

**IN THE FAYETTE CIRCUIT COURT
IN THE FAYETTE SUPERIOR COURT**

STATE OF INDIANA

IN THE MATTER OF JOINT
LOCAL CRIMINAL RULES

**JOINT LOCAL CRIMINAL RULES
OF THE FAYETTE CIRCUIT COURT AND FAYETTE SUPERIOR COURT**

It is ordered that the following be, and the same is, hereby adopted as Joint Criminal Rules of the Fayette Circuit and Superior Courts, to be and remain in full force and effect on and at all times after December 31, 2009 and until further order of the Court, and all rules heretofore adopted and hereby rescinded.

Daniel Lee Pflum
Judge, Fayette Circuit Court

Ronald T. Urdal.
Judge, Fayette Superior Court

CRIMINAL RULES

LR21-CR00-CR- 1

SCOPE

These rules govern the procedure and practice of criminal cases in the Fayette Circuit and Fayette Superior Courts unless otherwise provided by law or rules of the Supreme Court of Indiana.

RULE 2

ADOPTION OF INDIANA CRIMINAL RULES AND LOCAL CIVIL RULES

The Indiana Criminal Rules are adopted. All of the Local Civil Rules approved by the Fayette Circuit and Fayette Superior Courts are to be considered as a part of these rules. These rules shall be known as Fayette County Criminal Rules.

LR21-CR00-CR- 3

CASE ASSIGNMENT

The following criminal cases shall be filed in the Fayette Circuit Court, any C felony or higher and Neglect of a Dependent, Non-Support of a Dependent unless the support obligation is the result of an order issued by the Fayette Superior Court, Failure to Appear if the failure was in the Fayette Circuit Court, D felony violations of Indiana Code 35-42-4, 35-44-3-5 and 35-43-2-1.5 and all offenses filed with them, with the following exceptions: Habitual Traffic Offenders

All other offenses and infractions shall be filed in Fayette Superior Court.

Notwithstanding the above all cases where either the defendant, a co-defendant, the alleged victim or material witness is a person who falls within the third degree of relationship of the presiding judge or the presiding judge's spouse shall be assigned to the other Court. Should it be discovered after the case is filed that the case should have been filed in the other court the case shall be transferred to the other court or reassigned to the other judge as special judge.

LR21-CR00-CR- 4

TRANSFER

A judge of Fayette Circuit or Superior Court, by appropriate order entered in the Record of Judgments and Orders, may transfer and reassign to any other court of record in the county

with jurisdiction to hear the charged offense in any pending case subject to acceptance by the receiving court.

LR21-CR00-CR- 5

REFILING AND SUBSEQUENT FILINGS

When the State of Indiana dismisses a case and chooses to refile that case, the case shall be assigned to the court from which the dismissal was taken.

LR21-CR00-CR- 6

REASSIGNMENT

The following individuals have agreed to serve in the event it becomes necessary to reassign a felony or misdemeanor case in the Fayette Circuit Court: the Honorable Ronald T. Urdal, Judge of The Fayette Superior Court; the Honorable Steven E. Cox, Judge of the Franklin Circuit Court 1; the Honorable Clay M. Kellerman, Judge of the Franklin Circuit Court 2; and the Honorable Matthew R. Cox, Judge of the Union Circuit Court.

The following individuals have agreed to serve in the event it becomes necessary to reassign a felony or misdemeanor case in the Fayette Superior Court: the Honorable Daniel Lee Pflum, Judge of The Fayette Circuit Court; the Honorable J. Steven Cox, Judge of the Franklin Circuit Court 1; the Honorable Clay M. Kellerman, Judge of the Franklin Circuit Court 2; and the Honorable Matthew R. Cox, Judge of the Union Circuit Court.

In the event it becomes necessary to reassign a felony or misdemeanor case, the judges will be reassigned in consecutive order to the above noted judges.

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APPOINTMENT OF SPECIAL JUDGE

In the event no judge is available for assignment or reassignment of a felony or misdemeanor case, such case shall be certified to the Indiana Supreme Court for the appointment of a special judge. In the event the judge presiding in a felony or misdemeanor case concludes that the unique circumstances presented in such proceeding require appointment by the Indiana Supreme Court of a Special Judge, the presiding judge may request the Indiana Supreme Court for such appointment.

LR21-CR00-CR- 8

COURT APPEARANCE

(A) The Sheriff shall take an arrested and incarcerated person before the court having jurisdiction without unnecessary delay. Without unnecessary delay is generally deemed to be 24 hours, excluding Saturdays, Sundays and holidays.

(B) Should an arrested person be released from custody or admitted to bail prior to his first court appearance, such person shall sign three copies of an appearance notice, acknowledging that he will appear in court on the next scheduled Initial Hearing date following his release at 9:00 a.m. A copy of the signed notice shall be given by the Sheriff to the court, the arrested person and the Sheriff shall retain a copy. No person shall be released from custody or admitted to bail until such appearance notice is completed and signed by the person being released.

LR21-CR00-CR- 9

APPEARANCE OF COUNSEL

Any attorney representing a defendant shall appear for such defendant immediately upon being retained or appointed, and by signing and filing a written appearance.

LR21-CR00-CR- 10

WITHDRAWAL OF COUNSEL

A. Counsel for the defendant may withdraw from a case only after complying with IC 35-36-8-2.

Counsel desiring to withdraw their appearance shall file a motion requesting leave to do so. Such motion shall fix a time (to be procured from the Court) for the motion to be heard. ing counsel shall also file with the Court satisfactory evidence of at least ten (10) days written notice of the motion to his client.

LR21-CR00-CR- 11

MOTIONS

A. Criminal Code deadlines for filing motions and raising defenses shall be strictly followed, except where in direct conflict with rules adopted by the Indiana Supreme Court. And in such cases, the Rules of the Supreme Court shall govern. In all other cases not otherwise provided, the parties should advise the Court at the pre-trial.

B. A motion other than one made during trial or hearing shall be in writing. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It shall be signed by an attorney of record or the defendant personally and shall clearly identify the name and address of any attorney filing the same.

LR21-CR00-CR- 12

TRIAL

(A) Jury trials in felonies shall only be waived by the defendant in open Court or by verified pleading signed by the defendant, or as the Court may otherwise direct.

(B) The Court shall control the trial calendar and shall initially set the case for trial at the initial hearing. The State and the Defendants shall advise the Court of facts relevant in determining the order of cases on the trial calendar.

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CRIMINAL DISCOVERY

(A) The State of Indiana shall disclose to the Defendant not less than fourteen (14) days prior to the omnibus date or forty-five (45) days after the entry of a plea which ever comes first, except as otherwise provided, the following material and information within its possession or control:

- (1) The names and last known addresses of persons whom the State may call as witnesses, together with their relevant written or recorded statements, memoranda containing substantially verbatim reports of their oral statements and a list of memoranda reporting or summarizing their oral statements.
- (2) Any written or recorded statements and the substance of any oral statements made by the accused or by a co-defendant, and a list of witnesses to the making and acknowledgment of such statements.
- (3) A transcript of those portions of grand jury minutes containing testimony of persons whom the prosecuting attorney may call as witnesses at the hearing or trial, as designated by the defense after listening to the recording of the testimony.
- (4) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.
- (5) Any books, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in hearing or trial or which were obtained from or belong to the accused.
- (6) Any record of prior criminal convictions which may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.
- (7) Any evidence which tends to negate the guilt of the accused as to the offense charged

or would tend to mitigate his punishment.

(8) That there has or has not been electronic surveillance of any conversation to which the accused was a party.

(9) Any 404(B) evidence which the State intends to use.

(B) Subject to Constitutional limitations, the Defendant shall disclose to the State, not less than seven (7) days prior to the omnibus date or fifty-five (55) days after the entry of a plea which ever comes first, the following material and information within its possession or control:

(1) The names and addresses of persons whom the Defendant may call as witnesses along with a summary of their testimony and record of prior criminal convictions.

(2) Any books, papers, documents, photographs or tangible objects which are intended to be used at a hearing or trial.

(3) Any medical or scientific reports relating to Defendant or Defendant's evidence which may be used at a hearing or trial.

(4) Any defenses, procedural or substantive, the Defendant intends to make at a hearing or trial.

(C) The Court may order discovery of matters not covered by this rule, upon showing by counsel that it is material, the request is reasonable, and the matter is legally discoverable.

(D) Neither counsel for the parties or other prosecution or defense personnel shall advise persons having properly discoverable information (except the accused and complaining victim) to refrain from discussing the case with opposing counsel, nor shall they otherwise impede opposing counsel's investigation of the case. Counsel may advise the person that they do not have to respond without a subpoena.

(E) Discovery pursuant to this rule shall continue in effect and apply to any information or material discovered subsequent to the initial compliance with such request or order.

(F) Any materials furnished to an attorney pursuant to this rule shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms or conditions as the Court may provide.

(G) Upon a showing of good cause the Court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate.

(H) If, at any time during the course of the proceedings, it is brought to the attention of the Court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the Court may order such party to permit the discovery of material and

information not previously disclosed, grant a continuance, or enter such other order as it deems just, under the circumstances including exclusion of evidence at trial.

(I) Willful violation by counsel of this rule or any order issued pursuant thereto may subject counsel to appropriate sanctions by the Court.

(J) Objections to discovery shall be filed with the Court within five (5) days after the initial hearing or any request or motion for discovery is made.

(K) The following limitations shall apply:

(1) Discretionary Protective Order: The Court may deny disclosure if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure which outweighs any usefulness of the disclosure to counsel.

(2) Matters not subject to disclosure.

(a) Work product: Disclosure is not required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the State or members of its legal or investigative staffs, or of defense counsel or his staff.

(b) Information: Disclosure of an informant's identity will not be required where there is a paramount interest in non-disclosure and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure of the identity of witnesses to be produced at a hearing or trial will be required.

(c) Any matters protected by law.

(L) Any material and /or information required to be disclosed by this rule or otherwise to the opposing party and which is not disclosed at least three (3) weeks prior to trial shall, upon request by opposing counsel, be excluded, unless good cause is shown.

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STIPULATIONS

All stipulations must be reduced to writing and filed with the Court or made of record in open Court to the Official Court Reporter.

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FAILURE TO APPEAR

When the defendant has failed to appear and the Court has issued a Bench Warrant and ordered the bondsman to surrender the Defendant, the State of Indiana is to prepare a proposed order concerning late surrender fee and bond forfeiture at the appropriate time for the Court's review when the bondsman has failed to produce the Defendant.

LR21-CR00-CR- 16

REQUEST TO CALL A JURY

The Court will not summons a jury unless a party has filed a request to call a jury no more than) twenty-eight (28) days but no less than seventeen (17) days prior to the trial. Failure to timely file a request may result in a continuance of the jury trial on the Court's own motion. Nothing in this rule is intended to prevent the Court from calling a jury on its own motion.

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PROCEDURE NOT OTHERWISE SPECIFIED

If no procedure is especially prescribed by these rules the Court may proceed in any lawful manner not inconsistent with these rules or with any applicable Constitutional provision, statute, rule of the Supreme Court of Indiana, or local civil rules of the Fayette Circuit Court.

LR21-CR00-CR- 18

COMPLIANCE EXCUSED ONLY UPON ORDER OF COURT

The above Rules for Criminal Procedure shall be followed in all cases heard in the Fayette Circuit Court unless compliance is excused by the Judge for good cause shown.

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ATTENDANCE OF WITNESSES

When a defendant requests to take the deposition of a witness listed or disclosed by the State in its discovery, it is the duty of the State to provide the most current address of the witness known to the State, or, in the alternative, to secure the attendance of the witness at the deposition.

LR21-CR00-CR- 20

DNA TESTING

Any individual convicted of a felony after July 1, 2005, shall submit a DNA sample as required by statute and as directed by the Court.