

In the
Indiana Supreme Court



CAUSE NUMBER: 94S00-1301-MS-30

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, Rule 79 is amended as follows (deletions shown by ~~striking~~ and new text shown by underlining):

Rules of Trial Procedure

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

...

(H) Selection under local rule. In the event ~~a judge disqualifies or recuses under Section (C),~~ the parties do not reach an agreement or the agreed upon judge 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 special judge.

(1) In the event a special judge assumes jurisdiction and thereafter ceases to act for any reason, ~~including~~ except the timely granting of a 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. In the event of the timely granting of a motion for a change of judge from a special judge or if the regular judge does not assume jurisdiction under this section, a successor special judge shall be appointed in accordance with Sections (D) 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 case removed from them pursuant to the Rules of Trial Procedure, or
 - (b) the regular judge of the court where the case is pending may assume temporary jurisdiction, provided such judge is otherwise eligible to serve and has not previously had jurisdiction of the case removed pursuant to the Rules of Trial Procedure.

If the regular judge, judge pro tempore, temporary judge, or senior judge does not assume jurisdiction under this section, such hearing or trial shall be reset to a date when the special judge is available.

...

(J) Eligibility. Any regular judge of a Circuit, Superior, or Probate Court, a senior judge, or a person serving as a full-time judicial officer in a court of record, including a person who has been a member of a panel for selection, is eligible for appointment by a trial court as a special judge unless this judicial official:

- (1) has previously served as judge or special judge in the case; except that whenever a court has granted an order for a change of venue to another county, the judge granting the change of venue may be appointed as special judge for that cause in the receiving county if the judge granting the change, the receiving judge, and all of the parties to the cause agree to such appointment;
- (2) is disqualified by interest or relationship; or
- (3) is excused from service as special judge by the Indiana Supreme Court.

A special judge need not be a resident of the county where the case is pending, but accessibility should be considered in making the selection. Senior judges shall be eligible for service as special judge only in courts in which the senior judge is currently appointed by the Indiana Supreme Court to serve as senior judge.

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These amendments shall take effect on January 1, 2014.

The Clerk of this Court is directed to send 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; Indiana Supreme Court Administration Office; Court of Appeals of Indiana Administration Office; Indiana Tax Court Administration Office; Public Defender of Indiana; Indiana Prosecuting Attorney Council; Indiana Public Defender Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana State 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, on September 13, 2013.

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

All Justices concur.