

# Kane County Local Rule

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## V. CRIMINAL PROCEEDINGS

### ARTICLE 19. GENERAL

#### 19.00 APPLICABILITY OF RULES

- (a) Except where clearly indicated otherwise, the rules contained in this Article 19 shall be applicable to all cases assigned to the Criminal and Traffic Courts.
- (b) Rules contained in this Article shall be read in conjunction with applicable rules contained in this and other Articles, Illinois Compiled Statutes, and the Illinois Supreme Court Rules, and where conflicts exist, the Illinois Supreme Court Rules and the Illinois Compiled Statutes shall control.

#### 19.01 COURTROOMS, CASE AND TRIAL CALL ASSIGNMENTS

- (a) Courtroom designations within the Criminal and Traffic Courts shall be regulated by General Order issued by the Chief Judge.
- (b) Felonies are to be assigned by the Circuit Clerk's computer random assignment system among the designated felony courtrooms. The Chief Judge or designee shall retain the authority to directly assign a case, certain cases or class of cases to any court room outside of the random assignment where warranted for reasons of justice, efficiency or other circumstances.
- (c) A case shall be considered as being placed upon the trial call of a Judge the date of the defendant's first appearance, before the assigned Judge whether that appearance is in open court or by video.

#### 19.02 CONSOLIDATION OF OFFENSES

- (a) When more than one (1) felony case is filed against the same defendant, all such cases shall be assigned to the Judge to whom the earliest filed of all the cases was assigned, unless specifically exempted by order of the Chief Judge.
  - (1) For purposes of determining the earliest filed case, only pre-judgment felony cases shall be considered.
  - (2) If the granting of a motion for substitution of Judges as a matter of right causes fewer than all of the felony cases pending against a defendant to be transferred to a different Judge, the unaffected case or cases shall remain on the docket of the substituted Judge. This rule is limited by [725 ILCS 5/114-5 \(b\)](#) which addresses the rights of all co-defendants when one of the co-defendants is granted an automatic or ten (10) day substitution.
- (b) Cases of co-defendants charged with acting together to commit a felony shall be assigned to the Judge to whom the lowest numbered case of the co-defendant's is assigned. If a co-defendant has an unrelated prejudgment felony case, that unrelated case shall be assigned

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to the judge holding all of the co-defendant's cases. All pending files of all co-defendants should be in one courtroom.

- (c) If a motion for joinder is filed involving defendants whose cases are pending before different Judges, the motion shall be heard by the Judge to whom the lowest numbered case is assigned.
- (d) If a co-defendant's motion for substitution of Judge results in reassignment, the remaining co-defendants' cases shall not follow unless a motion for joinder is granted.

### **19.03 SUBSTITUTION OF JUDGE**

- (a) A Defendant is considered "placed on the trial call of a Judge" (See 725 ILCS 5/114-5(a)) on the first day, the Defendant physically appears before said Judge.

Upon the filing of a motion for substitution under 725 ILCS 5/114-5(a) the judge to be substituted must proceed no further in that cause and transfer the case and the motion for substitution to the Presiding Judge of the Criminal Division or one acting in his/her place.

The Presiding Judge than shall rule on the motion for substitution. If the motion is granted, the Presiding Judge shall reassign the case to a Judge not named in the motion through a set rotation procedure.

- (b) If a motion for substitution of Judge is filed under [725 ILCS 5/114-5 \(a\)](#), the Judge should proceed no further and send the file immediately to the Presiding Judge for hearing on the defendant's motion. The Presiding Judge may assign the hearing to another felony Judge for hearing if warranted by circumstances. If the motion is denied the case shall return to the Judge to whom it was assigned before the motion for substitution was filed. If the motion is granted the Presiding Judge will reassign the matter for further proceedings to a Judge different from the originally assigned Judge through a set rotation procedure.
- (c) The Chief Judge or designee shall retain the authority to directly assign a case upon a motion for substitution to any Judge for hearing on further proceedings for reasons of justice, efficiency or other circumstances.

### **19.04 SPECIALTY COURTS**

- (a) A defendant seeking to enter Pre-Trial Diversion (PTD), Drug Rehabilitation Court (DRC), Treatment alternative court (TAC), or any other specialty court must make application in the courtroom his/her case is currently assigned.
- (b) If a defendant is terminated from a Specialty Court the specialty court will set the defendant's case back to the originally assigned court room for further proceedings.

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- (c) At any time prior to entering final judgement on the conviction and sentence the assigned court judge may permit the defendant to apply to a specialty court. The court cannot consider a specialty court if prohibited by statute or specialty court rules.

### **19.05 APPOINTED COUNSEL**

Traffic, misdemeanor, and ordinance violation cases (other than DUI and Domestic Violence) where the Public Defender, MDD, Conflict Counsel, or other Court Appointed Counsel is appointed to represent a defendant shall be heard in the Kane Branch Court. Upon initial appointment of counsel in the Aurora, or Elgin Branch Courts, the case shall be transferred to the Kane Branch Court at 9:00 a.m. on the first available Monday court is in session for all further proceedings. Any failure to appear warrant issued thereafter in any such transferred case shall remain returnable to the Kane Branch Court.

### **19.06 RESERVED**

### **19.07 PETITIONS TO EXPUNGE RECORDS OF ARREST**

Any petition to expunge records of felony or misdemeanor arrest pursuant to [20 ILCS 2630/5](#), [20 ILCS 2630/5.2](#), or [730 ILCS 5/5-6-3.1](#) shall be in writing and shall be brought before the Chief Judge of the Circuit or any Judge designated by the Chief Judge.

### **19.08 SUBPONEA DUCES TECUM**

Any party seeking information, documents, or physical objects through a Subpoena Duces Tecum must follow this procedure and file a copy with the Kane County Circuit Clerk.

- (1) Give notice to the other party of intent to issue a Subpoena Duces Tecum. Said notice should describe the information sought;
- (2) If the non-subpoenaing party objects to the issuance, the parties must schedule a hearing within seven (7) days of the notice of Subpoena Duces Tecum before the Judge assigned to the case. The Judge will rule whether said subpoena can be issued;
- (3) If the Judge determines said subpoena is appropriate, the subpoena should be issued with the direction that the items/information should be sent directly to the party issuing said subpoena;
- (4) Once a party obtains said information items, a copy of said information and/or notice of the items received must be sent to the opposing party;
- (5) No information, items or responses to or from the subpoena shall be sent to the Court.