

**LOCAL CRIMINAL RULES OF
PRACTICE**

FOR THE COURTS

OF THE 52nd JUDICIAL CIRCUIT

FLOYD COUNTY, INDIANA

Updated: March 1, 2022

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LR22-CR1-200
APPLICABILITY OF RULES

A. SCOPE. The following local criminal rules of practice and procedure shall apply to cases filed in the Circuit and Superior Courts of Floyd County, Indiana.

B. EFFECTIVE DATE. These local rules shall be effective January 1, ~~2009~~2012.

C. CITATION. These rules may be cited as Local Criminal Rule _____. LR22-CR00-____)

D. PURPOSE. These rules are promulgated pursuant to, and are intended to supplement, the Indiana Criminal Rules as adopted by the Indiana Supreme Court.

LR22-CR2.1-201
WITHDRAWAL OF APPEARANCE

A. WITHDRAWAL OF APPEARANCE. An attorney desiring to withdraw his appearance shall file a written motion requesting leave to do so accompanied by a notice of hearing which shall be served upon the defendant directing said person to appear at the hearing, unless incarcerated, in which event the defendant shall be produced in Court for said hearing. The motion must contain the address and phone number of the defendant.

B. WAIVER OF RULE. A motion for leave to withdraw an appearance accompanied by a written appearance of successor counsel and a written consent of the defendant shall constitute a waiver of the requirements of this local rule.

B. TERMINATION OF APPEARANCE. An attorney's representation of a Defendant shall be conclusively presumed to be withdrawn/terminated five (5) days from the expiration of the time within which a Notice of Appeal must be filed.

LR22-CR18-202
DUTIES OF ATTORNEYS
PREPARATION OF ENTRIES

A. STATUS OF PROCEEDINGS. The Prosecuting Attorney and each attorney appearing of record shall at all times keep themselves informed of the status of the proceeding and shall be particularly bound by hearing dates orally set by the Court from the bench in their presence.

B. PREPARATION OF ENTRY. When the Prosecuting Attorney or an attorney of record for a defendant has agreed to or has been directed by the Court to prepare an order or entry, such attorney shall place on the last page of the entry appropriate signature lines indicating "prepared by" and "reviewed by" and shall submit the entry to opposing counsel for examination. Opposing counsel shall promptly examine the entry when submitted, shall sign the entry, and shall submit the entry to the Court within five [5] days of receiving same. If opposing counsel shall fail or refuse to sign or submit the order or entry within five (5) days of receiving same without advising the Court and the preparing attorney as to objections thereto, the preparing attorney shall advise the Court by letter of opposing counsel's failure or refusal to sign or submit such order or entry and submit the same to the Court. The Court shall accept such order or entry without opposing counsel's signature unless after examining the record, the Court determines that the same is erroneous.

C. FLAT FILING. The files of the Clerk of the Court shall be kept under the flat filing system. All pleadings presented for filing with the Clerk or the Court shall be flat and unfolded.

D. PAPER SIZE. All pleadings, motions, entries, orders, judgments and other papers shall be filed on letter size [8 ½ x 11] paper.

C. PROPOSED ORDERS AND ENTRIES. All proposed orders and entries shall reflect the name of the preparer under the indication "tendered by", shall be submitted in sufficient number for each person entitled to service and shall contain a distribution list identifying by name and address each person entitled to service. The preparer shall provide sufficient pre-stamped pre-addressed envelopes to the court for mailing of the orders or entries.

D. PROPOSED ORDERS AND ENTRIES. All proposed orders and entries shall reflect the name of the preparer under the indication "tendered by", shall be submitted in sufficient number for each person entitled to service and shall contain a distribution list identifying by name and address each person entitled to service. The preparer shall provide sufficient pre-stamped pre-addressed envelopes to the court for mailing of the orders or entries.

E. ATTORNEYS FILING PLEADINGS WITH MULTIPLE CAUSE NUMBERS. If an attorney files a pleading with more than one cause number, they shall provide the Court with enough copies for each case for filing. This applies to Motions, Notices, and Orders.

**LR22-TR7-203
MOTIONS**

A. PROPOSED ORDERS REQUIRED. Proposed orders shall accompany motions in the following matters:

- [1] to enlarge or shorten time
 - [2] for setting of hearing, conference or trial
 - [3] for continuance
 - [4] for reduction of bond
 - [5] for psychiatric examination for competency
 - [6] to compel discovery
 - [7] to withdraw appearance
 - [8] for dismissal
 - [9] for change of venue
 - [10] for modification of sentence
 - [11] for post-conviction relief
 - [12] for such other orders, judgments or decrees as the Court may direct;
- and shall comply with Local Rule LR22-CR18-202(E).

B. HEARINGS REQUIRED. Excepting motions to correct error, all motions shall be accompanied by a separate motion requesting a hearing and a proposed order for the scheduling of a hearing date.

C. GENERALLY. Excepting motions made during the course of a recorded proceeding, all motions shall be in writing.

**LR22-CR2.2-204
PRE-TRIAL CONFERENCES
OMNIBUS DATE
ASSIGNMENT OF CASES FOR TRIAL**

A. COURT CALENDAR. A calendar of cases assigned for bench trial or jury trial shall be kept by the Court and the Court Reporter shall enter on the calendar at the direction of the Court, the style, cause number, and the time and date the trial is assigned to commence. In order to comply with Indiana Criminal Rule 4, the Prosecuting Attorney may submit a motion for trial date setting out the requested trial date which the Court will grant unless a congested calendar exists in which event the next available date shall be the trial date.

B. PRE-TRIAL CONFERENCES AND OMNIBUS DATE.

Pre-trial Conferences. The Court, in its discretion, may require a pre-trial conference on certain cases and, *sua sponte*, set such cases for conference. Any party or attorney of record desirous of having a pre-trial conference for any case may file a motion requesting same accompanied by a proposed order.

Omnibus Date. The Omnibus date shall be set by the Court pursuant to the Indiana Criminal Code. All matters required to be resolved, filed or notices given, and all time limits required to be observed, shall be complied with on or before said date as required by the Indiana Criminal Code.

C. ATTENDANCE AT PRE-TRIAL CONFERENCE AND OMNIBUS HEARING DATE. At least one attorney for each defendant who is a member of the Indiana Bar and who will participate in the trial shall appear at the pre-trial conference and omnibus date. The defendant must also be present for any pre-trial conference or omnibus date in the Circuit and Superior Courts. An attorney and a defendant who fails to attend a pre-trial conference or omnibus date shall be bound by the trial date set by the Court as well as such other matters determined at the conference or omnibus date. A bench warrant may be issued in the discretion of the Court for any defendant who fails to attend a pre-trial or omnibus date.

D. REQUESTS FOR BENCH TRIAL. The assignment of a case for bench trial may be had by motion duly filed and accompanied by a proposed order. Said motion shall reflect an estimate of the trial time required.

**LR22-TR53.5-205
CONTINUANCES**

A. GENERALLY. A motion for continuance of a hearing or trial shall be accompanied by a proposed order which shall contain adequate space for insertion of a new time and date for re-scheduling purposes. The proposed order shall comply with Local Criminal Rule LR22-CR18-202.

B. CONTENT OF MOTION. A motion for continuance shall set forth the scheduled date, the reason for continuance, the specific length of time the moving party desires the cause to be delayed, and reference as to whether opposing counsel agrees or disagrees to a continuance of the scheduled hearing or trial.

C. TIMING OF MOTION. No continuance shall be granted at the request of a party unless a written motion for same is filed not less than fourteen [14] days prior to the scheduled hearing or trial, unless it is made to appear by affidavit that the facts which are the basis of the motion did not then exist or were not then known by the moving party.

**LR22-CR00-206
FINDINGS OF FACT**

PROPOSED FINDINGS. In all cases where findings of fact by the Court are requested or required, counsel of record shall submit to the Court proposed findings setting forth all facts claimed to have been established and the conclusions of law thereon. The proposed findings and conclusions shall be submitted to the Court on computer disc or by e-mail in the Court's discretion within such time as directed by the Court.

**LR22-CR00-207
BONDS AND BOND SCHEDULES**

A. BOND SCHEDULE. During regular court hours the judge of each court, or magistrate on cases assigned to him in each court, shall determine the bond on all cases filed in that court. The judges of the various courts may, in their discretion, institute and adopt bond schedules. These bond schedules are for the convenience of the court's and sheriff's offices for use after regular court hours. The sheriff's office may assign bonds for any individual arrested based on the nature of the charge per the schedule.

B. EXCEPTIONS. The bond may be changed by the judge of the court providing the bond schedule, and the magistrate on cases assigned to him in such court, at any time for any specific case. Any of the other judges and the magistrate may change a bond on any individual after court hours regardless of which court the individual is charged in, if the bond has not already been reviewed by one of the other judges or magistrate.

C. OTHER CASES. The bond on any case that is not on a bond schedule due to the severity and nature of the offense, may be set by any of the judges and the magistrate after regular court hours. The judges of the courts wherein the case is appropriate to be sent should be contacted first. In the event said judge or judges are unavailable, then a judge of either of the other courts or the magistrate may set the bond. Nevertheless, any judge or the magistrate may assign a bond to any individual case regardless of the offense or where the case will be filed provided none of the other judges or the magistrate have previously reviewed said bond and taken action thereon.

D. TYPES OF BONDS. The following bonds are approved for the courts of Floyd County: Surety, Cash and Ten (10%) percent Bonds posted in the Clerk's Office (Court Cash Bonds).

**LR22-CR2.2-208
CASE ASSIGNMENT**

A. APPLICATION. In the event a case charges both a felony and a misdemeanor, the case shall be considered a felony for the application of this rule.

B. ASSIGNMENT. For specific case assignment, refer to Local Rule (Civil) LR22-TR00-117 'Assignment of Cases'.

**LR22-CR2.3-209
TRANSFER**

A. TRANSFER BETWEEN COURTS. Transfer between the Floyd Circuit Court and the Floyd Superior Courts shall be accomplished pursuant to I.C. 33-29-1-9 & 10, which allows the judges to transfer cases between courts with mutual consent and to sit on any case in either court with mutual consent.

**LR22-CR2.2 RULE 210
CRIMINAL CASE ASSIGNMENT AND
APPOINTMENT OF SPECIAL JUDGES
IN CRIMINAL CASES**

A. When a change of judge becomes necessary in a criminal case pending in the Floyd Circuit or Superior Courts such case may be transferred between the Courts as provided for in LR22-TR00 Rule 17 B.

B. Pursuant to Ind. Crim. Rule 2.2 and Ind. Crim. Rule 13(C), this rule shall apply to the reassignment of the case and the selection of special judges in felony and misdemeanor cases where a change of judge is granted pursuant to Ind. Crim. Rule 12(B) or an order of disqualification or recusal is entered in the case.

The reassignment procedure set forth in this rule shall also apply where a change of judge is granted pursuant to Ind. Post-Conviction Remedy Rule 1(4)(b) and in proceedings to enforce a statute defining an infraction and ordinance violation case where a change of judge is granted for cause pursuant to Crim. Rule 12(C).

C. A special judge shall be selected, by the Assignment Judge, from the list of judges below

on a rotating basis, which includes all judges from administrative district 23, other contiguous counties and senior judges:

- (1) Clark Circuit #1
- (2) Clark Circuit #2
- (3) Clark Circuit #3
- (4) Clark Circuit #4
- (5) Clark Superior #5
- (6) Clark Superior #6
- (7) Floyd Circuit
- (8) Floyd Superior #1
- (9) Floyd Superior #2
- (10) Floyd Superior #3
- (11) Scott Circuit
- (12) Scott Superior
- (13) Harrison Circuit
- (14) Harrison Superior
- (15) Washington Circuit
- (16) Washington Superior
- (11) Senior Judges and Magistrate Judges who agree to serve as a Special Judge

D. APPOINTMENT ORDER. Upon selecting a special judge, the assignment judge shall prepare an Order of Appointment and forward said Order to the judge before whom the case is pending and enter an Order of Appointment and forward a copy of the Order to the special judge and the attorneys of record.

E. ACCEPTANCE OF JURISDICTION. The Order of Appointment, when entered on the CCS by the judge before whom the case is pending, shall constitute acceptance of jurisdiction by the appointed special judge unless the judge is otherwise disqualified, and no special appearance, oath or additional evidence of acceptance shall be required.

F. FORM OF ORDER. The Order of Appointment shall be in the following form:

IN THE COURT FOR COUNTY
STATE OF INDIANA

(CAPTION)

ORDER OF APPOINTMENT

Under the provisions of Trial Rule 79(H) of the Indiana Rules of Trial Procedures, the Honorable _____ of the _____ Court of _____ County is hereby appointed to serve as Special Judge in the above-captioned case.

SO ORDERED AND ASSIGNED THIS _____ DAY OF _____, 20____, BY THE ASSIGNMENT JUDGE FOR THE 23RD JUDICIAL DISTRICT.

G. IMPLEMENTATION OF RULE. In the event a selected Judge does not accept an appointment to serve as a special judge, the judge before whom the case is pending shall notify the assignment judge of the need for an appointment of a special judge under this local rule.

A. CERTIFICATION TO SUPREME COURT. If, under the provisions of this rule, no judge is eligible to serve as a special judge in a case, the assignment judge shall notify the judge before whom the case is pending who shall then certify such fact to the Indiana Supreme Court for the appointment of a special judge. If the judge before whom the case is pending is of the opinion that the particular circumstances of a case warrants selection of a special judge by the Indiana Supreme Court, said judge shall certify such facts to the Indiana Supreme Court for the appointment of a special Judge. Under such circumstances this Rule shall not be implemented unless the Indiana Supreme Court declines to appoint a special judge.

B.

**LR22-CR00-211
WARRANTS**

A. RE-ISSUANCE OF WARRANTS. All warrants issued for misdemeanors shall be returned to the issuing court six (6) months from issuance date and shall be reissued at the request of the Prosecuting Attorney. All warrants for felonies shall be returned to the issuing court one (1) year from issuance date. All bench warrants for contempt of court, failure to appear, revocation of probation, etc.; whether felony or misdemeanor, shall be returned to the issuing court one (1) year from issuance date. The court shall then reissue said warrants as it deems necessary.

**LR22-TR28-212
DEPOSITIONS**

A. PUBLICATION. The seal on depositions shall be broken and the deposition deemed published upon filing with the Court. When depositions are utilized, specific reference by page and line or question number to those places in such deposition which purport to demonstrate the presence or absence of material fact shall be provided.

**LR22-TR51-213
JURY INSTRUCTIONS**

A. FORM. Proposed final instructions, special or pattern, shall be submitted on letter size [8 1/2 x 11] paper, double-spaced, with all designations including indications for the Court's disposition placed on the bottom three [3] inches of the instruction. The parties shall submit a second set of proposed final instructions containing no designation of who submitted them, or other identifying references, which shall contain only the statement of law. This set of jury instructions may be sent with the jury to the jury room for use during deliberations. These instructions shall also be presented to the court on computer disc or by e-mail in the Court's

discretion.

**LR22-CR00-214
TRANSCRIPT**

A. COSTS. Costs for a transcript shall be in accordance with the Local Rule (Civil) LR22-AR15-113. The party requesting a transcript shall obtain an estimate of the cost of the transcript from the Court Reporter and shall pay a deposit equal to one-half of the estimated cost of the transcript before the transcription process is undertaken by the Court Reporter. The remaining estimated cost of the transcript shall be paid upon notification by the Court Reporter to the requesting party that one-half of the transcript has been completed. The actual total cost of the transcript shall be paid in full before the transcript is released to the requesting party. Nevertheless, this provision shall not apply to defendants whom the Court has determined to be indigent and unable to pay for the cost of a transcript.

**LR22-CR00-
215
SANCTIONS**

A. COURT ACTION. When a party or counsel for a party fails to comply with any of these Local Criminal Rules, the Court, after advising the party of the noncompliance, may direct the Clerk of the Court to refuse any pleadings or papers filed in non-compliance with these rules; or, if inadvertently accepted for filing, direct that such pleadings or papers be stricken from the record; or take whatever other appropriate action deemed necessary.

**LR22-CR00-216
FLOYD COUNTY SUBSTANCE ABUSE
PROGRAM SCHEDULE OF FEES**

1. Convictions for Driving While Intoxicated/Reckless Driving amended from Driving While Intoxicated
\$400
*Includes clinical impression assessment, classes, case management and workbooks.
2. Convictions for Marijuana/Controlled Substance \$400
* Includes clinical impression assessment, classes, case management and workbooks.
3. Convictions for other alcohol or substance offense \$250
* Includes clinical impression assessment, classes, case management and workbooks.
4. Conditions of Bond (Court Referral) \$250
*Includes clinical impression assessment, classes, case management and workbooks.
5. Referral/transfer to another agency-tracking client to completion of the ordered substance abuse program
\$100
6. Clinical Impression Assessment and Recommendation \$50
7. Clinical Impression Assessment and Referral to another outpatient agency or in-patient facility
\$250
*Includes case management tracking the client to completion of the treatment program.
8. Drug Screenings (administered by the Floyd Superior Court #2 Probation Office) \$30