

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF LAPORTE                )  
  CAUSE NO. 46C01-0501-DR-002

IN RE THE MARRIAGE OF            )  
  )  
Shannon R. WINSLETT,            )  
    Petitioner,                        )  
  )  
        vs.                                )  
  )  
Murry WINSLETT,                    )  
    Natural Person.                )

### **Motion for Automatic Change of Judge as of Right under Law**

Comes now the undersigned, Murry Winslett, and in direct support of his motion to this Court, hereby alleges, states, and provides the following facts and binding authorities:

1. The undersigned has contemporaneously filed his petition for modification of custody.
2. Accordingly, the undersigned now and hereby moves, pursuant to his one-time automatic right under Trial Rule 76(B) in the post-dissolution phase of any domestic relations cause, to an immediate change of judge in these proceedings without having to state any reason therefore.
3. The Court is reminded: "the general rule that in civil actions once a proper and timely motion for change of venue is filed, the trial court is divested of jurisdiction except to grant the change of venue." *Bird v. Delaware Muncie Metropolitan Plan Commission*, 416 N.E.2d 482, 486 (Ind. Ct. App. 1981).
4. Further: "It is well settled that upon filing of a motion for change of judge under T.R. 76, the trial court is divested of jurisdiction except to grant the change of venue or act on emergency matters." *Kolbet v. Kolbet*, 760 N.E.2d 1146, 1153 (Ind. Ct. App. 2002) (quoting *In re Adoption*

of *I.K.E.W.*, 724 N.E.2d 245, 251 n.9 (Ind. Ct. App. 2000)); *State ex rel. Wade v. Cass Circuit Court*, 447 N.E.2d 1082, 1083 (Ind. 1983).

5. "It has long been recognized that under Trial Rule 76 a party may file a change of judge motion in connection with a petition to modify". *K.B. v. S.B.*, 415 N.E.2d 749, 757 (Ind. Ct. App. 1981).

6. In *Trojnar*, the Court held that Trial Rule 76(B) allows for "one change of judge in connection with a dissolution proceeding prior to entry of a final decree . . . and one change of judge in connection with proceedings to modify that decree." *Trojnar v. Trojnar*, 656 N.E.2d 287, 290 (Ind. Ct. App. 1990). Accordingly, the right to a change of judge in connection with a petition to modify must be viewed prospectively, in as much as that right is derived from the newly-filed petition and does not relate back to pending matters.

7. At the present time, there are no *emergency* matters either pending in this cause, nor any *emergency* matters having been filed by either party.

8. As a matter of strictly construed law, therefore, this particular Court is immediately divested of all jurisdiction in this case by the filing of this T.R. 76 motion for change of judge.

9. The undersigned now demands his right under law to such automatic change of judge, and further now moves the Court to issue its panel of qualified judges to the parties for striking.

10. Lastly, any consideration in regards to local rules objections is irrelevant, as the right to a change of judge herein is a well-established and automatic entitlement under law.

11. This Court should now issue its appropriate panel to the parties for their strikings.

**WHEREFORE**, the undersigned now moves this Court to begin the process for such automatic change of judge in these proceedings, by issuing its panel of qualified persons, and for all other relief that is true and lawful, and just and proper in the premises.

Respectfully submitted,

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Murry Winslett

CERTIFICATE OF SERVICE

I hereby certify: that on this \_\_\_\_\_ day of June, 2006, a true copy of the foregoing *Motion for Automatic Change of Judge as of Right under Law*, by depositing the same in the United States mail, first-class postage prepaid, has been duly served upon each of the following:

(Attorney for Petitioner):  
Virginia M. Keating  
119 West 7th Street  
Michigan City, IN 46360-3405  
(219) 872-8360

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Murry Winslett

Murry Winslett  
[address redacted]  
La Porte, IN 46350  
[telephone redacted]