  
 Putative Father/Father/Mother  
 [Child by Next Friend]

**SUMMONS**  
**AND NOTICE OF HEARING**

THE STATE OF INDIANA TO:     [name]  
    [address]  
    [city, state zip]

A paternity action has been filed in the Court stated above. The following documents are attached or otherwise served with this Summons:

- \_\_\_\_\_ Petition for Establishment of Paternity
- \_\_\_\_\_ Petition for Custody
- \_\_\_\_\_ Petition for Child Support
- \_\_\_\_\_ Petition for Parenting Time
- \_\_\_\_\_ Chronological Case Summary
- \_\_\_\_\_ Subpoena
- \_\_\_\_\_ Other \_\_\_\_\_

Local Rules in Elkhart County require that both parties to this case complete certain specific tasks. You should immediately and carefully review those requirements at the website established by the Court: [www.ElkhartFamilyLaw.org](http://www.ElkhartFamilyLaw.org).

**THIS IS YOUR OFFICIAL NOTICE** that a Hearing on the issues raised by the designated petitions is scheduled for the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ .m. at [Address of Court]. If you wish to hire an attorney to represent you in this matter, it is advisable to do so before that date. **If you do not appear for the hearing, a final order could be entered by default determining paternity, custody, parenting time, medical expenses and child support.** If child support is requested, you are required to bring evidence of your weekly gross income (your pay before any deductions) and documents to verify year-to-date income (pay stub or employer statement) and your last income tax return, including all W-2s, 1099s and all accompanying schedules.

If you do not file a written appearance with the Clerk and serve a copy on the other party or the attorney whose name and address is set forth at the bottom of this page, you may not receive notice of any further proceedings in this action. You are not required to file a written response to the petition(s); however, certain grounds for dismissal must be asserted in a timely fashion or are waived. If you have a claim for relief against the person who filed the petition(s), you may be required to assert such a claim in a written pleading which must be filed with the Clerk and served upon the other party or the attorney whose name and address is set forth at the bottom of this page.

The following manner of service of this SUMMONS is hereby designated:

(select): \_\_\_\_\_ Registered or certified mail (with addressed envelope) postage prepaid,  
return receipt #  
\_\_\_\_\_ Sheriff of Elkhart County  
\_\_\_\_\_ Private service by: \_\_\_\_\_

Date:

(Name of attorney for Filing Party)  
Indiana Attorney No: (insert)  
(firm name)  
Attorney for (select: Mother, Father)  
(address)  
  
(phone number)

WENDY HUDSON  
CLERK, ELKHART CIRCUIT/SUPERIOR

By:  
Deputy Clerk

**CLERK'S CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I mailed a copy of this Summons and designated documents to the party being served, \_\_\_\_\_, by \_\_\_\_\_ mail, requesting a return receipt, at the address furnished by the filing party.

WENDY HUDSON  
CLERK, ELKHART CIRCUIT/SUPERIOR  
COURTS

Dated: \_\_\_\_\_, 20\_\_\_\_.

BY:  
Deputy Clerk

**RETURN ON SERVICE OF SUMMONS BY MAIL**

I hereby certify that the attached return receipt was received by me showing that the Summons and designated documents mailed to the party being served, \_\_\_\_\_, was accepted by the party being served on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I hereby certify that the attached return receipt was received by me showing that the Summons and designated documents was returned not accepted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WENDY HUDSON  
CLERK, ELKHART CIRCUIT/SUPERIOR  
COURTS

Dated: \_\_\_\_\_, 20\_\_\_\_.

BY:  
Deputy Clerk

**RETURN OF SERVICE OF SUMMONS BY SHERIFF**

I hereby certify that I have served the within Summons and designated documents:

1) By delivering on \_\_\_\_\_, 20\_\_\_\_, a copy of this Summons and the designated documents to each of the within named person(s).

2) By leaving on \_\_\_\_\_, 20\_\_\_\_, for each of the within named person(s) \_\_\_\_\_ a copy of the Summons and a copy of the designated documents at the respective dwelling house or usual place of abode, \_\_\_\_\_ in \_\_\_\_\_, Indiana, with a person of suitable age and discretion residing within, whose usual duties or activities include prompt communication of such information to the person served, or by otherwise leaving such process thereat, and by mailing a copy of the Summons without the designated documents to the said named person(s) at the address listed herein.

3) This Summons came to hand this date, \_\_\_\_\_, 20\_\_\_\_. The within named \_\_\_\_\_ was not found in my bailiwick this date, \_\_\_\_\_, 20\_\_\_\_.

ALL DONE IN ELKHART COUNTY, INDIANA.

SHERIFF OF ELKHART COUNTY, INDIANA

By: \_\_\_\_\_

**SERVICE ACKNOWLEDGED**

I hereby acknowledge that I received a copy of this Summons and copies of the designated documents at \_\_\_\_\_, Indiana, on this date, \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Select: Mother/Father)

**LR20-FL00-CVFL-6 ADDITIONAL DOMESTIC RELATIONS  
MATTERS**

**(A) FINANCIAL DISCLOSURES**

1) Any party seeking an initial order of child support or spousal maintenance, or the modification of an existing order of support or maintenance, shall, at the first hearing on such request, provide the court and any other party with appropriate verification of that party's current income and childcare expenses.

2) A party seeking an order which deviates from the Child Support Schedule calculation shall set forth facts supporting the deviation. At or before any hearing on a motion for support or maintenance, the responding party shall file a verified statement showing the party's income and childcare expenses.

3) At or before any pretrial conference, both parties shall file and exchange verified financial disclosure statements. In any event a verified financial disclosure statement shall be filed by both parties at least thirty (30) days prior to submission, unless such filing is waived in writing by both parties. Such waiver shall be filed with the court at the time of submission.

4) Any party failing to comply with the provisions of subsection 3 above shall be ordered to pay a sanction of \$100.00. If this amount is not paid AND the verified financial disclosure is not tendered to the opposing party within fifteen (15) days of the pretrial conference, the noncomplying party shall forthwith pay a sanction of \$200.00. All payments due under this subsection shall be made to the Treasurer of Elkhart County for deposit into the General Fund. Hearings shall be scheduled to monitor compliance. The Court may also impose such other sanctions permitted by statute or rule as it deems appropriate.

**(B) DISCOVERY LIMITATION**

No party shall engage in excessive use of interrogatories, motions for production, or requests for admissions.

**(C) ATTORNEY FEES**

1) In the absence of contradictory evidence, a reasonable initial attorney fee shall be \$1,200.00. Allocation of this fee between the parties shall be calculated through use of the following formula:

a. Husband's gross income from line I or line 2 of support worksheet (if maintenance is ordered, use line 2). \$ \_\_\_\_\_

b. Wife's gross income from line 3 or line 4 of support worksheet (if maintenance is ordered use line 4). \$ \_\_\_\_\_

c. Add lines A and D. \$ \_\_\_\_\_

d. Divide line A by line C. \$ \_\_\_\_\_

e. Divide line B by line C. \$ \_\_\_\_\_

f. Multiply \$2,400.00 by line D or line E, whichever is greater. \$ \_\_\_\_\_

g. Subtract \$1,200.00 \$1200.00

h. Line F minus line G. \$ \_\_\_\_\_

The party having the greater income shall pay the amount shown on line H to the attorney for the party having, the lesser income. If the party having, the lesser income is not represented by an attorney, then no attorney fees will be ordered.

2) In the absence of contradictory evidence a reasonable attorney fee for prosecution of a post dissolution rule to show cause shall be a minimum of \$400.00 for one court appearance. A minimum of \$200.00 will be added for each additional court appearance.

#### **(D) DECREE PROVISIONS**

- 1) Each decree of dissolution of marriage shall contain a provision which requires compliance with the applicable Indiana statute governing relocation of the residence of unemancipated children. That provision shall also make specific reference to that statute in order to assist lay persons in reviewing and copying it.
- 2) Both parties shall attach to the decree a current Child Support Computation Worksheet.

#### **(E) TWO-PARTY AUCTION**

1) If the parties are unable to divide personal property and household goods by agreement, the method of division shall be by the private two-party auction, which shall be conducted by the lawyers for the parties or a Magistrate in a timely manner on such terms as (s)he deems appropriate.

2) Either party may initiate a two-party auction at any point in the proceedings upon application to the court. Upon application, the non-possessory party may have reasonable access to the personal property in order to comply with this rule.

3) Prior to the auction, the two parties are ordered to prepare and submit one itemized list of all household goods and personal property noting, items of a separate nature (e.g. premarital, extended family gifts, inheritance, disposed of or disputed items, etc.).

4) A party who intentionally fails to cooperate or participate in the inventory and auction process will be subject to sanctions.

5) At the conclusion of the auction, the Magistrate or lawyer conducting the auction shall immediately provide copies of all pages indicating the auction results to the parties, and the said results shall b promptly be filed with the appropriate court.

## **LR20-FL00-CVDR-7 SUPPORT AND MAINTENANCE STANDARDS**

- (A) Except in unusual circumstances, the Courts shall follow the schedule of support payments and maintenance set forth in the Indiana Child Support Guidelines, including all explanations and formulas.
- (B) Temporary maintenance shall equal 33-1/3% of the parties' combined net income (net income is defined as gross income minus deductions for any other prior court ordered child support, legal duty of support, other orders of maintenance paid, income producing expenses, and federal, state or local taxes paid). Any order for temporary maintenance shall expire ninety (90) days after the date upon which the order becomes effective. A party seeking an extension of an order for temporary maintenance shall file an appropriate petition and at a hearing shall show good cause for the extension.
- (C) Maintenance paid to a party shall be deducted from the payor's income and added to the recipient's income, and determinations of child support and attorney fees obligations shall be based on those incomes as so adjusted.
- (D) If both a support order and a maintenance order are entered, the parties shall recalculate support promptly after ninety (90) days so as to reflect the expiration of the maintenance order. The parties shall calculate support during both the maintenance period and thereafter, and shall file the results with the Court.
- (E) If the non-custodial parent has continuous custody of one or more of the parties' minor children for a period of seven (7) days or more, the child support shall abate by one-half (2), pro rata, for each child in such continuous custody, until said child or children are returned to the custodial parent. That portion of support attributable to child care expenses for said child or children shall be totally abated.
- (F) Medical insurance. Whichever party can provide the most comprehensive policy of medical insurance for the child(ren) at the lowest cost shall provide said insurance. The amount of the insurance premiums shall then be allocated between the parties on the percentage-of-income basis. If the non-custodial parent pays the insurance premiums, that parent shall receive credit against support paid each week in the amount of that parent's allocated portion of medical insurance. If the custodial parent pays the medical insurance premiums, that parent shall receive an additional amount of support each week equal to the non-custodial parent's percentage of medical insurance premiums. For good cause shown, and following a hearing at which both parties are given an opportunity to be present, the Court may in its discretion waive the requirement that medical insurance be provided for the benefit of minor children.



**(G)** Educational expenses through grade 12. A Guidelines-based support order shall encompass all ordinary educational expenses through the high school level. If appropriate, extraordinary educational expenses for children who have not yet completed high school, including private school tuition and costs of tutoring, shall be determined as an addition to support and shall be divided between the parties in proportion to their respective weekly adjusted incomes.

**(H)** Educational expenses after grade 12. Post high school educational expenses shall be determined as either an addition to, or in lieu of support. Except in unusual circumstances, an award of such expenses shall be limited to the lesser of:

- 1) The actual annual expenditures for tuition, room board, books, transportation, fees and miscellaneous expenses for the student; or
- 2) The annual cost of tuition, room, board, books, transportation, fees, and miscellaneous expenses which would be incurred by an Indiana resident attending the Bloomington campus of Indiana University as a resident student.

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

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

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

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

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

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

## **LR20-TR16-NAHT-8 HEARINGS/TRIALS**

### **(A) INITIAL HEARINGS**

All judges and magistrates of Elkhart County, Indiana, Courts of general jurisdiction, including regular judges and magistrates, senior judges and judges pro tempore, shall be authorized to conduct initial hearings and other preliminary hearings held in connection with civil and criminal cases filed in all Elkhart County, Indiana, Courts of general jurisdiction.

### **(B) STATUS CONFERENCES**

- 1) At any time after the issues are finally closed on the merits of any civil case, any party may request, or the court on its motion may set, a status conference to set deadlines, facilitate discovery, and discuss settlement and alternative dispute resolution of the case.
- 2) At the status conference, all counsel shall be prepared to state:
  - a. Whether all parties have been correctly designated and properly served;
  - b. Whether a third-party complaint or impleading petition is contemplated;
  - c. The time reasonably required for completion of discovery;
  - d. Whether a jury trial has been timely demanded and if so, whether the parties would contemplate waiver of trial by jury;
  - e. Whether there are any pending motions and whether dispositive motions are contemplated;
  - f. Whether a separation of claims, defenses, or issues would be desirable and if so, whether discovery should be limited to the claims, defenses, or issues being tried first;
  - g. The prospects of disposing of the case through settlement, mediation, or other methods of alternative dispute -resolution.
- 3) At the conclusion of the status conference, the court may establish deadlines for disclosure of witnesses and exhibits to be offered at trial, discovery, amendments to the pleadings, dispositive motions, alternate dispute resolution measures, and any other matters to come before the court. The court may thereupon schedule a pretrial conference or a further status conference.
- 4) Deadlines established at the status conference shall not be extended, except by agreement of the parties and the Court, or for good cause shown.

### **(C) PRETRIAL CONFERENCES**

- 1) Unless waived by the Court, a pretrial conference shall be held in every civil case. No case shall be set for trial before the pre-trial order is filed.
- 2) All discovery shall be completed at least five (5) days prior to the pretrial conference, except an examination of the physical or mental condition of a party pursuant to TR 35, which may be ordered at any time prior to trial. Prior to the discovery cutoff date the Court may extend the time for completing discovery upon the filing of a written motion showing good cause for the extension of time.

- 3) The attorney for each party and each party appearing pro se shall have an independent duty to arrange the conference of the attorneys required by TR 16 8). Unless the attorneys agree otherwise, the conference shall be held in the office of the attorney located closest to the Court in which the case is pending. At this conference, every party shall provide each other party an opportunity to inspect and copy all exhibits. Any plaintiff's proposed exhibits shall be numbered, and any defendant's, proposed exhibits shall be lettered. The attorneys shall explore fully the possibility of settlement and of any further alternative dispute resolution techniques. The attorneys shall also discuss the length of time probably required for trial of the case and, in any case for which a jury has been requested, the possibility of waiving the jury and trying the case to the Court alone.
- 4) Following the conference of attorneys, and at least five (5) days before the pre-trial conference, the plaintiff shall file a proposed pre-trial order, signed by counsel for all parties. The proposed order shall cover the following points:
  - a. The nature of the action;
  - b. The basis of jurisdiction of the Court;
  - c. Questions raised by pending motions;
  - d. Proposed amendments to pleadings;
  - e. A concise statement of the contentions of each party;
  - f. A concise statement of undisputed facts;
  - g. A concise statement of disputed issues of fact;
  - h. A concise statement of uncontested issues of law;
  - i. A concise statement of contested issues of law;
  - j. A numbered list of the names and addresses of each party's witnesses', with expert witnesses designated as such;
  - k. A numbered or lettered list of trial proposed exhibits of each party, as appropriate;
  - l. A concise statement of any disagreement regarding rules of law relating to anticipated jury instructions;
  - m. Appropriateness of ADR processes; and
  - n. A certification by each attorney or pro se party of compliance with the provisions of TR 16.
- 5) A pretrial order, once signed by the Court, shall govern the course of the trial. The pretrial order shall not be amended except by consent of the parties and the Court or by further order of the Court to prevent manifest injustice. All pleadings shall be deemed merged into the pretrial order.
- 6) If the parties fail to timely file any material required to be filed prior to the pretrial conference, the Court may postpone the pretrial conference and take further action as appropriate.

**(D) TRIAL SETTINGS**

- 1) Except for good cause shown, the parties and counsel involved in any civil jury trial set as a backup trial shall be prepared to begin the trial when scheduled.
- 2) All attorneys and all parties appearing pro se shall be responsible for discovering the sequence of cases and shall be prepared to try their cases on the date scheduled.
- 3) Whenever a Court sets a criminal case for trial and the defendant is not then present, the defendant within twenty-one days thereafter shall file a signed written acknowledgment of the trial date or shall in open court orally acknowledge the trial date.
- 4) No dispositive motions, including but not limited to motions for summary judgment, shall be filed in any action within one hundred twenty (120) days of a scheduled trial of that action without leave of court. Leave of court may be granted or denied with or without hearing, at the option of the court.

**LR20-TR00-NATP-9 TRIAL PROCEDURES**

**(A)** Ten days before the commencement of the trial of any criminal case or a civil case which is a first or second setting:

- 1) Each attorney shall mark for identification and provide opposing counsel an opportunity to inspect and copy all exhibits which that party intends to introduce into evidence during the trial. The proponent of the exhibit shall prepare a proposed stipulation and shall submit it to opposing counsel with the exhibits. All documents stipulated to be admissible shall be prepared so that the court and each juror shall have a packet of stipulated exhibits at the beginning of the trial; and
- 2) Each party shall provide the court and each opposing counsel a final written list of names and addresses of that party's witnesses, as well as a written list of exhibits. If without just cause the exhibits and lists are not exchanged, stipulated to, or provided, then the exhibits or witnesses shall not be allowed to be used during the trial.

**(B)** Voir dire examinations shall be conducted first by the Court. Parties may submit to the Court, at least five days prior to the trial, any proposed questions for prospective jurors, which questions shall be asked if the court deems them appropriate. The Court may also grant each party a limited amount of time for additional examination of prospective jurors. The sole purpose of voir dire examination shall be to determine qualifications of prospective jurors.

(C) All challenges to prospective jurors seated in the jury box shall be exercised in writing after the first round of questioning of those prospective jurors. If more than one party peremptorily challenges the same juror, the challenge shall be counted against each party so challenging. At the end of each succeeding round, peremptory challenges may be exercised against only those persons seated after the previous round. Parties may interrogate previously-accepted prospective jurors only as to new matters and may thereafter challenge for cause a previously-accepted prospective juror.

(D) When an objection is made to a question posed to a witness during any jury trial, the person asking the question shall not state within the hearing of the jury the expected response of the witness.

(E) Only one person shall examine or cross-examine a witness, except by permission of the Court.

(F) A court shall not enforce any admissions, agreements, or stipulations unless they are reduced to writing and either filed with the Court or made a part of the record in open court.

## **LR20-TR51-NAJI-10 JURY INSTRUCTIONS**

(A) A court may require a party to submit any proposed instructions either on paper or on a 3.5-inch computer diskette in WordPerfect format.

(B) In any civil case each party shall tender to the court all proposed preliminary and final instructions at least 14 days prior to the trial date.

(C) In any criminal case each party shall tender to the court all proposed preliminary and final instructions at least 3 days prior to the trial date.

(D) The Court may in its discretion permit the parties to submit additional proposed final instructions after the close of the evidence.

(E) Any proposed instruction shall contain a citation of legal authority for the proposed instruction. Indiana Pattern Jury Instructions shall be used wherever applicable. Failure to comply with this rule shall be deemed a waiver by a party of the right to tender instructions.

(F) A party submitting proposed instructions on paper shall submit the proposal in duplicate. One copy of each proposed instruction shall identify the party tendering the instruction and shall contain citations of authority. The other copy of the instruction shall be prepared so as not to identify either the party proposing the instruction or the citation of authority.

(G) A party proposing any instruction shall deliver a copy of such instruction to any other party.

## **LR20-TR00-NACE-11 CUSTODY/DISPOSITION OF EXHIBITS**

(A) Any material marked as an exhibit, whether or not admitted into evidence, shall be held in the custody of the Court Reporter, unless otherwise ordered by the Court.

(B) All material placed in the custody of the Court Reporter shall be removed by the offering party, except as otherwise ordered by the Court, within four months after the final disposition of the case. At the time of removal, the party shall give a detailed receipt to the Court Reporter which shall be filed in the record of the case. If a party fails to comply with this rule, the Court may order the destruction or other disposition of the material.

## **LR20-TR00-CVSB-12 SURETY ON BONDS**

(A) No attorney, employee or other officer of the Court shall be accepted as surety on bonds in criminal, civil or probate matters.

(B) The Court will require a bond in an amount sufficient to cover all liquid assets of all estates, trusts and guardianships. If any non-liquid assets (such as real estate) become liquid, the bond shall immediately be increased in an amount to cover the additional liquid asset. The bond shall also be in an amount to protect two (2) times the annual income. The bond may be waived in an estate only if a sole heir is also the personal representative and as heir files a waiver of bond or if all adult competent heirs file a waiver of bond, and in a guardianship if the minor's account cannot be withdrawn except by Court order. When two or more persons are appointed personal representative or co-guardians, they may file a joint surety.

## **(C) ORDER ON APPEARANCE OF CRIMINAL DEFENDANTS AND THE SETTING OF BAIL IN CRIMINAL CASES**

### **1. No Bail Requirement**

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

- a. all offenses if the offender is on probation
- b. all felonies
- c. all misdemeanors involving possession or delivery of a firearm as proscribed by I.C. § 35-47 *et seq.*
- d. all misdemeanors involving domestic battery as proscribed by I.C. §35-42-2-1.3
- e. all misdemeanors involving invasion of privacy as proscribed by I.C. §35-46-1-15.1
- f. all misdemeanors involving operating while intoxicated proscribed by I.C. §9-30-5 *et seq.*

**2. Standard bail requirement for non-exempt misdemeanors and exceptions**

A standard bail may be applied for non-exempt misdemeanors in the amount of one-thousand five hundred dollars (\$1,500.00) regardless of the number of misdemeanors cited by the arresting law enforcement officer. If the arresting law enforcement officer documents circumstances surrounding the offense which he believes warrant a different amount of bail, he or she may request the person be held without bail until such time as a neutral and detached Judge or Magistrate reviews said facts and set bail.

**3. Consideration of Local Rule 13 for fixing amount of bail**

Except as otherwise provided herein, or in applicable statute or rule, bail in felony and misdemeanor cases shall be fixed by the Judicial officer finding probable cause for the arrest of the defendant. In fixing the amount of bail in a give case, that judicial officer shall consider the Elkhart County Criminal Bail/Bond schedule, as embodied in LR20-CR00-CRBS Rule 13. Notwithstanding the foregoing, it is emphasized that such schedule is advisory in nature, and shall not be construed as limiting the authority of any judicial officer to fix bond in any amount which he or she deems to be appropriate in any given cause.

**4. Surety requirement**

On all cases involving the posting of bail through a surety, a person shall not be released on bail until the bail bond agent certifies that he or she has verified that the information provided to the bail bond agent regarding identification and address of the person are accurate and reliable.

**5. Notice regarding Initial Hearing**

A person who has posted bail prior to his or her appearance in court for an Initial Hearing shall be informed of his or her Initial Hearing date, time and location, and that failure to appear as directed will result in a revocation of bail and the issuance of an arrest warrant for failure to appear.

**6. Alcohol related charges**

No bail shall be allowed for persons arrested on alcohol related charges if release of said person is otherwise prohibited by law (See I.C. §35-33-1-6)

**7. Duty of recording bail information**

**All original documentation regarding the posting of bail shall be submitted to the Court where the particular offense is filed and the Clerk of the Court shall be responsible for entering the information on the Chronological Case Summary (CCS).**

**If criminal charges have not been filed, the original documentation regarding the posting of bail shall be submitted to the Court that docketts the finding of probable cause for the arrest and shall also be entered by the Clerk of the Court in the CCS.**



**LR20-CR00-CRBS-13 CRIMINAL BAIL/BOND SCHEDULE**

(A) Unless otherwise ordered by a court, bail on felony charges shall be as follows:

|     | <b>FELONY CASES</b>  | <b>LEVEL</b>   |               |
|-----|--|----------------|---------------|
| A   | \$150,000.00   | LEVEL 1 FELONY | \$ 150,000.00 |
| B   | \$ 75,000.00   | LEVEL 2 FELONY | \$ 100,000.00 |
| C   | \$ 5,000.00 (SUSPENDIBLE)<br>\$ 10,000.00 (NONSUSPENDIBLE) | LEVEL 3 FELONY | \$ 75,000.00  |
| D   | \$ 3,000.00 (SUSPENDIBLE)<br>\$ 5,000.00 (NONSUSPENDIBLE)  | LEVEL 4 FELONY | \$ 10,000.00  |
| XXX | XXXXXXXXXXXXXXXXXXXXXXX                                    | LEVEL 5 FELONY | \$ 5,000.00   |
| XXX | XXXXXXXXXXXXXXXXXXXXXXX                                    | LEVEL 6 FELONY | \$ 3,000.00   |

(B) Bail for any misdemeanor shall be \$1,500 per charge.

(C) This Bail/Bond Schedule is advisory. It shall be within the discretion of any court to set a bond which is higher or lower than that recommended by the schedule in any given case. Any bail setting shall be reviewable at the instance of any party.

(D) Subject to court approval, a person charged with any class C or class D felony which does not involve the use or possession of a deadly weapon and for which the sentence would apparently be suspendible may be permitted to post with the Clerk of the Court a cash bond in the amount of 10% of the bail as set, provided that:

- 1) The person has close ties to the local community;
- 2) The person has not been convicted of an offense;
- 3) The person agrees to submit to supervision by the pretrial release officer;
- 4) The bond is posted in the name of the defendant; and
- 5) The bond shall disclose on its face that it is a personal asset of the defendant and may be subjected to payment-of court-imposed financial obligations

*(Amended effective July 1, 2014)*

## **LR20-CR00-CRDD-14 CRIMINAL DISCOVERY DISCLOSURE**

- (A) In any criminal case, each party shall routinely disclose:
- 1) The names, dates of birth, Social Security Account Numbers, and last-known addresses of all persons whom that party may call as witnesses, together with any written or recorded statements the person may have made, any memoranda containing substantially-verbatim reports of any oral statements the person may have made and summaries of the anticipated testimony of each potential witness;
  - 2) Copies of statements of any co-defendant;
  - 3) Copies of reports of experts made in connection with the case, including results of physical or mental examinations, scientific tests, experiments, or comparisons;
  - 4) Any books, papers, documents, photographs, videotapes, audio recordings, or tangible objects which the party may introduce at hearing or trial; and
  - 5) A record of prior criminal convictions of any witnesses called by that party.
- (B) In addition to the matters described in Section A of this Rule, the State shall disclose:
- 1) Copies of any written or recorded statements made by the defendant, summaries of any oral statements made by the defendant, and a list of witnesses to the making and acknowledgment of such statements; and
  - 2) Any other evidence which tends to negate the guilt of the defendant as to the offense charged or to mitigate the punishment of the defendant upon conviction.
  - 3) In addition to the matters described in Section A of this Rule, the defendant shall disclose any defense, procedural or substantive, which the defendant intends to assert at hearing or trial.
  - 4) A party seeking discovery shall prepare any discovery document so that answers may be made on the original discovery document. Discovery requests and responses shall not be filed with the Court or Clerk unless a dispute arises regarding said discovery.
  - 5) Providing discoverable material shall be a continuing Obligation of all parties and each party shall promptly provide any new material for which disclosure is required under this rule.
  - 6) A court may make more specific orders for additional discovery after a hearing on any appropriate motion filed by either party.
  - 7) A court may exclude from evidence any materials not properly disclosed to the other party and may impose further sanctions for any party's unjustified failure to comply with this rule.

## **LR20-AR15-NACR-15 COURT REPORTERS**

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

**SECTION ONE: DEFINITIONS** The following definitions shall apply under this local rule:

- (A) A Court Reporter is a person who is specifically designated by a court to perform the official court reporting services for the Court, including preparing a transcript of record.
- (B) Equipment means all physical items owned by the court or other governmental entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes, and any other device used for recording and storing, and transcribing electronic data.
- (C) Work space means that portion of the court's facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.
- (D) Page means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 7.2.
- (E) Recording means the electronic, mechanical, stenographic or other recording made as required by Indiana Rule of Trial Procedure 74.
- (F) Regular hours -worked means those hours which the court is regularly scheduled to work during any given work week. Depending on the particular court, these hours may vary from court to court within the county but remain the same for each work week.
- (G) Gap hours worked means those hours worked that are in excess of the regular hours worked but hours not in excess for forty (40) hours per work week.
- (H) Overtime hours worked means those hours worked in excess of forty (40) hours per work week.
- (I) Work week means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year, i.e. Sunday through Saturday, Wednesday through Tuesday, Friday through Thursday.
- (J) Court means the particular court for which the court reporter performs services.
- (K) County indigent transcript means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court.

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

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

(N) Expedited or rush transcript is one which is requested for delivery within three days, excluding weekends and holidays.

(O) Copy Rate means the subsequent order of an existing transcript excluding transcripts in appellate form.

## **SECTION TWO: SALARIES AND PER PAGE FEES**

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

(B) The maximum per page fee a court reporter may charge for the preparation of a county or state indigent transcript shall be \$3.50; the court reporter shall submit a claim directly to the county for the preparation of any county indigent transcripts. However, whenever possible, county indigent transcripts shall be prepared during regular work hours. When prepared during regular work hours, a per page fee shall not be assessed.

(C) The maximum per page fee a court reporter may charge for the preparation of a state indigent transcript shall be \$3.50.

(D) The maximum per page fee a court reporter may charge for the preparation of a private transcript shall be \$3.50.

(E) The maximum per page fee a court reporter may charge for an expedited or rush transcript shall be \$6.00.

(F) The maximum per page copy rate a court reporter may charge is \$2.00 per page.

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

### **SECTION THREE: PRIVATE PRACTICE**

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

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

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

*(Amended effective October 4, 2016)*

### **LR20-TR00-NAGC-16 GUARDIAN AD LITEM/CASA**

#### **(1) APPOINTMENT OF GUARDIAN AD LITEM**

The Courts of Elkhart County reserve the right to appoint a guardian ad litem to represent the interests of minors and incapacitated persons. An order for appointment of a guardian ad litem may be entered by agreement of the parties and the court or by petition and approval by the court. Guardian ad litem fees shall be ordered paid by the parties in accordance with the percentages of their incomes, unless otherwise agreed to by the parties or the parties are determined to be indigent, in which case the court shall pay the fees at the rate set forth by Elkhart County. Within ten (10) days of the appointment of the guardian ad litem, the parties and/or counsel shall file a guardian ad litem information sheet form and shall serve a copy upon the guardian ad litem. The guardian ad litem shall file a written report with the court and serve copies upon the parties and/or counsel as ordered by the court. The guardian ad litem's appointment shall be considered terminated upon completion of the work required by the court's initial order or upon entry of an order deciding the matters at issue. The appointment may be renewed at a later date by further order of the court.

Henceforth the customary fee for home studies conducted by an employee of the Elkhart County Probation Department shall be Five Hundred Dollars (\$500.00). Absent a court order to the contrary, that fee will be divided equally between the parties to the action in which the home study is ordered. The courts of Elkhart County, Indiana, both individually and collectively, reserve the right to enter Orders modifying the fee charged for the preparation of a home study in a give case, and modifying the division of responsibility for payment of that fee between the parties.

**(2) JUVENILE COURT GUARDIAN AD LITEM/CASA**

The Court shall appoint a Guardian Ad Litem and/or Court appointed Special Advocate (CASA) to each child involved in the Juvenile Court alleged to be a Child in Need of Services (CHINS), and in each Petition for Termination of Parental Rights. The following procedure shall be followed with respect to such appoints:

- 1) The CASA shall file a Form of Order with the Court appointing a CASA in each CHINS case. The Form of Order shall indicate the name of the assigned CASA.
- 2) The Court shall issue an Order appointing a CASA with the filing of all Termination Petitions. The CASA appointed in the corresponding CHINS action shall be appointed to represent the Minor in the Termination cause to provide for continuity in the representation of each child.

**LR20- AR00-NAMC-17**

**MAGISTRATE AND IV-D COMMISSIONER  
GUIDELINES**

**(A) MAGISTRATE GUIDELINES** The Courts of Elkhart County adopt the following guidelines regarding use of Magistrates:

- 1) Any Court may, with or without the consent of the parties, assign to a Magistrate the responsibility to hear specific currently-disputed matters.
- 2) The Magistrate shall, with reasonable promptness, hear such matters and shall issue to such Court either a report of findings, which may be accompanied by a recommendation for disposition of those matters, or a final order, whichever is appropriate under controlling law. Complaints regarding the timeliness of any disposition shall be made to the referring Court.
- 3) All filings related to any matter referred to a Magistrate shall be made with the Magistrate.
- 4) No change of venue from a Magistrate shall be granted. A change of venue from the referring Court may be sought under applicable trial Rules.
- 5) A Magistrate shall maintain an office which shall be open at all reasonable times during the Elkhart County hours of operation. A Magistrate shall maintain a telephone answering system during any workday periods when the office is not manned.
- 6) Referral of a matter to a Magistrate shall not operate as an appointment of a special judge, temporary judge or a judge pro tempore.

**(B) IV-D COMMISSIONER GUIDELINES**

The IV-D Child Support Court (hereinafter IV-D Court) is established by Elkhart County pursuant to Title IV, Section D, of the Federal Social Security Act for the purpose of providing for paternity establishment, establishment of child support orders, enforcement of child support orders and collection of past due support for Title IV-D Program participants.

- 1) In all cases in which the Title IV-D Child Support Division of the Elkhart County Prosecutor's Office (hereinafter IV-D Office) has intervened, all child support issues shall be deemed automatically referred to the IV-D Court;
- 2) Except that felony non-support cases shall remain in Elkhart Superior Court 6 unless Elkhart Superior Court 6 chooses to refer a felony non-support case to the IV-D Court.
- 3) In a case in which child support issues are deemed automatically referred to the IV-D Court, the underlying cause shall remain in the court in which it was originally filed, unless properly transferred to another court.
- 4) All new causes filed by the IV-D Office after January 1, 2005 shall be filed in Elkhart Superior Court 6 and the Judge of Elkhart Superior Court 6 shall supervise the administration of the IV-D Court.
- 5) All cases currently assigned a cause number will retain the original cause number; the IV-D staff will file all pleadings in the Court of origin with sufficient copies for all parties being noticed. All pleadings must include the parties address, dates of birth and social security numbers when preparing and filing orders, the IV-D Office shall tender two copies of the requested order plus one copy for each part
- 6) The IV-D Office is exempt from filing fees.

**LR20- JV00-NAJV-18**

**CIRCUIT COURT JUVENILE DIVISION**

**(A) JUVENILE COURT DETENTION AND PROTECTIVE CUSTODY HEARINGS**

Such hearings are probable cause hearings and by nature ex parte. Notwithstanding the above:

- 1) Detention Hearing: Minor allowed to cross-examine and confront witnesses, representation by counsel and presentation of relevant evidence discretionary with Court.
- 2) Protective Custody Hearing: Minor, parent, guardian or custodian allowed (K)cross-examination and confrontation of witnesses and representation by counsel. Minor, parent, guardian or custodian allowed to make statement of explanation of circumstances surrounding protective custody, presentation of relevant other evidence discretionary with the Court.

**(B) JUVENILE COURT INITIAL HEARINGS - DELINQUENCY/CHINS**

- 1) Initial hearings shall be held pursuant to law.
- 2) Upon denial of petition, the Court will set the matter for fact finding hearing, unless the parties agree and the Court has sufficient time to hear the same without disruption of the remainder of the Court schedule.

**(C) JUVENILE COURT DISPOSITIONAL, MODIFICATION OF DISPOSITION PROGRESS REPORTS, PLACEMENT REVIEW HEARINGS - DELINQUENCY/CHINS**

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

**(D) JUVENILE COURT WAIVER OF JURISDICTION, VIOLATION OF PROBATION DELINQUENCY AND TERMINATION OF PARENTAL RIGHTS - WELFARE**

- 1) Initial hearings shall be held on such petitions.
- 2) Upon denial of same, the Court shall set the matter for fact finding or evidentiary hearing following Rule 11 herein above stated.
- 3) Upon granting of waiver of jurisdiction, the State shall provide the waiver decree embracing all facts which the party claims is proven and conclusions of law thereon within seventy-two (72) hours of the conclusion of the hearing, in such numbers that the Juvenile Court, the adult Court to which the minor is waived, Probation Department and minor receive copies.

**(E) JUVENILE COURT REPORTS, ASSESSMENTS AND EVALUATIONS**

- 1) All Division of Family and Children, Probation and CASA reports, court ordered assessments and evaluations shall be filed with the Court not later than 4:00 p.m. on the Friday before the scheduled hearing.
- 2) All such reports shall be served on opposing parties and CASA, if relevant, as soon as such are available, the latest being by 4:00 p.m. on the Friday before the scheduled hearing.

**(F) JUVENILE COURT SCHEDULING**

- 1) All scheduling shall be done by Court staff. Specific dates for hearing may be requested, efforts to accommodate such requests shall be made contingent upon availability.



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

**(G) JUVENILE COURT ADDITIONAL PROCEDURES, FACT FINDING OR OTHER EVIDENTIARY HEARINGS**

- 1) A writ of attachment for an absent witness shall not be issued unless the party calling said witness files an affidavit showing:
  - 2) The materiality of the testimony of the witness;
  - 3) The expected testimony of the witness; and
  - 4) Certification that the absent witness was served with process more than three (3) days earlier or that for good and sufficient cause the witness was served with process less than three (3) days earlier.
- 5) Only one attorney for each party shall examine or cross-examine a witness, except by permission of the Court.
- 6). No person shall withdraw any original pleading, paper, record, model, exhibit or other document from the custody of the Clerk or other officer of the Court having custody thereof, except upon order of the Court and upon leaving a proper receipt with the Clerk or other officer.
- 7) Counsel for a party shall be responsible for preparing and filing summons, citations, notices or other documents for which forms may be obtained from the Clerk of the Court. These forms shall include any names, addresses and other descriptive information, such as place of employment, necessary to effect service of said document.
- 8) CASA's, foster parents, school personnel, Lifeline staff, institutional placement staff and any others the Court may determine will be invited by the Court to give reports and testimony as to a minor at dispositional, progress report, placement review or other hearing where such testimony is admissible under the law.

**(H) JUVENILE COURT RULES OF COURTS OF GENERAL JURISDICTION**

The Rules of Court promulgated by the Courts of General Jurisdiction are applicable to Juvenile Court unless negated by statute or Juvenile Court Rule.

**LR20 – AR1E – 19      CASELOAD ALLOCATION PLAN**

**One (1) full time Juvenile Magistrate  
 Two (2) full time Court Magistrates  
 One (1) part-time (.6) Title IV-D Court Commissioner  
 Total: 3.6 available**

**(Based Upon 2010 Projections Supplied by Indiana State Court Administration)**

|              | <b>NEED</b> | <b>ADJUSTMENT<br/>OF<br/>MAGISTRATE<br/>TIME</b> | <b>HAVE<br/>(After<br/>Adjustment)</b> | <b>UTILIZATION<br/>(After Adjustment)</b> |
|--------------|-------------|--|--|---|
| CIRCUIT      | 3.49        |  | 2.01                                   | 1.73                                      |
| SUPERIOR I   | 2.30        |  | 1.30                                   | 1.77                                      |
| SUPERIOR II  | 1.68        | - .54  | 1.01                                   | 1.66                                      |
| SUPERIOR III | 1.42        | - .07  | 1.01                                   | 1.40                                      |
| SUPERIOR IV  | 1.56        |  | 1.08                                   | 1.44                                      |
| SUPERIOR V   | 1.73        |  | 1.15                                   | 1.51                                      |
| SUPERIOR VI  | 3.76        | + .61  | 2.46                                   | 1.53                                      |

**LR-20-AR00-20**

**ELECTRONIC ENDORSEMENT OF MENTAL  
HEALTH COMMITMENTS**

All applications for Emergency Detention must comply with I.C. 12-26-5-1 *et. seq.* The required application must be signed by at least one physician. At the discretion of the judge, an application may be submitted to the court in electronic format. A judicial officer authorized to issue a warrant in the county in which the individual whose detention is sought is present may endorse the application electronically. The original Emergency Detention application documents and a record of electronic transmission must be maintained by the sending party. The endorsing Judge is responsible for filing a hard copy of the endorsement and Order of Detention with the Clerk of the Elkhart Circuit and Superior Courts.

*(Adopted effective March 1, 2015)*