

A PROCEDURAL GUIDE FOR ATTORNEY DISCIPLINE CASES

Prepared by the Indiana Supreme Court's
Offices of Court Services (formerly Division of State Court Administration) and
Supreme Court Services (formerly Division of Supreme Court Administration)

February 2005
Revised March 2020

TABLE OF CONTENTS

Introduction and Disclaimer	1
Overview	1
Disciplinary Complaint, Summons, and Answer	2
Appointment of Hearing Officers	2
Authority of Hearing Officers	3
Filings and the Record	3
Pre-Hearing and Discovery Matters	4
Deadlines and Ensuring Progress of the Case	5
Judgment on the Complaint	6
Evidentiary Hearing	6
Hearing Officer’s Report	6
Types of Discipline	7
After the Hearing Officer’s Report is Filed	8
Supreme Court Review of the Hearing Officer’s Report	9
Probation	9
Interim Suspension Pending Final Resolution of Charges	10
Suspension for Failure to Cooperate with Disciplinary Commission	11
Proceedings to Determine Disability	12
Reciprocal Suspension	12
Petitions for Reinstatement	13
Public Access	13
Miscellaneous Matters	14
Appendix	
A. Payment Schedule for Hearing Officers	
B. Form “Acceptance of Appointment as Hearing Officer and Oath of Office”	
C. Sample Pre-Hearing Conference Agenda	
D. Sample Itemized Statement of Services Rendered	
E. Sample Hearing Officer’s Report	
F. Vendor Forms	

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INTRODUCTION AND DISCLAIMER

This document is intended as a guide to assist hearing officers in the administration of their duties involving attorney disciplinary cases. It also provides useful information to the parties and others involved in disciplinary cases. It was prepared by the staff of the Indiana Office of Court Services (formerly the Division of State Court Administration) and Supreme Court Services (formerly the Division of Supreme Court Administration) and is neither endorsed nor approved by the Indiana Supreme Court. If you have questions, please contact Supreme Court Services at (317) 232-2540, which assists the Court in processing and monitoring attorney discipline cases.

Hearing officers and parties are advised to check the applicable rules for any amendments that have occurred since the most recent revision of this guide.

OVERVIEW

Indiana Admission and Discipline Rule 23 provides the framework for initiation and resolution of attorney discipline matters. The rule creates, organizes, and empowers the Indiana Supreme Court Disciplinary Commission and its staff. It also provides a procedure for filing grievances against attorneys, a system for the investigation of grievances, and a procedure for resolution should a grievance evolve into a formal complaint for disciplinary action against an attorney.

The Indiana Supreme Court may appoint a hearing officer to preside over individual attorney disciplinary matters, who: (1) shall be a member of the Bar of this State; (2) shall not be an employee of the Supreme Court, a member of the Disciplinary Commission, or a member of the same law firm as a Disciplinary Commission member; and (3) shall have no investigations or actions regarding potential professional misconduct pending before the Supreme Court or any of its agencies. Admis. Disc. R. 23(13)(a).

The hearing officer guides the discovery process, conducts an evidentiary hearing, and submits a report to the Supreme Court. Admis. Disc. R. 23(13). While the formal rules of civil or criminal procedure do not apply strictly and a heightened standard of proof governs, this process is very similar to a civil bench trial in which there is a request for special findings of fact and conclusions of law.

As with most civil cases, many attorney discipline matters never culminate in an evidentiary hearing. Instead, after the appointment of a hearing officer but before a hearing is conducted, the respondent and the Disciplinary Commission often reach an agreement for disposition of the complaint. Such “conditional agreements” are submitted to the Supreme Court for approval. Admis. Disc. R. 23(12.1)(b). The Court may approve a conditional agreement, reject a conditional agreement, or submit to the parties a proposed, alternative disposition. *Id.* When the Supreme Court rejects a conditional agreement, the Commission and the respondent often revise and resubmit their agreement to address the Court’s concerns, but should a case later go to trial, any prior conditional agreement is not admissible in evidence. *Id.*

In cases in which the hearing officer submits findings of fact to the Supreme Court following a hearing, the Supreme Court employs a *de novo* review of the entire record. However, the Supreme Court gives deference to the hearing officer's findings, particularly with regard to determinations as to the credibility of witnesses.

Hearing officers are paid for their work at rates established by the Supreme Court. A copy of the Supreme Court's 2016 fee schedule for hearing officers is attached in the "Appendix" to this document. Accordingly, hearing officers should itemize the time spent on cases and follow all applicable rules in seeking payment.

DISCIPLINARY COMPLAINT, SUMMONS, AND ANSWER

If the Commission determines that there is reasonable cause to believe an attorney is guilty of misconduct that should not be disposed of through administrative action (*i.e.*, a private administrative admonition, *see* Admis. Disc. R. 23(12.1)(a)), the Executive Director prepares a summons and disciplinary complaint setting forth the misconduct and prosecutes the case. The complaint and summons are served upon the respondent. Admis. Disc. R. 23(12)(a) and (c).

A respondent must file an answer within thirty (30) days after service of the summons and complaint. A written motion for enlargement of time to answer, if filed on or before the due date of the answer, is automatically allowed for an additional thirty (30) days from the original due date without a written order of the hearing officer. Should the first motion for extension of time to answer be filed before a hearing officer is appointed, the extension is still deemed granted without an order. A motion for an initial extension of time for more than 30 days and any further motion for enlargement of time to answer requires a written order and should be granted by the hearing officer only for good cause shown. Admis. Disc. R. 23(14)(b).

The answer must admit or controvert specifically the averments set forth in the complaint. If the respondent lacks knowledge or information sufficient to form a belief as to the truth of an averment, the respondent must so state and this statement shall be considered a denial. Averments in a complaint are admitted when not denied in the answer. An answer shall assert any legal defense. Admis. Disc. R. 23(14)(b).

APPOINTMENT OF HEARING OFFICERS

The Supreme Court appoints a hearing officer upon the filing of a complaint for disciplinary action. The State is divided into five regions with each Justice responsible for appointing hearing officers for one region. Each Justice decides how hearing officers are selected for that Justice's region. A hearing officer need not reside or practice within the appointing Justice's region. Once the selection is made, the Court enters a hearing officer appointment order directing the hearing officer to qualify and assume jurisdiction over the case.

The Clerk of the Supreme Court will provide the hearing officer with a copy of the appointment order, the disciplinary complaint and any other filings in the case, a form "Acceptance of Appointment as Hearing Officer and Oath of Office," and the State Auditor Vendor Forms (W-9

and Direct Deposit). In order to be properly paid, the hearing officer must be set up as a State Vendor by filling out and returning the W-9 and Direct Deposit Form (see Attachment F). The hearing officer should contact the Supreme Court Clerk's office or Supreme Court Services if any of these materials are not provided or if you have any questions. The hearing officer should return the W-9 and Direct Deposit Forms to the Office of Judicial Administration, Attn: Fiscal Department – 251 N. Illinois Street, Suite 1600, Indianapolis, IN 46204.

The hearing officer should execute and file with the Supreme Court Clerk's office the "Acceptance of Appointment as Hearing Officer and Oath of Office" promptly after receipt of the appointment order. By doing this, the hearing officer complies with the Court's directive to qualify and assume jurisdiction over the case. The hearing officer should also distribute courtesy copies of the executed acceptance form to all parties or their counsel. A sample "Acceptance of Appointment as Hearing Officer and Oath of Office" is included in the Appendix to this document.

The respondent may, for good cause shown, petition for a change of hearing officer within ten (10) days after the appointment of the hearing officer. Admis. Disc. R. 23(13)(b). The Commission may seek a change of hearing officer when the Commission is conducting an investigation into alleged misconduct by the hearing officer. Such petition should be filed with the Supreme Court Clerk, with a copy sent to the hearing officer and all parties or counsel of record. The decision whether to grant a petition for a change of hearing officer belongs exclusively to the Supreme Court and not to the hearing officer. The hearing officer may, however, file a response to the petition, particularly if the hearing officer agrees that there are grounds for a change of hearing officer. If the hearing officer discovers grounds for recusal or other reason that he or she cannot fulfill the hearing officer's duties after appointment (e.g., prolonged illness), the hearing officer may file a petition requesting the Court to appoint a successor hearing officer.

AUTHORITY OF HEARING OFFICERS

The broad, general authority of the Hearing Officer is found in Admis. Disc. R. 23(13)(c):

Hearing officers shall have the power and duty to:

- (1) Conduct a hearing on a Disciplinary Complaint;
- (2) Administer oaths to witnesses;
- (3) Receive evidence and file a Hearing Officer's Report making written findings of fact and conclusions of law; and
- (4) Do all things necessary and proper to carry out their responsibilities under this Rule.

FILINGS AND THE RECORD

All pleadings, motions, and orders subsequent to the complaint that are required to be served upon a party must be filed with the Clerk of the Supreme Court, 217 State House, Indianapolis, IN 46204. Admis. Disc. R. 23(23). All documents tendered to the Clerk for filing must be served by the filing party upon all other parties or their counsel and the hearing officer. *Id.* Pleadings and orders in disciplinary cases should not be filed in the trial court

clerk's office in the county in which the hearing officer resides, works or conducts a disciplinary hearing. The hearing officer may need to advise a respondent or counsel of the proper place for filing if there is any confusion on the matter.

The Supreme Court Clerk's office maintains the official record of the disciplinary proceeding and will archive it after its conclusion. A hearing officer may maintain a personal case file consisting of copies of filings and orders during the pendency of the matter, but he or she is not required to maintain the file after the conclusion of the case.

A hearing officer may retain a court reporter as an independent contractor. A judge who is serving as a hearing officer has no obligation to provide the services of a court reporter at the expense of the judge's court. A judge may, however, retain as an independent contractor a court reporter that serves the judge's court. If the hearing officer prefers, the hearing officer may ask the Commission to retain a court reporter for the case. The expense of the court reporter is generally taxed as costs against the respondent if misconduct is found.

The evidentiary record of the case, such as exhibits and transcripts, should be maintained by the hearing officer until the completion of his or her duties by filing a Hearing Officer's Report. The hearing officer may require the transcription of the hearing to assist in preparation of the findings of fact and conclusions of law. Also, either party may ask the hearing officer to order such transcription. In some cases, the audiotape of the hearing, rather than a transcription of that tape, is made part of the official record of proceedings. The party requesting the transcript generally pays the costs of the transcript. If the hearing officer requests production of the transcript for preparation of his or her report, the cost of the transcript is borne by the Supreme Court. The hearing officer may permit the parties or their counsel to check out the record to aid in briefing while the case is pending before the hearing officer.

When the hearing officer files the Hearing Officer's Report, the Commission is required to transmit the record of the case (including any transcript) to the Clerk of the Supreme Court for filing. Admis. Disc. R. 23(14)(c). **The hearing officer therefore should forward any parts of the record in his or her possession to the Commission for filing.** Documents that are not part of the official record of the case (e.g., the hearing officer's private notes and copies of pleadings), need not be transmitted.

PRE-HEARING AND DISCOVERY MATTERS

Information concerning pre-hearing and discovery matters is found in Admis. Disc. R. 23(14), which includes:

- Rules of pleading and practice in civil and criminal cases generally do not apply (but a hearing officer may use such rules as guidance).
- The Indiana Rules of Evidence generally do apply.
- No motions to dismiss or dilatory motions shall be entertained. Accordingly, the hearing officer has no authority to grant or entertain dispositive motions such as motions to dismiss or for summary judgment. (This does not, however, prevent the hearing officer from forgoing an evidentiary hearing and preparing his or her report

based on stipulated or undisputed facts, nor does it preclude a conclusion in the report that the facts alleged do not constitute an ethical violation.)

- Discovery is available to the parties on terms and conditions that, as nearly as practicable, follow the Indiana Rules of Civil Procedure pertaining to discovery.
- Upon request of a party, the hearing officer may issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party or that party's attorney, who shall complete it before service.
- The respondent, or counsel for the Commission and for the respondent, are authorized to sign and issue subpoenas. Admis. Disc. R. 23(14)(f)(5).
- Subpoenas for the attendance of witnesses and production of documentary evidence shall conform to the provisions of Ind. Trial Rule 45.
- The hearing officer shall have authority to enforce, quash or modify subpoenas upon proper application by an interested party or witness.

A pre-hearing conference is to be held at the discretion of the hearing officer or upon request of either party. The purpose of the pre-hearing conference is to: (1) obtain admissions; (2) narrow issues; (3) require witness lists, including addresses and the general nature of testimony; (4) consider amendments to the complaint or answer; and (5) other matters that may aid in the disposition of the case. The Disciplinary Commission routinely seeks the setting of a pre-hearing conference, but the hearing officer may schedule such a hearing *sua sponte*. There is no prohibition against conducting the pre-hearing conference telephonically. Generally, hearing officers schedule pre-hearing conferences after the respondent has answered the complaint and the issues have thus been narrowed.

DEADLINES AND ENSURING PROGRESS OF THE CASE

Within thirty (30) days after the respondent has filed a timely answer or the hearing officer is appointed and has qualified, whichever is later, the hearing officer shall schedule a date for a final hearing on the complaint and answer. Absent good cause, the hearing shall be held within ninety (90) days of the scheduling order. Admis. Disc. R. 23(14)(f). Within sixty (60) days after the conclusion of the hearing or the filing of proposed findings by the parties, whichever is later, the hearing officer shall determine whether misconduct has been proven by clear and convincing evidence and shall file with the Clerk a written Hearing Officer's Report with findings of fact and conclusions of law. Admis. Disc. R. 23(14)(g).

Hearing officers are encouraged to set deadlines (e.g., completion of discovery, filing of witness and exhibit lists) either by order or at the pre-hearing conference. Without such deadlines, a party may appear at hearing with witnesses or documents not seen by opposing counsel and use this technique to secure a continuance.

Each Justice monitors the progress of cases from that Justice's appointment region. To assist the Justices, Supreme Court Services prepares a quarterly report showing the status of each disciplinary and reinstatement case in which a hearing officer has been appointed. **To assist the Justices in monitoring the cases, hearing officers are encouraged to reflect all pertinent case activity on the Clerk's chronological case summary ("CCS") for the case, including entries showing deadlines, the setting of a future pre-hearing conference or a hearing, and**

the fact that a pre-hearing conference or a hearing was held. If the CCS for the case does not reflect activity toward resolution (e.g., no setting of a pre-hearing conference or a hearing) or is ambiguous (e.g., no entries after a date set for a pre-hearing conference or a hearing), the hearing officer will likely receive an email request to provide a brief status report to Supreme Court Services by return email. Occasionally, the Court will deem it necessary to enter an order setting a deadline for a hearing officer to conduct a hearing and/or file a report.

JUDGMENT ON THE COMPLAINT

If the respondent fails to answer the complaint, the Disciplinary Commission may file a motion for judgment on the complaint. Admis. Disc. R. 23(14)(c). A hearing on the motion for judgment on the complaint need be held only if the respondent files a timely response to the motion. The hearing officer is to set the hearing within twenty-eight (28) days, giving the parties at least seven (7) days' notice of the hearing.

If the respondent fails to answer or appear, the hearing officer shall take the facts alleged in the complaint as true and promptly file a report with the Supreme Court Clerk in conformity with the provision of a report following a hearing. Admis. Disc. R. 23(14)(c).

EVIDENTIARY HEARING

Information concerning proceedings before the hearing officer is found in Admis. Disc. R. 23(14), including:

- Written notice of a hearing date must be given to the parties not less than fifteen (15) days prior to such hearing. The Commission will then give notice to the grievant.
- Respondent shall have the right to: (1) attend the hearing in person; (2) be represented by counsel; (3) cross examine the witnesses; (4) both produce and require the production of evidence and witnesses on his or her behalf at the hearing as in civil proceedings.
- The proceeding shall be conducted on the record without a jury.

The hearing officer may choose the site for any hearing. If the hearing officer is a judge, the hearing officer may set the hearing in the hearing officer's courtroom. All hearing officers, however, may opt to conduct any hearings in Supreme Court facilities in downtown Indianapolis. The Disciplinary Commission also has a conference room at its offices in downtown Indianapolis that may be used for hearings. The hearing officer should contact the Disciplinary Commission about the availability of such space before setting a hearing in those facilities. Hearings may also be held at any other location that is convenient to the parties or witnesses.

THE HEARING OFFICER'S REPORT

Information concerning the Hearing Officer's Report is found in Admis. Disc. R. 23(14)(g). The Disciplinary Commission must prove misconduct by clear and convincing evidence. After the conclusion of the hearing or the filing of proposed findings by the parties, whichever is later, the hearing officer is required to determine within sixty (60) days whether misconduct has been

proven and submit to the Supreme Court a written Hearing Officer's Report containing findings of fact and conclusions of law. At the request of either party or *sua sponte*, the hearing officer may make a recommendation concerning disposition of the case and the imposition of discipline, but such a recommendation is not required. These findings of fact, conclusions of law, and any recommendations are not binding on the Supreme Court, which reviews disciplinary matters *de novo*.

The hearing officer is to file the Hearing Officer's Report with the Clerk of the Supreme Court. The hearing officer is also to serve a copy of the report to the respondent or counsel for the respondent and the Executive Director of the Disciplinary Commission at the time of filing with the Supreme Court Clerk. A courtesy copy of the report may also be served on counsel representing the Disciplinary Commission at the hearing.

In the Hearing Officer's Report, the Hearing Officer may include the following, based on evidence submitted at hearing:

- A finding that Respondent is an attorney admitted to practice law in Indiana or otherwise subject to the Supreme Court disciplinary jurisdiction (e.g., soliciting clients within Indiana);
- A statement of rules the Commission alleges were violated;
- The applicable burden of proof, i.e., clear and convincing evidence of misconduct;
- Factual findings relating to the misconduct charged;
- Legal conclusions, including which rules were violated and/or not violated;
- Any aggravating circumstances, including but not limited to prior disciplinary actions and sanctions, lack of personal accountability for acts of professional misconduct, egregious disregard for ethical rules, actual or potential harm to clients, disregard for clients, and pattern of misconduct;
- Any mitigating circumstances, including but not limited to cooperation at the hearing and with the Disciplinary Commission, remorse for harm caused to clients, respondent's mental state, obtaining psychiatric or professional help, lack of prior disciplinary actions, admission of wrongdoing, and the misconduct being an isolated occurrence.
- An analysis of precedent concerning similar misconduct.
- A recommendation as to the discipline to be imposed (optional).

Hearing officers and parties are advised to consider the privacy and confidentiality interests of those involved in attorney discipline proceeding, including clients, juveniles, and grievants. The use of initials or descriptive terms (e.g., "Client" and "Child") and the avoidance of sensitive information (e.g., complete addresses and bank account numbers) can help protect those interests. Administrative Rule 9 – Access to Court Records – can provide guidance on safeguarding sensitive information.

TYPES OF DISCIPLINE

The hearing officer may make a recommendation as to discipline *sua sponte* or upon request by either of the parties. This recommendation is not binding on the Court. Alternatively the hearing

office may choose not to recommend a particular discipline, leaving the decision to the discretion of the Supreme Court.

Pursuant to Admis. Disc. R. 23(3)(a), the hearing officer may recommend the following discipline:

- a private reprimand;
- a public reprimand;
- suspension from the practice of law for up to six months with automatic reinstatement thereafter;
- suspension for any period of time with the requirement the respondent then formally petition the Supreme Court and go through the reinstatement process under Admis. Disc. R. 23(18)(b) before resuming practice;
- suspension that is stayed in whole or in part, subject to the respondent's compliance with terms of probation; or
- permanent disbarment.

An attorney who has been disbarred will never be eligible for readmission. The hearing officer may, but need not, recommend a length of suspension or probation and/or terms of probation. Recommended probation may include such conditions as participation in counseling or treatment, education (such as training in law office or trust account management), oversight by a mentor or accountant, and/or monitoring by the Commission. Probation with monitoring by the Judges and Lawyers Assistance Program (JLAP) may be recommended when mental health, alcohol, substance abuse, or similar impairments are involved.

For guidance regarding the appropriate discipline for the misconduct involved, including aggravating and mitigating facts, the hearing office may wish to consult Standards of Imposing Lawyer Sanctions, as amended 1992, copyright 2005 by the American Bar Association. This may be found on-line at:

http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/sanction_standards.authcheckdam.pdf

For minor misconduct, the Commission may submit a proposal to the Court for an agreed private administrative admonition ("PAA"). *See* Admis. Disc. R. 23(12.1)(a). If not rejected by the Court within 30 days, the Commission sends a letter of PAA to the respondent. The fact that an attorney has received a PAA is public (by a notice of PAA filed by the Commission and a notation on the attorney's record), but the underlying facts are not. A PAA is available only under these circumstances and thus cannot be recommended by the hearing officer or imposed by the Court in any other situation.

AFTER THE HEARING OFFICER'S REPORT IS FILED

Once the hearing officer files his or her report with the Clerk of the Supreme Court, the hearing officer's involvement in the case generally concludes, even though the parties may seek review of the report by the Supreme Court. Admis. Disc. R. 23(15). The hearing officer should transmit the record (particularly any transcripts and exhibits) in the hearing officer's possession to the

Commission, which in turn will transmit it to the Supreme Court Clerk so it will be available to the parties and the Court. *See* Admis. Disc. R. 23(14)(g)(3).

The hearing officer may submit an itemized statement of services rendered so that the Supreme Court may compensate the hearing officer for his or her service, pursuant to the order issued by the Supreme Court in 2016 (see Attachment A to this manual). The itemized statement may be in the form of a letter and should include a table showing the date of the work/event, a description of the work/event, the duration of the event/work, and the cost attributable to the work per the schedule set forth by the Court. (An example of such a letter is attached to this manual.) The statement should be sent to: Chief Financial Officer, Office of Judicial Administration, 251 N. Illinois Street, Suite 1600, Indianapolis, IN 46204. The statement should be submitted within thirty (30) days after the conclusion of the hearing officer's participation in the matter.

In order to facilitate payment, the hearing officer should complete and submit the Vendor Forms (see Attachment F) if this has not already been done.

SUPREME COURT REVIEW OF THE HEARING OFFICER'S REPORT

After the filing of the Hearing Officer's Report, the respondent or and the Commission have thirty (30) days to file a petition for a review or brief on sanctions addressed to the Supreme Court. Opposing parties have thirty (30) days from the date of service to file a response brief, and a reply brief may be filed fifteen (15) days from the date of service of the response brief. Admis. Disc. R. 23(15).

When neither party challenges the findings of the hearing officer, the Court accepts and adopts those findings but reserves final judgment as to misconduct and sanction. *See Matter of Levy*, 726 N.E.2d 1257, 1258 (Ind. 2000). Whether or not a petition for review or brief on sanctions is filed, the review process in disciplinary cases involves *de novo* examination of all matters presented to the Court, but the Hearing Officer's findings receive emphasis due to the unique opportunity for direct observation of witnesses. *See Matter of Kern*, 555 N.E.2d 479, 480 (Ind. 1990).

If the Court imposes suspension without automatic reinstatement, the respondent must go through the reinstatement process under Admis. Disc. R. 23(18)(b) before resuming practice.

PROBATION

It is not uncommon for all or part of a suspension to be stayed pending a period of probation, often with monitoring by JLAP. Sometimes reinstatement is conditioned on a period of probation. A hearing officer may recommend probation in his or her report to the Supreme Court.

When the minimum period of probation expires, it is not lifted until the attorney affirmatively petitions to terminate it. Unless the Commission files an objection to the petition within 15 days after service, the Clerk (specifically, the Roll of Attorneys) will adjust the attorney's record to show the probation terminated without the need for a Court order. *See* Admis. Disc. R. 23(16)(b).

Attorneys can verify that they have been released from probation by checking their on-line attorney records.

The Commission may file a motion to revoke probation if a respondent violates any condition of probation. *See* Admis. Disc. R. 23(16)(c). The respondent may file a response under penalties of perjury within ten days of service. The Commission has the burden of establishing a violation by a preponderance of the evidence. The Court may dispose of the matter on the pleadings and supportive materials or may refer it to a hearing officer. The hearing officer is to hold a hearing within 14 days of appointment and file with the Clerk findings and a recommendation within ten days of the hearing. The Court will then shall enter an order ruling on the matter.

INTERIM SUSPENSION PENDING FINAL RESOLUTION OF CHARGES

The Commission may seek suspension of an attorney prior to hearing under certain circumstances. Admis. Disc. R. 23(11.1). The Supreme Court rules on such motions, not the hearing officer. A hearing officer does not have authority to order the interim suspension of a respondent. However, the Court may ask a hearing officer to conduct a hearing on an interim suspension request, as set forth below.

Emergency suspension pending prosecution of disciplinary action

The Commission will move for suspension pending prosecution upon two-thirds vote of the Commission members that: (1) the continuation of the practice of law by an attorney during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice, and (2) the alleged conduct, if true, would subject the respondent to disciplinary sanctions. Admis. Disc. R. 23(11.1)(b). The respondent has fifteen (15) days after service of the petition to respond. The Court may grant or deny the petition for suspension, or the Court may opt to refer the matter to a hearing officer.

If a petition for interim suspension is referred to a hearing officer, the hearing officer must conduct a hearing on the suspension within thirty (30) days of the date of referral and render a report to the Court within fourteen (14) days of the hearing. Admis. Disc. R. 23(11.1)(b)(7). Although not specified by the rules, the procedures employed at the hearing on the interim suspension are generally the same as those used for the final hearing on a disciplinary complaint. Thus, the Commission typically makes the first presentation of evidence and has the right to open and close argument. However, the Commission's burden of proof in an interim suspension hearing differs from that applicable to the final hearing on a complaint. The Commission must prove by a preponderance of the evidence (as opposed to clear and convincing evidence) that an interim suspension is merited. Generally, interim suspension hearings focus on the most serious charges allegedly justifying the interim suspension.

Admission and Discipline Rule 23(11.1)(b)(7) requires the hearing officer's report to contain findings of fact and a recommendation. Upon receiving the hearing officer's report, the Court may order interim suspension or impose temporary conditions of probation. The order of suspension or probation will remain in effect until disposition of the underlying disciplinary complaint (which may not have been filed yet) or further order of the Court.

The respondent may seek the dissolution or amendment of the interim suspension or probation by filing with the Supreme Court a verified motion setting forth facts demonstrating good cause. Admis. Disc. R. 23(11.1)(b)(10). The Court may refer the motion to a hearing officer, who will proceed according to Admis. Disc. R. 23(11.1)(b)(7), i.e., the hearing officer shall conduct a hearing on the motion within 30 days of the date of referral and render a report to the Court, including findings of fact and a recommendation, within fourteen (14) days of the hearing.

If an interim suspension or probation is ordered before a disciplinary complaint has been filed, the Commission must file a complaint for disciplinary action within sixty (60) days of the interim suspension or probation. Admis. Disc. R. 23(11.1)(b)(11). If the respondent is under interim suspension or probation, the hearing officer appointed in the disciplinary action is required to conduct a final hearing and file a report without undue delay. Admis. Disc. R. 23(11.1)(b)(12).

Suspension upon guilty finding of a crime punishable as a felony

An interim suspension also may be sought where an attorney licensed in Indiana is found guilty of a crime punishable as a felony under the laws of any state or the United States. Admis. Disc. R. 23(11.1)(a). The Disciplinary Commission is obligated to inform the Supreme Court of the conviction, and the Supreme Court may suspend the attorney pending final resolution of any resulting disciplinary charges. The rules do not provide for a hearing officer in this type of interim suspension proceeding. (A similar procedure applies when an attorney has been found in deliberate violation of a child support order. Admis. Disc. R. 23(11.1)(c).)

Note: An attorney licensed in Indiana who is found guilty of either a felony or misdemeanor must, within ten days after such finding of guilt, transmit a certified copy of the finding of guilt to the Executive Director of the Commission, even though a misdemeanor would not subject the attorney to interim suspension. Admis. Disc. R. 23(11.1)(a).

SUSPENSION FOR FAILURE TO COOPERATE WITH DISCIPLINARY COMMISSION

An attorney's failure to cooperate with the Disciplinary Commission's investigation of that attorney may result in the suspension of that attorney. *See* Admis. Disc. R. 23(10.1)(c). Such suspensions may be based on a failure to submit a written response to pending allegations of professional misconduct, to accept certified mail from the Commission, to respond to a subpoena from the Commission, to appear at any hearing on the matter under investigation, or to comply with any other lawful demand for information made by the Commission. Admis. Disc. R. 23(10.1)(b). The Commission's request for a noncooperation suspension is filed with the Supreme Court, which issues a show cause order directing the attorney to respond within ten (10) days. The Court may suspend the attorney thereafter upon a finding that the attorney failed to cooperate as outlined in Admis. Disc. R. 23(10.1)(c). The attorney may be relieved from a *noncooperation* suspension by complying with the Commission's demands. If the noncooperation suspension lasts for more than 90 days, the Commission files a motion to convert it to an *indefinite* suspension. Once the noncooperation suspension is converted to an indefinite suspension, the respondent must go through the reinstatement process under Admis. Disc. R. 23(18)(b) before resuming practice.

This rule does not provide for referral of the matter to a hearing officer, but the Court has, on rare occasion, referred show cause proceedings to a hearing officer to resolve factual disputes. Failure to cooperate with the Commission is itself an ethical violation that may be charged in a disciplinary complaint. *See* Prof. Cond. R. 8.1(b). In addition, the hearing officer may consider such failure to cooperate an aggravating circumstance in recommending an appropriate sanction.

PROCEEDINGS TO DETERMINE DISABILITY

Admission and Discipline Rule 23(19) allows any person to submit a report to the Commission suggesting that an attorney should “be suspended from the practice of law due to disability caused by physical or mental infirmity or by the use of intoxicants or drugs.”

If the Disciplinary Commission determines that there is good reason to believe that a disability exists that would justify suspension of the attorney named in the petition, the Commission will hold a hearing to determine if the attorney should be suspended. “To conduct the hearing, the Disciplinary Commission may request the appointment of a hearing officer as provided in Section 18(b)(4),” which governs petitions for reinstatement. The hearing officer submits findings and a recommendation to the Commission, rather than directly to the Court. The rules do not impose a deadline, but hearing officers are encouraged to submit their findings and recommendations to the Commission within thirty (30) days after the hearing.

The Commission may then file a petition for disability suspension with the Court, which will include its findings of fact. The recommendations may include that the attorney be suspended pending a final determination and/or that the Court appoint an attorney surrogate. The Court may immediately enter an order of suspension upon the Commission’s recommendation. The respondent has fifteen (15) days to petition the Court for dissolution of an immediate suspension order. Admis. Disc. R. 23(19)(d).

If the Commission files a petition for disability suspension, the respondent may file an objection within thirty (30) days of the filing of the petition. If no objection is filed or if the Court determines that the Commission’s petition is supported by sufficient evidence, the Court will enter an order of suspension for the duration of the attorney’s disability. Admis. Disc. R. 23(19)(g) and (h). After the disability ends, a respondent may seek relief from the suspension order through the reinstatement process under Admis. Disc. R. 23(18)(b).

RECIPROCAL SUSPENSION

When an Indiana attorney is subject to a public disciplinary sanction in another jurisdiction, the attorney must notify the Commission’s Executive Director in writing of the discipline within 15 days. If the attorney is suspended or disbarred, or resigns with an admission of misconduct, in the foreign jurisdiction, the Executive Director will file a notice with the Court and request an order to show cause within 30 days from service why reciprocal discipline in this state would be unwarranted. The Court will suspend the attorney in Indiana if there is no indication that the proceeding in the other jurisdiction was unfair. *See* Admis. Disc. R. 23(20).

The Court basically defers to the decision of the foreign jurisdiction as to both suspension and reinstatement. Thus, an attorney under reciprocal suspension may file a “motion for release from reciprocal suspension” based solely on the foreign jurisdiction’s reinstatement of the attorney, without having to go through the reinstatement process described below. *See* Admis. Disc. R. 23(20)(g).

PETITIONS FOR REINSTATEMENT

Attorneys who have resigned from the bar while disciplinary allegations were pending, *see* Admis. Disc. R. 23(17), or who were suspended without automatic reinstatement for misconduct, suspended indefinitely for failure to cooperate with the Commission, or suspended for a disability may resume practice only by filing a petition for reinstatement and going through the reinstatement process under Admis. Disc. R. 23(18)(b).

The Supreme Court may appoint a hearing officer to hear a petition for reinstatement. Such a hearing officer has the same powers as a hearing officer appointed to hear a complaint of professional misconduct, and the procedures are similar to those in disciplinary actions. *See* Admis. Disc. R. 23(18)(b)(4)(iii).

The petitioner has the burden of proving all the elements of Admis. Disc. R. 23(18)(b)(3) by clear and convincing evidence. Note that Admis. Disc. R. 23(26)(c) requires a suspended attorney to file an affidavit showing that notice of the suspension has been given to all clients and that specified actions have been taken with respect to pending matters. Proof of compliance with this section of the rule is a condition precedent to filing a petition for reinstatement. Admis. Disc. R. 23(18)(b)(2).

The hearing officer must determine whether the petitioner has proven the requirements set forth in Admis. Disc. R. 23(18)(b)(3) and make written findings and recommendation to the Court. Admis. Disc. R. 23(18)(b)(4)(iii). This could include a recommendation for unconditional reinstatement, or reinstatement subject to completion of a period of probation with conditions to address specific concerns (e.g., monitoring by JLAP, supervision of trust accounts by a CPA), or that reinstatement be denied.

Hearing officers are encouraged to submit the report to the Court within sixty (60) days after the hearing or the submission of proposed findings by the parties, whichever is later. After the filing of the hearing officer’s findings and recommendation, either the Commission or the respondent may petition the Supreme Court for a review of the recommendation within thirty (30) days after that recommendation is filed. Admis. Disc. R. 23(18)(b)(5). The Court reserves final judgment as to whether reinstatement should be granted.

PUBLIC ACCESS

Information concerning public access in disciplinary proceedings is found in Admis. Disc. R. 23(22). As a general rule, after a disciplinary complaint has been filed with the Supreme Court,

all proceedings, except adjudicative deliberations, and all papers filed of record with the Clerk are open and available to the public. This includes hearings before hearing officers.

However, hearing officers may, in the exercise of sound discretion, order a closed hearing or other appropriate relief on the motion of the hearing officer, or at the request of the Commission or the respondent, if, in the opinion of such hearing officer, the conduct of a closed hearing is necessary for any of the following purposes:

- (1) For the protection of witnesses;
- (2) To prevent likely disruption of the proceedings;
- (3) For the security of the hearing officer, or any of the parties to the proceedings;
- (4) To prevent the unauthorized disclosure of attorney-client confidences not at issue in the proceeding;
- (5) To protect medical information;
- (6) For any other good cause shown which in the judgment of the hearing officer requires such hearing to be closed.

If the hearing officer closes the hearing, an order to that effect setting forth the reasons for the closure should be filed before the hearing is conducted. Hearing officers also have the authority to seal specific documents for the same reasons as would justify closure of the hearing.

Proceedings and papers that relate to matters that have not resulted in the filing of a disciplinary complaint (such as grievances filed with the Disciplinary Commission), the Commission's investigative reports, and other work product of the Commission are not open and available to the public.

In addition to Admis. Disc. R. 23(22), hearing officers should consult Administrative Rule 9 – Access to Court Records – for further guidance regarding public disclosure of documents.

MISCELLANEOUS MATTERS

Pauper counsel requests and reimbursement of expenses

The Admission and Discipline Rules do not speak to the issue of pauper counsel or payment of expert witnesses and other investigatory costs. In at least two instances, one in a published opinion, the Supreme Court has ruled that pauper counsel is not available to respondents. *See, e.g., Matter of McCord*, 722 N.E.2d 820, 822 (Ind. 2000) (“There is no right to appointment of pauper counsel at public expense in an attorney disciplinary proceeding. . . . Accordingly, the fact that the hearing officer denied the respondent's request for pauper counsel in this case does not indicate that the respondent was denied due process.”).

Motions to dismiss addressed to the Court

Admission and Discipline Rule 23(14) provides that, during proceedings before the hearing officer, no motions to dismiss shall be entertained. Nevertheless, motions to dismiss are sometimes filed by the respondent or the Disciplinary Commission during the pendency of

proceedings before the hearing officer. For example, the Disciplinary Commission might move for dismissal of the disciplinary complaint upon reconsideration of its initial determination of probable cause, or the respondent might move to dismiss the disciplinary complaint upon jurisdictional grounds. *See, e.g., Matter of Fletcher*, 655 N.E.2d 58 (Ind. 1995) (respondent's motion to dismiss based on alleged lack of jurisdiction of Supreme Court due to *pro hac vice* appointment was denied). Such motions may be considered and resolved by the Supreme Court directly without intervention of the hearing officer.

Appeals from hearing officer decisions made prior to filing of the hearing officer's report

The rules make no provision for either the respondent or the Commission to appeal to the Supreme Court any pre-hearing rulings of the hearing officer before the hearing officer conducts a final hearing and files his or her report with the Court.

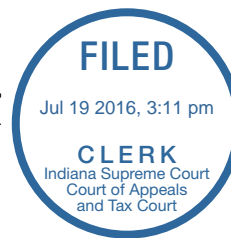
Conditional agreement to resolve action pending before the hearing officer

The parties may submit a conditional agreement to dispose of the disciplinary case to the Supreme Court. Sometimes this occurs contemporaneously with the filing of a disciplinary complaint, while other times it occurs while the case is pending before the hearing officer. The conditional agreement is not filed with the Clerk's office. Instead, it is submitted to Supreme Court Services, which presents it to the Supreme Court for discussion and decision. If approved, the Court issues an order or opinion imposing the agreed discipline. Hearing officers usually suspend activity in the case while a conditional agreement is pending. If however, the parties simply advise the hearing officer that a conditional agreement is being negotiated, it is recommended that the hearing officer continue to set deadlines and dates for a pre-hearing conference and/or a hearing. This will prevent the case from suffering undue delay if no agreement is reached.

APPENDIX

- A. Order dated July 19, 2016: Payment Schedule for Hearing Officers
- B. Form "Acceptance of Appointment as Hearing Officer and Oath of Office"
- C. Sample Pre-Hearing Conference Agenda
- D. Sample Itemized Statement of Services Rendered
- E. Sample Hearing Officer's Report
- F. Vendor Forms

In the
Indiana Supreme Court



Cause No. 94S00-1607-MS-384

Order Establishing Payment Schedule for
Hearing Officers and Masters

Hearing officers appointed by this Court to preside in attorney disciplinary proceedings, *see generally* Indiana Admission and Discipline Rule 23, and masters appointed by this Court to preside in judicial disciplinary proceedings, *see generally* Indiana Admission and Discipline Rule 25, shall be compensated for services rendered on or after August 1, 2016 in accordance with the following schedule of payments:

- Preparation of entries, study, research and all necessary non-hearing services \$150 per hour
- Pretrial or trial hearings \$525 per day
- Hearing of ½ day or less \$300 per day
- Reviewing evidence and preparing any findings, recommendations or reports required by order of this Court of the Admission and Discipline Rules, *see, e.g.,* Admission and Discipline Rules 23(14)(h) and 25(VIII)(N) \$150 per hour
- Necessary out-of-pocket expenses (telephone, postage, etc.) ACTUAL EXPENSE
- All travel necessary to the conduct of such case shall be reimbursed at the per mileage rate designated in the Indiana Department of Administration Travel Policy in existence at the time the travel occurs.

At the conclusion of their services in a particular case, hearing officers and masters shall submit statements of services, pursuant to the above schedule, to the Chief Administrative Officer, State House Room 315, 200 West Washington Street, Indianapolis, Indiana 46204. Prior to submission of such statement of services, the hearing officer or master should contact the Office of Judicial Administration, 317-232-2542, to determine the applicable travel reimbursement rate so that the statement of services will contain accurate travel and total expense assessments.

Compensation for services rendered by hearing officers or masters before the effective date of this order is governed by previously issued orders of this Court.

Done at Indianapolis, Indiana, on 7/19/2016.

Loretta H. Rush
Chief Justice of Indiana

In the Indiana Supreme Court

In the Matter of:)	Supreme Court Case No.
)	
_____)	_____
Respondent.)	

ACCEPTANCE OF APPOINTMENT AS HEARING OFFICER AND OATH OF OFFICE

I, _____, having been appointed as the Hearing Officer in this matter on the _____ day of _____, 20__, do hereby accept such appointment and do solemnly swear or affirm that I will uphold the Constitution and the Laws of the United States of America and the Constitution and Laws of Indiana, and will honestly and faithfully discharge my duties to the best of my ability, So Help Me God.

Hearing Officer's signature

Date: _____

SAMPLE PRE-HEARING CONFERENCE AGENDA

Prepared by Donald R. Lundberg

Former Executive Secretary of the Disciplinary Commission

Edited by Supreme Court Services (January 2017)

- **Preliminary Consideration: Whether to conduct pre-hearing conference telephonically or by personal attendance of counsel and/or respondent. The Disciplinary Commission staff is willing to make the arrangements for conducting conferences telephonically.**

- **Representation of the parties**
 - o **Is the respondent *pro se* or represented by counsel?**
 - o **Determine if a *pro se* respondent contemplates retaining counsel.**
 - o **Who will be handling the matter for the Disciplinary Commission?**

- **Hearing dates and times**
 - o **Amount of time required for hearing.**

- **Hearing location**
 - o **Options: hearing officer's courtroom, Supreme Court conference room, Disciplinary Commission conference room, elsewhere.**
 - o **Considerations: convenience of hearing officer, witnesses, parties and other participants, and availability of hearing facility.**
 - o **Who will make arrangements for scheduling hearing facility?**

- **Reporting proceedings**
 - o **Hearing Officer's court reporter**
 - o **Contract court reporter**
 - o **Who will make court reporter arrangements?**

ATTACHMENT C

- **Status of pleadings**
 - o **Contemplated amendments to charging complaint,**
 - o **Timely answer by respondent?**

- **Discovery**
 - o **To what extent will the parties be able to handle discovery matters without the intervention of the hearing officer?**
 - o **Other anticipated discovery issue or disputes.**

- **Witness attendance**
 - o **Hearing officer may issue subpoenas.**
 - o **The respondent, or attorneys for the Commission and for the respondent, are authorized to sign and issue subpoenas.**
 - o **Subpoenas shall conform to the provisions of Indiana Trial Rule 45.**

- **Possibility of resolution by agreement or narrowing or simplification of issues by stipulation**

- **Case scheduling**
 - o **Final hearing on the merits.**
 - o **Exchange of witness and exhibit lists (preliminary and/or final),**
 - o **Discovery cut-off date,**
 - o **Pre-hearing briefs, if any.**
 - o **Necessity for and date of additional or final pre-hearing conferences**

- **Special case needs**
 - o **Foreign language translators.**
 - o **Witnesses who need special accommodations.**

HEARING OFFICER'S LETTERHEAD

DATE

Office of Judicial Administration
Attn: Chief Financial Officer
251 North Illinois Street, Suite 1600
Indianapolis, Indiana 46204

RE: Matter of _____, Case Number _____

Dear Sir or Madam:

Enclosed please find an itemized statement for services rendered by the undersigned hearing officer in this attorney discipline matter.

Sincerely,

[Name of hearing officer]

ATTACHMENT D

HEARING OFFICER'S LETTERHEAD

Office of Judicial Administration
 Attn: Chief Financial Officer
 251 North Illinois Street, Suite 1600
 Indianapolis, Indiana 46204

Balance:

 Invoice Date:

STATEMENT OF SERVICES

Matter of _____, Case Number _____

Time Entries

Date	Entrant	Activity	Description	Rate	Hours	Line Total
4/12/19	BL	Filing	File acceptance of appointment	\$150	0.4	\$60.00
4/25/19	JAS	Email	Email attorneys re: PTC	\$150	0.4	\$60.00
4/30/19	BL	Drafting/filing	Draft and file order for PTC	\$150	0.7	\$105.00
5/10/19	BL	Hearing	PTC & order	\$150	0.6	\$90.00
7/11/19	BL	Drafting	Draft and file PTC order	\$150	0.9	\$135.00
7/25/19	BL	Hearing	PTC by phone & order	\$150	0.8	\$120.00
11/19/19	JAS	Email	Email attorneys re: PTC	\$150	0.2	\$30.00
11/20/19	BL	Hearing	PTC by phone	\$150	0.4	\$60.00
11/21/19	BL	Drafting	Draft and file PTC order	\$150	0.8	\$120.00
12/5/19	BL	Hearing prep	Review pre-hearing briefs; prepare	\$150	1.2	\$180.00
12/6/19	BL	Hearing	Final hearing (full day)	\$525	Flat	\$525.00
2/4/20	BL	Review	Review parties' proposed findings	\$150	0.6	\$90.00
2/5/20	BL	Drafting	Begin drafting report	\$150	4.0	\$600.00
2/6/20	BL	Drafting	Continue drafting report	\$150	2.5	\$375.00
2/7/20	BL	Drafting	Complete report, file & serve	\$150	3.5	\$525.00

Totals: 17.0 \$3,075.00

Expense Entries

Date	Entrant	Activity	Description	Cost	Quantity	Line Total
12/6/19	BL	Travel	168 miles x .38	\$63.84	1	\$63.84
12/6/19	BL	Lunch	The Banana Shack	\$8.70	1	\$8.70

Totals: \$72.54

Time subtotal: \$2,550.00
Hearing subtotal: \$525.00
Expense subtotal: \$72.54

Balance Due: \$3,147.54

ATTACHMENT D

NOTE: This sample Hearing Officer's Report is based on one that was filed in an actual case several years ago, with some modifications. It is provided by Supreme Court Services only as an example of organization and general content. The analysis does not necessarily reflect the Supreme Court's view of the law, and some of the rule citations and terminology used may no longer be current.

In the Indiana Supreme Court

In the Matter of:)	Supreme Court Cause No.
Firstname MI. LASTNAME,)	00S00-0000-DI-000
Respondent.)	

HEARING OFFICER'S REPORT

The hearing officer, [NAME], after having taken the evidence at hearing under advisement, and having reviewed the transcript of the hearing, the briefs and proposed findings and conclusions submitted by the Commission and the Respondent, now makes the following findings of fact, conclusions of law, and recommendation.

FINDINGS OF FACT

1. The Respondent is an attorney in good standing, having been admitted to practice law in the State of Indiana on [DATE].
2. M.D. and her husband, H.D., had moved to Indiana from Ohio. Upon H.D.'s death in 1982, M.D. consulted the Respondent concerning her husband's estate. On August 12, 1983, M.D. sent the Respondent a letter indicating her desire that the Respondent administer her estate in the event of her sickness or death. The letter requested that the Respondent send "a statement as to [the respondent's] fee, and a check will be mailed." Comm. Ex. #3.
3. Included in the letter from M.D. was information regarding bank account and certificate of deposit balances, income from pension funds, social security proceeds, life insurance policies, and estimated state and federal income taxes for 1983.
4. L.N. was M.D.'s niece and closest relative. L.N. had been told by M.D. that the Respondent was M.D.'s attorney. M.D. had given L.N. a card containing the Respondent's name and telephone number. L.N. was to call the Respondent should M.D. die or become incapacitated.
5. On August 27, 1984, M.D. sent the Respondent a letter wherein she stated, "I am interested in a possible move to [Retirement Home], and need your objective thinking and guidance." Comm. Ex. #4. M.D. requested that they meet in September. The Respondent met with M.D. and encouraged the move to Retirement Home.

ATTACHMENT E

6. Retirement Home is a retirement apartment community in Indianapolis, Indiana. The facility contained an apartment community, assisted living units, and a nursing care center for residents who were no longer able to care for themselves.
7. On September 13, 1984, M.D. executed a Power of Attorney ("POA") designating the Respondent as her attorney in fact. Upon M.D.'s incompetence, the POA would become effective.
8. Within a year, M.D. moved into her apartment at Retirement Home. During this period, M.D. was independent and controlled her own affairs.
9. On October 29, 1985, M.D. sent the Respondent another letter informing him of certain bank accounts which had been closed. M.D. told the Respondent that her money market savings and checking accounts were "opened with Merchants National Bank and Trust" . . . "[a]s this bank has a small branch within [Retirement Home],. . ." She also told the Respondent that she had opened a safe deposit box. In addition, M.D. asked the Respondent if he would be willing to review and honor her Living Will. M.D. did not want to involve her family in this matter.
10. M.D.'s Living Will contained the following relevant provision, "In the absence of my ability to give directions regarding the use of life-prolonging procedures, it is my intention that this declaration be honored by my family, power of attorney and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of the refusal." Comm. Ex. #6.
11. The Living Will was executed by M.D. and witnessed by the Respondent on November 11, 1985.
12. On January 23, 1988, M.D. told the respondent that she wanted to execute another POA on a form used by Retirement Home. The Respondent, charging M.D. \$15.00, reviewed and approved the document. On February 1, 1988, M.D. executed the new POA, making the Respondent her attorney in fact. Upon her disability or incompetence, the POA gave the Respondent the following powers:

[Recitation of powers under POA.] Comm. Ex. #9-10.
13. On July 8 and August 1, 1988, M.D. sent the Respondent letters informing him of bank account balances, income, and federal and state tax information. Comm. Ex. #11.
14. Throughout the 1990s, M.D.'s eyesight began deteriorating to the point that she had difficulty writing letters.
15. In January of 1999, M.D. fell ill as the result of a stroke or fall. As a result, she was transferred to the assisted living portion of Retirement Home. On February 11, 1999, the Respondent sent a letter to Retirement Home informing them that he would "assume certain

obligations under the enclosed Power of Attorney." Comm. Ex. #12. He instructed Retirement Home to send statements to his office in Greenfield, Indiana.

16. In June 1999, M.D. became ill and was hospitalized. Retirement Home called M.D.'s niece, L.N., and informed her of the hospitalization. L.N., using the card M.D. had given her, attempted to call the Respondent. However, the number she had was no longer the current number. She traveled to the hospital from her home in Ohio. At the hospital, L.N. met the Respondent and learned that he was M.D.'s attorney in fact.
17. After approximately one week in the hospital, M.D. was returned to the Retirement Home's nursing care facility. M.D. had recovered from her illness, but she remained confined to a wheelchair.
18. Because M.D. was no longer in her apartment at Retirement Home, the Respondent had her belongings removed.
19. On November 21, 2001, Retirement Home called L.N. and told her that they could not make contact with the Respondent. Retirement Home informed her that M.D.'s account was three (3) months past due. L.N. was subsequently able to reach the Respondent. L.N. asked the Respondent why the bill was not paid, he stated that the money was gone and hung up.
20. L.N. believed M.D. received sufficient income from social security and her pension checks. L.N. called Retirement Home and was advised to seek legal counsel.
21. Subsequently, L.N. informed M.D. of her financial situation. L.N. reports that M.D. was upset that her money was gone, stating, "[L.N.] I've been such a fool." L.N. told M.D. that she would attempt to get some of her money and belongings back. Thereafter, L.N. contacted the Respondent and asked him what had happened to M.D.'s belongings. The Respondent stated that certain items were auctioned and others were placed into storage.
22. During this period in November of 2001, M.D. also asked L.N. to check on the contents of a safety deposit box at the bank at Retirement Home. When L.N. contacted the bank, she was informed that then contents had been reduced to a cashier's check and removed.
23. On November 27, 2001, M.D. executed a document revoking the POA appointing the Respondent as her attorney in fact. On the same day, she also executed a new POA appointing L.N. as her attorney in fact. Comm. Ex. #14-15.
24. Soon thereafter, L.N. retained the services of an attorney in an attempt to get an accounting of M.D.'s assets from the Respondent. Over the course of approximately six months, beginning in November 30, 2001, L.N.'s counsel sent numerous letters to the Respondent in an effort to obtain an accounting. However, the Respondent did not respond to her requests.
25. On October 10, 2002, L.N., as M.D.'s POA, filed a complaint against the Respondent in [NAME] Superior Court under [Cause no]. In her complaint, L.N. sought to force an

accounting and sought a judgment against the Respondent for any missing or unauthorized expenditure of M.D.'s funds.

26. During the course of this suit, the respondent resisted attempts to obtain an accounting. After numerous procedural hearings, the Court issued an order on June 23, 2004 directing the Respondent to produce an accounting of M.D.'s assets. Comm. Ex. #37.
27. On August 23, 2004, the Respondent filed his accounting with the Court.
28. On December 2, 2004, a final evidentiary hearing was held. Through her counsel, L.N. explained that the Respondent failed to provide a comprehensive accounting as required by Indiana Code § 30-5-6-4. In addition, L.N. asserted that the Respondent had violated his fiduciary duty to M.D., and that he had fraudulently consumed her funds without her knowledge. The Respondent, through his counsel, asserted that he provided valuable legal services, and that he provided an accounting which explained the number of hours and fees charged while working for M.D.
29. During the hearing, the respondent testified that he had practiced law for approximately thirty (30) years handling social security disability, bankruptcy, personal injury, and estate cases. The Respondent acknowledged that he acted as M.D. and H.D.'s attorney, preparing their joint will. After handling H.D.'s estate, the Respondent stated that M.D. hired him to help her sell her house and to select a new residence. The Respondent testified that he helped her select Retirement Home.
30. During his testimony, the respondent characterized this level of legal service as "nothing really substantial." Comm. Ex. 39, Pg. 23. Specifically, he explained that M.D. would occasionally send him a review of her finances and ask his opinion about decisions she should make.
31. Additionally, the Respondent testified that he began exercising his authority under the POA after M.D.'s illness. The Respondent stated that he became responsible for paying M.D.'s monthly bills to Retirement Home. He explained that he would cash certificates of deposit and transfer those funds into another account to pay certain bills. Further, he stated that he consulted with M.D.'s doctor, took control of bank accounts, and opened "up communication with the people in [Retirement Home]." Comm. Ex. #39, Pg. 30. Because M.D. was unhappy with being confined in a wheelchair, the Respondent stated that there was "a lot of work that had to be done with her through social workers and psych consults." Comm. Ex. #39, Pg. 32.
32. During the period from February to April 1999, the Respondent testified that he charged M.D. for 35 hours of work at the rate of \$100 per hour. Comm. Ex. #39, Pg. 33. Thereafter, the Respondent acknowledged that he increased his fee to \$160 per hour after learning that other attorney's in Marion County were charging that fee.
33. During the month of June 1999, the Respondent stated that M.D. was admitted to the hospital for a serious illness. He described each day as "a marathon session . . ." Comm. Ex. #39, Pg. 35. He explained that he was at the hospital each day "because of the serious nature

of her admission," Comm. Ex. #39, Pg. 35. The Respondent testified that his July 1999 bill for \$4,050 reflects 23.5 hours at an hourly rate of \$160.

34. During the hearing, the Respondent explained how he billed M.D. and kept track of his time. He stated that, "right or wrong", he would use the actual checks as the "record of transactions". Comm. Ex. #39, Pg. 36. In other words, the Respondent did not produce any written documentation to memorialize any work performed for M.D.; he used his memory to determine the approximate time spent, which would include mileage and out-of-pocket expenses. Comm. Ex. #39, Pgs. 36-37.
35. After M.D. returned to Retirement Home's assisted living facility, the Respondent testified that M.D. was comatose and connected to numerous medical devices. The Respondent stated that while he could not specifically recall the services he provided, he remembers taking calls from Retirement Home anytime there was a concern over M.D.'s medical condition. Comm. Ex. #39, Pgs. 38-39. He also stated that during the approximately three (3) year period where he acted as POA, he would visit M.D. once per week. Comm. Ex. #39, Pg. 40.
36. In determining whether his fees were reasonable, the Respondent stated that he did not have access to a court to make this determination. Comm. Ex. #39, Pg. 48. He claimed that his accounting was accurate, but that he "tried to be conservative in [his] accounting on this." Comm. Ex. #39, Pg. 51.
37. In fulfilling what he saw as his responsibilities as POA, the Respondent testified that he wrote checks addressed to "Cash" from M.D.'s checking account to pay him for his services. Comm. Ex. #39, Pg. 63-64. The Respondent stated that he had no explanation why he wrote some checks to himself and other to "Cash." Comm. Ex. #39, Pg. 76.
38. On May 26, 2005, the trial court issued its findings of fact and conclusions of law. The trial court found the following: (1) between January 1999 and November 2001, the Respondent had billed M.D. for a total of 546 hours of legal services; (2) the Respondent failed to supply an accounting as required under Indiana Code § 30-5-6-4; (3) the Respondent failed to keep comprehensive or informative records showing how he made use of M.D.'s funds; (4) the respondent failed to keep an accounting of M.D.'s personal property; (5) the respondent failed to keep a written record of the legal services rendered on behalf of M.D.; (6) checks that were written to the Respondent or "Cash" total \$105,892.00; (7) the Respondent had given conflicting accounts about how he had billed M.D. for his services; (8) the Respondent had unilaterally increased his fee from \$100 to \$160 per hour; (9) the time the Respondent attributes to working for M.D. amounted to an "inordinate amount of unproductive" and unprofessional work; (10) the plaintiff asserts that the value of M.D.'s estate was \$320,000, but the Respondent claims it was \$270,000; (11) the plaintiff asserts that the Respondent paid himself fees in the amount of \$106,000, but the Respondent claims it was \$87,500; (12) the Respondent had committed what amounted to constructive fraud upon M.D., and the trial court awarded damages in the amount of \$67,292.00 in favor of M.D. Comm. Ex. #38.
39. On January 24, 2011, the Indiana Supreme Court Disciplinary Commission ("the Commission") filed a Verified Complaint For Disciplinary Action. In its complaint, the

Respondent is alleged to have violated Indiana Rules of Professional Conduct 1.5(a), 1.7(b), 1.8(a), and 1.15(b), and Indiana Admission and Discipline Rule 23(29)(a)(2).

40. On April 4, 2011, the Respondent filed his answer to the complaint. In his answer, the Respondent claimed that he used M.D.'s funds "to produce for her a gospel following her near death and other writings or perhaps publishing with [M.D.'s] funds since these things may be something a little different from what a usual trusted friend would do with funds." Resp. Ans.
41. On September 29, 2011, an evidentiary hearing was held on the Commission's complaint. The Commission appeared, by counsel, and the Respondent appeared, *pro se*.
42. During the hearing, the Respondent, although never mentioning this during the civil suit, maintained that the fees he charged to M.D. were for payment for his work in writing books. Resp. Ex. P. He acknowledged that he wrote checks to cash to pay bills, but kept the balance for himself.

CONCLUSIONS OF LAW

1. Respondent's [DATE] admission to this state's bar subjects him to the Supreme Court's disciplinary jurisdiction. *See* Ind. Const. art. 7, § 4.
2. In disciplinary hearings, the Commission has the burden of proving the alleged misconduct by clear and convincing evidence. *See* Ind. Admission and Discipline Rule 23(14)(i); *Matter of Siegel*, 708 N.E.2d 869, 870 (Ind. 1999).
3. Disciplinary proceedings are neither civil nor criminal in nature. They come from the inherent power of the courts to supervise their officers. They are not lawsuits, but are inquiries into the conduct of the Respondent. The purpose is not to punish, but to determine the fitness of an officer of the court to continue in that capacity and to protect the courts and the public from the official ministrations of persons unfit to practice. *See* Matter of Roberts, 442 N.E.2d 986, 987 (Ind. 1983).
4. The charges alleged by the Commission are the only charges to be considered by the hearing officer. Misconduct cannot be found under a disciplinary rule not charged. *See* Matter of McCarthy, 466 N.E.2d 442, 443 (Ind. 1983).

Count I

4. The Commission asserts that the Respondent violated Rule 1.5(a) of the Indiana Rules of Professional Conduct by charging unreasonable attorney fees for non-legal services. The rule provides:

A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount of expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- a. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- b. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- c. the fee customarily charged in the locality for similar legal services;
- d. the amount involved and the results obtained;
- e. the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client;
- f. the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- g. whether the fee is fixed or contingent.

This list is not exhaustive, and attorney fees must be reasonable under the circumstances.

5. In this case, the record reveals that the Respondent performed duties as an attorney in fact under a POA. The evidence shows that the fees charged were exorbitant. In fact, a trial court had already imposed a judgment against the Respondent in the amount of \$67,292. The trial court correctly found that the type of work and time spent by the Respondent did not justify the amount charged to M.D. Further, there is no evidence of any fee agreement between M.D. and the Respondent regarding his work under the POA. Despite the lengthy relationship with M.D., the fees charged were determined solely by the Respondent. As a result, the Commission has shown by clear and convincing evidence that the Respondent violated rule 1.5(a) of the Indiana Rules of Professional Conduct.

Count II

6. The Commission asserts the Respondent violated Rule 1.7(b) of the Indiana Rules of Professional Conduct by unilaterally changing the fee charge to M.D. The rule provides:

Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- a. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- b. the representation is not prohibited by law;

- c. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - d. each affected client gives informed consent, confirmed in writing.
- 7. Generally, this rule applies to conflicts of interest that adversely affect another client, a former client, a third person, or the lawyer's own interests. *See* Ind. Prof. Cond. R. 1.7, cmt. 1.
- 8. Concerning personal interest conflicts, Rule 1.7(b) is designed to protect a client from a lawyer who may not be able to give detached advice when his or her business interests are adverse to the client. Examples would be (1) when a lawyer is involved in a business transaction with an entity that is adverse to his client; or (2) when a lawyer is involved in employment discussions with a law firm that represents his client's opponent. *See* Ind. Prof. Cond. R. 1.7(b), cmts.
- 9. As this rule is inapplicable to a unilateral fee increase, the Commission has not proven a violation of Rule 1.7(b) of the Indiana Rules of Professional Conduct.

Count III

- 10. The Commission asserts that the Respondent has violated Rule 1.8(a) of the Indiana Rules of Professional Conduct by increasing his fee from \$100 to \$160 per hour. The rule provides:

A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

 - a. the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
 - b. the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - c. the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- 11. While this rule applies to a lawyer who accepts an interest in the client's business or other nonmonetary property as payment for all or part of a fee, it does not apply to ordinary initial fee arrangements between a client and lawyer. *See* Ind. Prof. Cond. R., cmts. As a result, the Commission has not proven a violation of Rule 1.8(a) of the Indiana Rules of Professional Conduct.

Count IV

12. The Commission asserts that the Respondent has violated Rule 1.15(d) of the Indiana Rules of Professional Conduct by failing to provide an accounting of M.D.'s assets when requested to do so by L.N. The rule provides: "Upon receiving funds or other property in which the client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive, and upon request by the client or third person, shall promptly render a full accounting."
13. Indiana Code § 30-5-6-4 provides that an attorney in fact is only required to provide an accounting when ordered by a court, when requested by the principal, a guardian appointed for the principal, or the personal representative of the estate of the principal, upon the principal's death. The attorney in fact must deliver the accounting within sixty (60) days of receiving a written request.
14. The evidence in this case shows that after the Respondent was removed as M.D.'s POA, L.N. was appointed. M.D., through her counsel, made numerous written requests for an accounting by the Respondent. The Respondent failed to comply with the requests. In addition, the Respondent repeatedly resisted attempts to obtain an accounting through civil litigation. As a result, the Commission has proven by clear and convincing evidence that the Respondent violated Rule 1.15(d) of the Indiana Rules of Professional Conduct.

Count V

15. The Commission asserts that the Respondent has violated Rule 23(29)(a)(2) of Indiana Rules for Admission to the Bar and the Discipline of Attorneys by failing to maintain records of the funds handled on behalf of M.D. The rule provides: "Every attorney shall maintain and preserve for a period of at least five (5) years, after final disposition of the underlying matter, the records of trust accounts, including checkbooks, cancelled checks, check stubs, written withdrawal authorizations, vouchers, ledgers, journals, closing statements, accounting or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property in the trust."
16. This Rule operates in conjunction with Rule 1.15 of the Indiana Rules of Professional Conduct.
17. The evidence in this case shows that the Respondent did not keep any type of ledger or account book detailing how M.D.'s funds were disbursed. While there were some cancelled checks and bank statements introduced as evidence, the record detailing the expenditures is incomplete. Even the Respondent testified that he relied on his memory to determine the amount to disburse to himself for attorney fees. In addition, he stated that he would utilize

the checks themselves as a record of expenditures, and would even write checks to "Cash" in order to pay bills and compensate himself.

18. As a result, the Commission has proven by clear and convincing evidence that the Respondent violated Rule 23(29)(a)(2) of Indiana Rules for Admission to the Bar and the Discipline of Attorneys.

Other sample conclusions of law:

Respondent's temporary admission to this state's bar subjects him/her to the Supreme Court's disciplinary jurisdiction. See Ind. Const. art. 7, § 4.

Respondent's solicitation of clients within Indiana subjects him/her to the Supreme Court's exclusive jurisdiction to regulate professional legal activity in this state. See Ind. Const. art. 7, § 4; Matter of Murgatroyd, 741 N.E.2d 719 (Ind. 2001).

The Commission filed a "Verified Complaint for Disciplinary Action" against Respondent on _____. Respondent was served and did not respond. Accordingly, the facts alleged in the complaint as taken as true. See Admis. Disc. R. 23(14)(c).

The analysis of proper discipline entails consideration of the nature of the misconduct, the duty violated by the respondent, any resulting or potential harm, the respondent's state of mind, the duty to preserve the integrity of the profession, the risk to the public should the respondent be allowed to continue in law practice, and matters in mitigation, and aggravation. See Matter of McCarthy, 668 N.E.2d 256, 258 (Ind. 1996).

Although only the charges as alleged in the complaint may be considered in determining whether a respondent violated the Rules of Professional Conduct, uncharged misconduct that relates to a finding of a rule violation may be considered as part of the entire course of conduct in determining the appropriate discipline. See Matter of Robert, 442 N.E.2d 986, 988 (Ind. 1983).

AGGRAVATING AND MITIGATING CIRCUMSTANCES

1. Aggravating circumstances include: (1) a lack of remorse for the unreasonable amount of fees extracted from M.D.; and (2) the lack of cooperation and unwillingness to comply with Indiana law regarding his duty to provide an accounting upon the proper request of L.N.
2. No mitigating circumstances are found.

Other sample aggravating/mitigating circumstances:

The hearing officer finds the following aggravating circumstances: (1) Respondent has a history of prior discipline; (2) Respondent's misconduct was due to a dishonest or selfish

motive; (3) Respondent engaged in a pattern of dishonesty; (4) Respondent is not remorseful; (5) Respondent is unwilling to accept responsibility for his/her actions; (6) Respondent lacks insight into his/her misconduct; (7) Respondent did not cooperate fully with the Commission's investigation; (8) the client was vulnerable and reliant on Respondent as a result of the client's incarceration/incapacity; (9) the client suffered substantial financial damages as a result of Respondent's actions; (10) Respondent has not reimbursed the client for financial damages caused by his/her misconduct/for the excessive fee charged.

The hearing officer finds the following mitigating circumstances: (1) Respondent has no disciplinary history; (2) Respondent was cooperative with the Commission; (3) Respondent is remorseful; (4) Respondent's misconduct was not due to a dishonest or selfish motive; (5) Respondent accepts responsibility for his/her actions; (6) at the time of the misconduct, Respondent was newly admitted to the bar; (7) Respondent has a reputation for honesty and concern for his/her clients; (8) Respondent has a history of service to the community and the legal profession; (9) no client suffered financial loss because of Respondent's negligence; (10) Respondent made immediate restitution to the client; (11) Respondent completed a treatment program for chemical dependency and continues with an aftercare program.

RECOMMENDATION

For the violations of Rules 1.5(a) and 1.15(d) of the Indiana Rules of Professional Conduct and Rule 23(29)(a)(2) of Indiana Rules for Admission to the Bar and the Discipline of Attorneys, the hearing officer recommends that the Respondent be suspended from the practice of law for a period of not less than one (1) year, without automatic reinstatement.

Other sample recommendations:

The hearing officer recommends that the Respondent receive a public reprimand.

The hearing officer recommends that the Respondent be suspended for 90 days with automatic reinstatement. [Note: All suspensions over six months must be without automatic reinstatement. Admis. Disc. R. 23(3)(a).]

The hearing officer recommends that the Respondent be suspended for a period of time to be determined by the Court.

The hearing officer recommends that the Respondent receive a suspension of 180 days, with the first 30 served as active suspension and the balance conditionally stayed subject to successful completion of 24 months of probation that includes entering into and complying with a monitoring agreement with the Indiana Judges and Lawyers Assistance Program.

[NAME]
Hearing Officer

Distribution:

Clerk of the Supreme Court
217 State House
Indianapolis, IN 46204

G. Michael Witte
Executive Director
Indiana Supreme Court Disciplinary Commission
251 North Illinois Street, Suite 1650
Indianapolis, IN 46204

[NAME]
Staff Attorney
Indiana Supreme Court Disciplinary Commission
251 North Illinois Street, Suite 1650
Indianapolis, IN 46204

[Respondent or counsel
Address]



**AUTOMATED DIRECT DEPOSIT
AUTHORIZATION AGREEMENT**

State Form 47551 (R7 / 5-18)
Approved by State Board of Accounts, 2018
Prescribed by Auditor of State, 2018

* This agency is requesting disclosure of your Federal Identification Number / Social Security Number in accordance with IC 4-1-8-1. Disclosure is mandatory, and this record cannot be processed without it.

In accordance with **IC 4-13-2-14.8**, a person who has a contract with the State of Indiana or submits invoices to the State of Indiana for payment shall authorize the direct deposit by electronic funds transfer of all payments by the state to the person.

This form must be completed in order to receive payment from the State of Indiana and any time there is a change in banking information. This form must be accompanied by a W9. If you are changing an e-mail address to receive electronic notifications of EFT deposits, please contact vendors@auditor.in.gov.

New Enrollment

Change of Existing Account

Prior Routing Number: _____

Prior Account Number: _____

SECTION 1: AUTHORIZATION

According to Indiana law, your signature below authorizes the transfer of electronic funds under the following terms:

Name of Company or Individual (as shown on the account)

Federal Identification Number / Social Security Number *

Address (Number and Street and/or PO Box Number)

City, State, and ZIP Code (00000-0000)

SECTION 2: DIRECT DEPOSIT INFORMATION

Type of Account:

Checking (Demand)

Savings

Please check this box if your direct deposit will be automatically forwarded to a bank account in another country.

Financial Institution: _____

Routing Number (9 digits): _____

Account Number (maximum 17 digits – include leading zeros): _____

SECTION 3: E-MAIL ADDRESS TO RECEIVE ELECTRONIC NOTIFICATION OF ELECTRONIC FUND TRANSFER (EFT) DEPOSITS *Required

(Please contact vendors@auditor.in.gov to add more than four addresses.)

All future notices of EFT deposits to the bank account specified above will be sent to the following e-mail addresses:

By checking this box, I authorize the information provided on this form to be accurate and I agree with the provisions on the reverse side of this form. I also authorize the State of Indiana to initiate credit entries and to initiate, if necessary, debit entries and adjustments for any credit entries in error to my account indicated above. This authorization will remain in effect until the state has received written notification of its termination and has adequate time to act upon the request.

NAME (type) _____ TITLE _____ TELEPHONE _____

AUTHORIZED SIGNATURE* _____ DATE (month, day, year) _____

* Under **IC 26-2-8-106**, your electronic signature on this form represents the same legal authority as your written signature.

INSTRUCTIONS:

1. *Complete all three sections and sign and date the bottom of the form.*
Note: If signing electronically, the form must be saved first, and then opened in Adobe Acrobat. For help in creating a digital ID please click [here](#).
2. *File the completed form with the agency that you do business with.*
3. *Retain a copy of the completed form for your records.*

By Signing This Form:

You are responsible for ensuring that this form was approved and instructions above are followed. By signing this form, you represent that it is understood by all parties that, if approved:

1. The State of Indiana must initiate credits (deposits) in various amounts, by electronic transfer of funds through automated clearing house (ACH) processes, to the listed checking (demand) or savings account designated in the financial institution named in Section 2.
2. If necessary, you will accept reversals from the State for any credit entries made in error to the bank account per National Automated Clearing House Association (NACHA) regulations.
3. You may only revoke this request and authorization by notifying the Auditor of State (AOS) by e-mailing vendors@auditor.in.gov or in writing at the following address: **Indiana Auditor of State, 200 W Washington St. Ste 240, Indianapolis, IN 46204**. The authorization will remain in effect until the office has adequate time to act upon the request.
4. A new Automated Direct Deposit Authorization Agreement is required for change in existing account information. The previous account information must be provided. Failure to timely notify the AOS of an account change will delay payment.
5. The State of Indiana and its entities are not liable for late payment penalties or interest if you fail to provide information necessary for an electronic funds transfer and/or you do not properly follow these Instructions.
6. E-mail address(es) must be provided in Section 3 to allow for appropriate application of all payments through Electronic Notification.
7. You acknowledge that it will cause disruption to the notification process if the e-mail addresses provided for electronic funds transfer notification are frequently changed or changed without promptly providing an updated e-mail address to the AOS.
8. You acknowledge that an e-mail notification returned as undeliverable may be removed from the Auditor's e-mail notification system.
9. You are responsible for contacting the AOS if you are not receiving electronic notices of EFT deposits.

Request for Taxpayer Identification Number and Certification

**Give Form to the
requester. Do not
send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <hr/> <p>2 Business name/disregarded entity name, if different from above</p> <hr/> <p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.</p> <p> <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate </p> <p> <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ </p> <p>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <p> <input type="checkbox"/> Other (see instructions) ▶ _____ </p>	<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
	<p>5 Address (number, street, and apt. or suite no.) See instructions.</p> <hr/> <p>6 City, state, and ZIP code</p> <hr/> <p>7 List account number(s) here (optional)</p>	<p>Requester's name and address (optional)</p>

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number										
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Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
 - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
 - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
 - Form 1099-S (proceeds from real estate transactions)
 - Form 1099-K (merchant card and third party network transactions)
 - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABL accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ¹ The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor ⁴

For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.