

## **LAKE COUNTY CRIMINAL RULES PROPOSED 8/1/2015**

L.R. 45-C.R.2.2-1. Local Rule for the Assignment of Criminal and Quasi Criminal Cases in all City, Town, County and Criminal Division Courts in Lake County

All ordinance violations, infractions, misdemeanors and felonies alleged to have been committed in Lake County shall be filed, assigned, and reassigned only in accordance with this rule. The terms “charges” and “offenses,” as used herein, means ordinances, infractions, misdemeanors and felonies, unless otherwise specified.

### A. Filing.

1. Unless otherwise provided, all misdemeanors, infractions and ordinance violations alleged to have been committed within the political boundaries of any city or town that maintains a city or town court shall be filed in the city or town court sitting in said city or town. All other ordinance violations, infractions and misdemeanors shall be filed in the County Division of the Superior Court.
2. In cases in which law enforcement officers from multiple jurisdictions are involved, all misdemeanors, infractions and ordinance violations shall be filed in the city or town court of the officer issuing the probable cause affidavit for any misdemeanor or issuing the ticket for any infraction or ordinance violation.
3. All murder, Class A, B and C felonies shall be filed in the criminal division. After June 30, 2014, all murder charges and Level 1, 2, 3, 4 and 5 felonies shall be filed in the Criminal Division.
4. Except as otherwise provided, the clerk shall file all Class D Felonies, and after June 30, 2014, all Level 6 Felonies, pursuant to the Weighted Caseload Plan then in effect as adopted by the Lake Superior and Circuit Courts
5. If a defendant who is being charged with a Class D felony, or after June 30, 2014, a Level 6 Felony, is on probation to the county division, has other charges pending in the county division, or has previously been sentenced in the county division for an offense, then the Class D felony, or Level 6 Felony, shall be filed in the county division.
6. If a defendant who is being charged with a Class D felony, or, after June 30, 2014, a Level 6 Felony, is on probation to the criminal division, has other charges pending in the criminal division, or has previously been sentenced in the criminal division for an offense, then the Class D felony, or Level 6 Felony, shall be filed in the criminal division.
7. Notwithstanding the filing requirements above, all charges involving multiple offenses or defendants shall be filed in the same court as one another if the charges arise from:
  - a. a single act;
  - b. a series of acts connected together or constituting parts of a single scheme or plan;
  - c. a conspiracy; or,
  - d. a number of offenses so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one offense from proof of the others.
  - e. it is the intent of this subsection that in the event that a defendant has multiple cases or an alleged crime involves multiple defendants, one judge will hear all the pending matters.

8. Except as otherwise provided, and whenever possible, charges which have previously been filed and dismissed may only be refiled in the same division. This includes all charges arising out of the same offense report, arrest report, or set of operative facts.

9. A defendant who is seeking expungement in a case in which an arrest occurred, but no charges were filed, shall file the request for expungement with the Clerk of the Court for random assignment in any Criminal Division or County Division court that has jurisdiction over the types of charges for which the defendant was arrested. The case shall be assigned an XP cause number, and no filing fee shall be required. Any document containing a social security number shall remain confidential pursuant to Admin. Rule 9.

10. A defendant who is seeking expungement in a case in which charges were filed, but no conviction was entered, or a conviction was entered but was subsequently vacated on appeal, shall file the request for expungement in the same court in which the charges were filed. However, if the case that did not result in a conviction, or in which a conviction was vacated on appeal, was filed in a city or town court, the request for expungement shall be filed with the Clerk of the Court for random assignment in the County Division. The request for expungement shall be ~~filed within the existing case of the same court in which the charges were filed and no filing fee shall be required.~~ ~~If there is no existing case, then the case shall be~~ assigned an XP cause number. No filing fee shall be required. Any document containing a social security number shall remain confidential pursuant to Admin. Rule 9.

11. A defendant who is seeking expungement in a case in which a conviction was entered shall file the request for expungement in the court in which the conviction was entered. However, if the conviction was entered in a city or town court, the request for expungement shall be filed with the Clerk of the Court for random assignment in the County Division. A request for expungement filed in a case in which a conviction was entered shall be assigned an XP cause number. A filing fee is required, unless waived or reduced by the court after a showing of indigency by the petitioner. Any document containing a social security number shall remain confidential pursuant to Admin. Rule 9.

12. A defendant who is seeking expungement in multiple cases shall file the request for expungement with the Clerk of the Court for assignment in the Criminal Division or County Division court in which the highest level of conviction has been entered. If all of the convictions were entered in city and town courts, then the request for expungement shall be filed with the Clerk of the Court for random assignment in the County Division. A petition for expungement addressing multiple cases in which convictions were entered shall be assigned an XP cause number. A filing fee is required, unless waived or reduced by the court after a showing of indigency by the petitioner. Any document containing a social security number shall remain confidential pursuant to Admin. Rule 9.

13. An MI filed in the County Division for purposes of specialized driving privileges SHALL NOT be electronically filed; the provisions of Lake County Admin. Rule LR 45-A.R.16-17 are inapplicable to such filings.

## B. Assignment.

1. Charges shall be assigned within a division according to the following rules, which are listed in order of precedence:

a. Charges involving multiple offenses or defendants shall be assigned to the same judge if the charges arise from:

(1) a single act;

(2) a series of acts connected together or constituting parts of a single scheme or plan;

(3) a conspiracy; or,

(4) a number of offenses so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one offense from proof of the others.

b. Charges filed against defendant who has other charges pending shall be assigned to the judge handling the pending charges.

c. Charges filed against a defendant who has previously been sentenced by a judge shall be assigned to that same judge. If the defendant has previously been sentenced by more than one judge of the division, then the case shall be assigned to the judge who still has jurisdiction over the defendant through probation, if applicable, or else to the judge who sentenced the defendant most recently.

d. Charges against a defendant who has previously been a defendant in the division shall be assigned to the same room of the division.

e. If more than one defendant in a new case has other charges pending before separate judges within the same division, the new case shall be assigned to the judge with the greater number of cases pending against all codefendants in the case. If the number of such pending cases is equal for two or more judges, then the case shall either be randomly assigned to one of those judges or else be assigned to the judge whose cases are closer to disposition at the time of the new filing.

f. Charges filed in the county division involving violations of IC 35-48 shall be assigned to Room 2 of that division if the defendant is a resident of the city of Gary or the offense is alleged to have occurred in Gary.

g. All other cases shall be randomly assigned so that the assignment of all criminal cases to judges within a division is kept relatively equal.

2. Charges which have been dismissed and refiled shall be assigned to the same judge who had jurisdiction of the charges when they were dismissed. This includes all charges arising out of the same offense report, arrest report, or set of operative facts.

## C. Reassignment.

1. If a motion for change of judge is granted in a felony or misdemeanor case or an order of disqualification or recusal is entered in a felony, misdemeanor, infraction or ordinance case, then the case shall be reassigned to a special judge as outlined below.

2. Only the presiding judge of each court is eligible to become a special judge.

3. A special judge shall be appointed from a list of eligible presiding judges on a rotating basis in each of the following case categories: OE, OV, IF, CM, FD, FC, FB, FA, MR, MC, and, after June 30, 2014, for case types F1, F2, F3, F4, F5 and F6.. Each judge may also choose to limit the number of categories for which that

judge will be eligible to hear special judge cases. However, judges of city or town courts shall only be eligible to hear CM, IF, OV or OE cases and will not be eligible to serve as special judges in the case of Trials de Novo or Appeals from other city or town courts.

4. The lists of eligible persons shall be maintained in the office of the Lake Superior Court Administrator (hereafter Administrator) and regularly updated. When it becomes necessary to select a special judge from said lists, the following procedure shall be followed:
  - a. The judge who has recused or granted a motion for change of judge shall contact the Administrator for the name of the next available judge. The Administrator shall provide to that judge a name from the list on a rotating basis beginning with the first name on the list for the particular case category. The disqualified judge shall then issue an order notifying the special judge that he or she has been appointed. The city or county clerk's office shall then send the complete case file to the clerk's office servicing the special judge. No transfer fees shall be assessed.
  - b. The selected special judge to serve under this local rule must accept jurisdiction unless disqualified under circumstances set out in the Rules of Trial Procedure 79(H). Should the special judge be required to recuse, the special judge shall follow the procedures outlined above in Rule C(4)(a). Judges who have previously recused or were disqualified shall no longer be eligible as a special judge in that particular case. The order of appointment by the regular judge shall constitute acceptance. An oath or additional evidence of acceptance is not required.
  - c. If no judge from the list qualifies, the final judge that recuses shall petition the Supreme Court for the appointment of a special judge pursuant to Ind. Criminal Rule 13(D), for criminal cases, and/or Ind. Trial Rules 79(H)(3) and (K), for infraction or ordinance cases.
5. Motions for change of judge as of right (as opposed to recusal or disqualification) for infractions and ordinance cases shall continue to be governed by the Indiana Rules of Trial Procedure and nothing in this rule shall be read to conflict with those Rules.
6. Any protective order entered by the regular judge shall remain in full force and effect until addressed by the special judge, the judge receiving the case via

transfer or the judge receiving the case upon filing of a Petition for Trial De Novo or Appeal from a city or town court.

#### D. Trials de Novo or Appeals from City or Town Courts

1. Upon filing a request for a Trial de Novo or Appeal from a city or town court for a misdemeanor, infraction or ordinance case and the posting of a bond, if required by the Trial de Novo Rules or by statute, the county division clerk shall randomly assign the case to the appropriate court of the county division pursuant to section B of this rule as if the case were a newly filed charge.
2. The clerk of the county division shall notify the city or town court from which a Trial de Novo or Appeal is sought as to the filing of the Trial de Novo or Appeal and whether a bond was posted in a misdemeanor case. The posting of a bond with the county division clerk for a misdemeanor case shall stay the execution of the sentence imposed by the city or town court. Bond shall be set pursuant to the bond schedule. With the consent of the city or town court, a bond originally posted in the city or town court may be transferred to the county division clerk and utilized as a Trial de Novo or Appeal bond.
3. No judge of the county division may decline the assignment of a Trial de Novo or Appeal from a city or town court unless retaining jurisdiction by the county division judge would violate the Code of Judicial Conduct. Upon a proper recusal, the procedures outlined in Sec. C of this rule shall be followed, however, no judge of a city or town court will be eligible to be a special judge of a Trial de Novo or Appeal from a city or town court; rather, if a city or town court judge is next on the list of special judges, the Administrator shall appoint the next judge on the list who is NOT a city or town court judge.

#### E. Transfers.

1. This rule shall not prohibit a town, city or superior court from transferring a case from one court to another. This rule shall also not be understood to encourage or permit the transfer of a case merely on the agreement of the prosecution and defense.
2. Pursuant to Ind. Criminal Rule 2.3, any reassignment of a case from a city or town court to the county division that does not involve the recusal of a city or town court

judge or the filing of a petition for trial de novo or appeal, constitutes a transfer that requires the acceptance of a county division judge. Such acceptance must be obtained prior to the entry of any order to transfer from a city or town court.

#### F. Transfers to Veterans' Treatment Court

1. A Veterans' Treatment Court (hereafter VTC) will be presided over by the Judges of County Divisions II and III.
2. Upon assignment to the VTC, the clerk shall assign a County Division III cause number to the case,
3. When County Division III's VTC reaches 50 active participants, then all additional VTC cases shall be assigned to County Division II and then County Division III in 50 case increments to ensure an even distribution of cases. VTC cases filed in County Division II shall be assigned a County Division II cause number.
4. For a Defendant to qualify for transfer to the VTC s/he must meet the following criteria. A Defendant:
  - a. must have received an honorable or less than honorable discharge from the armed services,
  - b. must be approved for transfer to the VTC by the Veterans Administration,
  - c.
  - d. c. must be willing to adhere to the terms and conditions regarding said court and said agreement to be imposed by the VTC and the Veterans Administration.
5. A Defendant's Transfer to the Veteran's Treatment Court can be effected upon:
  - a. Order of a Judge of the County Division, Criminal Division, or any City or Town Court located in Lake County sua sponte,
  - b. Motion of the Defendant or the State, if said Motion is granted by the presiding judge of the County Division, Criminal Division or any City or Town Court Judge located within Lake County, to whom the Defendant was originally assigned.
6. If the VTC and/or the Veterans Administration determines that, upon transfer to the Veterans' Treatment Court, that a Defendant is ineligible to participate or is unable to continue placement in the program, the Veterans' Treatment Court may return the case to the court that originally had jurisdiction of the Defendant.
7. Transfers of cases directly to the VTC from counties other than Lake will be reviewed by the VTC on a case-by-case basis.

#### G. Form Order

Court orders concerning the reassignment of any criminal or quasi criminal case must specifically indicate the reason for the reassignment. Such an order should be similar to that reproduced below:

STATE OF INDIANA            )            IN THE \_\_\_\_\_ COURT  
  ) SS:  
COUNTY OF LAKE            )            \_\_\_\_\_ INDIANA

STATE OF INDIANA  
Plaintiff

v.  
Defendant

CAUSE NO.: 45 \_\_\_\_\_

**ORDER FOR TRANSFER OF CASE**

This cause is hereby ORDERED transferred to the (court name), for the following reason:

\_\_\_\_\_ Upon recusal or disqualification due to, (here state the reason for the recusal or disqualification), and pursuant to the Local Rule for the Assignment of Criminal and Quasi Criminal Cases in Lake County, and the parties have not agreed to the selection of a special judge in a timely manner.

\_\_\_\_\_ By stipulation of the parties for consolidation with pending charges in (court name).

\_\_\_\_\_ For entry into the Veterans’ Treatment Court. The Clerk shall randomly assign this case to County Division 2 or 3 as if an original filing therein.

\_\_\_\_\_ From the Veterans’ Treatment Court to \_\_\_\_\_ (the Court which Defendant was originally assigned) as the Defendant was found inelligible for the Veterans’ Treatment Court or has been found to be unable to continue placement in the program.

The Court Clerk is directed to prepare and forward this Court’s file and Chronological Case Summary to the Office of the Clerk of (specific clerk’s office), and the arrest sheet and a copy of the Chronological Case Summary to the Office of the Lake County Prosecutor or City/Town Attorney. A copy of the Court’s file and the Chronological Case Summary, marked “Copy of transferred file” is to be retained with the records of this Court.

Any bond money on deposit for this defendant under this cause number is hereby ORDERED transferred to the Clerk of (specific clerk’s office) and the Clerk is hereby directed to issue a check for said funds, without deduction of administrative fees, to the Clerk of (specific clerk’s office).



So Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Judge

\_\_\_\_\_