

**STATE OF INDIANA – COUNTY OF ELKHART
IN THE ELKHART CIRCUIT AND SUPERIOR COURTS**

**Notice of Proposed New Rule or Amendment(s) to Local Court Rule(s)
June 1, 2021**

In accordance with Trial Rule 81 of the Indiana Court Rules, the Elkhart Circuit and Superior Courts hereby give notice to the bar and the public that the Courts propose to amend the Local Rule(s) on Motions Practice for the courts of record of Elkhart County, effective January 1, 2022. This is a new local rule, not an amendment to an existing rule. All new text is shown by underlining and deleted text is shown by ~~striketrough~~.

The time period for the bar and the public to comment shall begin on June 1, 2021, and shall close on June 30, 2021. The proposed amendments to the rule will be adopted, modified or rejected before July 31, 2021.

Comments by the bar and the public should be made in writing and mailed, or emailed, to:

Hon. Stephen R. Bowers, Judge of the Elkhart Superior Court No. 2, 315 S. Second St., Elkhart, IN 46516; or sbowers@elkhartcounty.com.

A paper copy of the proposed amended local rule(s) will be made available for viewing in the office of the Clerk of Elkhart County, 101 N. Main St., Goshen, IN 46526, during normal business hours. Persons with Internet access may view the proposed amended local rule for Motions Practice at the following websites:

<https://elkhartcounty.com/en/government/courts/>

or

<https://www.in.gov/courts/publications/local-rules/>



Stephen R. Bowers, Judge
Elkhart Superior Court No. 2

LR20-TR00-NAMP Rule 22. Motions Practice

A. SCOPE OF RULE. This rule applies to:

1. Trial Rule 12 Motions;
2. Trial Rule 37 Failure to Make or Cooperate in Discovery;
3. Trial Rule 56 Motions for Summary Judgment;
4. Trial Rule 65 Injunctions and Restraining Orders;
5. Motions to Exclude under I.R.E. 702(a) and 702(b); and
6. Other complex or Dispositive Motions

B. SEPARATE DOCUMENTS.

1. Motions must be pled separately, but alternative motions may be filed in a single pleading if each is named in the title following the caption.
2. The following documents must be filed separately:
 - i. Motion for Summary Judgment;
 - ii. Memorandum in Support;
 - iii. Designation of Evidence and Table of Contents;
 - iv. Response Memorandum; and
 - v. Reply memorandum.

If no evidence is designated, no separate Designation of Evidence or Table of Contents is required.

C. SUMMARY OF ARGUMENT REQUIRED. The Memorandum in Support of Motions for Summary Judgment and Response Memorandum must contain a Summary of Argument not to exceed two pages and located at the beginning of the Memorandum.

D. TIME LIMIT FOR FILING A MOTION, RESPONSE, OR REPLY.

1. All motions are subject to the deadlines provided by statute and the Indiana Rules of Trial Procedure.
2. RESPONSES: A party must file any response brief to a motion (other than Motions for Injunction Relief or Restraining Orders) within 30 days after the motion is served. Any response to a Motion for Injunctive Relief or for a Restraining Order must be filed within 7 days after the motion or application is served.
3. REPLIES. The moving party must file any reply brief within 10 days after the response is served.
4. EXTENSIONS. The Court may extend a deadline, if allowed by law.

5. SUR-REPLY. Sur-Replies are disfavored and will only be permitted with leave of the court in extraordinary circumstances. A Request to file a Sur-Reply must be filed no later than five (5) days after service of a Reply. Entry of service of notice of denial is not required. A Sur-Reply may not be filed with, nor attached to, the Request. If the Request is granted, the Sur-Reply must be filed within 10 days after the Request was granted.
6. SUMMARY RULINGS. The Court may rule on a motion summarily if an opposing party does not file a response before the deadline.

E. PAGE LIMITS.

1. RULE. Supporting and response briefs (excluding tables of contents, tables of authorities, and appendices) must not exceed 25 pages. Reply briefs must not exceed 25 pages. A Sur-Reply must not exceed 5 pages. Margins must be at least 1 inch. Font size must be at least 12 point in the body and 11 point in footnotes. Double spacing is required in the body, except for extended quotations.
2. EXCEPTION. The Court may allow a party to file a brief exceeding these page limits for extraordinary and compelling reasons. But if the Court permits a brief to exceed 25 pages, it must include:
 - i. a table of contents with page references;
 - ii. an issue statement; and
 - iii. a table of authorities, including:
 - a. all cases (alphabetically arranged), statutes, and other authorities cited in the brief; and
 - b. references to where the authorities appear in the brief.

F. MOTIONS TO STRIKE DESIGNATIONS SUBMITTED IN SUPPORT OF OR OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT AND MOTIONS TO STRIKE SUMMARY JUDGMENT MEMORANDA.

1. At the time a Response to Motion for Summary Judgment is filed, the non-moving party's Motion to Strike, if any, must also be filed.
2. Upon a motion, the Court may permit a party to file a Supplemental Designation of Evidence in support of the Reply Memorandum.
3. A party objecting to such a Supplemental Designation must file its Motion to Strike, if any, within 7 days of the Motion to File a Supplemental Designation of Evidence.
4. A Motion to File a Supplemental Designation of Evidence must not exceed the page limits outlined in E.

5. At the time a Reply Memorandum is filed, the moving party's Motion to Strike, if any, must also be filed.
6. A Motion to Strike and supporting argument must not exceed the page limits outlined in subsection E.
7. Any opposition to a Motion to Strike must not exceed the page limits outlined in E and must be filed no later than 7 calendar days after the Motion to Strike is filed.

G. FORMATTING.

1. PAGINATION.
 - i. All of the pages of each document listed in (B)(2) must be separately and consecutively paginated.
 - ii. Every page of each document must contain a page number, beginning with page 2.
 - iii. The page numbers may be affixed to a page by type, stamp, or handwriting.
 - iv. Page numbers must appear in the bottom of the page and must be formatted to indicate each page number in relation to the total of the pages in the document (e.g., "Page 1 of 14"; "1 of 14"; "p. 1/14"; "p. 1 of 14").
2. DESIGNATION OF EVIDENCE AND TABLE OF CONTENTS.
 - i. The first item set out below the caption of the case in the Designation of Evidence and Table of Contents must be the Table of Contents.
 - ii. The Table of Contents must clearly designate each Exhibit relied upon in the Motion or Response.
 - iii. Each Exhibit must be affixed with a Title and Exhibit Letter. No document or individual page may be designated as evidence that does not contain an Exhibit Letter and short Title.
 - iv. The Table of Contents must contain the beginning and ending page number for each Exhibit.
 - v. The entire Designation of Evidence and Table of Contents must be consecutively paginated (i.e., "Bates-stamped") in the manner described under (G)(1), beginning with the caption on page 1.
3. EXHIBIT DESIGNATION AND TITLES.
 - i. Exhibits within the Designation of Evidence and Table of Contents must begin with the letter "A" and proceed through the alphabet.

- ii. The Exhibit Title must identify the specific document by its content, such as "Affidavit of Mary Rose"; "Credit Card Statements 2007-2019"; and "Deposition of John Henry."
 - iii. The Exhibit Letter and Title of the Exhibit must match the Exhibit Letter and Title as stated in the Table of Contents.
 - iv. If a document is authenticated or referenced by an Exhibit, it must be marked as a subpart to that Exhibit and must be specifically and accurately referenced in the authenticating or reference document.
 - v. As with each Exhibit, each subpart to an Exhibit must be identified in the Table of Contents.
 - vi. If any document contains an Exhibit Letter or Exhibit Number from an earlier filing, the earlier letter or number must be removed to avoid confusion. However, when necessary to authenticate an earlier document, the earlier letter or number must remain on that document, and the Exhibit must also contain and be identified in the Table of Contents by the new Exhibit Letter.
 - vii. Citations must be to the page number referenced in the Table of Contents.
4. DESIGNATION OF EVIDENCE EARLIER FILED. Documents that are designated as evidence that have already been filed or issued in the case, such as the Complaint, Answer, Orders, the relevant portions of another party's designated evidence, etc., must be listed and included in the Designation of Evidence and Table of Contents and assigned an Exhibit Letter and short Title as required in (G)(3).

H. ENFORCEMENT OF RULE.

1. VIOLATIONS OF THIS RULE. If a party files any document in violation of this Rule, the Court, in its discretion, may issue an appropriate order.
2. DEFECTIVE FILING. If the Court strikes, as a defective filing, a party's Motion, Designation of Evidence and Table of Contents, Memorandum, or other filing related to this Local Rule, the Court may allow the party to cure the defective e-filing within 120 hours. If the party submits a cured document within 120 hours of the striking Order, excluding days the Court is closed, the document is deemed timely filed as of its original filing.
3. LATE FILINGS. Any motions, memoranda, or other documents filed within 48 actual (not Court business) hours of a hearing generally

pertaining to the subject matter of the hearing may be stricken in the discretion of the Court.