

ST. JOSEPH COUNTY LOCAL RULES FOR FAMILY LAW CASES

Rule LR71-FL00-403. Family Cases Involving Unemancipated Children.

403. 1. Contested Matters.

403.1.1. Referrals for Investigation and Report. A Court may refer contested matters involving child custody and parenting to the Domestic Relations Counseling Bureau (DRCB) or another service provider for screening, investigation, and/or report. A referral may be made prior to hearing, both before and after a final decree, on motion of either party with the consent of the Court, or on the Court's own motion.

403.1.2. Definition. "Contested matters," for purposes of this rule, shall include issues involving child custody and parenting time, which may exist both before and after the entry of a final decree.

403.1.3. Cooperation of Parties. The parties to contested matters shall meet, and cooperate, with the DRCB or other service provider as required.

403.1.4. DRCB Recommendations. Upon referral, the DRCB may recommend either that the parties be referred for interventions (such as mediation, counseling, or case management), or that the parties proceed to an investigation and evaluation. Unless otherwise order by the Court, a DRCB investigation and evaluation of contested matters involving child custody and parenting time will not be conducted by the DRCB unless the above-mentioned interventions have failed or are found to be inadequate to protect the physical safety or emotional well-being of a minor child.

403.1.5. DRCB Reports. The DRCB shall report to the Court on all contested matters referred to its attention. The DRCB shall file its original report with the Court, which shall distribute copies to counsel or to a party no represented by counsel.

403.1.6. Confidentiality of DRCB Records. The records and reports of the DRCB contain information of a private and personal nature, and the release of that information, without court approval and supervision, could result in intentional mischief or unintentional injury to the parties, their children or relatives. As such, the records and reports of the DRCB are confidential, and that any and all access to the notes, records, or reports of the DRCB shall by allowed only by order of the Court that has jurisdiction over the relevant parties and cause of action.

403.2. Uncontested Matters. The parents of unemancipated children are encouraged to develop a parenting plan that is mutually acceptable to the parents and their children. Where practicable and appropriate for all concerned, the Court shall give due consideration to agreements between parents.

Rule LR71-FL00-404. Conduct of the Parties and Counsel in Family Cases.

404.1. Generally. Fault of one or both parties in the breakdown of a marriage is not at issue in a dissolution of marriage action under Indiana law. Likewise, fault is not typically an issue in other types of "family cases" covered by these rules. Parties and counsel are required to focus on the

relevant issues in the case and to avoid assigning fault to an opposing party or counsel in family cases.

At all times, the parties to family law cases covered by these rules and their attorneys are to conduct themselves in a manner consistent with Indiana law and rules of court. The Court will not permit unsolicited argument, name calling by anyone, needless accusations, or irrelevant or immaterial evidence to be submitted at these hearings. In its discretion, the Court may sanction violations of this rule.

404.2. Giving Rules to Clients. Attorneys appearing in family cases shall (a) furnish their family clients with a copy of these Rules at the earliest reasonable opportunity and (b) review all pertinent parts with their clients, and (c) assist clients in fully understanding and observing their provisions.

Rule LR71-FL00-405. Expectations of Parents and requirements for Attorneys.

405.1 Expectations of Parents and Attorneys.

- a. Parents and attorneys in family cases will conduct themselves in concert with the courts to serve as co-problem solvers.
- b. Parents and attorneys shall pursue the best interests of all family members with particular deference to the needs and welfare of the children.
- c. Parents and attorneys will pursue all opportunities to resolve disputes and conflicts before relying on the Court for a determination.
- d. Parents and attorneys will treat one another with courtesy and respect.

405.2 Requirements for Initial, Provisional and Other Hearings.

405.2.1. Pre-Hearing Meeting Requirements, Exceptions.

It is required that, unless considerations of safety or other good cause make it unreasonable, before the date and time set for an initial, provisional or other hearing, attorneys and pro se parties shall meet with each other in a good-faith attempt to resolve all issues. Attorneys and pro se parties contacted for this purpose shall make themselves reasonably available for consultation.

Prior to commencement of a hearing or trial the attorneys and pro se parties shall certify to the court that they have complied with this rule. The duty of consultation shall be continuing.

405.3. Resolution of Parenting Time Problems and Disputes

405.3.1 Disagreements Generally. When a disagreement occurs regarding parenting time and the requirements of the Indiana Parenting Time Guidelines, both parents shall make every effort to discuss options, including mediation, in an attempt to resolve the dispute before going to court.

405.3.2. Mediation. If court action is initiated, the parents shall enter into mediation pursuant to Rule 411.1 unless otherwise ordered by the court.

405.3.3 Child Hesitation. If a child is reluctant to participate in parenting time, each parent shall be responsible to ensure the child complies with the scheduled parenting time. In no event shall a child be allowed to make the decision on whether scheduled parenting time takes place.

405.3.4. Relocation. When either parent considers a change of residence, reasonable advance notice of the intent to move in accord with Indiana Code provisions shall be given to the other parent. Parents are expected to discuss necessary changes in the parenting schedule as well as the allocation of transportation costs in exercising parenting time which may result from the move.

405.3.5. Withholding Support or Parenting Time. Neither parenting time nor child support shall be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for noncompliance. A child has the right both to support and parenting time, neither of which is dependent upon the other. If there is a violation of either requirement, the remedy is to apply to the court for appropriate sanctions.

405.3.6. Enforcement of Parenting Time.

a) **Contempt Sanctions.** Court orders regarding parenting time must be followed by both parents. Unjustified violations of any of the provisions contained in the order may subject the offender (noncompliant party) to contempt sanctions. These sanctions may include fine, imprisonment and/or community service.

b) **Injunctive Relief.** Under Indiana law, a non-custodial parent who regularly pays support and is barred from parenting time by the custodial parent may file an application for an injunction to enforce parenting time under Indiana law.

c) **Criminal Penalties.** Interference with custody or visitation rights may be a crime under Indiana law.

405.3.7. Attorney Fees. In any court action to enforce an order granting or denying parenting time, a court may award reasonable attorney fees and expenses of litigation. In awarding fees, a court may consider whether the parent seeking attorney fees substantially prevailed and whether the parent violating the order did so knowingly or intentionally. A court can also award attorney fees and expenses against a parent who pursues a frivolous or vexatious court action.

405.3.8. Inapplicability to the Title IV-D Agency. As the State of Indiana does not represent either of the parents in a Title IV-D child support case, this rule does not apply to petitions or rules to show cause filed by the Title IV-D agency; however, the attorney for the Title IV-D agency and the parent(s) and their counsel, if any, are encouraged to meet and discuss resolution of these matters in advance of any hearing.

405.4. Attorneys to Provide Copies of Rules to Clients. It is required that attorneys will furnish their family clients with copies of these rules and assist them in fully understanding and observing both their spirit and intent.