

In the  
Indiana Supreme Court



CAUSE NUMBER: 94S00-1205-MS-275

ORDER AMENDING INDIANA RULES OF TRIAL PROCEDURE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Rules of Trial Procedure 3.1, 5, 6, 26, 34, 53.1, 72, 77, 79, and Appendix B are amended as follows (deletions shown by ~~striking~~ and new text shown by underlining):

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**Rule 3.1 Appearance**

(A) **Initiating party.** At the time an action is commenced, the attorney representing the party initiating the proceeding or the party, if not represented by an attorney, shall file with the clerk of the court an appearance form setting forth the following information:

- (1) Name, address and telephone number of the initiating party or parties filing the appearance form;
- (2) Name, address, attorney number, telephone number, FAX number, and e-mail address of any attorney representing the party, as applicable;
- (3) The case type of the proceeding [Administrative Rule 8(B)(3)];
- (4) A statement that the party will or will not accept service by FAX or by e-mail from:
  - a. other parties and/or
  - b. the court under Rule 72(D).

- (5) In domestic relations, Uniform Reciprocal Enforcement of Support (URESA), paternity, delinquency, Child in Need of Services (CHINS), guardianship, and any other proceedings in which support may be an issue, the Social Security Identification Number of all family members;
- (6) The caption and case number of all related cases;
- (7) Such additional matters specified by state or local rule required to maintain the information management system employed by the court;
- (8) In a proceeding involving a protection from abuse order, a workplace violence restraining order, or a no-contact order, the initiating party shall provide to the clerk a public mailing address for purposes of legal service. The initiating party may use the Attorney General Address Confidentiality program established by statute; and
- (9) In a proceeding involving a mental health commitment, except 72 hour emergency detentions, the initiating party shall provide the full name of the person with respect to whom commitment is sought and the person's state of residence. In addition, the initiating party shall provide at least one of the following identifiers for the person:
  - (a) Date of birth;
  - (b) Social Security Number;
  - (c) Driver's license number with state of issue and date of expiration;
  - (d) Department of Correction number;
  - (e) State ID number with state of issue and date of expiration; or
  - (f) FBI number.

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**(G) Service.** The Clerk of the Court shall use the information set forth in the appearance form for service by mail, FAX, and e-mail under Trial Rule 5(B)(2).

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## Rule 5. Service and Filing of Pleading and Other Papers

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**(B) Service: How made.** Whenever a party is represented by an attorney of record, service shall be made upon such attorney unless service upon the party himself is ordered by the court. Service upon the attorney or party shall be made by delivering or mailing a copy of the papers to ~~him at his~~ the last known address, or where an attorney or party has consented to service by FAX or e-mail as provided in Rule 3.1(A)(4), by faxing or e-mailing a copy of the documents to the fax number or e-mail address set out in the appearance form or correction as required by Rule 3.1(E).

(1) *Delivery.* Delivery of a copy within this rule means

- (a) offering or tendering it to the attorney or party and stating the nature of the papers being served. Refusal to accept an offered or tendered document is a waiver of any objection to the sufficiency or adequacy of service of that document;
- (b) leaving it at his office with a clerk or other person in charge thereof, or if there is no one in charge, leaving it in a conspicuous place therein; or
- (c) if the office is closed, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or,
- (d) leaving it at some other suitable place, selected by the attorney upon whom service is being made, pursuant to duly promulgated local rule.

(2) *Service by Mail.* If service is made by mail, the papers shall be deposited in the United States mail addressed to the person on whom they are being served, with postage prepaid. Service shall be deemed complete upon mailing. Proof of service of all papers permitted to be mailed may be made by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney. It shall be the duty of attorneys when entering their appearance in a cause or when filing pleadings or papers therein, to have noted in the Chronological Case Summary or said pleadings or papers so filed the address and telephone number of

their office. Service by delivery or by mail at such address shall be deemed sufficient and complete.

(3) Service by FAX or e-mail. A party who has consented to service by FAX or e-mail may be served as follows:

a. Service by e-mail shall be made by attaching the document being served in .pdf format. Discovery documents must also be served in accordance with Trial Rule 26(A).

b. Service by FAX shall be deemed complete upon generation of a transmission record indicating the successful transmission of the entire document, except as provided in subparagraph d.

c. Service by e-mail shall be deemed complete upon transmission, except as provided in subparagraph d.

d. Service by FAX or e-mail that occurs on a Saturday, Sunday, a legal holiday, or a day the court or agency in which the matter is pending is closed, or after 5:00 p.m. local time of the recipient shall be deemed complete the next day that is not a Saturday, Sunday, legal holiday, or day that the court or agency in which the matter is pending is not closed.

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## **Rule 6. Time**

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**(E) Additional time after service by United States mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by United States mail, three [3] days shall be added to the prescribed period.

**(F) Dissolution Actions--Sixty-day waiting period.** No cause for dissolution of marriage or for legal separation shall be tried or heard by any court until after the expiration of sixty (60) days from the date of the filing of the petition or from the date of the publication of the first notice to a nonresident.

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## Rule 26. General provisions governing discovery

(A) **Discovery methods.** Parties may obtain discovery by one or more of the following methods:

- (1) depositions upon oral examination or written questions;
- (2) written interrogatories;
- (3) production of documents, electronically stored information, or things or permission to enter upon land or other property, for inspection and other purposes;
- (4) physical and mental examination;
- (5) requests for admission.

Unless the court orders otherwise under subdivision (C) of this rule, the frequency of use of these methods is not limited.

**(A.1) ~~Electronic Format~~ Electronic Format.** In addition to service under Rule 5(B) serving a hard copy, or a .pdf format electronic copy, a party propounding or responding to interrogatories, requests for production or requests for admission shall comply with (a) or (b) of this subsection.

(a) The party shall serve the discovery request or response in an electronic format (either on a disk or as an electronic document attachment) in any commercially available word processing software system. If transmitted on disk, each disk shall be labeled, identifying the caption of the case, the document, and the word processing version in which it is being submitted. If more than one disk is used for the same document, each disk shall be labeled and also shall be sequentially numbered. If transmitted by electronic mail, the document must be accompanied by electronic memorandum providing the forgoing identifying information.

or

(b) The party shall serve the opposing party with a verified statement that the attorney or party appearing pro se lacks the equipment and is unable to transmit the discovery as

required by this rule.

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**Rule 34. Production of documents, electronically stored information, and things and entry upon land for inspection and other purposes**

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**(B) Procedure.** The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request may specify the form or forms in which electronically stored information is to be produced. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Service is dispensed with if the whereabouts of the parties is unknown.

The party upon whom the request is served shall serve a written response within a period designated in the request, not less than thirty [30] days after the service thereof or within such shorter ~~for~~ or longer time as the court may allow. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless it is objected to, including an objection to the requested form or forms for producing electronically stored information, stating in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. If objection is made to the requested form or forms for producing electronically stored information--or if no form was specified in the request--the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(A) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Unless the parties otherwise agree, or the court otherwise orders, a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

If a request for electronically stored information does not specify the form or forms of production, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable.

A party need not produce the same electronically stored information in more than one form.

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### **Rule 53.1. Failure to rule on motion**

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**(E) Procedure for withdrawing submission.** Upon the filing by an interested party of a praecipe specifically designating the motion or decision delayed, the Clerk of the court shall enter the date and time of the filing ~~in the Clerk's praecipe book on the praecipe~~, record the filing in the Chronological Case Summary under the cause, which entry shall also include the date and time of the filing of the praecipe, and promptly forward the praecipe and a copy of the Chronological Case Summary to the Executive Director of the Division of State Court Administration (Executive Director). The Executive Director shall determine whether or not a ruling has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2.

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### **Rule 72. Trial Court and Clerks**

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**(D) Notice of Orders or Judgments.** Immediately upon the notation in the Chronological Case Summary of a ruling upon a motion, an order or judgment, the clerk shall serve a copy of the entry ~~by mail~~ in the manner provided for in Rule 5(B) upon each party who is not in default for failure to appear and shall make a record of such ~~service mailing~~. Such service mailing is sufficient notice for all purposes for which notice of the entry is required by these rules; but any party may, in addition, serve a notice of such entry in the manner provided in Rule 5 for the service of papers. In cases of consolidated proceedings involving ten (10) or more parties, the trial judge may provide by order for

alternative method of notice to designated liaison parties who undertake responsibility for forwarding notice to all parties.

It shall be the duty of the attorneys when entering their appearance in a case or when filing pleadings or papers therein, to have noted on the Chronological Case Summary and on the pleadings or papers so filed, their mailing address, and service by mail at such address shall be deemed sufficient.

**(E) Effect of Lack of Notice.** Lack of notice, or the lack of the actual receipt of a copy of the entry from the Clerk shall not affect the time within which to contest the ruling, order or judgment, or authorize the Court to relieve a party of the failure to initiate proceedings to contest such ruling, order or judgment, except as provided in this section. When the mailing service of a copy of the entry by the Clerk is not evidenced by a note made by the Clerk upon the Chronological Case Summary, the Court, upon application for good cause shown, may grant an extension of any time limitation within which to contest such ruling, order or judgment to any party who was without actual knowledge, or who relied upon incorrect representations by Court personnel. Such extension shall commence when the party first obtained actual knowledge and not exceed the original time limitation.

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## **Rule 77. Court records**

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**(B) Chronological Case Summary.** For each case, the clerk of the circuit court shall maintain a sequential record of the judicial events in such proceeding. The record shall include the title of the proceeding; the assigned case number; the names, addresses, telephone and attorney numbers of all attorneys involved in the proceeding, or the fact that a party appears pro se with address and telephone number of the party so appearing; and the assessment of fees and charges (public receivables). The judge of the case shall cause Chronological Case Summary entries to be made of all judicial events. Notation of judicial events in the Chronological Case Summary shall be made promptly, and shall set forth the date of the event and briefly define any documents, orders, rulings, or judgments filed or entered in the case. The date of every notation in

the Chronological Case Summary should be the date the notation is made, regardless of the date the judicial event occurred. The Chronological Case Summary shall also note the entry of orders, rulings and judgments in the record of judgments and orders, the notation of judgments in the judgment docket (IC 33-32-3-2), and file status (pending/decided) under section (G) of this rule. The Chronological Case Summary may be kept in a paper format, or microfilm, or electronically. The Chronological Case Summary shall be an official record of the trial court and shall be maintained apart from other records of the court and shall be organized by case number.

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**Rule 79. Special judge selection: circuit, superior, and probate courts**

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**(C) Disqualification or recusal of judge.** A judge shall disqualify and recuse whenever the judge, the judge’s spouse, a person within the third degree of relationship to either of them, the spouse of such a person, or a person residing in the judge’s household:

- (1) is a party to the proceeding, or an officer, director or trustee of a party;
- (2) is acting as a lawyer in the proceeding;
- (3) is known by the judge to have an interest that could be substantially affected by the proceeding; or
- (4) is associated with the pending litigation in such fashion as to require disqualification under the *Code of Judicial Conduct* or otherwise.

Upon disqualification or recusal under this section, a special judge shall be selected in accordance with Sections (D), ~~(E)~~, and (H) of this rule.

**(D) Agreement of the parties.** Within seven (7) days of the notation in the Chronological Case Summary of the order granting a change of judge or an order of disqualification, the parties may agree to an eligible special judge. The agreement of the parties shall be in writing and shall be filed in the court where the case is pending. Alternatively, the parties may agree in writing to the selection of an eligible special judge in accordance with Section (H). Upon the filing of the agreement, the court shall enter an order

appointing such individual as the special judge in the case and provide notice pursuant to Trial Rule 72(D) to the special judge and all parties or appoint a special judge under Section (H).

A judge appointed under this section shall have ~~fifteen (15)~~seven (7) days from the date the appointment as special judge is noted in the Chronological Case Summary to decide whether to accept the case ~~in accordance with Section (G)~~. The filing of an acceptance vests jurisdiction in the special judge. An oath or additional evidence of acceptance of jurisdiction is not required.

This provision shall not apply to criminal proceedings or election contests involving the nomination or election of the judge of the court in which the contest is filed.

- (E) ~~**[Reserved]** Deleted, eff. Jan. 1, 2013. **Selection by court.** In the event the parties fail to agree or are not permitted to agree to the appointment of a special judge under Section (D) of this rule, they may consent to the appointment of a special judge by the judge before whom the case is pending. A party in an ex parte proceeding may also agree to the appointment of a special judge under this provision. If the judge before whom the case is pending is unavailable, the parties may agree to the appointment of a special judge by the regular judge of the court.~~

~~Upon being advised that the parties agree to the selection of a special judge by the court, the court shall enter an order appointing an eligible special judge in the case and provide notice pursuant to Trial Rule 72(D) to the special judge and all parties. A judge appointed under this Section shall have fifteen (15) days to decide whether to accept the case and enter his or her acceptance in accordance with Section (G).~~

- (F) ~~**[Reserved]** Deleted eff. Jan. 1, 2013. **Selection by Panel.** In the event a special judge is not selected under Sections (D) or (E) of this rule, this section shall be used for the selection of a special judge.~~

- ~~(1) **Naming of Panel.** Within two (2) days of deciding that a special judge must be appointed under this section, the judge before whom the case is pending shall submit a panel of three persons eligible under Section J to the parties for striking. In the event~~

~~the judge before whom the case is pending is unavailable to submit the panel, the regular judge of the court where the case is pending shall submit the panel to the parties.~~

- ~~(2) Striking From Panel. In an adversary proceeding, each party shall be entitled to strike one judge from the panel. In an ex parte proceeding, the sole party shall be entitled to strike one judge from the panel. The moving party shall be entitled to strike first, and shall have seven (7) days from the day the clerk mails the panel to the parties to strike. The nonmoving party, or the Clerk of the Court in an ex parte proceeding, shall have seven (7) days from the date of the first strike to make the final strike.~~
- ~~(3) Failure of Nonmoving Party or Clerk to Strike. If the nonmoving party, or the Clerk of the Court in an ex parte proceeding, fails to strike within the time required by subsection (2), the moving party shall have seven (7) days from that time to make the final strike.~~
- ~~(4) Failure of Moving Party to Strike. If the moving party fails to strike under either subsection (2) or (3) within the time limits required by those subsections, the judge who submitted the panel shall resume jurisdiction of the case.~~
- ~~(5) Appointment of Special Judge. The judge who submitted the panel shall appoint the judge remaining on the panel as special judge in the case.~~
- (G) [Reserved] Deleted eff. Jan. 1, 2013** **Acceptance of appointment.** A special judge selected under Sections (D), (E), or (F) of this rule shall have fifteen (15) days from the date of appointment to decide whether or not to accept the case and enter his or her decision. The filing of the acceptance vests jurisdiction in the special judge. An oath or additional evidence of acceptance of jurisdiction is not required.
- (H) Selection under local rule.** ~~In the event a special judge does not accept the case under Sections (D), (E) or (F), or a judge disqualifies and recuses under Section (C),~~ In the event a judge disqualifies or recuses under Section (C), or does not accept the case under Section (D), the appointment of an eligible special judge shall be made pursuant to a local rule approved by the Indiana Supreme Court which provides for the following:

- (1) appointment of persons eligible under Section J who: a) are within the administrative district as set forth in Administrative Rule 3(A), or b) are from a contiguous county, and have agreed to serve as a special judge in the court where the case is pending;
- (2) the effective use of all judicial resources within an administrative district; and
- (3) certification to the Supreme Court of Indiana of cases in which no judge is eligible to serve as special judge or the particular circumstance of a case warrants selection of a special judge by the Indiana Supreme Court.

A person appointed to serve as special judge under a local rule must accept jurisdiction in the case unless the appointed special judge is disqualified pursuant to the Code of Judicial Conduct, ineligible for service under this rule, or excused from service by the Indiana Supreme Court. The order of appointment under the local rule shall constitute acceptance. An oath or additional evidence of acceptance of jurisdiction is not required.

**(I) Discontinuation of service or Unavailability of as special judge.**

(1) In the event a special judge assumes jurisdiction and thereafter ceases to act for any reason, including the timely granting of a ~~except the granting of a timely~~ motion for change of judge, ~~the regular judge of the court where the case is pending shall assume jurisdiction, provided such judge has not previously served in the case and is otherwise eligible to serve. If the regular judge does not assume jurisdiction under this section, the~~ a successor special judge shall be ~~selected~~appointed in accordance with Sections (D) and (H) of this rule. ~~If the special judge ceases to act by reason of the timely granting of a motion for change of judge, the special judge shall appoint a successor special judge in accordance with Sections (D), (E), (F), and (H) of this rule.~~

(2) In the event that a special judge assumes jurisdiction and is thereafter unavailable for any reason on the date when a hearing or trial is scheduled:

a. the special judge may, as appropriate, appoint a judge *pro tempore*, temporary judge, or senior judge of the court where the case is pending, provided such judge is otherwise eligible to serve and has not previously had jurisdiction of the



2. Attorney information for service as required by Trial Rule 5(B)(2)

Name: \_\_\_\_\_ Atty Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
FAX: \_\_\_\_\_  
Email Address: \_\_\_\_\_

*(List on continuation page additional attorneys appearing for above party)*

3. This is a \_\_\_\_\_ case type as defined in administrative Rule 8(B)(3).

4. I will accept service by:

FAX at the above noted number: Yes \_\_\_\_ No \_\_\_\_

Email at the above noted address: Yes \_\_\_\_ No \_\_\_\_

5. This case involves child support issues. Yes \_\_\_\_ No \_\_\_\_ *(If yes, supply social security numbers for all family members on a separately attached document filed as confidential information on **light green paper**. Use Form TCM-TR3.1-4.)*

6. This case involves a protection from abuse order, a workplace violence restraining order, or a no – contact order. Yes \_\_\_\_ No \_\_\_\_ *(If Yes, the initiating party must provide an address for the purpose of legal service but that address should not be one that exposes the whereabouts of a petitioner.)* The party shall use the following address for purposes of legal service:

\_\_\_\_\_ Attorney's address  
\_\_\_\_\_ The Attorney General Confidentiality program address  
(contact the Attorney General at 1-800-321-1907 or e-mail address is **confidential@atg.state.in.us**).  
\_\_\_\_\_ Another address (provide)

7. This case involves a petition for involuntary commitment. Yes \_\_\_\_ No \_\_\_\_

8. If Yes above, provide the following regarding the individual subject to the petition for involuntary commitment:

a. Name of the individual subject to the petition for involuntary commitment if it is not already provided in #1 above: \_\_\_\_\_

b. State of Residence of person subject to petition: \_\_\_\_\_

c. At least one of the following pieces of identifying information:

- (i) Date of Birth \_\_\_\_\_
- (ii) Driver's License Number \_\_\_\_\_  
State where issued \_\_\_\_\_ Expiration date \_\_\_\_\_
- (iii) State ID number \_\_\_\_\_  
State where issued \_\_\_\_\_ Expiration date \_\_\_\_\_
- (iv) FBI number \_\_\_\_\_
- (v) Indiana Department of Corrections Number \_\_\_\_\_
- (vi) Social Security Number is available and is being provided in an attached confidential document Yes \_\_\_ No \_\_\_

9. There are related cases: Yes \_\_\_ No \_\_\_ (If yes, list on continuation page.)

10. Additional information required by local rule:

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11. There are other party members: Yes \_\_\_ No \_\_\_ (If yes, list on continuation page.)

12. This form has been served on all other parties and Certificate of Service is attached:  
Yes \_\_\_ No \_\_\_

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Attorney-at-Law  
(Attorney information shown above.)

These amendments shall take effect January 1, 2013.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Public Defender's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson Reuters. The Clerk is also directed to post this Order to the Court's website.

Thomson Reuters is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit and Superior Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 7<sup>th</sup> day of September, 2012.

/s/Brent E. Dickson  
Brent E. Dickson  
Chief Justice of Indiana

All Justices concur.