

**STATE OF INDIANA – COUNTY OF MADISON
IN THE CIRCUIT COURT**

**Notice of Proposed New Local Rule on Evidence Handling, Retention and Disposition
December 13, 2012**

In accordance with Trial Rule 81 of the Indiana Rules of Court, the Madison Unified Circuit Courts hereby give notice to the bar and the public that the Courts propose to add a new local rule at **LR48-AR7-12.5** concerning **Evidence Handling, Retention and Disposition**. Supreme Court approval is not required for this new local rule.

The time period for the bar and the public to comment will begin on **December 14, 2012**, and will close on **January 14, 2013**.

The **effective date** of the new rule will be **January 15, 2013**.

Persons with Internet access may view the proposed new local rule at the following website:
<http://www.in.gov/judiciary/madison/>

Notice has been given to the public on the website of the Madison County Clerk and on the Indiana Judicial Website, and by furnishing a copy to the officers of the Madison County Bar Association. Comments may be made to: Unified Court Administration, 16 E. 9th Street, Suite 417, Anderson, IN 46016 and by email to: jhunter@madisoncounty.in.gov.

Dennis D. Carroll, Judge
Circuit Court – Division 6

Angela Sims, Judge
Circuit Court – Division 1

G. George Pancol, Judge
Circuit Court – Division 2

David A. Happe, Judge
Circuit Court – Division 4

Thomas Newman, Jr., Judge
Circuit Court – Division 3

Thomas Clem, Judge
Circuit Court, Division 5

LR48 – AR7 - 12.5 EVIDENCE HANDLING, RETENTION AND DISPOSITION

A. Preamble

In all cases, the court shall proceed pursuant to these Rules unless the court directs a longer retention period after motion by any party or on its own motion.

B. Retention Periods for Evidence introduced in Civil Proceedings

1. **Civil Cases, Including Adoption, Paternity, and Juvenile Proceedings.** All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits, shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, four (4) months after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for two (2) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later.

The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

C. Retention Periods for Evidence Introduced in Criminal Misdemeanor, Class D and Class C Felonies and Attempts.

1. All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence except as otherwise ordered by the court, three (3) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for three (3) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post conviction action, is pending.

The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

D) Retention Periods for Evidence Introduced in Criminal Class B and A Felonies and Murder Attempts

1. All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, twenty (20) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for twenty (20) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post conviction action, is pending.

The court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

E. Non-documentary and Oversized Exhibits. Non-documentary and oversized exhibits shall not be sent to the Appellate level Court, but shall remain in the custody of the trial court or Administrative Agency during the appeal. Such exhibits shall be briefly identified in the Transcript where they were admitted into evidence. Photographs of any exhibit may be included in the volume of documentary exhibits.

1. Drugs, currency, or other dangerous or valuable items shall not be included in appellate records.

F. Notification and Disposition. In all cases, the court shall provide actual notice, by mail or through the Madison County Courthouse mailbox system, to all attorneys of record and to parties only if unrepresented by counsel, that the evidence will be destroyed by a date certain if not retrieved before that date. Counsel and parties have the duty to keep the court informed of their current addresses and notice to the last current address shall be sufficient. Court reporters should maintain a log of retained evidence and scheduled disposition date and evidence should be held in a secure area. At the time of removal, the party receiving and removing the evidence shall give a detailed receipt to the court reporter, and the receipt will be made part of the court file.

1. In all cases, the Court, or the Sheriff on the Court's order, should dispose of evidence that is not retaken after notice. The Sheriff should be ordered to destroy evidence if its possession is illegal, or if it has negligible value. The Sheriff should auction evidence of some value with proceeds going to the county general fund. These Rules and their retention periods will take precedence over inconsistent language in statutes. I.C. 35-33-5-5(c)(2).

G. Biologically Contaminated Evidence. A party who offers biologically contaminated evidence must file a pretrial notice with the trial court and serve all the parties so that the court can consider the issue and rule appropriately before trial. A party can show contaminated evidence or pass photographs of it to jurors, but no such evidence, however contained, shall be handled or passed to jurors or sent to the Jury Room unless specifically ordered by the Court.

H. Rationale on Destruction and Disposal of Evidence There are two goals in the destruction or disposal of stored evidence. The first is that nothing of a confidential nature be compromised, and second, that storage space is created.

The following are suggested methods of disposal of such items in the absence of any statutory provision:

- a) Paper: shredding or burning.
- b) Drugs: to Sheriff for disposal.
- c) Guns: to Sheriff for auction or destruction.
- d) Plastic, glass, stone or stone-like objects, wood: to County Dump.
- e) Money: per statute
- f) Jewelry or other valuables: Notify owner to retrieve or sale at Sheriff's auction.
- g) For any other material: The regular judge shall make written instructions for disposal.
- h) For any of the above, or for any item not mentioned, the regular Judge may give written instructions for disposal.