

In the Indiana Supreme Court

CAUSE NUMBER: 94S00-0909-MS-

ORDER AMENDING INDIANA ADMINISTRATIVE RULES

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, Administrative Rules 5 Attachment A, 7, 8, 8.1, 9, and 16 are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

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Rule 5. Payment and Notification Procedures

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ATTACHMENT A

Schedule for Payment of Senior Judges Who Serve as Special Judges And Senior Judges Who Serve as Mediators

***This Schedule shall take effect September 1, 2005.
Revised January 15, 2009***

Pursuant to Administrative Rule 5(A)(1), senior judges who serve as special judges are to be paid in accordance with a Schedule published by the Executive Director of the Indiana Supreme Court Division of State Court Administration.

The Trial Rules and Administrative Rules contain four sections which relate to the payment of senior judges who serve as special judges. They are:

1. Trial Rule 79(J), which qualifies a senior judge to serve as a special judge pursuant to local rule;
2. Administrative Rule 5(A)(1), which prohibits a senior judge from collecting special judge pay on the same day he serves as a senior judge;

3. Administrative Rule 5(B)(3)(e), which provides that a former judge serving as a senior judge must retain his/her pre-retirement special judge cases, without senior judge credit, unless specifically approved by the Supreme Court; and

4. Administrative Rule 5(A)(1), which provides that a senior judge who serves as special judges shall be paid in accordance with a Schedule published by the Executive Director of State Court Administration.

The foregoing rules treat a senior judge who has special judge cases in two ways, depending on whether the senior judge acquired jurisdiction of the special judge cases before or after retirement.

In light of the foregoing provisions, the Executive Director, Lilia Judson, now submits this Schedule, in a question and answer format, to the Supreme Court for its approval.

I. Payment Schedule for Senior Judges Who Serve as Special Judges

A. How will a senior judge who hears a “pre-retirement” special judge case be compensated?

If the special judge case predates the senior judge’s retirement, the senior judge retains the case as special judge [Admin. R. 5(B)(3)(e)] and receives no senior judge credit for his/her post-retirement service (except when specifically requested of and approved by the Supreme Court). The senior judge will receive compensation for this service only as a special judge.

However, if the “pre-retirement” special judge case comes before the senior judge on a day the senior judge is serving as a senior judge on other matters assigned by the trial court, the senior judge could claim senior judge pay and credit for that day of service, but not special judge pay. Admin. R. 5(A)(1).

B. How will a senior judge who hears a “post-retirement” special judge case be compensated?

A senior judge who hears a special judge case which he/she received after retiring, may claim senior judge pay and credit for the case under Admin.R. 5(B)(6). Such “post retirement” special judge cases will be treated the same as other senior judge work and “a senior judge who serves substantially shorter time than the daily calendar of the court where the judge is serving may, with the permission of the Executive Director, accumulate and consolidate such service times into a day’s credit.”

C. How will senior judge days be counted by the court in which a senior judge hears special judge cases?

If the senior judge claims senior judge pay and/or credit time while serving on special judge cases in a particular court, that time will be counted toward that court’s senior judge day allotment.

D. How will a senior judge be compensated when he/she serves as a special judge in a court in which he/she is not appointed as a senior judge?

A senior judge who serves as a special judge in a court in which he/she is not appointed as a senior judge cannot receive senior judge pay or senior judge credit for service in that court. He/she can only receive special judge pay.

E. May a senior judge claim service time and/or per diem for traveling to and from a court where he/she serves?

No. A senior judge may claim credit only for actual time served in a court.

F. May a senior judge claim service time and/or per diem for scheduled senior judge service which is canceled through no fault of the senior judge?

No. A senior judge may claim credit only for actual time served in a court.

II. Schedule for Payment of Senior Judges Serving as Mediators.

Indiana Code 33-23-3-3 provides that senior judges may serve as domestic relations mediators but they cannot receive a senior judge per diem as provided in IC 33-23-3-5. A senior judge serving as a domestic relations mediator may receive compensation from the alternative dispute resolution fund under IC 33-23-6 in accordance with the county domestic relations alternative dispute resolution plan. Administrative Rule 5(B)(9) further provides that a senior judge who is also a registered mediator and serves as a mediator in a court-ordered mediation pursuant to IC 33-23-3-3, or on a pro bono basis, may receive senior judge service credit for said mediation service provided that, the senior judge is not compensated at a rate greater than the per diem rate for senior judges.

In light of the foregoing, the Executive Director, Lilia Judson, now submits this Schedule, in question and answer format, for Supreme Court approval.

A. Can a senior judge who mediates pro bono for a court in which he also practices law receive senior judge credit for the mediation?

No. In order to serve as a senior judge, a person must be appointed by the Supreme Court as a senior judge in a particular court. The senior judge cannot be appointed as a senior judge in any court in which the judge practices law.

B. Can a senior judge receive senior judge credit for service as a mediator in a court in which he has not been appointed to serve as a senior judge by the Supreme Court?

No. A senior judge must be appointed to a particular court in order to receive credit and/or per diem for senior judge service in that court.

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Rule 7. Judicial Retention Schedules

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II. PROCEDURE

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CRIMINAL (2)

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85-2-31R	Restitution Record IC 35-38-2-2	(1927) 1976- +	destroy 6 years after date of last entry.
89-2-32R	<u>Search Warrants (Executed and Unexecuted) and not associated with a specific criminal case file</u>	1790- +	<u>place in separate case file and assign a criminal miscellaneous case number. for cases adjudicated. Destroy 20 years after issuance of warrant. (The prosecuting attorney may request a longer retention period by filing a written request specifying the length of the extended retention period) order for dismissal and for warrant for which no case file exists.</u>
<u>09-2-32.1</u>	<u>Search Warrant Executed and associated with specific criminal case file</u>	1790- +	<u>place in separate case file and assign a criminal miscellaneous case number. Destroy at the same time as the associated criminal case. If there is more than one associated criminal case, destroy at the same time as the case with the longest retention period. An association with a specific criminal case is created when a notice is filed with the court by the prosecuting attorney stating that a filed criminal case is associated with the executed search warrant. Upon the filing of such a notice, an entry shall be made on the CCS in both cases noting the association.</u>

<u>09-2-32.2</u>	<u>Search Warrants Denied or Not Executed</u>	<u>1790- +</u>	<u>destroy 2 years after order denying issuance of search warrant or if search is not executed (No return filed within the 2 year period presumes that warrant was not executed).</u>
89-2-33R	Certificates on Standards for Breath Test Operators, Equipment & Chemicals (IC 9-30-6-5)	1983- +	destroy 10 years after filing or upon recordation in Nonjudicial Order Book 89-1.1-19.1.
05-2-34	Dismissed Misdemeanor Case Files	9/1881	destroy 1 year after order to dismiss is given.
05-2-35	Forensic Diversion Program	2004- +	destroy 6 years after release of individual from final discharge.
05-2-36	Wiretap recordings Under IC 35-33.5-5-2	1990- +	Destroy after ten (10) years only upon an order of the court that issued the warrant.
05-2-37	Applications for wiretaps and corresponding warrants under IC 35-33.5-5-2	1990- +	Destroy after ten (10) years only upon an order of the court that issued the warrant.
<u>09-2-38</u>	<u>Grand Jury Recordings and Transcriptions – felonies</u>	<u>1881+</u>	<u>Destroy 55 years after date of final disposition</u>
<u>09-2-38.1</u>	<u>Grand Jury Recordings and Transcriptions – dismissed felony cases</u>	<u>1881+</u>	<u>Destroy 2 years after order to dismiss granted</u>
<u>09-2-38.2</u>	<u>Grand Jury Recordings and Transcriptions – misdemeanors</u>	<u>1881+</u>	<u>Destroy 10 years after date of final disposition</u>
<u>09-2-38.3</u>	<u>Grand Jury Recordings and Transcriptions – dismissed misdemeanors</u>	<u>1881+</u>	<u>Destroy 1 year after order to dismiss granted</u>

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Rule 8. Uniform Case Numbering System

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23C01 Fountain Circuit Court
23H01 Fountain/Attica City Court

24C01 Franklin Circuit Court 1
24C02 Franklin Circuit Court 2
25C01 Fulton Circuit Court
25D01 Fulton Superior Court
25E01 Fulton County Court (abolished)

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Rule 8.1. Uniform Appellate Case Numbering System

(A) Application. The Clerk of the Supreme Court shall use the uniform case numbering system set forth below for cases filed in the Supreme Court, Court of Appeals and Tax Court.

(B) Numbering System. The uniform appellate case numbering system shall consist of four groups of characters arranged in a manner to identify the court, the year/month of filing, the case type and the filing sequence. The following is an example of the case number to be employed:

55S00-0804-SJ-001

(1) Court Identifier. In cases filed in the Supreme Court and the Court of Appeals, and in inheritance tax cases and original tax appeals filed in the Tax Court, the first group of five characters shall constitute the county and the court identifier. The first and second character in this group shall represent the county of the court from which the case is being appealed or the original action arose; the county where the original inheritance tax action arose; or the county designated in the written election filed by the taxpayer in an original tax appeal, or otherwise designated as set forth in Indiana Tax Rule 8(A), employing the same code set forth in Administrative Rule 8(B)(1).

The third character in the first group shall represent the court in which the proceeding is being filed employing the following codes:

S Supreme Court
A Court of Appeals
T Tax Court

The last two characters of the first group shall distinguish between geographical districts set forth in IC 33-25-1-2 from which the case is being appealed or being assigned in the Court of Appeals, and additional cases and other matters handled by the Supreme Court and the Tax Court, employing the following codes:

00 Administrative/Other matters handled by the Supreme Court, including, but not limited to, Attorney Disciplinary matters, Judicial Disciplinary matters, Special Judge assignments, Senior Judge assignments and Rule amendments.

01 First District: Bartholomew, Boone, Brown, Clark, Clay, Crawford, Daviess, Dearborn, Decatur, Dubois, Fayette, Floyd, Fountain, Franklin, Gibson, Greene, Hancock, Harrison, Hendricks, Henry, Jackson, Jefferson, Jennings, Johnson, Knox, Lawrence, Martin, Monroe, Montgomery, Morgan, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Randolph, Ripley, Rush, Scott, Shelby, Spencer, Sullivan, Switzerland, Union, Vanderburgh, Vermillion,

Vigo, Warrick, Washington, and Wayne.

02 Second District: Adams, Blackford, Carroll, Cass, Clinton, Delaware, Grant, Hamilton, Howard, Huntington, Jay, Madison, Marion, Miami, Tippecanoe, Tipton, Wabash, Wells, and White.

03 Third District: Allen, Benton, DeKalb, Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Newton, Noble, Porter, Pulaski, St. Joseph, Starke, Steuben, Warren, and Whitley.

04 The entire state constitutes the Fourth District.

05 The entire state constitutes the Fifth District.

10 Cases appealed to the Tax Court.

(2) Year/Month of Filing. The second group of four characters shall represent the year and month of filing. As shown above, the first and second characters of this group denote the last two digits of the calendar year and the third and fourth characters reflect the month of filing.

(3) Case Type. The third group of two characters shall designate the type of proceeding.

i. The following codes shall be used for matters originating in the Supreme Court:

BL Board of Law Examiners

CQ Certified Questions

DI Attorney Discipline

JD Judicial Discipline

MS Miscellaneous Matters

OR Original Actions

SJ Special Judges

ii. In appeals, the same case type code used in the lower court, as specified in Administrative Rule 8(B)(3), shall be used except as indicated below:

EX Appeals in certain administrative proceedings

TA Appeals from the Tax Court

DP Direct capital appeals

PD Post-conviction capital appeals

LW Direct Life without Parole (LWOP) appeals

CR Direct appeals (non-capital, non-LWOP)

PC Post-conviction appeals (non-capital)

SD Requests to file successive capital post-conviction petitions

SP Requests to file successive post-conviction petitions (non-capital)

JV Juvenile delinquency appeals with a trial court designation of "JD".

(4) Filing Sequence. The fourth group may consist of any number of characters assigned

sequentially to a case when it is filed. It shall begin with "1" at the beginning of each year for each case classification and continue sequentially until the end of the year. The number of cases filed within a given classification will determine the number of digits in this group.

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Rule 9. Access to Court Records

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(E) Remote Access and Fees. Courts should endeavor to make at least the following information, when available in electronic form, remotely accessible to the public unless public access is restricted pursuant to sections (G) or (H):

- (1) Litigant/party indexes to cases filed with the court;
- (2) Listings of new case filings, including the names of the parties;
- (3) The chronological case summary of cases;
- (4) Calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings;
- (5) Judgments, orders, or decrees.

Upon the request and at an amount approved by the majority of judges of courts of record in the county, the County Board of Commissioners may adopt an electronic system fee to be charged in conjunction with electronic access to court records. The fee must be approved by the Division of State Court Administration. The method of the fee's collection, deposit, distribution and accounting must be approved by the Indiana State Board of Accounts.

Commentary

In addition to any fees charged under this rule, Sections (C)(9) and (10) provide that courts may charge for the fair market value of bulk and compiled information. This rule does not impose an affirmative obligation to preserve information or data or to transform information or data received into a format or medium that is not otherwise routinely maintained by the court. While this section encourages courts to make the designated information available to the public through remote access, this is not required, even if the information already exists in an electronic format.

(F) Bulk Distribution and Compiled Information.

- (1) Upon written request as provided in this sSection (F), bulk distribution or compiled information that is not excluded by Section (G) or (H) of this rule may be provided.
- (2) Requests for bulk distribution or compiled information shall be made to the Executive Director of the Division of State Court Administration or other designee of the Indiana Supreme Court. The Executive Director or other designee may forward such request to a court exercising jurisdiction over the records, and in the instance of records from multiple courts, to the Indiana Supreme Court, for further action. Requests will be acted upon or responded to within a reasonable period of time.
- (3) With respect to requests for case record information not excluded from public access by Sections (G) or (H) of this rule, the request for bulk distribution or compiled information may be granted upon determination that the information sought is consistent with the

purposes of this rule, that resources are available to prepare the information, and that fulfilling the request is an appropriate use of public resources. The grant of said request may be made contingent upon the requestor paying ~~reasonable costs of responding to the request~~ an amount which the court determines is the fair market value of the information.

(4) With respect to requests for bulk distribution or compiled information that include information excluded from public access pursuant to Sections (G) or (H) of this rule:

(a) such requests must be verified and can only be made by individuals or entities having a substantial interest or a bona fide research activity for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes, and wherein the identification of specific individuals is ancillary to the purpose of the inquiry. Each request under this sub-section (4) must:

(i) fully identify the requestor and describe the requestor's interest and purpose of the inquiry;

(ii) identify what information is sought;

(iii) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education;

(iv) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited;

(v) provide for individual notice to all persons affected by the release of information, unless, upon prior notice to the Indiana Attorney General and a reasonable opportunity to respond, such individual notice requirement is waived by the Supreme Court;

(vi) demonstrate by clear and convincing evidence that the public interest will be served by allowing access, that denying access will create a serious and imminent danger to the public interest, or that denying access will cause a substantial harm to a person or third parties.

(b) Upon receiving a request pursuant to this sub-section (F)(4), the Supreme Court may permit objections by persons affected by the release of information, unless individual notice required under (F)(4)(a)(v) is waived by the Supreme Court.

(c) The request may be granted only upon determination by the Supreme Court that the information sought is consistent with the purposes of this rule, that resources are available to prepare the information, and that fulfilling the request is an appropriate use of public resources, and further upon finding by clear and convincing evidence that the requestor satisfies the requirements of subsection (F)(4)(a), and that the purposes for which the information is sought substantially outweighs the privacy interests protected by this rule. An order granting a request under this subsection may specify particular conditions or requirements for use of the information, including without limitation:

(i) The confidential information will not be sold or otherwise distributed, directly or indirectly, to third parties;

(ii) The confidential information will not be used directly or indirectly to sell a product or service to an individual or the general public;

(iii) The confidential information will not be copied or duplicated other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose; and

(iv) The requestor must pay reasonable costs of responding to the request, as determined by the court.

(d) When the request includes release of social security numbers, dates of birth, or addresses, the information provided may include only the last four digits of social security numbers, only the year of birth, and only the zip code of addresses. The restrictions on release of social security numbers, dates of birth, and addresses may be waived only upon a petition to the Executive Director of the Division of State Court Administration and a finding of exceptional circumstances by the Indiana Supreme Court.

Commentary

~~This section~~ Section (F)(3) authorizes courts, in their discretion, to provide access to bulk distribution and compiled information that is accessible to the public. It does not require that such information be made available. Permitting bulk distribution or compiled information should not be authorized if providing the data will interfere with the normal operations of the court.

In allowing bulk or compiled data requests, courts must limit bulk data to court records, even if those requesting this information are seeking other information which is governed by other agencies' policies.

Generating compiled data may require court resources and generating the compiled information may compete with the normal operations of the court for resources, which may be a reason for the court not to compile the information. However, it may be less demanding on court resources to instead provide bulk distribution of the requested information pursuant to section (D)(3), and let the requestor, rather than the court, compile the information. Courts may charge for the fair market value of bulk or compiled information provided under Section (F)(3).

Section (F)(4) allows only the Supreme Court to grant requests for bulk or compiled information that is excluded from public access and only when the request is made by research and/or governmental entities. The general intent of (F)(4)(d) is that the last four digits of social security numbers and years of birth, rather than entire birth dates and social security numbers, are sufficient for matching records and to ensure that someone is correctly identified in bulk or compiled records. Courts should provide more complete social security numbers or other identifying information only in extraordinary circumstances.

(G) Court Records Excluded From Public Access.

(1) *Case records.* The following information in case records is excluded from public access and is confidential:

- (a) Information that is excluded from public access pursuant to federal law;
- (b) Information that is excluded from public access pursuant to Indiana statute or other court rule, including without limitation:
 - (i) All adoption records created after July 8, 1941, ~~pursuant to~~ as declared confidential by Ind. Code § 31-19-19-1 et. seq., except those specifically declared open ~~pursuant to~~ by Ind. Code § 31-19-13-2(2);
 - (ii) All records relating to Acquired Immune Deficiency Syndrome ~~pursuant to~~ as declared confidential by Ind. Code § 16-41-8-1 et. seq.;
 - (iii) All records relating to child abuse ~~not admitted into evidence as part of a public proceeding pursuant to~~ as declared confidential by Ind. Code § 31-33-18 et. seq.;
 - (iv) All records relating to drug tests ~~not admitted into evidence as part of a public proceeding pursuant to~~ as declared confidential by Ind. Code § 5-14-3-4(a)(9);
 - (v) Records of grand jury proceedings ~~pursuant to~~ as declared confidential by Ind. Code § 35-34-2-4;

- (vi) Records of juvenile proceedings, ~~pursuant to~~ as declared confidential by Ind. Code § 31-39-1-2, except those specifically open under statute;
 - (vii) All paternity records created after July 1, 1941 ~~pursuant to~~ as declared confidential by Ind. Code §§ 31-14-11-15, 31-19-5-23, 31-39-1-1 and 31-39-1-2;
 - (viii) All pre-sentence reports ~~pursuant to~~ as declared confidential by Ind. Code § 35-38-1-13;
 - (ix) Written petitions to permit marriages without consent and orders directing the Clerk of Court to issue a marriage license to underage persons, ~~pursuant to~~ as declared confidential by Ind. Code § 31-11-1-6;
 - (x) Only those arrest warrants, search warrants, indictments and informations ordered confidential by the trial judge, prior to return of duly executed service; ~~pursuant to~~ as declared confidential by Ind. Code § 5-14-3-4(b)(1);
 - (xi) All medical, mental health, or tax records unless determined by law or regulation of any governmental custodian not to be confidential, released by the subject of such records, or declared by a court of competent jurisdiction to be essential to the resolution of litigation ~~pursuant to~~ as declared confidential by Ind. Code §§ 16-39-3-10, 6-4.1-5-10, 6-4.1-12-12, and 6-8.1-7-1;
 - (xii) Personal information relating to jurors or prospective jurors, other than for the use of the parties and counsel, pursuant to Jury Rule 10;
 - (xiii) Information relating to protection from abuse orders, no-contact orders and workplace violence restraining orders ~~not admitted into evidence as a part of a public proceeding~~ as declared confidential by Ind. Code § 5-2-9-6 et. seq.;
 - (xiv) Mediation proceedings pursuant to Alternative Dispute Resolution Rule 2.11, Mini-Trial proceedings pursuant to Alternative Dispute Resolution Rule 4.4(C), and Summary Jury Trials pursuant to Alternative Dispute Resolution Rule 5.6;
 - (xv) Information in probation files pursuant to the Probation Standards promulgated by the Judicial Conference of Indiana pursuant to Ind. ~~iana~~ Code § 11-13-1-8(b);
 - (xvi) Information deemed confidential pursuant to the Rules for Court Administered Alcohol and Drug Programs promulgated by the Judicial Conference of Indiana pursuant to Ind. Code § 12-23-14-13;
 - (xvii) Information deemed confidential pursuant to the Drug Court Rules promulgated by the Judicial Conference of Indiana pursuant to Ind. Code § 12-23-14.5-9.
 - (xviii) All records of the Department of Workforce Development as declared confidential by Ind. Code § 22-4-19-6.
- (c) Information excluded from public access by specific court order;
 - (d) Complete Social Security Numbers of living persons;
 - (e) With the exception of names, information such as addresses, phone numbers, dates of birth which explicitly identifies:
 - (i) natural persons who are witnesses or victims (not including defendants) in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings, provided that juveniles who are victims of sex crimes shall be identified by initials only;
 - (ii) places of residence of judicial officers, clerks and other employees of courts and clerks of court;
 unless the person or persons about whom the information pertains waives confidentiality;

(f) Complete account numbers of specific assets, loans, bank accounts, credit cards, and personal identification numbers (PINs) ~~not admitted into evidence as part of a public proceeding~~;

(g) All orders of expungement entered in criminal or juvenile proceedings;

(h) All personal notes and e-mail, and deliberative material, of judges, jurors, court staff and judicial agencies, and information recorded in personal data assistants (PDA²s) or organizers and personal calendars.

(1.1) Court Proceedings Closed to the Public. During court proceedings that are closed to the public by statute or court order, when information in case records that is excluded from public access pursuant to this rule is admitted into evidence, the information shall remain excluded from public access.

(1.2) Court Proceedings Open to the Public. During court proceedings that are open to the public, when information in case records that is excluded from public access pursuant to this rule is admitted into evidence, the information shall remain excluded from public access only if a party or a person affected by the release of the information, prior to or contemporaneously with its introduction into evidence, affirmatively requests that the information remain excluded from public access.

(1.3) Access to Excluded Information. Access to information excluded from public access under subsections 1.1 and 1.2 may be granted after a hearing pursuant to Administrative Rule 9(I).

(2) *Administrative records*-. The following information in administrative records is excluded from public access and is confidential:

(a) All information excluded in sub-sections (a) through (h) of section (G)(1);

(b) Information that is excluded from public access to the extent provided by Indiana statute or other court rule, including without limitation:

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(xi) proceedings and papers in attorney disciplinary matters that relate to matters that have not resulted in the filing of a verified complaint, ~~or~~ investigative reports and other work product of the Executive Secretary, employees or agents of the Disciplinary Commission, statements of circumstances conditionally agreeing to discipline, and affidavits of resignation or consenting to discipline pursuant to Admission and Discipline Rule 23;

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(4) *Appellate Proceedings.* In appellate proceedings pending as of or commencing after January 1, 2009, parties, counsel, the courts on appeal, and the Clerk of the Supreme Court, Court of Appeals, and Tax Court (“Clerk”) shall have the following obligations:-

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Rule 16. Electronic Filing and Electronic Service Pilot Projects

(A) Definitions. The following definitions shall apply to this rule:

(1) *E-Filing System.* An ~~e~~E-filing system is a system approved by the Indiana Supreme Court for filing and service of pleadings, motions and other papers (“~~Documents~~ documents”) or information via an electronic means such as the Internet, a court-authorized remote service provider, or through other remote means to and from the trial court’s case management system.

(2) *Electronic Filing.* Electronic filing (“E-filing”) is a method of filing court documents or information with the Clerk of the Court by electronic transmission utilizing the E-filing system.

(3) *Electronic Service.* Electronic service (“E-service”) is a method of serving ~~Documents~~ documents or information by electronic transmission on any User in a case via the E-filing system.

(4) *User Agreement.* A user agreement is an agreement that establishes obligations and responsibilities of the User and the Court and provides guidelines for proper use of the E-filing system.

(5) *User.* A ~~u~~User is an individual that has received authorization from the trial court administering an E-filing system to use that E-filing system by remote access.

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(E) ~~Signing of Documents~~ Signature. The filing of ~~Documents~~ documents and information through the E-filing system by use of a valid username and password ~~are~~ is presumed to have been ~~signed and~~ authorized by the User to whom that username and password have been issued and documents filed through the E-filing system are presumed to have been signed by the same User.

(F) Commencement of an Action. An action may be commenced by E-filing only in a court which has adopted a pilot project plan approved by the Division of State Court Administration pursuant to this rule.

(G) Time of Filing. Documents or information may be filed through an E-filing system at any time that the Clerk’s office is open to receive the filing or at such other times as may be designated by the Clerk and posted publicly. Documents or information filed through the E-filing system are deemed filed when received by the Clerk’s office, except that ~~Documents~~ documents or information received at times that the Clerk’s office is closed shall be deemed filed the next regular time when the Clerk’s office is open for filing. The time stamp issued by the E-filing system shall be presumed to be the time the ~~D~~document is received by the Clerk.

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Appendix. The Necessary Elements of a Proposed Plan to Implement Electronic Filing or An Electronic Service Pilot Project Pursuant to Administrative Rule 16

Pursuant to Administrative Rule 16(B), the following provisions relate to the necessary elements required in any written request for approval of an electronic filing or an electronic service pilot project. The Division of State Court Administration may modify these provisions at any time.

I. Definitions

(a) “Filing User” refers to attorneys who have an electronic case filing log-in and password to file documents electronically, or the agent an attorney has expressly designated to make a filing on his or her behalf.

(b) “Electronic Case Filing System” (ECF) refers to the court’s system that receives in electronic form ~~documents or information filed in electronic form~~ via the Internet, a

court-authorized remote service provider, or through other remote means to and from the trial court's case management system.

(c) "Notice of Electronic Filing" refers to the notice that is automatically generated by the Electronic Case Filing System at the time a document is filed with the system, setting forth the time of filing, the name of the party and attorney filing the document, the type of document, the text of the docket entry, and the name of the attorney(s) receiving the notice.

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II. Elements

A proposed plan submitted pursuant to Administrative Rule 16(B) must contain the following elements:

A. System Compatibility

A detailed description of how the proposed system is compatible with the clerk's office and the current technology in use in the court and court offices.

B. User Hardware and Software Requirements

The specific hardware and software users will need to electronically file documents and information and receive notice of case activity.

C. System Users

An identification of other court users, including the public, and a description of how the proposed system would be compatible with their use. Any proposed system must allow members of the public to view electronic and hard copy documents, unless they are deemed confidential by statute, court rule, or court order.

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III. Content/Substantive Requirements

In addition to the elements outlined above, any proposed Plan shall include the following content:

A. Eligible Users

Attorneys admitted to the Indiana bar and in good standing are eligible to register as Filing Users of a court's Electronic Case Filing system. Registration via the User Agreement should require the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar. Filing Users must notify the clerk of the court in writing within 30 days of any change of address, electronic or otherwise.

B. Registration Obligations

Registration as a Filing User constitutes consent to electronic service of all documents in accordance with the Indiana Rules of Court. Filing Users must agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised.

C. Public Accessibility

Members of the public may review at the clerk's office filings that have not been sealed by the court. A person who has system access may retrieve docket sheets and documents. Only a Filing User may file documents and information electronically.

D. General Format Requirements

Formatting requirements for all documents filed electronically must comply with the format and procedures set forth in the Indiana Rules of Court and the local rules for the county in which the electronic filing occurs. (If the court intends to create local rules specifically applicable to electronic filing, a copy of such proposed local rules must be included with the proposed plan-→).

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H. Certificate of Service

A certificate of service, if required by the Rules of Trial Procedure, must be included with all documents and information filed electronically. The certificate shall indicate that service was accomplished pursuant to the court's electronic filing procedures. The party effectuates service on all registered parties by filing electronically. Those parties or attorneys who have been permitted by the court to be exempt from the electronic filing requirement must be provided the documents in paper form in accordance with the Indiana Rules of Court.

I. Electronic Copies and Electronic File-Stamps

When a document or information is filed electronically, the official record is the electronic recording of the document as stored by the court. The system will generate a Notice of Electronic Filing, which will be transmitted via e-mail to the filer and all attorneys of record in the matter. The Notice of Electronic Filing serves as the court's date-stamp and proof of filing.

J. Password Serves as Signature

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User. A Filing User has responsibility for all transactions under his or her password and is obligated to notify the clerk if his or her password is compromised.

The log-in and password required to submit documents and information to the Electronic Case Filing System shall serve, in part, as the Filing User's signature on all electronic documents filed with the Court, and as the Filing User's authorization for filing information with the Court. They also serve as a signature for purposes of the Indiana Rules of Court, the local rules of the court, and any other purpose for which a signature is required in connection with proceedings before a court.

K. Signatures Other Than Filing User

Documents requiring signatures for two or more parties represented by different counsel must be electronically filed either by: (a) representing the consent of the other attorney(s) on the signature line where the other attorney's handwritten signature would otherwise appear; (b) identifying in the signature block attorneys whose signatures are required and by the submission of a notice of endorsement by the other attorneys no later than three business days after filing; (c) submitting a scanned document containing all necessary signatures; or (d) in any other manner approved by the court.

L. Filing Consequences

Electronic transmission of a document or information to the Electronic Case Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document or information for all purposes of the Indiana Rules of Court and the local rules of the court, and constitutes entry of the ~~document~~ filing on the court's docket. When a document or information has been filed electronically, the official record is the electronic recording of the document or information as stored by the court, and the filing party is bound by the document or information as filed.

Filing a document or information electronically does not alter the filing deadline for that document or information. Filing must be completed before midnight local time of the court in order to be considered timely filed that day.

When a document or information is filed electronically, the court's system must generate a Notice of Electronic Filing, which will be transmitted via e-mail to the filer and all attorneys of record in the matter who are Filing Users. The party submitting the filing ~~the document~~ should retain a paper or electronic copy of the Notice of Electronic Filing, which serves as the court's date-stamp and proof of filing. Transmission of the Notice of Electronic Filing to an attorney's registered e-mail address constitutes service upon the attorney. Only the Notice of Electronic Filing, generated and transmitted by the court's system, is sufficient to constitute electronic service of an electronically filed document. Those parties or attorneys who have been permitted by the court to be exempt from the electronic filing requirement must be provided notice of the filing in paper form in accordance with the Indiana Rules of Court.

M. Sealed Documents

The provider of the electronic filing system must certify a level of security for sealed documents that demonstrates the ability to comply with the Indiana Rules of Court, especially Administrative Rule 9. The party filing a sealed document also must electronically file a Notice of Manual Filing. No document will be maintained under seal in the absence of an authorizing statute, court rule, or court order.

N. Court Orders

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Indiana Rule of Trial Procedure ~~77(d)-(D)~~. If a party is not represented by at least one attorney who is a Filing User, the court must give notice in paper form in accordance with the Indiana Rules of Court.

O. Technical Difficulties

Parties are encouraged to file documents and information electronically during normal business hours, in case a problem is encountered. In the event a technical failure occurs, and despite the best efforts of the filing party a document or information cannot be filed electronically, the party should print (if possible) a copy of the error message received.

In addition, as soon as practically possible, the party should file a Declaration that Party was Unable to File in a Timely Manner Due to Technical Difficulties.

If a party is unable to file electronically and, as a result, may miss a filing deadline, the party must contact the designated Electronic Filing System Administrator. If a party misses a filing deadline due to an inability to file electronically, the party may submit the untimely-filed document, accompanied by a declaration stating the reason(s) for missing the deadline. The document and declaration must be filed no later than 12:00 noon of the first day on which the court is open for business following the original filing deadline.

P. Retention of Documents in Cases Filed Electronically

Filing Users must retain signed copies of electronically filed documents until two (2) years after all time periods for appeals expire. Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form. On request of the court, the Filing User must provide original documents for review.

Originals of documents filed electronically which require scanning (*e.g.* documents that contain signatures, such as affidavits) must be retained by the filing party and made available, upon request, to the Court and other parties for a period of two years following the expiration of all time periods for appeals.

Q. Entry of Court Orders

All signed orders must be filed electronically by the court or court personnel. All orders, decrees, judgments, and proceedings of the court filed electronically will constitute entry on the court's docket. A hardcopy version of all judgments shall be entered in the Court's Record of Judgments and Orders, pursuant to Trial Rule 77(D).

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These amendments shall take effect January 1, 2010.

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.

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

The Clerks of the Circuit 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 15th day of September, 2009.

/s/ Randall T. Shepard
Chief Justice of Indiana

All Justices concur.