

# In the Indiana Supreme Court

CAUSE NUMBER: 94S00-0909-MS-

## 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, Trial Rules 3.1, 43, and 79 are amended to read 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 party initiating the proceeding 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;
- (5) In domestic relations, Uniform Reciprocal Enforcement of Support (URESAs), 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; ~~and~~

(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.

**(B) Responding parties.** At the time the responding party or parties first appears in a case, such party or parties shall file an appearance form setting forth the information set out in Section (A) above.

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### **Rule 43. Evidence**

**(A) Form and admissibility.** In all trials the testimony of witnesses shall be taken in open court, unless state law, these rules, the Indiana Rules of Evidence, or other rules adopted by the Indiana Supreme Court provide otherwise.

**(B) Evidence on motions.** When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

**(C) Interpreters.** The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court. Application of this rule shall be in compliance with the Americans with Disabilities Act.

**(D) How evidence is presented.** The trial shall proceed in the following order, unless the court within its discretion, otherwise directs: First, the party upon whom rests the burden of the issues may briefly state his case and the evidence by which he expects to sustain it. Second, the adverse party may then briefly state his defense and the evidence he expects to offer in support of it. Third, the party on whom rests the burden of the issues must first produce his evidence thereon; the adverse party will then produce his evidence which may then be rebutted.

**(E) Public Access.** Information filed or introduced in court proceedings is confidential to the extent provided by statutes, rules of court and Indiana Administrative Rule 9(G).

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

(A) **Application.** When the appointment of a special judge is required under Trial Rule 76, the provisions of this rule constitute the exclusive manner for the selection of special judges in circuit, superior, and probate, ~~municipal, and county~~ courts in all civil and juvenile proceedings. Trial Rule 79.1 constitutes the exclusive manner for the selection of special judges in all actions in city, town, and the Marion county small claims courts.

(B) **Duty to notify court.** It shall be the duty of the parties to ~~promptly~~ advise the court promptly of an application or motion for change of judge.

(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 ~~otherwise~~ associated with the pending litigation in such fashion as to require disqualification under ~~in accordance with Canon 3(E) of 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.

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**(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), 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;

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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.