Civil Litigation Taskforce

RECOMMENDATIONS

February 2022

Submitted to the Innovation Initiative for their meeting on February 9, 2022

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Executive Summary

The Indiana Supreme Court acted boldly in 2019 by establishing the Indiana Innovation Initiative to analyze and recommend steps "to make Indiana's system of justice more efficient, less expensive, and easier to navigate while continuing to ensure that justice is fairly administered, and the rights of all litigants protected." Segmenting that work, the Court later created three subsidiary groups: the Family Law Taskforce and the Technology Working Group in 2019, and the Civil Litigation Taskforce in January 2021.

Change in the civil justice system is inevitable whether by design or as a result of broader external technological and social forces. The challenge lies in shaping and managing change in a way that helps our civil courts operate more efficiently and achieve the aspiration in Trial Rule 1 of "the just, speedy and inexpensive determination of every action."

This Report is the culmination of 12 months of work by the Civil Litigation Taskforce (the Taskforce), as directed by the Indiana Supreme Court, to "consider recommendations on more efficient handling of civil litigation created by the National Center for State Courts (National Center), the Institute for the Advancement of the American Legal System (IAALS), and the Conference of Chief Justices, including the recommendations of the CCJ Civil Justice Improvements Committee described in "Call to Action: Achieving Civil Justice for All" (Call to Action). This Report's recommendations draw heavily from Call to Action and the considerable research by the National Center and IAALS.

This Report is divided into six sections: case management, discovery, service of process, self-represented litigants, alternative dispute resolution, and technology. Although it is useful to divide the subject matter and recommendations into those six categories, it is important to recognize that all aspects of civil litigation are interrelated.

Case Management

The pathways approach to case management as recommended in Call to Action is a centerpiece of the recommendations. The one-size-fits-all approach of the current rules of civil procedure too frequently results in disproportionate cost and delay in simple and uncontested matters. The use of pathways provides flexibility in "right-sizing" case management based on the needs of the case. The Report recommends testing the pathways approach recommended in Call to Action as part of a pilot project before

consideration of broader implementation. The Report also recommends reforming how Local Rules are promulgated and approved. Local Rules that conflict with the Indiana Trial Rules should be eliminated. The final recommendation is to dedicate additional resources toward training of judges and court personnel on the use of existing technology to better manage civil caseloads.

Discovery

Discovery is often a fractious issue in litigation, and it proved to be such in developing a recommended set of reforms. Consensus is difficult to reach. However, the Report recommends Indiana follow the lead of other states and the research by the National Center and IAALS in reforming discovery practice. Proportionality should be a key objective, if not an abiding principle, in curbing discovery costs and delays. Forms and protocols are also proposed to help lawyers and courts manage the discovery process.

Service of Process

Rules on service of process should ensure due process without creating unnecessary costs and delay. The recommendations include several rule changes to better achieve such a balance.

Self-Represented Litigants

Self-represented litigants appear with increasing frequency in our civil courts, and that trend is unlikely to change. Courts need to adjust to serve these litigants more effectively. The recommendations include a variety of measures that will assist in achieving just outcomes in civil litigation and, by extension, help courts manage dockets characterized by large numbers of self-represented litigants.

Alternative Dispute Resolution (ADR)

ADR is an effective and efficient means to resolve many disputes. The use of ADR should continue to be encouraged, and this Report includes a variety of recommendations aimed to make ADR more readily available to those who lack the knowledge or resources to use this alternative to adversarial litigation. The recommendations also include support for diversity initiatives for mediators and other neutrals and changes to the ADR Rules to support and encourage innovative new forms of ADR.

Technology

Finally, this Report would be incomplete without addressing technology. The Report seeks to build on the work of the Technology Working Group in including recommendations for the strategic use of information technology to help our courts be more efficient and improve accountability and transparency. New technologies, such as Artificial Intelligence (AI), are emerging at an accelerating pace, and assessing their potential use should be a continuing process advised by experts both inside and outside the court system.

Introduction

In Call to Action, the Conference of Chief Justices aptly summarized the plight of our civil courts:

> *Americans deserve a civil legal process that can fairly and promptly resolve disputes for everyone—rich or poor, individuals or businesses, in matters large or small. Yet our civil justice system often fails to meet this standard. Runaway costs, delays, and complexity are undermining public confidence and denying people the justice they seek. This has to change.*

(p. 2). Call to Action is a seminal work and provides a well-designed roadmap for reform. The status quo is unsustainable. Without change, our civil courts will become a last resort for resolving the majority of disputes, with private companies filling the void using dispute resolution processes that lack the transparency and impartiality of our civil courts. Worse, more and more claimants may simply choose to forfeit their rights rather than bear the expense and delay of civil litigation. A thriving democracy requires civil courts that are available to provide just and efficient remedies for civil wrongs. The present system falls short of fulfilling that important function.

Call to Action was a primary resource for this Report, particularly as to the recommendations relating to case management and discovery. The Taskforce also met with experts from the National Center and IAALS, and attended numerous presentations and meetings with experts and innovators from other states, all of which helped inform the Report's recommendations. The Report also draws upon a significant body of empirical research and publications in the covered areas.

Although the Taskforce itself is solely responsible for the recommendations in this Report, numerous experts within Indiana were consulted. In-state experts informally consulted by members of the Taskforce are too numerous to list, but included the Commercial Courts Advisory Panel, the Coalition for Court Access, Professor Victor Quintanilla, and the Supreme Court's ADR Committee. The Taskforce also extends its gratitude to the Hon. David Dreyer, Jon Laramore, and Seth Wilson who provided valuable contributions to portions of the Report.

The Taskforce also reached out to members of the Indiana Bar through a variety of means, including a survey circulated to members of the Indiana State Bar Association, the Indiana Trial Lawyers Association, and the Defense Trial Counsel of Indiana. The survey questions, results, and respondents' anonymous comments are included in **Appendix A.**

In addition, the Taskforce Chair assisted Justice Steven David and the Hon. Elizabeth Tavitas in a presentation on the pathway approaches proposed by the Family Law Taskforce and the Civil Litigation Taskforce, respectively, at the Indiana State Bar Association's House of Delegates meeting on October 14, 2021. That session included an open forum led by Justice David, which included questions and comments by members of the House of Delegates.

It is expected that this Report is the beginning, not the end, of a deliberative process aimed at civil justice improvements in Indiana. The recommendations are offered in the spirit of the challenge presented—to think outside the box and propose innovative steps to make civil justice in Indiana more efficient, less costly, and more accessible to litigants of all stripes. Changes, however, can have unintended consequences for litigants in real cases, so in many instances, the recommendations are to conduct pilot projects to test the impact of various measures before they are implemented statewide. Other recommendations, however, of a more targeted nature, are suggested as appropriate for immediate adoption.

Members

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Key Resources

Overview

The Indiana Supreme Court issued an Order launching a statewide innovation program in November 2019, empowering several teams to explore ways to improve Indiana's system of justice. And on January 12, 2021, the Supreme Court issued an Order establishing this Civil Litigation Taskforce.

More Information

The Civil Justice Improvements Committee of the Conference of Chief Justices issued twelve general recommendations to improve services in high-volume courts, and five more recommendations specific to debt collections in Appendix I of Call to Action.

This Report includes specific citations to supporting resources. Additional literature reviewed during the Taskforce's investigations include:

- Carpenter, Ann E., et al, "Judges in Lawyerless Courts", 110 Geo. L.J. __ (forthcoming 2022).
- Greiner, D. James, et al., "Self-Help Reimagined", Indiana Law Journal, Vol. 92, No. 3 (2017).
- Kauffman, Brittany K.T. and Meyer, Brooke H., "Transforming Our Civil Justice System for the 21st Century, The Road to Civil Justice Reform" (2020).
- Kroeper, Kathryn M., et al., "Underestimating the Unrepresented: Cognitive Biases Disadvantage Pro Se Litigants in Family Law Cases" (2020).
- Lundberg, Donald R., "Unbundled legal services or limited scope representation", Res Gestae (June 2008).
- Quintanilla, Victor D., *Doing Unrepresented Status: The Social Construction and Production of Pro se Persons*, DePaul Law Review, Vol. 69:543 (2020).

Meetings with Outside Sources

The Taskforce met with the following people to discuss issues and gain information used in developing the recommendations in this Report:

- Civil litigation reform - Paula Hannaford-Agor, National Center, and Brittany Kauffman, IAALS (January 27, 2021)
- Strategic plan - Judicial Conference Strategic Planning Committee - chairs Judge Mark Spitzer and Judge Richard Stalbrink (February 24, 2021)
- Family Law Taskforce - representatives Judge Elizabeth Tavitas and Leslie Dunn (March 24, 2021)
- Case Lines Pilot – Judge Paul Felix and Seth Wilson (April 28, 2021)
- Technology Working Group - representative Bob Rath (April 28, 2021)
- Seminole County - Florida case management – Tony Landry (May 13, 2021)
- Maine Civil Justice Initiatives – David Packard, Laura Pearlman, Katharine Wiltuck (May 21, 2021)
- Palm Beach, Florida - case management Parik Chokshi and Michele Nelson (May 27, 2021)
- Lawyers for Civil Justice – cost-shifting discovery pilot – Tom Allman, Alex Dahl, Robert Owen, Matt Hamilton (June 4, 2021)
- San Mateo County, California – ADR methods – Jeniffer Alcantara (June 7, 2021)
- Orange County, California – ADR methods – Jeff Wertheimer (June 9, 2021)
- Odyssey – case management - Gaye Lynn Strickland (June 21, 2021)
- Judicial Conference ADR Committee – ADR rule changes - chair Judge Stephen "Sam" Scheele (July 9, 2021)
- Professor Victor Quintanilla – survey on legal needs/self-represented litigants (July 2021)
- National Open Court Data Standards – Paul Embley (August 13, 2021)
- Indiana Office of Admissions and Continuing Education - Bradley Skolnik – mediator issues (August 16, 2021)
- Kristina Coleman – author of law review article on service of process by social media (September 2021)
- Indiana State Bar Association, ADR Section Council (November 1, 2021)

Case Management

Implement Mandatory Pathway Assignment

Navigating the civil justice system can be an overwhelming and daunting experience. The exorbitant expenses and unnecessary delays have undermined public confidence in our court system. To help restore public confidence in the judicial system, the Conference of Chief Justices and the Conference of State Court administrators endorsed 13 recommendations for improving the American civil justice system in Call to Action. This report was the culmination of years of research and work designed to develop guidelines and best practices to ensure the just, prompt, and cost-effective resolution of civil state court cases. Emphasizing the importance of "right-sizing" case management so that process and procedure fit the needs and complexity of different case types, the Report recommended mandatory assignment to case pathways as the means of achieving that goal.

To help reduce costs and delays in civil litigation, and improve service to litigants, attorneys, and the courts, this Taskforce recommends that Indiana test the pathways approach to case management through several pilot programs. In making this recommendation, consideration was given to the Call to Action recommendation, national and Indiana case filing statistics, feedback solicited from Indiana lawyers, and other state pathway experiences.

Data and Indiana lawyers support pathway assignments to right-size case management

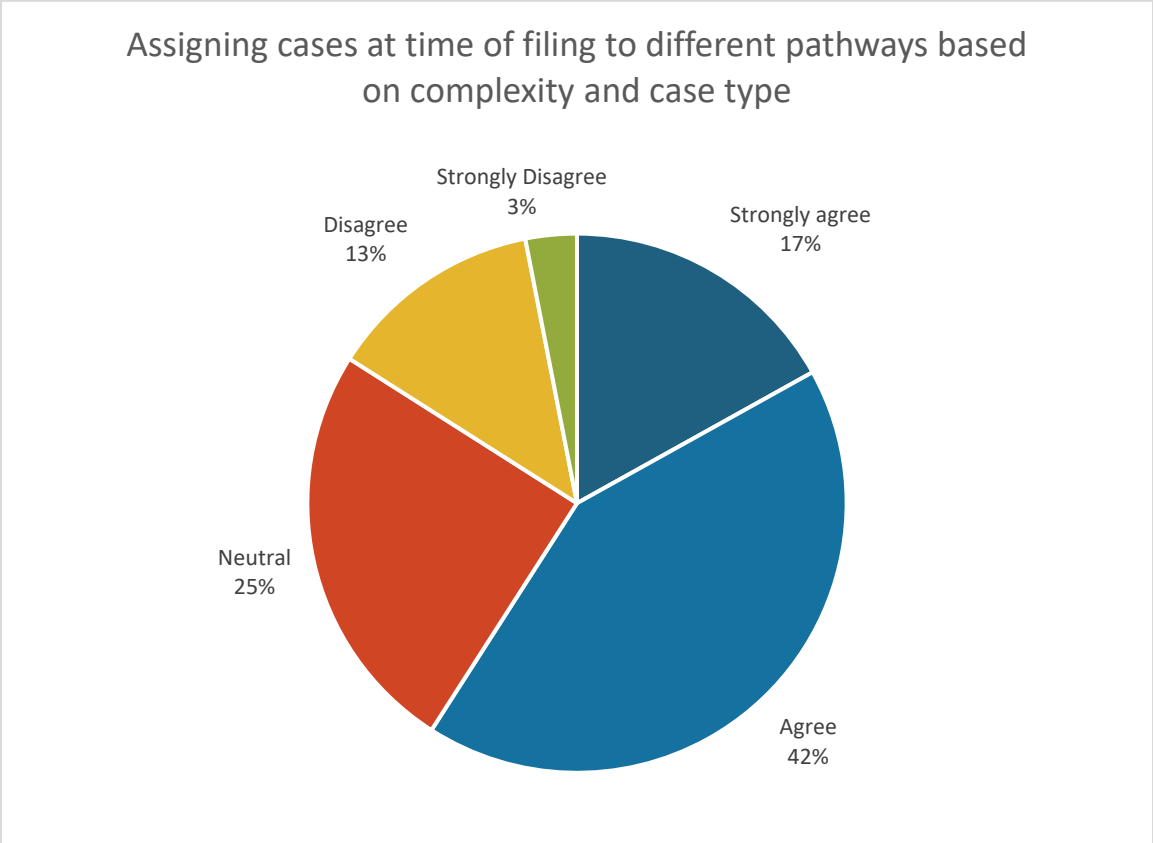
Following a one-size-fits-all approach to civil cases creates unnecessary burdens, expense and delay and frustrates the ends of justice for many litigants. Civil filing data and outcomes by case characteristics reflect trends that weigh in favor of "right-sizing" case management by case type. Analysis of national civil case filing data from 1992 compared to the period of July 2012 through June 2013 showed a dramatic shift away from near-equal contract and tort case filings to contract cases outweighing civil tort filings seven-to-one. Call To Action, (p. 8-9). More current Indiana data confirm that trend and is consistent with a heavy weighting of collection matters. Data show that

during pre-pandemic 2019, Indiana civil tort filings comprised just 2.6% of civil case filings as compared to 23% for collection matters and 2.9% for mortgage foreclosures.

In 2015, the National Center released a detailed report on The Landscape of Civil Litigation of State Courts, which examined civil case characteristics and outcomes in 10 United States urban counties, including Marion County. Some data points from that landscape study highlight the need for right-sized case management:

- 75% of all judgments were for less than $5,200;
- 0.2% had judgments that exceeded $500,000;
- 4% of cases were disposed by bench or jury trial, summary judgment, or binding arbitration, and the overwhelming majority (97%) of those were bench trials;
- Three-quarters of judgments entered in contract cases following a bench trial were less than half of those in small claims cases ($1,785 versus $3,900);
- Only 1% of cases were disposed on summary judgment;
- 76% of cases involved at least one self-represented party (mostly defendants).

In addressing the uniqueness of Indiana courts, attorneys, and litigants, feedback was solicited from Indiana lawyers on adopting a pathways approach to case management. Of those responding, 59% supported assigning cases to different pathways at time of filing based on complexity and case type, with 25% being neutral:



Lessons Learned from other states that have adopted pathways assignment.

Other states have implemented and experimented with the pathways approach to varying degrees. Differing approaches have been taken as to how pathways are assigned, the nomenclature used for different pathways, and the extent to which procedures vary within different pathways. In April 2020, IAALS published The Road to Civil Justice Reform, a compilation of case studies of civil justice reform in Idaho, Maine, Missouri, and Texas. Recent changes made in Arizona, Minnesota, and Utah also included improvements to case management. Closer to home, the 22nd Judicial Circuit of Illinois tested pathway assignment in its courts and found benefits from focusing attention on overcoming obstacles to timely disposition, particularly in older cases, according to a study published by the National Center. The experience of the 22nd District of Illinois highlighted the importance of "building out the pathways with suggested timelines and practices for major case events, like discovery, pretrial conferences, and trials" to bring effective "case management practices into stronger focus." Civil Justice Initiative: Evaluation of the Civil Justice Initiative Project, p. 17.

The experience in other jurisdictions that have implemented or tested mandatory pathway assignment underscores the importance of garnering buy-in from the legal community. Outreach and consensus-building are critically important to generating such buy-in. The Taskforce started that process by surveying Indiana lawyers and having informal conversations among stakeholders, but further outreach is recommended. Piloting the pathways first and providing transparency about the results of the pilots would be an essential step in developing the critical mass of support for improvements to case management.

Overview of mandatory pathway assignment recommendation

In accordance with recommendations by the Conference of Chief Justices and the National Center, Indiana courts should use a mandatory pathway assignment system to achieve right-sized case management.

- To best align court management practices and resources, courts should implement a pathways approach to case management in all civil cases except for cases in small claims court.
- Upon filing, all cases are automatically assigned to one of three pathways, Streamlined, Complex, and General, based on specified criteria including the number of parties and case type.
- Courts must include flexibility in the pathways approach so that a case can be transferred to a more appropriate pathway if significant needs arise, or circumstances change.
- Pathway assignment may be changed by court order upon a specific showing that a different pathway better fits the needs of the case and will not impose disproportionate burden, expense, or delay on any party.
- Pathway assignment could also be changed automatically upon certain events, such as the filing of a third-party claim.
- Alternative dispute resolution may be appropriate in any of the pathways, provided it would facilitate the just, prompt, and inexpensive disposition of civil cases.

Pathways overview and key points:

- *3 tiers – streamlined, complex, and general*
- *Right-sized case management; mandatory upon filing*
- *Flexibility to reassign cases to appropriate pathway*
- *Jury trial rights preserved*

The three-pathways approach envisions the following types of pathways

- The Streamlined Pathway is reserved for cases that present uncomplicated facts and legal issues. Streamlined Pathway cases require minimal judicial intervention but close court staff monitoring through Odyssey. This pathway is designed to address the concern that for many litigants the cost of litigating a case through trial exceeds the monetary value of the case.
    - This pathway provides an expedited process for cases with a limited number of parties, routine legal and evidentiary issues, few anticipated pretrial motions, limited need for discovery, few witnesses, minimal documentary evidence, and anticipated trial length of one or less days.
- The Complex Pathway is appropriate for cases that present multiple legal and factual issues, involve many parties, or otherwise are likely to require close court supervision. This pathway is designed to emphasize the need to comply with case management deadlines to ensure that the litigation continues to move forward without unnecessary delays.
    - This pathway is reserved for cases involving highly complex legal or factual issues, multiple parties or lawyers, numerous witnesses, voluminous documentary evidence, high interpersonal conflict, and other characteristics that indicate the case would benefit from close judicial supervision.
- The General Pathway is for cases with characteristics making them inappropriate for either the Streamlined or Complex pathway. Cases in this category cannot be handled in a streamlined fashion; however, they do not require the same level of oversight as a complex case.

- While this pathway is principally identified by what the case is not, the General Pathway is not another route to "litigation as we know it."

Triage of cases into a pathway should be initially based on the simplified automated triage approach developed by the National Center

The Taskforce recommends that the following case types under Indiana Administrative Rule 8 be assigned to pathways as shown below. This does not mean that judges cannot modify the pathway of a particular case type. Civil collection, eviction, mortgage foreclosure, orders of protection and miscellaneous cases (commonly forfeiture or petitions for judicial review cases) are placed in the Streamlined pathway because a large percentage of these cases require little attention by the judge, but court staff can notify the judge if a hearing is needed, or orders need approval and signature. Civil Plenary cases are assigned to the Complex pathway because the Indiana Commercial Courts have discovered that many complex commercial cases fall into the Civil Plenary case type. In addition, medical malpractice cases with multiple defendants often have significant discovery matters and dispositive motions and should fall under the Complex pathway. Court staff can be utilized to flag any other cases that should be placed on the Complex pathway. Then, by default, the remaining cases not otherwise assigned to the Complex or Streamlined pathways will be assigned to the General pathway. This might include civil tort cases which can be resolved in a 2–3-day jury trial.

Unless modified by the Court, the presumptive pathways should be:

Streamlined case types

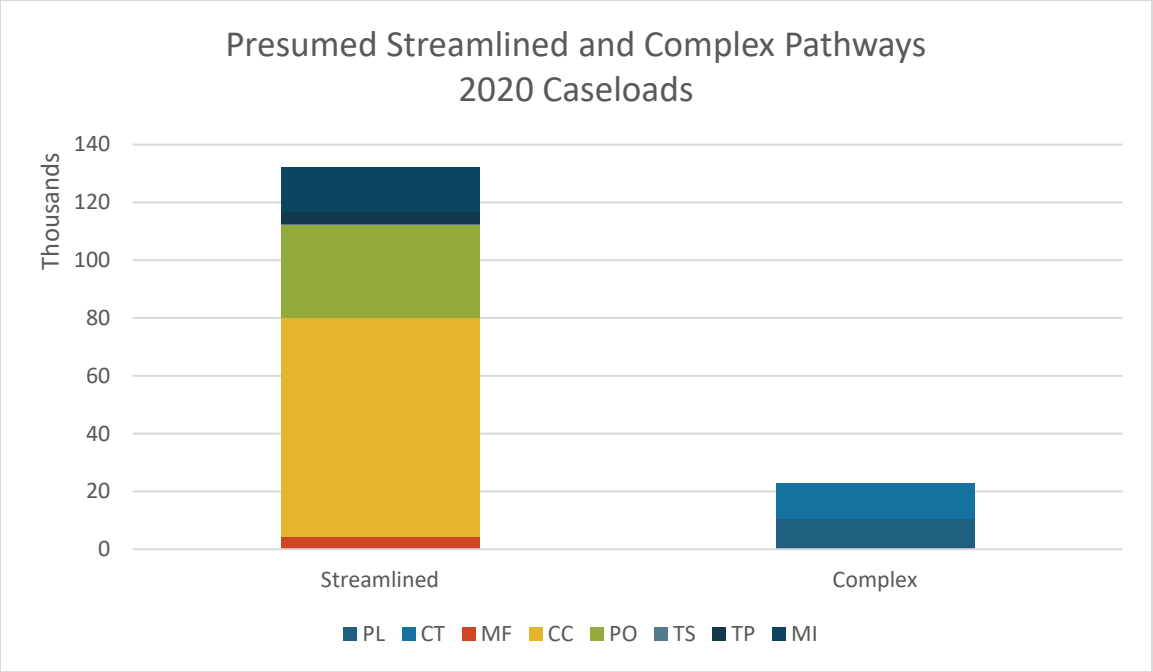
- CC -- Civil Collection
- EV -- Petition for Eviction
- MF -- Mortgage Foreclosure
- MI -- Miscellaneous
- PO -- Order of Protection
- TP -- Verified Petition for Issuance of a Tax Deed
- TS -- Application for Judgment in a Tax Sale

Complex case types

- CT -- Civil Tort
- PL -- Civil Plenary

(Note: Case types not designated above shall not be included in the pathways system.)

This approach would route approximately 85% of cases to the Streamlined pathway, by default, based on the 2020 caseloads published by the Indiana Office of Court Services.



The case types in the Streamlined pathway include MF mortgage foreclosure (4,300 new cases filed), CC credit collection (76,000), PO order of protection (32,000), TS application for judgment in a tax sale (115), TP verified petition for issuance of tax deed (4,000), and MI miscellaneous (16,000). The case types in the complex pathway include PL plenary (11,000) and CT civil tort (12,000).

Sample General and Complex Pathways Proposed Initial Case Management Orders are included in **Appendix B** and may be used in conjunction with the proposed discovery forms in **Appendix D**.

Discovery is tied into the pathway assigned

It is anticipated that each pathway will require different rules and guidance relating to discovery. Some of the liveliest debates in the Taskforce's deliberations involved discovery limits in defining the pathways. The Taskforce's survey of Indiana lawyers showed that a majority disagrees with limiting the number of written discovery requests and the duration of depositions. Yet, research shows that runaway discovery causes much of the inordinate expense and delay that plagues the civil justice system. In a survey of civil litigators published by IAALS in 2009, Final Report on the Joint Project of

the American College of Trial Lawyers Task Force on Discovery and Civil Justice and IAALS, "fewer than half of the respondents thought that our discovery system works well and 71 percent thought that discovery is used as a tool to force settlement," leading IAALS to the conclusion that "[o]ur discovery system is broken." (p. 9). Furthermore, limits on discovery are common under current local rules, the Commercial Court Rules, and in federal court.

After much discussion, the Taskforce ultimately reached a consensus that the pilots testing the pathways approach should incorporate a recommended case management plan that includes suggested limits on the number of written discovery requests and the duration of depositions based on pathway assignment. The discovery protocols described in the next section of this Report include suggested limitations based on pathway assignment. Courts continue to have the ability to approve or reject any case management plan entered into by the parties, and, issues not resolved by agreement of the parties can be resolved by the court. Right-sized case management seems unachievable without right-sizing discovery, and numerical and durational limitations on discovery are a familiar means used in many courts in Indiana and elsewhere to avoid disproportionate discovery expense and delay. The Taskforce recommendations follow that of the National Center and IAALS in including suggested discovery limitations in various forms depending on pathway assignment in the pilot program test.

The pilot program will explore whether each pathway should include:

- A firm schedule of deadlines based on the date of service of the complaint;
- Mandatory exchange of supporting documents and identification of witnesses;
- Limits on written discovery requests and depositions;
- Relief from discovery limitations subject to court approval upon (i) the parties' agreement or (ii) a specific showing that the additional discovery is proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Broader discovery issues are addressed in the Discovery portion of this Report.

Proposed Pilot

When the Indiana Supreme Court has implemented significant changes in courts in the past, pilot projects have been created to test the recommendations before broad implementation. A few examples are Criminal Problem-Solving Courts, Commercial

Courts, and implementation of the Pre-Trial Services Model under Criminal Rule 26. Thus, the Taskforce recommends a pilot project be implemented to test these pathway recommendations. The pilot would include selection of 6-8 judges selected by the Supreme Court, and the Taskforce provides the following guidelines that may be helpful:

1) select at least three judges who solely handle civil litigation with large civil dockets.
2) select at least 3-5 judges who have mixed jurisdiction dockets with civil, criminal, family, juvenile, or probate. Select at least two judges from smaller counties and three judges from medium size counties.
3) the judges selected should be open to change in implementing these recommendations.
4) the pilot project should be for two years in length.
5) there should be judges selected from the southern, central, and northern parts of Indiana.
6) the judges should track data to assist in determining the success of the recommendations in making civil litigation more efficient and less costly and time consuming.
7) the assignment of cases to the pathways should be automatic upon filing based upon the case type as outlined above. The assignment to an alternative pathway may be made upon motion of any party or upon the court's own motion. Courts should be open to changing the pathway assignment to fit the needs of particular cases.

Ensure that Local Rules of Court are Consistent with Indiana Rules of Trial Procedure

A uniform set of rules and procedures will result in greater ease of navigation of the judicial system, increased efficiency in filings, and speedier disposition of routine matters.

Local rules that are obsolete or conflict with the Indiana Rules of Trial Procedure should be eliminated

All rules should reflect the current and future state of the judicial system, without reference to old practices. Any local rule that conflicts with the trial rules should be eliminated. For example, Trial Rule 56 provides for a summary judgment response time calculated 30 days after **service** of the motion. At least one Indiana county requires a

summary judgment response to be filed within 30 days following the date the motion was **filed**. Local Rule 41-TR5 Rule 147C.2. See **Appendix C** for examples of how local rules conflict. This is a trap for the unwary.

Local rules relating to filing deadlines, time computation, or simple matters should be uniform

The importance of uniformity in filing deadlines and time computation cannot be overstated, as in the case of filing and response times related to Trial Rule 56. Not only do local variations lead to confusion and the potential for missed deadlines, but they work against efficiency in Indiana courts. Uniformity in response times allows for a statewide standard resulting in certainty and the ability to leverage technology to effectively and efficiently control calendaring and dockets. Further, simple matters should not be made complicated by different rules based upon local preference. For example, something as simple as the withdrawal of an appearance should have one form to be used statewide. Yet, the local rules contain numerous varying requirements. Local rules related to discovery should also be streamlined by statewide uniformity.

Local rules related to civil procedure must be approved by the Indiana Supreme Court

Currently, the Indiana Supreme Court approves local court rules in only four areas: selection of special judges in civil and criminal cases, court reporter services, caseload allocation plans, and service as an acting judge in another court, county, or district. All other local rules are adopted without Supreme Court approval. As a result, the local rules vary greatly from county to county, causing conflict and unnecessary variances in procedures throughout the state. Requiring Supreme Court approval of local rules will help eliminate these issues.

Local rules should be subject to review every two years and should satisfy the goals of the Innovation Initiative

To ensure the integrity of all rules, a two-year review of local rules is recommended. All rules should further the goals of judicial efficiency for the courts, practitioners, and litigants. It is recommended that the Supreme Court issue an order mandating each county undertake a complete review of its local rules to accomplish the goals and objectives set forth herein, and that proposed new local rules be submitted to the Supreme Court for review and approval with the weighted caseload report due in the

year 2023. Only those local rules that have undergone revision and approval by the Supreme Court in 2023 and thereafter will remain in effect.

Additional Training

Judges and court staff should be offered additional training and resources to increase their efficiency in using Odyssey and managing their docket.

Enhanced training for judicial officers and court staff would be helpful as another tool for the judiciary to increase efficiency. The National Center has recommended that every case should not require repeated and direct judicial involvement and that court staff can address some issues, allowing judicial officers more time to address purely legal matters. The following are examples of tasks the court staff could manage for the judge: 1) the Trial Rule 41(E) docket, 2) using the Odyssey diary system to guide scheduling of case management conferences or submission of case management orders, and 3) running case disposition reports for the judicial officer to assess performance. This training for judges could be the focus of a judicial conference. For staff, it could be implemented during the summer training for court staff.

Enhancing use of online forms through Odyssey would create efficiencies for judges and staff in issuing orders. For example, including online templates for pre-trial and case management orders is helpful to both attorneys and courts. Specifically, for court staff this eliminates the need to type the caption on each order and would only require the entry of hearing dates scheduled by the court. Wider availability of online templates for orders could assist attorneys in shaping the relief that they seek and advising their clients. The Indiana Commercial Courts developed standard forms that are available on the Indiana Commercial Court webpage. The Indiana Commercial Court judges receive positive feedback on the use of standard forms and have observed attorneys using them in non-commercial court cases. Standard forms for attorney use also creates efficiencies for counsel that could reduce the cost of litigation.

Discovery

Introduction

Discovery can be the costliest and most time-consuming part of litigation, both for the parties who must collect, review and produce material, and for courts that have to adjudicate discovery disputes. According to Logikcull, a global discovery software company, 20 to 50 percent of all costs in federal civil litigation are incurred during discovery, and an estimated 6.36 billion dollars are spent yearly on federal civil discovery. The Court Statistics Project found that litigating a civil case to trial in state courts can cost anywhere from $43,000 to $122,000 or more, which makes litigation too expensive for most people. The cost of discovery is one of the main sources of these expenses. According to research by Paul Hannaford-Agor from the National Center, legal fees incurred in discovery substantially exceeded fees incurred in any other aspect of litigation other than trial itself. Expenses for e-discovery, transcription costs or expert witness fees often compound the burden and expense of civil discovery. A 2012 study conducted by the Rand Institute for Civil Justice found that e-discovery collection and processing costs alone averaged over $4,000 per gigabyte, exclusive of even higher costs for attorney pre-production review.

Cost is not the only problem area. In a survey of civil litigators published by IAALS in 2009, Final Report on the Joint Project of the American College of Trial Lawyers Task Force on Discovery and Civil Justice and IAALS, (IAALS Report) that organization found that "fewer than half of the respondents thought that our discovery system works well and 71 percent thought that discovery is used as a tool to force settlement," leading IAALS to the conclusion that "[o]ur discovery system is broken." (p. 9). Respondents reported that discovery is conducted too frequently that has little bearing on the merits of the parties' dispute. IAALS recommended that "balance [should] be established between the burdens of discovery on the one hand and the search for evidence necessary for a just result on the other hand." IAALS further observed:

> *Discovery should enable a party to procure in admissible form through the most efficient, nonredundant, cost-effective method reasonably available, evidence directly relevant to the claims and defenses asserted in the*

pleadings. Discovery should not be an end in itself; it should be merely a means of facilitating a just, efficient and inexpensive resolution of disputes.

IAALS Report (p. 7)

The Taskforce conducted research into other state's recent discovery-related updates, considered the federal rules, and brainstormed innovative ways to make discovery more efficient without compromising parties' procedural rights.

The Taskforce's recommendations are as follows:

1. Make available additional discovery-related forms to aid practitioners and courts in avoiding and/or resolving discovery disputes; and
2. Modify certain discovery-related Indiana Trial Rules in line with other successful rule changes recently made around the country.

The Taskforce also considered a Cost Allocation Pilot for the Indiana Commercial Courts, but no consensus could be reached. Therefore, that pilot is not included as a recommendation, but details are provided for the Supreme Court's consideration.

Overview of Research Conducted

Survey Results related to Discovery

Based on the survey results, Indiana practitioners agreed the following discovery-related proposals would be beneficial:

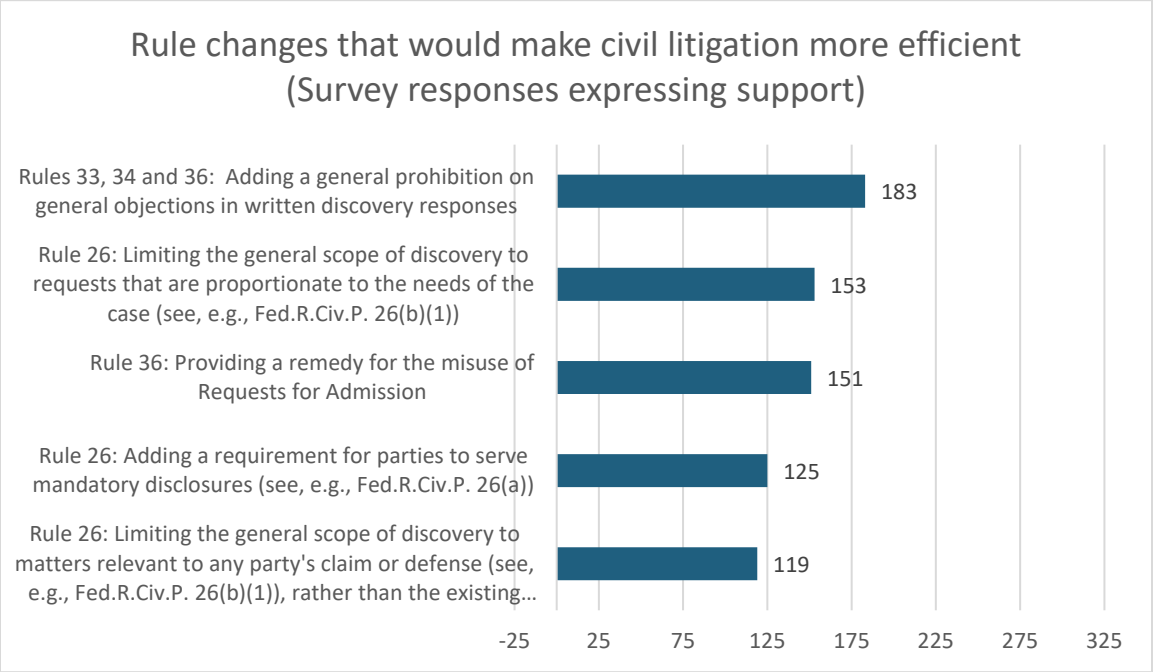
- Assigning cases at time of filing to different pathways based on complexity and case type;
- Electronic service of discovery;
- Electronically Stored Information Protocol [Form];
- Discovery Preservation Order [Form];
- Protective Order [Form]; and
- Early informal off-the record court intervention to resolve discovery disputes before a Motion to Compel is filed.

These issues are addressed in the recommendations below.

Indiana practitioners were divided over the following topics, but tended to agree with the following:

- Trial rules do not reflect modern practice or promote efficiency;
- Discovery too often seeks information that has little material benefit to the case;
- Use of Special Masters to assist courts in managing and supervising discovery and in resolving discovery disputes before they reach the judges for decision;
- Use of Basic Interrogatories [Form];
- Use of Basic Requests for Production [Form]; and
- Use of Forms for addressing Outstanding Discovery Responses.

As it relates to discovery-related rule changes, many surveyed believed the following rule changes would make the discovery process more efficient:



Other written feedback included support for the following:

- Mandatory initial disclosures (DTCI, ISBA, and ITLA);
- Form discovery requests that are not objectionable by rule (ISBA);

- Elimination of Preliminary Statements and General Objections (ITLA);
- Simplifying court intervention without needing formal motions to compel (ITLA);
- Statewide uniformity of any limits on the number of discovery requests allowed (ISBA); and
- Right-sizing discovery—both with limits to written discovery and limits to deposition times—to fit the needs of the case (DTCI).

Other written feedback indicated the following concerns:

- Limiting discovery will not expedite the process because discovery is largely self-regulating without significant court involvement already (ITLA);
- Too many discovery requests are currently excessively lengthy (DTCI);
- Delays and lack of cooperation in discovery, including improper use of Protective Orders to shield information that should not be subject to a Protective Order (ITLA); and
- Strong opposition to the use of artificial intelligence (ITLA).

The recommendations below include reforms supported by survey respondents. Basic Interrogatories [Form], Basic Requests for Production [Form], or Forms for addressing Outstanding Discovery Responses (i.e., a Motion to Compel), were not prepared for this Report, as they would be difficult to standardize while maintaining the goal of narrowly tailoring discovery. Also, for reasons discussed in conjunction with the proposed Discovery Protocol below, adding mandatory initial disclosures as a discovery rule change is not included as a recommendation in this Report.

Other states' recent discovery-related updates

Other states have recently considered or implemented changes to the discovery process, including rule changes, discovery forms, use of special masters, use of cost-shifting, pilot projects, and other discovery-related tracking. The overarching themes throughout these changes were proportionality, robust initial disclosures, reducing the need for discovery motions, and reducing the time to resolution. The primary states the Taskforce focused on were California, Colorado, Illinois, Iowa, Massachusetts, Michigan,

New Hampshire, New York, Pennsylvania, and Wisconsin. For more specifics on the findings, please see attached **Appendix E**.

Courts Should Make Available Additional Discovery-Related Forms

Providing this assistance will help practitioners and the courts avoid and/or resolve discovery disputes.

The Trial Rules currently have certain approved forms available, including those for admission and discipline, alternative dispute resolution, appeals, child support, appearances, juvenile forms, access to court records, domestic violence, original actions, post-conviction relief and various tax forms. The Indiana Commercial Courts have also made forms available, including the following which impact discovery: Appendix H – Order Appointing Commercial Court Discovery Master; Appendix I – Order for Initial Case Management Conference; Appendix J – Initial Case Management Proposed Order; Appendix K – Stipulated Protective Order; and ESI Supplement to Proposed Initial Case Management Order.

The survey results suggest that additional discovery-related forms would be helpful to litigants:

- Discovery Protocol (includes electronically stored information and hard copy);
- Order Appointing a Discovery Master;
- Preservation Order;
- Protective Order; and
- Order for Cost-Sharing.

To the extent these forms are already made available by the Commercial Courts, those forms provide a good starting point with a few suggested updates as outlined in **Appendix D**.

Discovery protocol form and case management order

Defender Services Office of the United States Courts described the benefits of a stipulated discovery protocol relating to electronically stored information (ESI) saying, "[t]he primary purpose of the ESI protocol is to facilitate more predictable, cost-effective, and efficient management of electronic discovery and a reduction in the number of disputes relating to ESI. The protocol provides a mechanism through a meet and confer process, to address problems a receiving party might have with an ESI

production early in a case, and to discuss the form of the discovery that the party receives." Having a standardized form will help litigants, especially litigants new to initiating such discovery protocols, identify all of the major categories and schedules that need to be decided, improving the efficiency of the litigation and the court.

As for format, the Discovery Protocol incorporates provisions for ESI and hard copy documents; thus, it covers the ESI Protocol form requested by the Indiana lawyers surveyed and also provides additional guidance. The Discovery Protocol is lengthy and is drafted to encompass a broad spectrum of discovery issues, for any case size. Some provisions of the Discovery Protocol may not be applicable or appropriate in all cases; the protocol is intended to be a starting point from which the parties modify as needed for the matter, including deleting irrelevant portions. To aid parties in using the Discovery Protocol, an Instructions cover page is provided.

The Discovery Protocol accounts for the varying discovery needs in each of the proposed pathways from the Case Management section of this Report: Streamlined, Complex and General. As an example, matters may need search and production limitations, although they may differ based on the pathway, and the Discovery Protocol allows such flexibility. The Discovery Protocol even allows a "NONE" selection.

With respect to mandatory initial disclosures, significant thought was given to a proposal to add such a requirement to the Trial Rules. Ultimately, the recommendation at this time is only to include optional initial disclosures, as well as search and production limitations in the Discovery Protocol form. If the form is well-received, the Supreme Court may consider rule changes in line with the form in the future. Importantly, this Report does not recommend mandating use of the Discovery Protocol for all matters at this time. But, again, if the form is well-received, the Court may consider mandating its use in the future (for all or certain pathways).

In that vein, if the recommended Discovery Protocol is adopted, this Report recommends that the Supreme Court remove the discovery provisions from the current Case Management Order form (e.g., requirements in Section 3 for initial witness and document disclosure) and instead, order or encourage use of the more comprehensive provisions contained in the Discovery Protocol.

With those caveats, please see **Appendix D**, which includes the proposed Discovery Protocol Form and accompanying instruction cover page.

Form order appointing discovery master

"By their nature, certain lawsuits are primed from the outset to cost the parties excessive money and time, regardless of the amount in controversy. A certain a [sic] piece of litigation might involve a technical or complex area of the law. It might require ongoing and frequent oversight of the discovery process. …. In cases like those, an often-underutilized solution is the Special Master."[1] "Despite their relative anonymity, [special] masters have been credited with some of the most creative and innovative conflict resolution within the history of the U.S. legal system."[2]

Over the past few years, use of a special master has become more common and alleviated the burden on overwhelmed courts to resolve selective disputes efficiently. "Based upon the recommendation of federal and state judges both within and outside the Judicial Division and the Working Group's analysis, and consistent with the best practices described below, the ABA encourages courts to make greater and more systematic use of special masters to assist in civil litigation in accordance with these Guidelines."[3]

The Indiana Commercial Courts have embraced use of special masters through the update of Rule 5 (Commercial Court Masters), as well as Appendix H – Order Appointing Commercial Court Discovery Master. The Indiana Commercial Courts' movement in this area should be replicated in our other courts. Trial Rule 53 remains restrictive in the use of a special master, including a discovery master. Thus, a proposed update to Trial Rule 53 is outlined in **Appendix F.** In addition, **Appendix D** includes a proposed Order Appointing Discovery Master for use by Indiana courts as a whole, which form is based on the order used by the Commercial Courts.

The various Indiana Bar Associations have sections (e.g., the IndyBar's eDiscovery, Information Governance and Cybersecurity Section) in this arena and could serve as a source for qualified candidates for appointments as discovery masters. Another resource for potential discovery master candidates is the Association of E-Discovery Specialists (ACEDS). Appointing a taskforce to vet and compile a list of discovery master candidates and their qualifications would also make assignment of special masters easier for the courts.

Preservation order form

For those regularly practicing in eDiscovery, the steps to take to preserve ESI are automatic any time there is a reasonable anticipation of litigation. However, 80% of those surveyed said a Preservation Order would be helpful. This would also be particularly helpful for self-represented litigants, for whom no part of litigation is routine. As a result, this Report includes a Preservation Order Form in **Appendix D**, which may be used if all parties consent or the court finds the Preservation Order will materially assist in resolving the case in a just and timely manner.

Protective order form

The majority of those surveyed (approximately 70%) also said providing a Protective Order form would be helpful. As a result, this Report includes a Protective Order Form in **Appendix D**. The foundation of the proposed Protective Order form is the Indiana Commercial Court's Appendix K - Stipulated Protective Order. The proposed Protective Order governs the production and handling of any confidential or attorneys' eyes-only information (collectively referred to as "Protected Information").

Form order for discovery cost-sharing

When no consensus could be reached on the Cost Allocation Pilot discussed in **Appendix G**, the Taskforce decided an optional Form Order for Discovery Cost-Sharing may be a better solution at this time. Cost-sharing in discovery could be made more available to the courts where there are bad actors in discovery or circumstances otherwise make cost-sharing just and appropriate. To that end, suggested additions to Rule 37 are discussed below, and a draft Order for Cost-Sharing in Discovery Form is included in **Appendix D**.

The Court Should Modify Certain Discovery-Related Indiana Trial Rules

The proposed modifications will bring Indiana in line with other rule changes recently made around the Country to address runaway discovery costs, wasteful disputes, and delays.

The survey results related to discovery discussed above demonstrate support for changes to the Indiana Trial Rules to improve the discovery process. Research by the National Center shows a positive impact in states that have implemented discovery reforms to address cost and delay. In 2016, the National Center reported a study of the impact of recent rule changes in three states, New Hampshire, Texas and Utah, which

included, among other things, proportionality requirements, numerical limits on certain types of discovery, expedited procedures and timelines, and mandatory disclosures. The National Center concluded that although the "precise nature of the impact of these reforms varied somewhat from jurisdiction to jurisdiction, . . . all of them ultimately had some effect on the manner of disposition, time to disposition, or other key case processing measures." (p. 8-9). In general, settlement rates increased, and disposition times decreased. In the one state (New Hampshire) where disposition times increased, there was also a substantial decrease in the rate of defaults—meaning more cases were being decided or settled on the merits.

The Rule amendments proposed by the Taskforce in **Appendix F** follow reforms in other states, including the following changes:

- Proportionality as a fundamental principle limiting the availability of discovery;
- Aligning the general scope of discovery with the issues in the case, rather than its subject matter;
- Limits on the number of discovery requests and the number and duration of depositions, subject to the parties' agreement or court approval of additional discovery;[4]
- Prohibition of general objections to discovery; and
- Enhanced use of masters to help manage discovery in appropriate cases.

Cost Allocation Pilot

The Taskforce closely examined a pilot project involving cost-shifting in discovery proposed by Lawyers for Civil Justice, an organization comprised of corporations, law firms, and defense bar organizations. Considerable time and resources were devoted to evaluating the pilot project, including obtaining input from the Commercial Court judges. After extensive discussion with strong views being expressed for and against the pilot, the Taskforce ultimately failed to reach a consensus. Consequently, this Report does not recommend implementing the cost-shifting pilot, but since the work and evaluation of it could be beneficial, a discussion of the proposed pilot is included in **Appendix G**.

Service of Process

Permit Electronic Service of Process on Registered Agents

Allowing service on registered agents who have consented to service by electronic means will facilitate service of process on thousands of Indiana entities.

The Indiana Secretary of State recognizes two types of registered agents: commercial and noncommercial. Commercial registered agents represent over 70,000 businesses registered with the Indiana Secretary of State, with the top six representing over 80% of that total. By statute, both types of registered agents may or shall provide, among other information, "the electronic mail address of the registered agent at which the registered agent will accept electronic service of process" as prescribed in the Trial Rules. Ind. Code § 23-0.5-4-3(c) and Ind. Code § 23-0.5-4-4(a)(5). Expressly permitting electronic service of registered agents would have a significant impact on effectuating prompt service on organizations in a cost-effective manner. Registered agents should be asked for their affirmative consent, or to renew their consent if previously given, to service by electronic means. The Taskforce recommends an amendment to Trial Rule 4.6(B) in **Appendix F** to permit this type of service.

Some commercial registered agents have requested electronic service of process through an integration method like that of an e-filing service provider. Documents served in high volume through integration can be processed automatically more effectively than email. The Taskforce recommends that this level of integration be explored and considered.

Allow Service by Publication in Online Media, In Addition to Printed Newspapers

Trial rules can be modified to enable service by publication on the Supreme Court website and, eventually, other online publications.

The Indiana Supreme Court requested public comment in July 2021 on proposed amendments to Trial Rule 4.13. Summons: Service by publication. [5] The proposed changes would extend service by publication beyond newspapers to include publication on the Indiana Court Legal Notice Website. The Office of Court Technology would provide the website which would publish the summons under this rule.

The Taskforce supports the rule amendment and recommends allowing for such service in other online publications as this type of service evolves.

Expressly Permit Alternative Methods of Service, Including by Email, Text Message, and Social Media Direct Message

Best practices and standard forms would help simplify use of alternative service methods and ensure due process.

Alternative methods of service are permitted under Trial Rule 4.14 but are seldom used. Establishing guidelines and best practices will facilitate broader use of these alternative methods when appropriate, including electronic service through social media, text messages, and electronic mail, and can facilitate actual notice[6] to defendants.

The most innovative and controversial alternative method is service by social media. The data indicate that a large segment of the population regularly uses social media. It is this extensive use that makes social media a potentially viable alternative method for service of process. If certain guidelines are followed, service by social media appears to be reasonably calculated to give defendants actual notice and to comport with due process.

According to a Pew Research Center study in 2015, 65% of adults and 76% of internet users utilized social media. The popularity of social networking sites has increased since then. While Facebook's growth has leveled off, it is still used by 69% of adults in the U.S. [7] Instagram, WhatsApp, Pinterest, LinkedIn, Reddit have all seen an increase in the number of users and multiple new apps have come online. [8] In contrast, from 1999 to 2015, newspaper readership declined by at least 22% across all ages. [9] In 2015, readership between the ages of 18 and 44 was around 20%, and for those 65 and older, only 50% read a newspaper daily, which was down from 72% in 1999. [10] As a consequence of the popularity and extensive use of social media and electronic mail, starting in 2013, various courts around the country – New York[11], Virginia[12], Maryland[13], Iowa[14], Alaska[15], Texas[16], and California[17] – have permitted service of process by electronic mail and/or social media. [18] This type of service was allowed after other forms of service were unsuccessful and evidence was presented as to the authenticity of the email address or the social media profile, as well as the regular use of them by the defendant. Some courts also required copy service by U.S. mail at the last known address. In each case, the court determined that such alternative service was reasonably

calculated to give the defendant notice and an opportunity to be heard. Modification of Texas Rules of Civil Procedure, Rule 106: Method of Service permitted alternative service by "social media, email, or other technology" as of December 31, 2020.[19]

Under the Alaska Rules of Civil Procedure, Rule 4(e), courts may permit service of process on a party through the Alaska Court System's legal notice website. A serving party must first file an affidavit of diligent inquiry, stating whether service would be more effective using "any other manner that is reasonably calculated to give the party actual notice of the proceedings and an opportunity to be heard," including by email or by posting to the absent party's social networking account.

These developments provide guidance on ensuring that due process is met. The guidelines for satisfying due process require the party seeking alternative service of process to demonstrate: 1) the email address or the social media profile is actually the defendant's; 2) the defendant actually uses the social media or email account (and has received and responded to emails from the person serving by email); 3) the trial rules have a catch-all provision, which already exists in Trial Rule 4.14; and 4) for international defendants, service of process through the alternative method is not prohibited by an international agreement.

When circumstances are appropriate, and due process will be satisfied, then service by text message should also be considered as an alternative method of service.

The Taskforce recommends that alternative service of process be specifically permitted and set forth in the Trial Rules and that Trial Rule 4.14 be amended as follows:

Trial Rule 4.14. Service Under Special Order of Court

Upon ~~application of~~a verified motion filed by any party setting forth facts sufficient to show that prior attempts to obtain service pursuant to the trial rules have been unsuccessful, the court in which any action is pending may make an appropriate order for service in ~~a~~ any other manner ~~not provided by these rules or statutes when such service~~ that is reasonably calculated to give the defendant actual knowledge of the proceedings and an opportunity to be heard. Such other forms of service may include social media, electronic mail, or other technology.

The Taskforce further recommends creation of an approved form for use in requesting alternative service pursuant to amended Trial Rule 4.14. This will assist litigants and the trial court alike in assessing whether service is deemed appropriate.

Update Judicial Benchbook to Clarify Notice Requirements in Proceedings Supplemental

Trial Rule 69(E) requires notice to the judgment debtor pursuant to Trial Rule 5, not Trial Rule 4.

Notwithstanding that the court retains jurisdiction over the judgment debtor post-judgment, there are judicial officers who are requiring service of process under Trial Rule 4 for proceedings supplemental. This is not required by the trial rules and bogs down the post-judgment process. The Taskforce proposes a request to the appropriate Benchbook Committees that the following guidance be added to the Benchbooks for Civil and Small Claims:

> *Notice required by Trial Rule 69(E) is not essential for retention of jurisdiction over the judgment debtor with respect to proceedings supplemental, because notice to the debtor is governed by Trial Rule 5, not Trial Rule 4. The defendant is not entitled to new service of process. Citizens Nat'l Bank v. Harvey, 339 N.E.2d 604 (Ind. Ct. App. 1976).*

The Taskforce also recommends that the Judicial Education Committee incorporate this information in a relevant training course for judicial officers. This could be added as a note to the form and maybe to a checklist in the Civil Benchbook.

Clarify Trial Rule 4.1(B)

Trial Rule 4.1(B) should mirror language in Trial Rule 4.1(A)(3).

As presently written, there is a conflict in the language in the trial rule that requires copy service to be followed by a mailed copy of the complaint and summons. Trial Rule 4.1(A)(3) requires delivery to the party's "dwelling house or usual place of abode." Trial Rule 4.1(B), however, states that service under TR 4.1(A)(3) requires separate service by first class US mail to the party's "last known address." These are not synonymous concepts, and the Taskforce recommends correcting this inconsistency to reflect actual practice and to make clear that the mailed copy must also be sent to the dwelling house or usual place of abode.

Trial Rule 4.1. Summons: Service on individuals

(A) In General. Service may be made upon an individual, or an individual acting in a representative capacity, by:

(1) sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter; or

(2) delivering a copy of the summons and complaint to him personally; or

(3) leaving a copy of the summons and complaint at his dwelling house or usual place of abode; or

(4) serving his agent as provided by rule, statute or valid agreement.

(B) Copy Service to Be Followed with Mail. Whenever service is made under Clause (3) or (4) of subdivision (A), the person making the service also shall send by first class mail, a copy of the summons and the complaint to the address shown on the summons for service of process ~~last known address~~ of the person being served, and this fact shall be shown upon the return.

Permit Use of Automated Certificates of Service

Automatically generate certificate of service for documents filed and served via the Indiana Electronic Filing System.

The Indiana Supreme Court launched the Indiana E-filing System (IEFS) in Hamilton County in 2015 and completed the statewide implementation in 2019. E-filing is mandatory for attorneys and optional for non-attorneys. [20]

Attorneys and self-represented litigants must certify that service has been made and, for each party served, specify the date and means of service. [21] The rules do not include examples or explicit language for the certification.

The Indiana Office of Court Technology prepared a tutorial to explain certificates of service for e-filed documents, in response to questions from filers regarding whether the certification is still required and how to describe e-service. The tutorial offers two examples of properly drafted certificates of service and one example, based on actual filings, of a poorly drafted certificate of service.

At least one other state worked with its e-filing vendor to automate certificates of service. The new process was piloted with the Texas Supreme Court and has since been

implemented in all trial and appellate courts statewide. The Texas e-filing system automatically generates and appends a separate Certificate of Service to the lead document of each filing, listing, for each party and service contact, the recipient's name, email address, timestamp of service, and the service status as of the time the page is generated. Texas is also reportedly considering adding a hyperlink in the certificate of service which would present an updated report, for each recipient, of the delivery status and whether the document has been opened. [22]

Automating certificates of service would improve the efficiency and accuracy of the information. E-filing service providers could generate the certificates of service for their filings, in the absence of a common method. The e-filing system has the details of electronic service, including each recipient's name, email address, timestamp, transmission status, and whether the recipient opened the served document(s). In addition, the e-filing system could provide options for service to be selected by the filer at the time of filing. Because the filer cannot add any value to the certificate of service beyond what the system can provide, greater accuracy and efficiency would be achieved. Automating the process would not only reduce the effort of the filers, but would reduce the likelihood of a filing being rejected due to a missing or incorrect certificate of service. This could reduce time spent by court staff in reviewing and accepting filings.

Attorneys and parties would continue to provide certificates of service for documents that they serve outside of the IEFS. Some of Indiana's e-filing service providers offer to print and serve documents in hard copy (e.g., by U.S. mail, process server). The service provider could automatically generate the certificate of service under those circumstances.

Self-Represented Litigants

In 2017, 1.2 million Hoosiers had family incomes below 125 percent of the federal poverty line.[23] Eighty percent of these low-income Hoosiers experienced at least one civil legal problem during 2016, and only one in four of their households turned to lawyers for help with those civil legal problems. In other words, there is a significant presence of Self Represented Litigants (SRLs) in Indiana's courts. The goals of the recommendations below are to assist SRLs in navigating the legal system and to create efficiencies with courts and court staff in managing cases involving SRLs.

A Self-help Center Should be Established in Each County

The Supreme Court should include in its budget funds for the establishment of County self-help centers.

In 2016, more than 116,000 civil cases in Indiana involved at least one SRL, accounting for 25 percent of all civil cases filed in Indiana courts.[24] The percentage of civil cases with SRLs increased 33 percent during the past decade. Yet, the numbers of SRLs are systematically underreported due to inconsistencies in how they are counted. The need for better tracking and reporting of these numbers is critical. The scope of the issue cannot be understood until we have a statewide baseline for determining who will be counted as an SRL. For example, is someone counted as an SRL who is never represented during litigation, who is represented only at critical points, or who has an attorney appear to file the case only to withdraw immediately thereafter?

To facilitate collection of relevant SRL information for courts to achieve increased efficiency, improvements are needed in data analytics services. One such improvement would be adopting the National Open Court Data Standards, as recommended by the National Center, subject to an assessment of the technical feasibility and cost considerations as discussed in the Technology section below.

While additional data are needed, the available information demonstrates that the number of cases featuring at least one SRL is large and growing. The National Center 2015 Landscape of Civil Litigation study, which included Indiana data, suggests that 76% of civil cases included at least one SRL. The need for assistance is beyond the capacity of Indiana's system of civil legal aid. Indiana's system of legal aid and pro bono providers

can fully serve only three out of every 10 persons seeking help due to insufficient resources.

Judicial officers and clerks of court report that SRLs usually require additional assistance and have difficulty understanding and following court rules, putting pressure on court personnel and leading to progression delays and more contested hearings. Establishing self-help centers in each county will help alleviate that pressure and assist SRLs in correctly preparing pleadings and obtaining legal information. Working with local bar associations to recruit attorneys willing to volunteer their time in the self-help centers would also be of great assistance.

Self-help centers may take the form of a designated room within the judicial center or as a kiosk available to the public that allows users access to court forms for printing and/or direct electronic filing. The Indiana Bar Foundation (IBF) was recently awarded a $13.1 million grant from the Indiana Housing and Community Development Authority to launch a series of initiatives to help guide Hoosiers facing housing problems through the civil legal system.[25] One of these initiatives will be to create kiosks where tenants and landlords can access self-help forms and legal navigators that will provide legal information to SRLs. Partnering with the IBF to expand those kiosks to include access to all the resources available through www.indianalegalhelp.org would be an ideal way to launch this program of self-help centers. The funding to the IBF is a two-year grant, so maintaining these self-help centers will require ongoing support from the Supreme Court's budget and other funding sources.

This Report agrees with The Family Law Taskforce Report, which recommends (p. 40) duplicating the free legal clinics operating in several counties so that in-person and virtual clinics, help desks, or self-help centers are available in every courthouse in the State.

A working group should be established to implement this recommendation, including investigating sources of funding for the self-help centers.

SRL Best-Practices Toolkits Should Be Developed and Provided to All Indiana Judges

Giving judges instant access to relevant SRL information will increase efficiency and assist SRLs.

Developing an SRL best-practices toolkit for courts and court personnel to assist them in responding to the increase in SRLs in court will be key to reducing backlogs and aiding SRLs. The toolkit would include: a bench card with information relevant to many SRL hearings, training resources on providing legal information rather than legal advice, legal aid and pro bono brochures, and other resources. The proposed bench card may include the following: limitations on garnishments, Indiana Code of Judicial Conduct Rule 2.2 (particularly comments 4 and 5), best practices in remote hearings, protocols for verifying service, and information on www.indianalegalhelp.org. Such steps were also recommended in the Report from the Family Law Taskforce, (p. 28-31), and this Report joins in that recommendation.

Limited Scope Representation Should be Expanded in the Indiana Rules of Court

The Supreme Court should direct the Committee on Rules of Practice and Procedure to review and expand Rules allowing limited scope representation.

Limited scope representation is a tool to help SRLs who can afford some representation but not traditional, full representation—a tool that is underutilized in Indiana. While Indiana Rule of Professional Conduct 1.2(c) allows attorneys to represent clients on a limited basis, additional guidance is needed for attorneys and their clients when engaged in limited scope representation. By addressing the limited scope representation in the Rules of Professional Conduct and the Trial Rules, attorneys and clients can be better informed as to their options and responsibilities when engaged in limited scope representation.

Amendments to the rules should address ghostwriting (when a lawyer drafts or edits a court document and the client adopts the document as their own work);[26] the need to enter a formal appearance or identify the drafting attorney on the pleading;[27] availability and operation of limited appearances; and how opposing counsel should communicate with the opposing party and attorney engaged in limited scope representation, *i.e* the application of Rules 4.2 and 4.3 of the Rules of Professional Conduct.

The American Bar Association has issued a Report of the Modest Means Task Force entitled Handbook on Limited Scope Legal Assistance, which provides detailed guidance that may be used to develop a program on limited scope representation and rules

changes for limited-service practices. Bar associations and civil legal aid providers can work to create forms to assist attorneys in limited scope representation.[28]

This recommendation assists attorneys who would like to expand their practices, SRLs who can hire attorneys on a limited basis dependent on their means and needs, and the courts, as it will permit counsel to assist with discrete discovery matters or attend hearings in a targeted manner.

The availability of limited scope representation also should be better publicized. After rule changes defining/explaining limited scope representation are implemented, then there should be an educational campaign directed at trial court judges and attorneys across the state regarding limited scope representation. The advantages of limited scope representation also should be publicized.

A working group should be established to implement this recommendation.

Forms Located on www.indianalegalhelp.org Should be Accepted by All Courts in Indiana

The Supreme Court should issue an order requiring all Indiana courts to accept these filings.

Streamlining is important to helping SRLs successfully navigate the judicial system. Complex local rules and forms are a barrier to that goal. Courts are encouraged to refer SRLs to www.indianalegalhelp.org for appropriate guidance. The forms on www.indianalegalhelp.org are reviewed and vetted and should be accepted by all courts to facilitate the goal of improving access to justice for SRLs. While courts can continue to accept any local forms as appropriate pleadings, SRLs should be able to rely on what is available on www.indianalegalhelp.org, so that they are not discouraged from pursuing their cases by having forms rejected. This was also a recommendation in the Report from the Technology Working Group, and this Report concurs in that recommendation.

Online Guided Interviews with Automated Form Generation Should be Available on www.indianalegalhelp.org

These interviews and forms should be in multiple languages and in plain language.

Common forms, such as a Complaint, an Appearance, an Answer, and a Motion for Extension of Time should be prepared through plain language questions the SRL can answer with information needed to automatically populate the form pleading.

SRLs cannot navigate the system if they cannot understand forms and information provided to them. Many people have difficulty understanding legalese, and it is a barrier to SRLs successfully completing their cases. Multimedia instructions, including graphics, text, and videos, should be used to help guide SRLs with information about their legal issues. It is essential to provide forms and info in multiple languages commonly spoken in Indiana, including Spanish, Burmese, Vietnamese, and French.

Courts and other stake holders in promoting access to justice can assist in developing funding sources to ensure this work is done.

SRLs Should be Able to Electronically File Petitions and Pleadings Via www.indianalegalhelp.org

Electronic filing streamlines the process for SRLs and the courts.

Electronic filing is saving time and money for courts, and it allows parties to have immediate access to information online about their cases. The forms generated through plain language automated form generation should be able to be filed electronically via www.indianalegalhelp.org. Each of the parties could access the forms through the web-based application, which would allow for saving the completed form and could be amended and accessed by permission. Further, electronic service would save SRLs time and money required to copy and mail their filings to opposing parties.

This was also a recommendation in the Report from the Family Law Taskforce. This Report joins in making that recommendation and encourages further development toward this goal.

The Indiana Supreme Court provides e-filing services to courts in all 92 counties and the State's three appellate courts. Attorneys must e-file in all cases; paper filing is not allowed. Since the service was launched in 2015, SRLs have had the choice to e-file using the same public e-filing service providers available to attorneys.

The Coalition for Court Access, through the Indiana Bar Foundation, has explored incorporating e-filing into the guided interviews available at www.indianalegalhelp.org. (Attachment D) Software development requirements have been discussed, which led to

the identification of additional questions: notarization and customer support. Notarization of a document interrupts the guided interview before a document can be e-filed. Notarization would need to be eliminated to enable e-filing, or a remote notary service would need to be integrated into the guided interview.

Also, each commercial e-filing service provider offers technical support to the filers using their service. Someone–perhaps the self-help centers, described above, or a central court navigator service–would need to provide technical support for SRLs who e-file through www.indianalegalhelp.org.

A working group should be established to implement all of the recommendations relating to www.indianalegalhelp.org.

The Supreme Court Should Adopt the Family Law Taskforce's Proposed Rule on Public Assistance

This Proposed Rule is found at Appendix G of the March 2021 Family Law Taskforce Recommendation, and this Report recommends adopting this rule. Attorneys and court staff have concerns about crossing the line from providing legal information into providing legal advice. This rule clarifies what is legal advice versus legal information. The purpose of this rule is to assist court staff and other non-lawyer intermediaries in answering questions posed by a member of the public about the operation of the judicial system. The rule is intended to enable court staff and intermediaries to provide the best possible service and to provide accurate information without giving legal advice.

Alternative Dispute Resolution

Indiana historically has been a leader among states in embracing Alternative Dispute Resolution (ADR) and adopting laws and rules governing its use.[29] Indiana should take further leadership in implementing strategies to encourage voluntary use of a wide variety of ADR methods to achieve the cost-efficient, prompt and fair resolution of civil disputes. The recommendations below seek to reduce barriers to voluntary use of ADR, including a lack of information about ADR among self-represented litigants (SRLs) and the out-of-pocket costs of paying private neutrals for their services.

Provide Litigants with an ADR Information Sheet when an Answer is Filed

The Taskforce recommends distribution of an ADR Information Sheet, such as the one included in **Appendix H**, that briefly summarizes mediation and other common forms of ADR and provides references to resources for litigants interested in alternative forms of dispute resolution by such means as appropriate to inform attorneys and SRLs about ADR. The ADR Information Sheet could, for example, be sent to the parties by the court after an Answer is filed or with an initial scheduling order. The ADR Information Sheet could also be published online and made available to the public as a self-help resource for SRLs. The ADR Information Sheet should plainly state that "requesting or participating in alternative dispute resolution does not stop the lawsuit or change or affect deadlines ordered by the court or provided by the Trial Rules."

Successful resolution of disputes through ADR could not only serve to lighten caseloads for our courts, but also may achieve earlier disposition of cases, reduce costs to the parties, and provide more control by the litigants over the outcome, leading to greater satisfaction with the result and improved perceptions of lawyers as problem-solvers.

While acknowledging that ADR is not suitable for every dispute, the goal with this recommendation is to inform litigants of the advantages and disadvantages of ADR and of the various forms of ADR available to them. It would be an introduction of ADR to SRLs and a refresher to attorneys and judges of both the advantages of ADR generally and the variety of ADR methods. While mediation is by far the most widely used form of ADR, other methods may better suit a particular dispute or set of litigants. The ADR Information Sheet would describe common forms of ADR, such as arbitration (binding

and non-binding), mediation, neutral evaluation, settlement conferences, and document review arbitration.

The early dissemination of brief but relevant information on ADR should further the objective of making ADR more widely utilized.

Utilize Senior Judges and/or Magistrates to Conduct Settlement Conferences

Empirical research on ADR has consistently shown a high level of participant satisfaction in mediation when compared to adjudication and other forms of ADR.[30] This is consistent across a wide spectrum of disputants of differing age, education levels, gender, and experience in litigation. Mediator neutrality and the opportunity for participants to tell their story correlate with higher levels of participant satisfaction with the fairness of the process. *Id.*

Mediation has and will continue to be an effective alternative for resolving many disputes that end up in litigation. Successful mediations spell the voluntary resolution of disputes, saving court resources for more difficult situations and disputes. Accordingly, the Taskforce has sought to develop strategies to make mediation more widely available to civil litigants in our state courts. Fortunately for Hoosiers, there are many skilled mediators who are available to provide free or low-cost mediation to litigants who may not otherwise be able to afford mediation. These human resources coupled with videoconferencing capabilities for remote mediations provide an opportunity to make mediation more widely available to litigants in every part of the state.

There are currently 114 senior judges who, through both training and experience, are well-suited to conduct mediations remotely at little additional cost to the state.

Recommendations Regarding Registered Mediators

- Incentivize registered mediators to participate in pro bono mediation
- Functionality should be added to the Mediator Registry so that it is searchable to identify mediators who have volunteered to take cases on a no-charge basis.
- To encourage mediators to conduct mediations at no cost, they should receive one hour of CME per calendar year for completing at least one free mediation during the calendar year.

Indiana is fortunate to have 959 registered mediators in a searchable database maintained by the Office of Admissions and Continuing Education. The Indiana Mediator Registry is a helpful resource listing these trained mediators, many of whom are not regularly conducting mediations and may embrace opportunities to sharpen and maintain their skills by conducting more mediations. These mediators are a resource that could be used to make mediation more widely available to Hoosiers in a dispute.

At the time of the mediators' registration, they are asked if they will accept pro bono or no-fee mediations. Asking this question of mediators with each annual registration would give the opportunity for mediators who subsequently decide they want to offer pro bono services to notify the court of their availability. However, the Mediator Registry is not currently searchable for mediators who are available on a no-fee basis. Since the information has already been collected, it should be a simple change to allow searches for mediators willing to offer their services for free. Such search functionality would allow litigants, lawyers, and judges to find mediators willing to mediate without charge and enhance the availability of mediation throughout the state in cases where the parties otherwise lack sufficient resources to engage a mediator.

In addition, to encourage mediators to provide their services *pro bono*, registered mediators should receive one hour of Continuing Mediation Education (CME) credit per year if they complete at least one pro bono mediation during that year. Registered mediators are required to complete six hours of CME per three-year cycle to maintain their registration under Indiana ADR Rule 2.5, so mediators would be able to satisfy half of their required CME through pro bono services.

Providing CME credit would also help registered mediators maintain and sharpen their skills. Being an effective mediator requires skills that are improved through practice. Yet, the Mediator Registry includes a significant proportion of mediators who report having mediated few, if any, cases. These mediators in particular would benefit more from experience than from further education. Substantive knowledge, while helpful, is not generally required to be an effective mediator, and rules and procedures surrounding mediation change infrequently. Consequently, once a mediator has completed the initial 40-hour training required for registration, experience is the best teacher in helping mediators improve and maintain their skills. Granting one hour of CME for taking a pro

bono case thus aligns with the objective of developing more competent and effective mediators.

The Taskforce has consulted with the Indiana Commission for Continuing Legal Education concerning these proposals relating to the Mediator Registry and CME. At the Commission's October 21, 2021 meeting, the Commission voted unanimously to support these proposals. In doing so, the Commission specifically recognized a mediator's "skills [] are improved only through practice," and that offering mediators one hour of CME per year for completing a free mediation will create "an incentive for them to sharpen their mediation skills while providing a service to the community." A copy of that correspondence is attached to this report at **Appendix I.**

Prompt steps should be taken to increase diversity among registered mediators and other neutrals

In October 2021, a committee of interested individuals was formed to study and make recommendations regarding diversity among civil mediators and arbitrators in Indiana. The group is called the Committee for Diversity, Equity and Inclusion in Alternative Dispute Resolution in Indiana. The committee functions as a working group for the newly formed Indiana Supreme Court Commission on Equity and Access. The committee's stated goal is to increase diversity in the Indiana civil alternative dispute resolution area with particular emphasis on black/brown attorneys through awareness, messaging, financial and practical assistance, and education. The American Bar Association Resolution 105 – Diversity in ADR will serve as a working guide for the committee. Ideas and initiatives being considered by the committee include:

- Conducting a three-hour CLE on alternative dispute resolution focused on diverse individuals;
- Providing opportunities for diverse lawyers to shadow current mediators;
- Reviewing Marion County lawyers who are on the courts' lists of mediators to identify black and brown lawyers;
- Identifying resources and providers who can be encouraged to use diverse mediators;
- Identifying methods to increase the selection of black and brown mediators

- Determining what individuals, organizations, and institutions can do to promote diversity in civil alternative dispute resolution;
- Potentially creating an Indiana Chapter of the National Association of Certified Mediators or other independent certifying organization that is accredited by the Commission for Continuing Legal Education and include black and brown individuals in leadership positions;
- Determining methods to provide financial assistance to black and brown lawyers who apply to be certified mediators in Indiana; and
- Increasing the trial courts' awareness of black and brown mediators to encourage their inclusion on courts' lists.

This Report fully supports the goals and initiatives of The Committee for Diversity, Equity and Inclusion in Alternative Dispute Resolution in Indiana. Increasing diversity among neutrals in Indiana, particularly mediators, will further the goals of increasing utilization of alternative dispute resolution and potentially expanding the number of pro bono mediations as well.

Recommendation Regarding the Rules for Alternative Dispute Resolution

Revisions to the Indiana Rules of Alternative Dispute Resolution are recommended to encourage use of a wide variety of ADR methods that are not specifically described in the present rules beyond (in some instances) brief mention in ADR Rule 1.1. The current rules specify procedures for mediation (Rule 2), arbitration (Rule 3), mini trials (Rule 4), summary jury trials (Rule 5) and private judges (Rule 6), but not any other forms of ADR, including ADR methods that are presently more frequently used than some of those specifically described in the rules. The promulgation of specific rules relating to certain types of ADR implies that they are favored or recognized in a way that other methods are not. Parties should be empowered to undertake any voluntary process that assists them in resolving their disputes, provided they understand that their participation in that process and the agreed resolution is voluntary. Mediation and arbitration stand on a different footing given their wide use, and it is beneficial to maintain specific rules relating to those ADR methods. The text of proposed ADR Rule changes can be found in **Appendix J** of this Report.

Rule 1 of the ADR Rules

ADR Rule 1 should refer to types of ADR that are not presently mentioned, including binding arbitration, documents-only arbitration (whether binding or non-binding), and online arbitration and should clarify that the means of ADR referenced in the Rules are not exhaustive. Innovative new forms of ADR, including online ADR, should be encouraged.

Currently, Rule 1 mentions a number of ADR platforms that are not commonly used, while omitting other current ADR methods altogether

Rule 1.1 presently suggests that the only "recognized" methods of ADR are listed or described in the ADR Rules. Innovation concerning ADR, including use of online methods, should be encouraged, and so revisions are proposed to Rule 1.1 to empower parties to find a method of ADR that best suits their needs.

In keeping with the goal of encouraging innovation in ADR methods and broadly encouraging their use, a change in Rule 1.5 is proposed to extend immunity more broadly to neutrals assisting in any form of ADR.

A change to ADR Rule 1.6 is proposed to clarify that the prohibition on ordering litigants to engage in binding ADR without their agreement applies generally in any type of ADR in which the neutral or ADR panel would be rendering a binding decision.

Rule 2.5(D) of the ADR Rules

A modification of ADR Rule 2.5(D) is proposed to permit registered mediators to receive one hour of continuing mediation education credit for performing pro bono mediation (see explanation above).

Rule 3 of the ADR Rules

ADR Rule 3 applies to both binding and non-binding arbitration. The Indiana Supreme Court ADR Committee has proposed a change that would make the rule applicable to non-binding arbitration only. This Report recommends that the rule remain unchanged.

Binding arbitration is typically sought by parties who wish to avail themselves of the speed and efficiency of arbitration as compared to litigating in state court. In many

instances, such parties will agree to the case administered by one of the various companies/organizations that offer arbitration, such as the American Arbitration Association or the National Arbitration Forum. However, there are many instances where parties may not be able to agree on a particular arbitration forum, but nonetheless want to utilize binding arbitration to resolve their dispute. If ADR Rule 3 is left applicable to binding arbitration, parties will have an additional forum for the timely and efficient resolution of their cases.

Parties should have an option under ADR Rule 3 to have cases decided by submission of "documents only" with no oral hearing

While cases to be arbitrated can be quite complex and involve large sums of money, many cases are low in value and lack complexity. The parties should be able to opt for increased speed and cost-efficiency in resolving cases with low value and little complexity. Documents only arbitration is an emerging method for dealing with such cases. The American Arbitration Association, JAMS ADR, and FORUM, are examples of popular ADR platforms that have an option for documents only submissions to the arbitrator(s). In opting for documents only submissions, the parties would agree to waive any oral hearing in favor of the arbitrator(s) resolving the matter by review of documents submitted by the parties. Such documents submitted may include pleadings, documentary evidence, witness affidavits, and copies of applicable case law. Documents only arbitrations save on travel costs and other expenses, while decreasing conflicts and issues associated with oral hearings. They are particularly useful for certain types of contractual disputes.

Rules 4, 5 and 6 of the ADR Rules

ADR Rules 4, 5, and 6 give undue emphasis to forms of ADR that are rarely used.

The proposed revisions would delete ADR Rules 4 (mini trials), 5 (summary jury trials) and 6 (private judges) in their entirety. These methods are seldom used, and as explained above, describing these methods of ADR at greater length in separate rules implies that they are preferred over other methods more commonly used in the present environment. Each of those methods of ADR would still be listed in ADR Rule 1.1, and

thus the proposal to remove the specific procedures in ADR Rules 4, 5, and 6 is not intended to affect the use of these forms of ADR.

Technology

Technology is continually reshaping how courts, lawyers and litigants conduct litigation. Technological advances and change will only accelerate in the future, taxing our abilities to make cost-effective, strategic investments in technology and to implement them. Technology has been and will continue to be a primary driver of innovation and change and it should continue to be a priority regularly to evaluate how improvements in technology could make civil justice more affordable and available to all Hoosiers.

Improve Data Analytics and Governance Through NODS

Enhanced use of technology would not only assist Indiana trial courts in improving day-to-day case management, but information technology and data analytics can help guide policy and measure progress across the entire civil justice system. In Call to Action, the Conference of Chief Justices recommended that regular collection and use of standardized data about case management would enable court leadership to objectively measure the effectiveness of reform efforts, to inventory and analyze existing civil dockets and to foster public trust through increased transparency and accountability. (Recommendations 10.3, 10.4, 10.5.)

The Indiana Supreme Court took a major step in modernizing court infrastructure by implementing e-filing and Odyssey throughout the state. Use of that common system in all 92 counties lays the necessary foundation for harnessing data about civil litigation and enabling its use to better manage individual cases and civil litigation generally in our courts. Further progress is needed to fully realize the benefits of data analytics.

Data analytics would allow the Court to better leverage and use data to inform future decision-making and resource allocation. Data governance ensures that data are strategically and efficiently managed to ensure the right data are available to meet the needs of users and the Court for managing cases, policy-making and planning.

It is also noteworthy that the benefits of data analytics are not limited to civil litigation, although that is the focus here. Insights could likewise be gained into improvements in the criminal justice system.

The Data Governance and Policy Guide (the "Data Guide") issued in 2019 by the National Center (p. v, 1) states:

The public and justice partners increasingly depend on ready access to data, and accurate and timely data are essential for public trust and confidence in the judiciary. Data are now strategic assets of the courts and courts need strong data governance policies and practices.

* * * *

Data are strategic assets for courts, increasingly necessary not only for the operation of the court and management of cases, but also for strategic planning, developing policies and budgets, and improving court performance. This is a significant shift from the view of data existing primarily as by-products of case processing or court management.

The Data Guide from the National Center provides a helpful roadmap for creating and maintaining good data governance policies and practices. Consistency is key. Without consistency in the data collected, including consistency in definitions, meaningful comparisons and statistical analysis cannot be undertaken. *See*, Data Guide, p. 2. The Data Guide posits the following situation to illustrate how use of inconsistent definitions can lead to faulty conclusions and misallocation of funding:

- One county closes cases at disposition and reopens them if a new petition is filed. A neighboring county keeps domestic cases open in anticipation of continued litigation. Funding for the court is based on the number of new cases opened plus the number of cases reopened.

The Data Guide recommends using cover and disposition sheets to make it easier for clerks to know what data they should enter. (p. 18). Simplifying the clerk's data entry increases the likelihood that the statistics will be complete and accurate. AI could automatically interpret data from the cover and disposition sheets to validate the information captured manually or to populate the statistical information automatically.

Tracking the increase in SRLs provides another example of the need for uniformity in data collection. The 2019 Indiana Civil Legal Needs Study found that from 2006 to 2016, the percentage of civil cases with SRLs increased by 33 percent in Indiana courts—a significant shift that directly affects the operations of the civil justice system. (p. 18) The

Legal Needs Study used data published in Indiana's Judicial Services Reports in which a case is deemed to involve a SRL if a party proceeds without attorney representation at any point in the case while the case remains open. However, the authors of the Legal Needs Study noted (p. 22) that litigants who are defaulted are not counted as self-represented and that likely results in undercounting SRLs, particularly in consumer debt collection matters. This calculation aligns with the Guide to Statistical Reporting (p. 39), published by the Court Statistics Project (CSP), a collaboration of the Conference of State Court Administrators and the National Center. The Taskforce recommends that courts track separately the number of cases with a default judgment where the plaintiff was represented and the defendant did not appear.

Effectively monitoring that trend and meeting the resulting challenges posed by the growing number of SRLs requires accurately and consistently counting SRLs in all Indiana courts—an issue further addressed in the Self-Represented Litigants section of this Report above.

Judges, attorneys, litigants, researchers, and the public at-large would benefit from improved data collection and reporting. More robust information would then be available to drive improvements in court processes. In addition, transparency and accountability would foster public confidence, which is essential to a well-functioning civil justice system.

A central consideration in a data governance program is what data are needed to fulfill the Court's purposes. Per the Data Guide (p. 10), such purposes could include:

- Maintain accurate court records;
- Manage cases;
- Inform judicial decision-making (e.g. pre-trial release decisions, risk assessments, and sentencing in criminal cases; adoptions in family cases; and risk assessments in delinquency cases);
- Inform policy;
- Plan and monitor budgets;
- Request resources from funding organizations or grantors;
- Measure performance;

- Increase efficiency and/or reduce costs;
- Comply with laws or rules.

Fortunately, the National Center has developed a national standard for data elements tracked by a case management system, the National Open Court Data Standards (NODS). NODS provides a comprehensive set of data elements relating to civil case dockets including the nature of the cases, the progress of the cases, hearings, orders, and dispositions. A spreadsheet and data map is available from the National Center. Much of the NODS data is already being collected as part of the Odyssey case management system, but other data elements would have to be added and the information entered into the system by filers and court staff.

There are major benefits of adopting a national standard for data collection. The National Center has observed in their State Court Guide to Statistical Reporting, "Being able to put each state's caseload in a jurisdictional, regional, or national context provides useful insights that inform policy, budgetary, and court management decisions." (p. 1). It would allow policy and procedure to be more effectively guided by the experience of other states. There is much to be gained from learning from reform efforts in other states, but those lessons may not apply if the caseloads and other conditions in those states differ in meaningful ways from Indiana. National standards allow for more targeted comparisons in states or areas that more closely resemble Indiana.

Implementing NODS is not, itself, the goal. Rather, NODS offers a tool to define information to allow more effective comparison of results across jurisdictions. Referring to NODS specifications may save the Court time when designing new features, compared to designing a data model from scratch. Improving analysis and reporting capabilities is a high-priority goal.

The Taskforce has not undertaken a study of the feasibility and costs of adopting NODS or similar data standards in Indiana. However, this Report recommends that the Court form a committee or group with the requisite technical expertise and knowledge to undertake such a study and make a more specific proposal to the Court. Such work should be undertaken in the context of the Court's larger policy and protocols for data governance, which also should be reviewed in conjunction with these efforts.

Consider Benefits of Artificial Intelligence

One area of technological innovation the Taskforce did investigate was the availability of artificial intelligence (AI) that could improve the efficiency of our courts, including by automating processing of routine and uncontested matters. It is important to distinguish use of AI to automate and streamline processes from its use in substantive decision-making concerning the merits of controversies which should always remain with our dedicated and knowledgeable judiciary. Specifically, the Taskforce considered what applications may be available to complement the statewide case management system, Odyssey. Courts in Palm Beach County, Florida, for example, are presently using AI to read documents e-filed by attorneys, decipher the type of document and filing code, and process them automatically into the case management system. Known as robotic process automation, this application of AI has the potential to reduce manual effort and streamline workflows for routine filings. For court customers, AI can help improve the e-filing experience by validating the documents and related data before the filing is submitted.

Although AI has proven to be effective in certain applications used by private companies and law firms to control legal costs, our investigation did not identify any AI applications that the Taskforce could recommend for the courts. Nonetheless, AI continues to be developed, and it is likely that AI applications will be developed in the future that could be a cost-effective improvement for our courts. AI has the potential to interpret case management records and documents into a data warehouse for advanced analytics.

In the near term, AI is likely to have a more transformational impact on the practice of law than in the administration of the courts. This evolution will be driven primarily by the attorneys, customers, and vendors in the legal technology market. Such developments bear watching and evaluation by an advisory panel of experts. For example, courts may be able to indirectly contribute to evolution in legal services by exposing data or altering processes to enable AI-driven features in legal technology.

Establish Permanent Technology Working Group

Technology was not a major focus of the Taskforce because the Indiana Supreme Court formed a Technology Working Group as part of its Innovation Initiative with members

who have technological expertise. In today's environment, identifying and assessing new technologies and applications requires a level of expertise that the Taskforce largely lacked. Nonetheless, the Taskforce believes this Report would have been incomplete without emphasizing the importance of making wise investments in the courts' information technology and IT infrastructure to improve efficiency, fairness, accountability, and transparency in the civil justice system.

The Technology Working Group was established to "analyze the research on court reform, assess the impact of innovations in other states, [and] identify innovative strategies for significantly improving court processes[.]" The group included attorneys with technology expertise in private practice, technology professionals from the public and private sectors, and university professors in business and law. This group, or a similar one, could provide advice, conduct research, and suggest improvements over time. The group's role should be advisory in nature, not to provide oversight, governance, or management.

The Technology Working Group's Recommendations Concerning Court Technologies Should Be Adopted

The Taskforce reviewed and considered the report of the Technology Working Group and supports the recommendations in the report concerning ways courts should use technology to better serve users of our courts and the public at large. Many of those recommendations have either been implemented or are being tested as part of pilot programs.

One of the more intriguing suggestions involves the creation of an online triage portal for users of our courts including SRLs. The portal would incorporate natural language processing and AI to help guide court users to the information and forms they need to accomplish their legal objectives. Technology Working Group Report, p. 54. The Taskforce supports the efforts of the Coalition for Court Access and the Indiana Bar Foundation to enhance indianalegalhelp.org with the features of an online triage portal.

Appendix A: Civil Litigation Survey

Survey Results

The Civil Litigation Taskforce surveyed the Indiana State Bar Association, Indiana Trial Lawyers Association, and the Defense Trial Counsel of Indiana for feedback on civil litigation reform. The Taskforce received 325 responses from attorneys on ideas to improve process in eleven specific areas; 318 of those responses indicated that civil litigation was a primary part of their practice. The responses are summarized in the charts and tables below.

Would the following proposed changes to civil practice make civil litigation faster and more efficient?

Proposed change	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Further limits on the number of discovery requests (including requests for production and admission) and the duration and number of depositions	35	70	36	85	99
Assigning cases at time of filing to different pathways based on complexity and case type	55	137	81	42	10
Tighter control of case deadlines	49	131	75	59	11
Voluntary online dispute resolution at the outset of the case	40	117	91	49	27

Proposed change	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Early informal or off-the-record court intervention to resolve discovery disputes before a motion to compel is filed	91	168	30	30	6

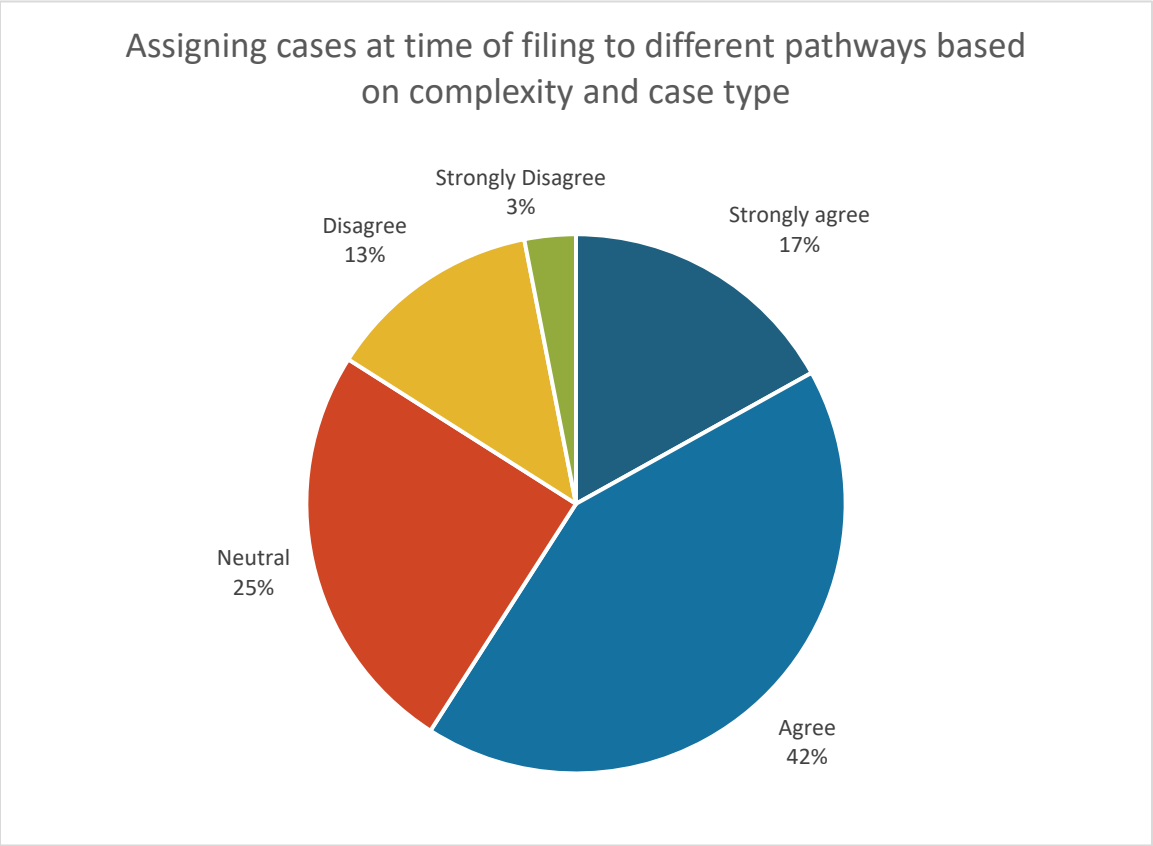


Chart Summary: Assigning cases at time of filing to different pathways based on complexity and case type

- 17% of attorneys surveyed strongly agree that assigning cases at time of filing to different pathways based on complexity and case type would make civil litigation more efficient.

- 42% of attorneys surveyed agree that assigning cases at time of filing to different pathways based on complexity and case type would make civil litigation more efficient.
- 25% of attorneys surveyed are neutral as to whether assigning cases at time of filing to different pathways based on complexity and case type would make civil litigation more efficient.
- 13% of attorneys surveyed disagree that assigning cases at time of filing to different pathways based on complexity and case type would make civil litigation more efficient.
- 3% of attorneys surveyed strongly disagree that assigning cases at time of filing to different pathways based on complexity and case type would make civil litigation more efficient.

Would the following enhanced use of technology make civil litigation faster and more efficient?

Response	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Remote hearings	162	112	22	24	4
Online dispute resolution	72	110	82	41	17
Receipt of notices by text message	28	36	94	95	70
Electronic service	142	132	36	8	3
Artificial intelligence in managing cases and filings (not in deciding cases)	21	29	155	58	60

Are the following obstacles to achieving a just, speedy, and inexpensive determination of every action?

Response	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Litigants are not being held to case management schedule and deadlines	51	130	77	59	8
Lack of uniformity and inconsistency of local rules or practices	67	133	72	48	4
Trial rules do not reflect modern practice or promote efficiency	44	93	97	81	6

In general, discovery in civil cases:

Response	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
is too expensive	32	100	76	89	23
seeks information that has little material benefit to the case	47	105	45	95	33
too frequently involves disputes that slow down the process	53	116	66	80	10
involves electronically stored information that is too costly and complicated to collect, process, produce and/or use	42	81	81	89	32

What additional methods of service of process should be explored to increase efficiency in civil litigation?

Response	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Email service on a corporation/LLC/entity	96	126	34	48	21
Email service on an individual (excluding infants, incompetents, institutionalized persons)	59	103	47	72	39
Social media service	20	25	50	116	113
Text message	20	41	39	110	109

With regard to mandatory mediation as required in some counties before trial:

Response	It is effective in efficiently resolving disputes	It often imposes an unnecessary cost	It should only be required before a jury trial
Strongly agree	95	23	31
Agree	146	68	73
Neutral	37	48	50
Disagree	36	142	117
Strongly Disagree	11	44	52

The following forms of alternative dispute resolution are effective in efficiently resolving disputes:

Response	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Non-binding arbitration following initial disclosures of documents and information at the outset of a case	7	48	93	108	66
Neutral evaluation that would allow each party to present written and/or oral summaries of its case to a neutral evaluator who would provide independent feedback on the strengths and weaknesses of...	21	117	75	74	36
Mini trials under Rule 4 of the Indiana Rules of Alternative Dispute Resolution	7	56	122	93	46
Summary jury trials under Rule 5 of the Indiana Rules of Alternative Dispute Resolution	7	52	123	95	44
Use of a special master to assist the court in managing and supervising discovery and in resolving discovery disputes before they reach the judge for decision	40	119	92	51	20

Indiana courts have provided lawyers a number of helpful forms. (See, e.g., Courts: IOCS: Commercial Courts Handbook (in.gov); Indiana Legal Help | Coalition for Court Access | Indiana Bar Foundation.) Would court-approved statewide forms such as the following make your practice more efficient?

Response	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Electronically stored information (ESI protocol)	67	172	68	9	6
Discovery preservation order	72	188	44	12	6
Case management plan	90	189	27	14	3
Protective order	59	164	75	19	4
Basic interrogatories	35	103	72	74	36
Requests for production	35	100	71	77	37
Forms to addressing outstanding discovery responses	44	147	61	54	15

Would the following changes to the Trial Rules make civil litigation more efficient?

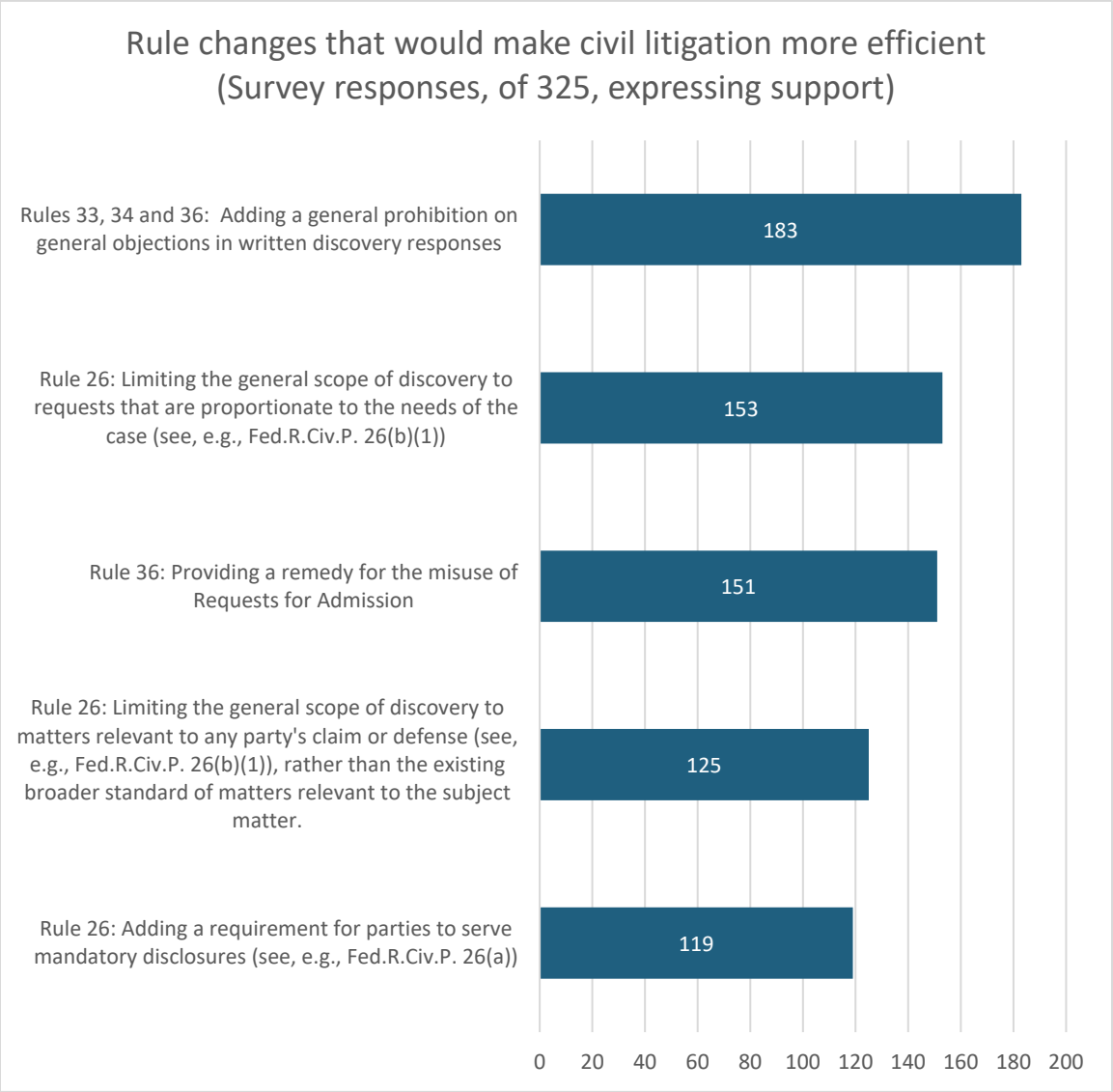


Chart Summary: Whether making specific changes Trial Rules 26, 33, 34, and 36 would make civil litigation more efficient

- 183 attorneys indicated that changing Rules 33, 34 and 36: Adding a general prohibition on general objections in written discovery responses would make civil litigation more efficient.

- 153 attorneys indicated that changing Rule 26: Limiting the general scope of discovery to requests that are proportionate to the needs of the case (see, e.g., Fed.R.Civ.P. 26(b)(1)) would make civil litigation more efficient.
- 151 attorneys indicated that changing Rule 36: Providing a remedy for the misuse of Requests for Admission would make civil litigation more efficient.
- 125 attorneys indicated that changing Rule 26: Limiting the general scope of discovery to requests that are proportionate to the needs of the case (see, e.g., Fed.R.Civ.P. 26(b)(1)) would make civil litigation more efficient.
- 119 attorneys indicated that changing Rule 26: Adding a requirement for parties to serve mandatory disclosures (see, e.g., Fed.R.Civ.P. 26(a)) would make civil litigation more efficient.

Do you have a need for a list of the following eDiscovery service providers/vendors?

Response	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Legal hold notices and preservation	17	59	151	61	21
Custodial interviews/collections	9	41	165	64	22
Document review, including use of technology assisted review, continuous active learning and/or data analysis	18	78	137	58	16
Document productions	18	89	133	54	14
Defensible destruction	15	48	153	59	22
Data protection	19	85	140	43	15

Response	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
Cybersecurity/data security incident response	23	75	145	47	14
Privacy compliance domestically (e.g. CCPA)	18	57	164	51	14
Privacy compliance internationally (e.g. GDPR)	17	36	174	58	18

Survey Comments

Comments
1) Limits on the number of discovery requests would be extremely helpful. Some counties have them; most don't. 2) Mandatory initial disclosures and form discovery requests that are not objectionable by rule would eliminate many needless disputes. 3) A state equivalent to FRCP 26(a)(2)(B)-(C) governing experts would clarify a lot of gray areas in expert discovery. 4) Judges should have a uniform framework for addressing discovery disputes; some judges make the process needlessly complicated.
Discovery should be liberal. Any rules promoting liberal discovery should be allowed.
The discovery abuse by defendants in general, and businesses specifically, is horrendous. Hiding the ball, general objections that prevent anyone from knowing if information is being withheld, lack of privilege logs, and ignoring Indiana law that promotes liberal discovery without involving the courts is rampant in almost every case. Trial judges hate discovery dispute and generally give defendants free passes. If a plaintiff fails to comply, the case gets dismissed.
Efforts must be undertaken to reduce pretrial discovery.

Comments
While we all read horror stories and watch Youtube videos of lawyers behaving badly, most competent trial lawyers propound and answer discovery appropriately and semi-timely. While discovery disputes happen with some regularity, most are resolved informally. The one (or at most two) time per year we seek Court assistance in resolving discovery disputes typically involves a legitimate dispute over an unsettled area of law (i.e. what information is or is not encompassed by certain privileges). I appreciate our Supreme Court studying certain issues with an eye on improvement. However, I suggest placing additional limitations on discovery would offer little upside and a potentially substantial downside. In my experience, discovery is largely self-regulating, with only intermittent court involvement.
This entire survey is focused on Big firm corporate discovery issues and ignores issues in injury and other tort cases. The entire survey seems to be an attempt to justify corporate defendants hiding even more relevant information behind veils of secrecy.
I think civil litigation takes too long. In the quickest of counties - on a civil litigation case - it may take 2-3 years to get a jury trial. Some counties are 4-5 years. I would suggest a system that brings any filed suit to jury trial in 18 months or sooner.
Simply tracking the federal rules for initial disclosures and early case management conferences would speed up cases significantly. The burden is essentially on plaintiffs to keep cases moving by requesting case management conferences and asking for deadlines. Michigan's newer rules provide a good model with varying requirements for initial disclosures depending on case type, an initial case management conference, and some limits on discovery without leave of court. Technology is great to facilitate litigation and Indiana is very good at this (thank you!) but I'm personally strongly opposed to the use of artificial intelligence.
Limiting discovery in any way is not the answer to expedite the civil process. The problem is the abuse is discovery delays - not cooperating in producing deponents, multiple delays in discovery responses. Formal Motions to Compel with hearings can be expensive and can delay the case further and should be used as a last resort. We need a simpler court intervention to help discovery move along before court intervention.
Question #10 is purposely written to seek agreement to remedy for non-existent problems. This is a push-pull questionnaire, not a scientifically designed poll.

Comments
I believe that mediation/alternative dispute resolution should be mandatory in nearly all civil litigation matters. A rule mandating ADR approximately six months prior to any bench/jury trial could dispose of numerous cases. Certain counties do not mandate ADR, allowing one party to dictate whether a case will go to trial or not. Parties should make good faith efforts prior to a trial to settle the case.
Defense firms have long had "contracts" with specific court reporting companies that charge exorbitant amounts for the same service as independent reporters. Additional regulation of this practice could be beneficial to Plaintiffs.
I believe we need to curb discovery abuses by limiting discovery to the controversy at hand and stopping general obstructive objections to discovery. That said, as stated before, FRCP 26 is too draconian and often leads to form over substance. I think we need to be very careful not to become so focused on inflexible rules that it undermines our (counsel and courts') primary obligation: to see that substantial justice is done for all parties. As stated by our Supreme Court, "Although our procedural rules are extremely important, it must be kept in mind that they are merely a means for achieving the ultimate end of orderly and speedy justice. [Thus, w]e must examine our technical rules closely when it appears that invoking them would defeat justice; otherwise we become slaves to the technicalities themselves and they acquire the position of being the ends instead of the means. This is e[s]pecially true in [this] case . . . where we prejudice no one [in] allowing the . . . [case to proceed] at this point." American States Ins. Co. v. State ex rel. Jennings, 283 N.E.2d 529, 531 (Ind. 1972).
It became common for opposing counsel to object to EVERY written discovery request, include discovery aimed at gathering routine information. Any rules that discourage or prohibit this practice would be helpful.
I feel the Allen County Local Rules adequately cover best practices. An early case management conference is important to tailor discovery and other legal issues to a claim's needs.

Comments
Defense counsel taking a deposition and then not having it transcribed. Defense counsel utilizing boilerplate objections that have no merit.
Regarding #9 above. Counsel needs the opportunity to augment the forms. The forms should not be the only discovery permitted. A procedure to allow the Court to hire a medical expert or a crash reconstructionist for PI cases $75K or less, to advise the court or fact-finder. Court can assess the costs for the expert. It shouldn't cost $20,000 to try a case worth $75,000 or less. Injured Ps cannot afford to pursue their cases. At the beginning of a case, Insurance companies should be required to make mandatory disclosure of all potentially applicable insurance coverage, under oath and with the entire company financially responsible for misrepresentations. Instead of attempting to hide umbrella policies or additional available policies, only to "discover" the additional policies when pressed. Sanctions imposed if they fail to do so. A standard "disclosure" packet should be implemented at the beginning of litigation. This would require the disclosure of the "basics" by each side and within a specified length of time. There would then be a Supplemental discovery that can be requested which more specifically addresses issues of the particular case. The supplemental discovery would be subject to objection and limitation. Any follow up discovery would require a showing of good cause. Within 90 days after an Answer to a Complaint is filed, a mandatory review is required by the P and D counsel where they are required to review the allegations of the Complaint and Answer. Any Allegation that should be amended, such as "allegation denied because there is insufficient information to determine whether the accident happened in ____County" is subject to revision or the assessment of costs and fees to disprove. When multiple (20-30) boiler plate defenses are listed to a Complaint then within 6 months of the filing, counsel is required to review and determine which defenses, if any, should be withdrawn. Again subject to assessment of costs and fees to disprove defenses not withdrawn. If Counsel withholds relevant evidence claiming irrelevance, then counsel and party are subject to sanction. Too often defense counsel decides what their client is required to disclose and information is withheld because counsel has decided it is not relevant. Have a Magistrate or Neutral review these issues when a complaint arises. (For smaller counties there should be a "circuit rider" neutral that covers multiple courts, or a professional mediator that serves in this capacity and makes

Comments
recommendations to the parties and to the courts.) Indiana should go to a 4-2 or 5-1 decision in jury verdicts. Having one person or two able to highjack a jury trial gives too much power to individuals holding extreme views. Jury Trials are usually prepared for 2 years and then a juror is able to anchor a case in a particular direction because they choose to exercise their veto power. The Court of Appeals and the Supreme Court have majority decisions all the time, and they are professional jurists that are unable to agree unanimously. Many of our most significant case precedents would not be the rule of law in this State if unanimity was required. Parties still have a right to an appeal if they believe reversible error occurred. It has always troubled me, that there is no problem with telling a Plaintiff that missed a Statute of Limitations deadline that they lost their right to file completely and totally, but a Defendant that blows their deadline to respond to a Complaint is almost always permitted "grace" to file a belated Answer. Some judges are offended by the mere act of filing for a Default Judgment.
Never require mediation before a jury trial date is set. This plays into the defense and insurance companies to only offer a minimal sum knowing the trial is a year away.
Billing practices for national court reporting services should be more transparent. I, as the non-requesting attorney, pay just as much or more than the attorney who noticed and took the deposition just because the insurance company who contracted with the court reporting service gets a discount for volume (that discount paid by my clients). A copy of a transcript should be a FRACTION of the cost of the original. In addition, there should be a limit on how much court reporters can charge for electronic exhibits. They are charging per-page for exhibits that were simply emailed to them, they never print, never review, never do anything with other than attach to the electronic transcript, and then my client is left to pay $400 for an 1,800 page exhibit that required no more work by the court reporter than a 2-page exhibit did.
All civil cases should be assigned a trial date at the beginning of the case. Not having one makes the case drag on too long.
Right to trial by jury should be preserved. Judicial settlement conferences as in federal court would likely be helpful in certain cases.

Comments
I think mediation is a good idea, but if both attorneys agree that it would not likely be successful and it would be cheaper and easier to just try the issue, then they should not be made to go through mediation.
I do not see any need to change trial rule 26 and the scope of discovery. In my practice, this rarely comes into play. I do see a need for parties to take their duty more seriously to candidly answer discovery in the first place and in a timely fashion. General objections to every single discovery request should be clearly banned. I think a solution to the discovery abuses going on among litigants in civil cases is that there could be an option for a case management discovery conference, which occurs after the exchange and time to answer of initial paper discovery so that issues may be addressed informally with the court (IF THERE ARE ISSUES). This could be an option elected by either party to informally collaborate and get the impressions of the court on outstanding discovery issues (IF THEY EXIST). My perception has been that may courts just don't like dealing with discovery issues and this is being taken advantage of by litigants. I do not see changes to the existing rules as suggested in question 10 as a solution to this problem. I also see some parties attempting to improperly use Protective Orders as a further way to limit legitimate discovery, delay providing discovery and shielding the public and attorneys sharing information that should not be subject to a protective order in the first place. I think we need to be able to have informal conferences with the court to discuss the propriety of proposed "protective orders" when necessary without having to have a full blown contentious hearing or wait several months for a hearing and then an order on the issue.
Mediations re Plaintiff medical malpractice claims are essentially worthless. Federal initial disclosures would be great if defendants actually provided meaningful info and documents which would streamline the process--usually defendants ignore the purpose of those rules.
None
I don't have a problem in my practice with the court process being too slow. I don't believe state courts are set up to enforce some of the rules we see in federal courts because federal

Comments
court judges have magistrates to move things along. State court judges don't have that luxury and I don't see the legislature giving us the needed funding. Med mal cases take too long but that's because of the burdensome panel process.
A draconian TR 26 like FRCP 26 is not needed. That would inhibit justice rather than promoting it.The use of a "Preliminary Statement" or "General Objections" containing boilerplate legalese frustrates the purpose of discovery and fails to comply with the rules of procedure. Karhu v. Vital Pharm., Inc., 2014 WL 11532403, at *2 (S.D. Fla. Feb. 4, 2014). The hypothetical, theoretical, or contingent possibilities contained in a "Preliminary Statement" and "General Objections" have no meaningful application to any discovery requests and are invalid. Id. See also, Lopez v. Don Herring Ltd., 327 F.R.D. 567, 591–92 (N.D. Tex. 2018). Preliminary Statements and General Objection should be banned explicitly in the rules.Boilerplate objections in response to discovery requests asserting vague, ambiguous, overbroad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence are contrary to binding precedent mandating liberal discovery to provide "parties with information essential to the litigation of all relevant issues [and] to eliminate surprise. . ." Canfield v. Sandock, 563 N.E.2d 526, 528 (Ind. 1990). The idea that general or boilerplate objections preserve any objection is "urban legend." Liguria Foods, Inc. v. Griffith Labs., Inc., 320 F.R.D. 168, 187 (N.D. Iowa 2017). Boilerplate objections make it unclear which general objection is purportedly applicable, whether the information provided is complete, whether responsive information is being withheld, and provide no clue how to narrow the issue. Id. Boilerplate objection should be banned explicitly in the rules.The practice of responding to discovery "subject to" or "without waiving" objections is "manifestly confusing (at best) and misleading (at worse)," and has no basis at all in the rules of procedure. Heller v. City of Dallas, 303 F.R.D. 466, 486-7 (N.D. Tex. 2014). "[W]hen a party responds to a discovery request, 'subject to or without waiving such objection,' such objection and answer leaves the requesting party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered." Heller, 303 F.R.D. at 487. "Subject to" or "without waiving" objections should be banned explicitly in the rules.The lack of specific requirements for a privilege log allows the defense to sweep evidence under the rug and waste time and judicial resources. TR 26 should be amended to require privilege logs that must include:the title or description of each documentthe purpose/subject matter of the

Comments
document;the identity of the author(s) of each documentsall recipients (designating who sent and received) of each documentthe capacities/roles/positions of the author and each recipient;the date each document was created;the nature of the privileged asserted, and why each document is believed to be privileged. This explanation must be sufficiently detailed to allow the court to determine whether the party has discharged its burden of establishing the requirements expounded upon in the foregoing discussion.
I would encourage the Court to not reduce or minimize a party's rights to pursue discovery. I believe Indiana has struck a good balance with regard to discovery issues. Discovery disputes are best left to the parties and the trial courts to work through. Wholesale changes are not needed.
I believe that a trial date should not be withheld until after mediation has been completed. I think it is more effective to work with an existing trial date and schedule mediation accordingly. Waiting to provide a trial date after mediation is completed just slows everything down.
I would love for there to be mandatory arbitration for cases under a certain value whether its 25k or 50K, if a litigant is upset with an award then they could appeal for a trial de novo but if they do not do better they should get hit with attorneys fees and costs.
There needs to be a greater effort at initial full disclosure of all relevant aspects of the claim/defenses and efforts at early resolution via informal/formal mediation.
Remote hearings for routine statuses or uncontested motions should be kept and the technology we spent money to buy and time learning, over the past 18 months should not be thrown out. To go back to the "old way" is throwing the baby out with the bathwater. It is so much less expensive for clients and less time consuming for all attorneys and court personnel.
The parties in general should be able to conduct discovery before any potential disclosure requirements. Also, if there is a pathway system for case management, the attorneys need to be given the opportunity to select different pathways depending upon the needs of the particular case.

Comments
It would be helpful to have some uniform rules for requiring remote depositions during time periods when courts put in place Covid-related restrictions.
Making the rules harder for litigants to get their day in court is not the answer.
In my experience discovery "proportionality requirements" have led to more objections, not less. Some defendants now object to nearly every request on the basis of proportionality without making any sort of showing regarding the expense of the production or the importance of the evidence. I now spend more time responding to discovery objections than before federal proportionality requirements went into effect. I have filed far more motions to compel and had far more discovery dispute telephone calls and hearings. These requirements allow large companies to determine for themselves what information they want to produce. Proportionality requirements improperly invade the province of the jury to determine whether a case is big or small. Proportionality requirements all large companies to hide their egregious conduct so long as they can convince a judge or magistrate that the plaintiff's case is relatively small. Small cases are entitled to full justice as much as big cases.
• The use of a “Preliminary Statement” or “General Objections” containing boilerplate legalese frustrates the purpose of discovery and fails to comply with the rules of procedure. Karhu v. Vital Pharm., Inc., 2014 WL 11532403, at *2 (S.D. Fla. Feb. 4, 2014). The hypothetical, theoretical, or contingent possibilities contained in a “Preliminary Statement” and “General Objections” have no meaningful application to any discovery requests and are invalid. Id. See also, Lopez v. Don Herring Ltd., 327 F.R.D. 567, 591–92 (N.D. Tex. 2018). Preliminary Statements and General Objection should be banned explicitly in the rules.• Boilerplate objections in response to discovery requests asserting vague, ambiguous, overbroad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence are contrary to binding precedent mandating liberal discovery to provide “parties with information essential to the litigation of all relevant issues [and] to eliminate surprise. . .” Canfield v. Sandock, 563 N.E.2d 526, 528 (Ind. 1990). The idea that general or boilerplate objections preserve any objection is “urban legend.” Liguria Foods, Inc. v. Griffith Labs., Inc., 320 F.R.D. 168, 187 (N.D. Iowa 2017). Boilerplate objections make it unclear which general objection is purportedly applicable, whether the information provided is complete, whether responsive information is being withheld, and provide no clue

Comments
how to narrow the issue. Id. Boilerplate objection should be banned explicitly in the rules.• The practice of responding to discovery "subject to" or "without waiving" objections is "manifestly confusing (at best) and misleading (at worse)," and has no basis at all in the rules of procedure. Heller v. City of Dallas, 303 F.R.D. 466, 486-7 (N.D. Tex. 2014). "[W]hen a party responds to a discovery request, 'subject to or without waiving such objection,' such objection and answer leaves the requesting party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered." Heller, 303 F.R.D. at 487. "Subject to" or "without waiving" objections should be banned explicitly in the rules.
1. We need a Trial Rule regarding the due date for responses to Motions (other than MSJ motions, which have a deadline per T.R. 56). 2. WE need a Trial Rule that if a summary judgment has been filed, and the Court has ruled on the same 3 months prior to trial, then any trial date is vacated. Allowing a judge to vacate the trial date with a pending MSJ motion does not work. This is the policy in federal court, which system really does not work.
Rule 56 standard needs to be the same as directed verdict standard, as in federal court. Throw out Jarboe and adopt Celotex. Current standard forces cases without any evidence to proceed to trial, since it is incumbent on a defendant to essentially disprove the plaintiff's case in Indiana at summary judgment stage. By far the greatest inefficiency in Indiana litigation practice.
Early mediation helps to narrow the issues. Order it early.
Gamesmanship in discovery -- withholding documents, forcing meet-and-confers and court intervention, expanding the already broad reach of discovery, lack of uniformity in how Courts handle and resolve discovery disputes -- seems to be the biggest obstacle to efficient civil litigation. Any efforts to address these would be best.

Comments
Trial Rule 36 needs to be changed. Presently, it is used as a trap, and not to narrow the issues. With the volume of e-mails that most practitioners receive, lawyers are now serving RFAs online, I imagine, hoping they will get lost in the shuffle. The Supreme Court should be proactive and change the rule to mirror any other discovery rule. If one misses the 30 day mark, like interrogatories, it should not be fatal to any claim or defense. Changing this rule would reduce discovery disputes and unfair results. Also, all discovery should still be mailed hard copy. Again, litigants are abusing the use of e-mail and this also leads to discovery disputes. Forcing lawyers to take the same to put something in the mail, encourages civility, because it forces the mind to process the communication and the discovery request being sent. We are compromising civility for expediency in serving discovery which is not a good thing.
*Mandatory disclosures early on in the life of a case would go a long way in reducing the need for protracted discovery. Failure to disclose in a thorough and timely manner should have weighted consequences.
Courts are more and more frequently allowing Plaintiff's counsel to video or audio record medical examinations. Healthcare providers are refusing to conduct them due to the burden associated with recording. Many healthcare providers have to close their offices due to privacy concerns and the implications it has on disturbing other patients. This dramatically increases the costs of the exam by having to do it after-hours, etc. Healthcare providers are also troubled by the invasive nature of video-recording. This is an imbalance in the system. A defendant is not permitted to scrutinize a plaintiff's provider in such a way because of the doctor-patient privilege. Yet, a provider conducting an exam pursuant to Rule 35 is subjected to such scrutiny. Plaintiff's counsel is also starting to demand that any and all questions to be asked during the exam or any health questionnaires to be completed during the exam be produced in advance of the exam so counsel and plaintiff can review in anticipation. This is the equivalent of asking for opposing counsel's list of deposition questions. At most, a plaintiff should be permitted to have counsel observe the exam, without interference, in case there is a concern that it will not be performed in an appropriate manner. However, by allowing recording, the Court's are essentially stating healthcare providers cannot be trusted to uphold their own oaths and ethical obligations. Rule 35 should include further direction and create a

Comments
standard any party must satisfy before recording is permitted. Records should be an exception and not the rule as it is becoming.
Any changes to the rules should give trial judges greater ability to do justice between the parties and address the particular needs of each case. Earlier mandatory disclosures will assist in earlier resolution of matters.
Limiting the scope of discovery to fit the needs/complexity of the case would make many cases much more efficient.
While civil litigation is the primary focus of my practice, I work in an administrative law field, not a jury trial practice.
Again, an early case management conference/discovery conference conducted the judge, magistrate or Special Master to impose orderly deadlines for written discovery, non-party discovery, depositions would expedite cases.
Adopt federal standard for summary judgment.
1. Interrogatories are not tailored to each case and cause the need for objections. 2. Litigants should not be able to hide social media entries. 3. Requests for Admission are not used properly and cause a objections and arguments to the court. 4. Summary Judgment standard should be eased to allow Judges to get rid of frivolous litigation.
limiting the time for a deposition to 3-4 hours is an additional suggestion.
Limiting the time for which depositions are taken to 3-4 hours.
#7 - that answer depends on the case - sometimes I like having the MSJ filed because it shows the other party what they are facing when they are not being realistic and using the process as punishment, sometimes it makes sense right away (most times it makes sense right away), if unsuccessful, we can always come back to it later. After 40 years in the practice, I can see that almost all cases are better settled than tried, and the judges we are losing are the ones with trial experience (lawyers too!)

Comments
Faster litigation should not be the only standard (ex. - remote hearings). There is value in in-person hearing, even at the status conference level for the bar and practice of law, and for the judiciary to meet and interact with the bar.
too many plaintiff firms send over 70+ ROGs (Matt Tandy) (counting sub parts) in clear violation of local rules, yet I cannot get Marion County judges to enforce the local rule. Other firms (Craig Kelley & Faultless) send over 40+ RFAs on every case, asking the same questions multiple ways. I cannot get Marion County judges to enforce local rule
Do NOT got the route of Colordao under any circumstances. We cannot afford to rely on plaintiffs to control discovery in personal injury lawsuits. We must retain the ability to subpoena information regardless of whether the Plaintiff believes it "relevant." Also: Colorado's rule requiring civil cases to be resolved within 12 months leads to abuse of process for discovery - I refer back to my complaint above. This will result in increased insurance rates for Indiana citizens for little benefit beyond the pockets of the plaintiff's bar.

Appendix B: Case Management Forms

Complex Pathway Proposed Initial Case Management Order

STATE OF INDIANA	)	IN THE _____ COURT
	) SS:	
COUNTY OF _____	)	CAUSE NO. _____
	)	
Plaintiff,	)	**COMPLEX PATHWAY**
	)	**PROPOSED INITIAL**
vs.	)	**CASE MANAGEMENT ORDER**
	)	
	)	
Defendant.	)	

1. Statement of Claims

1.1. [Insert a statement of plaintiff's claims, including the legal theories and facts upon which the claims are based. This must not exceed one page.]

1.2. [Insert a responsive statement of defendant's claims or defenses, including the legal theories and facts upon which the claims are based. This must not exceed one page.]

1.3. [Insert a list of all related litigation pending in other courts, a brief description of such litigation, and a statement as to whether any additional related litigation is anticipated.]

2. Pretrial Pleadings and Disclosures

2.1. All parties must file preliminary witness and exhibit lists by _____ [Typically, no later than 3 months from the filing of the complaint].

2.2. All motions for leave to amend the pleadings and/or to join additional parties must be filed by _____ [Typically 3 to 4 months from the filing of the complaint].

2.3. Plaintiff(s) must serve Defendant(s) (but not file with the Court) a settlement demand, by _____ [Typically no later than 4 months from the filing of the complaint]. Defendant(s) must serve Plaintiff(s) (but not file with the Court) a response thereto within 30 days after receipt of the demand.

2.4. If a party intends to use expert testimony in connection with a motion for summary judgment to be filed by that party, such expert disclosures must be served on opposing counsel no later than 60 to 90 days before the dispositive motion deadline. If such expert disclosures are served the parties must confer within 7 days to stipulate to a date for responsive disclosures (if any) and completion of expert discovery necessary for efficient resolution of the anticipated motion for summary judgment. The parties must make good faith efforts to avoid requesting enlargements of the deadline for dispositive motions and related briefing. Any proposed modifications of these deadlines or briefing schedule must be approved by the Court.

2.5. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim must notify the Court as soon as practicable.

2.6. Discovery Plan:

_____ Supplemental Discovery Plan filed herewith.
_____ No Discovery Plan in place

3. Dispositive Motions

3.1 [Select the track that best suits this case:]

_____ No dispositive motions are anticipated. All discovery must be completed by _____ [no later than 6 months from the filing of the complaint]. [Consider setting a trial date (jury or bench) at the Initial Case Management Conference].

_____ Dispositive motions are expected and must be filed by_____ [no later than 6 to 8 months from the filing of the complaint]. The parties shall address the need for sequencing of dispositive motions and the parties

shall agree a schedule for that sequencing concerning specifically identified issues.

4. Mediation

4.1. This matter is ordered to mediation. _____ is appointed as mediator. Absent leave of Court, mediation must occur prior to _____ [date].

4.2. All parties, their attorneys, representatives with full settlement authority, and other individuals necessary for resolution of all disputed issues shall be present at each mediation conference unless excused by the mediator or the Court. The Court or the mediator shall determine the individuals who shall be present at any mediation session.

4.3. At least 7 days prior to the mediation conference, each side shall submit to the mediator a Confidential Statement of the Case, not to exceed 10 pages. It shall include:

4.3.1. The legal and factual contentions of the respective parties as to both liability and damages;

4.3.2. The factual and legal impediments to settlement; and

4.3.3. The status of the settlement negotiations to date.

The confidential statement may be supplemented upon request of the mediator to both parties.

4.4. The mediator shall file a report with the Court not later than 90 days from the date the mediator was selected informing the Court of the status of the mediation process.

4.4.1. Report of Mediation:

4.4.1.1. If the parties do not reach an agreement as to any matter, the mediator shall report the lack of any agreement to the Court without any comment or recommendation.

4.4.1.2. If an agreement is reached, the mediator shall promptly report the fact of the agreement to the Court; and the agreement shall be reduced to writing and signed by the parties. If the agreement is complete on all issues, it shall be accompanied by a joint stipulation and recommendation of disposition.

5. <u>Court Dates</u>

[Insert any other matters any party believes should be brought to the Court's attention]

The Court schedules the following hearing dates:

Status conference_____

Pre-trial conference_____

Hearing on Motion to Dismiss_____

Hearing on Motion for Summary Judgment_____

Hearing on other motions_____

[The parties shall state which hearings are required].

_____ _____

Attorney for Plaintiff Attorney for Defendant

Approved and So Ordered.

_____ day of _____, 20___ _____

JUDGE

General Pathway Proposed Initial Case Management Order

STATE OF INDIANA	)	IN THE _____ COURT
	) SS:	
COUNTY OF _____	)	CAUSE NO. _____
	)	
Plaintiff,	)	**GENERAL PATHWAY**
	)	**PROPOSED INITIAL**
vs.	)	**CASE MANAGEMENT ORDER**
	)	
	)	
Defendant.	)	

1. Statement of Claims

1.1. [Insert a statement of plaintiff's claims, including the legal theories and facts upon which the claims are based. This must not exceed one page.]

1.2. [Insert a responsive statement of defendant's claims or defenses, including the legal theories and facts upon which the claims are based. This must not exceed one page.]

1.3. [Insert a list of all related litigation pending in other courts, a brief description of such litigation, and a statement as to whether any additional related litigation is anticipated.]

2. Pretrial Pleadings and Disclosures

2.1. All parties must file preliminary witness and exhibit lists by _____ [Typically, no later than 3 months from the filing of the complaint].

2.2. All motions for leave to amend the pleadings and/or to join additional parties must be filed by _____ [Typically 3 to 4 months from the filing of the complaint].

2.3. Plaintiff(s) must serve Defendant(s) (but not file with the Court) a settlement demand, by _____ [Typically no later than 4 months from the filing of the complaint]. Defendant(s) must serve on the Plaintiff(s) (but not file with the Court) a response thereto within 30 days after receipt of the demand.

2.4. If a party intends to use expert testimony in connection with a motion for summary judgment to be filed by that party, such expert disclosures must be served on the other party no later than 60 to 90 days before the dispositive motion deadline. If such expert disclosures are served, the parties must confer within 7 days to stipulate to a date for responsive disclosures (if any) and completion of expert discovery necessary for efficient resolution of the anticipated motion for summary judgment. The parties must make good faith efforts to avoid requesting enlargements of the deadlines for dispositive motions and related briefing. Any proposed modifications of these deadlines or briefing schedule must be approved by the Court.

2.5. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim must notify the Court as soon as practicable.

2.6. Expert Witnesses: Plaintiffs shall disclose experts, with a summary of opinion, no later than _____. Defendant shall disclose experts, with a summary of opinion, not later than _____. Any independent medical exams shall be completed, exchanged, and filed by these dates.

2.7. Final Witness and Exhibit Lists: Final witness and exhibit lists shall be exchanged by _____.

2.8. Discovery Plan:

_____ Supplemental Discovery Plan filed herewith.
_____ No Discovery Plan in place.

3. Dispositive Motions

3.1 [Select the track that best suits this case:]

_____ No dispositive motions are anticipated. All discovery must be completed by _____ [no later than 6 months from the filing of the complaint]. [Consider setting a trial date (jury or bench) at the Initial Case Management Conference].

_____ Dispositive motions are expected and must be filed by _____ [no later than 6 to 8 months from the filing of the complaint]. The parties shall address the need for sequencing of dispositive motions and the parties shall agree to a schedule for that sequencing concerning specifically identified issues.

4. Mediation

4.5. This matter is ordered to mediation. _____ is appointed as mediator. Absent leave of Court, mediation must occur prior to _____ [date].

4.6. All parties, their attorneys, representatives with full settlement authority, and other individuals necessary for resolution of all disputed issues shall be present at each mediation conference unless excused by the mediator or the Court. The Court or the mediator shall determine the individuals who shall be present at any mediation session.

4.7. At least 7 days prior to the mediation conference, the attorney for each side shall submit to the mediator a Confidential Statement of the Case, not to exceed 10 pages. It shall include:

4.7.1. The legal and factual contentions of the respective parties as to both liability and damages;

4.7.2. The factual and legal impediments to settlement; and

4.7.3. The status of the settlement negotiations to date.

The confidential statement may be supplemented upon request of the mediator to both parties.

4.8. The mediator shall file a report with the Court not later than 90 days from the date the mediator was selected informing the Court of the status of the mediation process.

4.8.1. Report of Mediation:

4.8.1.1. If the parties do not reach an agreement as to any matter, the mediator shall report the lack of any agreement to the Court without any comment or recommendation.

4.8.1.2. If an agreement is reached, the mediator shall promptly report the fact of the agreement to the Court; and the agreement shall be reduced to writing and signed by the parties. If the agreement is complete on all issues, it shall be accompanied by a joint stipulation and recommendation of disposition.

5. Trial

5.1. Trial is set for _____ day(s) beginning on the ___ day of _____, 20___ at _____ a.m./ p.m.

5.2. Pretrial Motions**.** Any motions which require a pretrial hearing such as motions in limine, or challenges to experts shall be filed no later than _____. Any motion not otherwise addressed, shall be addressed at the final pre-trial conference. No pretrial motions will be heard on the morning of trial.

5.3. Stipulations and Exhibit Book**:** Written stipulations shall be prepared with reference to all exhibits exchanged or identified. The Court orders counsel to create a single exhibit book for use by the Court/Judge during the trial, and to stipulate to its admission into evidence, to the extent possible.

5.4. Jury Instructions: Proposed instructions shall be submitted two (2) weeks prior to trial. Supplements may be made thereafter.

6. Court Dates

[Insert any other matters any party believes should be brought to the Court's attention]

The Court schedules the following hearing dates:

Status conference_____

Pre-trial conference_____

Hearing on Motion to Dismiss_____

Hearing on Motion for Summary Judgment_____

Hearing on other motions_____

[The parties shall state which hearings are required].

_____ _____

Attorney for Plaintiff Attorney for Defendant

Approved and So Ordered.

_____ day of _____, 20___ _____

JUDGE

Appendix C: Local Rules Examples

- Obsolete Rules
  - **Madison County, LR48-TR5(G) Rule 26**
    - Rules pertaining to FAX Filing
  - **St. Joseph County, LR71-TR26 Rule 201.7**
    - Reports of appraisers, masters, and commissioners shall be filed with the Court in triplicate. Unless otherwise authorized by the Court, a copy of the report shall be provided on either a floppy disk or an electronic mail message with a copy of the request attached in digital format.
  - **St. Joseph County, LR71-TR26 Rule 208.2**
    - Whenever agreed by the parties or otherwise ordered by the Court, a party shall forward simultaneously with the hard copy discovery request (interrogatories, requests for production, requests for admission, or other requests for discovery) either a floppy disk or an electronic mail message with a copy of the request attached in digital format.
- Conflicting Rules: Trial Rule 56. Summary Judgment
  - **Johnson County, LR41-TR5 Rule 147**
    - (C)(1) Responses shall be filed within ten (10) days following the date the motion was filed.
    - (C)(2) Unless otherwise ordered, responses and supporting memoranda to motions filed under Trial Rule 12 and Trial Rule 56 shall be filed thirty (30) days following the date the motion was filed.
    - (F) A praecipe for hearing shall be included in a separate rhetorical paragraph within the motion or shall be filed in a separate written motion no later than five (5) days after the response.
  - **St. Joseph County, LR71-TR12 Rule 206**
    - 206.2 Notwithstanding any other rule of court, all T.R 12 and 56 motions shall be set for hearing by the moving party at the time of filing unless otherwise ordered by the Court. Unless otherwise authorized by the Court, the hearing shall be scheduled for a day not fewer than fourteen

(14) days after the time period allowed for filing briefs as specified in Rule 206.1 supra.

Local rules relating to filing deadlines/ time computation, or simple matters

- Withdrawal of Appearance
  - **Allen County, LR02-TR3.1 Rule 4**
    - (A) Permission to withdraw shall be given only after the withdrawing attorney has given the client at least ten (10) days written notice of the intention to withdraw, and has filed a copy of that Notice of Intention to Withdraw with the motion to withdraw; or upon a simultaneous or prior entering of appearance by other counsel for the client. If no other counsel has appeared for the client, the motion to withdraw shall contain withdrawing counsel's certification of the last known address, telephone number, and email address of the party, subject to the confidentiality provisions of T.R. 3.1(A)(8) and (D). After the case has been scheduled for trial, a hearing shall be set on the motion to withdraw. After the case has been scheduled for trial, the Court will not grant a request for withdrawal of appearance unless good cause is shown.
    - (B) The Notice of Intention to Withdraw shall include an explanation to the client as follows: (1) the present status of the case, excluding confidential / privileged information; (2) the dates of all scheduled hearings and other pending matters; (3) advise that the provisions in A.C.L.Civ.R. 3. 1-03 (B) and (C) (regarding party appearing without an attorney) and T.R. 3.1 (E) (regarding address changes) apply to the client after withdrawal of counsel; (4) the expectation of the Indiana common law that, as an unrepresented party, the client will be held to the same standard of conduct as an attorney licensed to practice in the State of Indiana; (5) that prejudice might result from failure of the client to act promptly or to secure new counsel; and (6) pursuant to Indiana law, all business entities must be represented by an attorney in civil cases.
  - **Bartholomew County, LR03-TR Rule 3.1-1**
    - (A) In all cases, except criminal involving the appointment of a public defender, and IV-D Child Support cases involving the appointment of a public defender, attorneys must file a Motion for Leave to Withdraw Appearance within forty-five (45) days in all criminal and civil cases.

- (B) Motions for leave to withdraw appearance must indicate the client's address in the Certificate of Service and Proposed Order.
- (C) An attorney must give his client 10 days written notice of his intention to withdraw unless: (1) another attorney has filed an appearance for the same party; (2) the withdrawing attorney indicates in the motion that he or she has been terminated by the client.

- **Clark County, LR10-AROO-2 Rule 2**
  - No mention of withdrawal deadline before trial
  - (B) Except for appearances in estates, guardianships, or criminal matters, an attorney desiring to withdraw an appearance in any other proceeding shall file a written motion requesting leave to withdraw accompanied by a notice of hearing or proof satisfactory to the Court that a notice has been given to the client and all other parties of record at least ten (10) days in advance of the withdrawal date. The actual withdrawal date shall be set forth in the written notice.
- **Elkhart County, LR20-TR3.1-NAEA Rule 3**
  - (B)(1) An attorney's appearance for a party will be withdrawn if: (a) Another attorney simultaneously appears for the party; (b) The attorney provides satisfactory evidence that the party has discharged the attorney; or (c) The party acquiesces to the withdrawal.
  - (B)(2) In all other circumstances, an attorney seeking permission to withdraw an appearance shall file a written motion stating justification for the withdrawal. The attorney shall give the party ten (10) days written notice of the attorney's intention to seek permission to withdraw. This notice shall (1) inform the party that failure to secure new counsel may result in dismissal of the party's case or in entry of a judgment or ruling against the party (2) set forth the date of any scheduled hearing or trial, and (3) include any other pertinent information. Except for good cause shown, an appearance will not be withdrawn within ten (10) days prior to commencement of a trial.
- **Floyd County, LR22-TR3.1 Rule 101**
  - No mention of withdrawal deadline before trial
  - (A) Excepting appearances in estates and guardianships, an attorney desiring to withdraw his appearance in any other proceeding shall file a

written motion requesting leave to do so accompanied by a notice of hearing or proof satisfactory to the Court that at least ten [10] days prior written notice has been given to the client and to all other parties of record in advance of the withdrawal date, which date shall be set forth in the written notice. The motion must contain the address and phone number of the client.

- **Howard County, LR34-TR3.1 Rule 5**
  - (A) Permission to withdraw shall be given only after the withdrawing attorney has given his client ten (10) days written notice of his intention to withdraw and has filed a copy of the notice with the court, except in the following cases: (1) when another attorney has already filed an appearance for the same party; or (2) when the withdrawing attorney files a pleading indicating that he or she has been terminated from the case by the client; or (3) when the appearance of an attorney is deemed withdrawn upon conclusion of an action or matter. The court will not grant a request to withdraw an appearance unless the same has been filed with the court at least ten (10) days prior to trial date, except for good cause.
- **Johnson County, LR41-TR3.1 Rule 145**
  - No mention of withdrawal deadline before trial
  - (B) Motions for leave to withdraw appearance must indicate the client's current mailing address in the Certificate of Service and Proposed Order.
  - (C) An attorney must give the attorney's client ten (10) days written notice of the attorney's intention to withdraw unless: (1) another attorney has filed an appearance for the same party; or (2) the withdrawing attorney indicates in the motion that he or she has been terminated by the client.
  - (D)(1) The letter of withdrawal shall explain to the client that failure to secure the assistance of new counsel may result in dismissal of the client's case or a default judgment may be entered against the client, whichever is appropriate. (2) The letter of withdrawal shall clearly indicate any pending motions, response dates, hearing dates, scheduling orders, or trial dates.
- **Lake County, LR45-TR3 Rule 5**
  - No mention of deadline before trial.

- (E)(1) Permission to withdraw shall be given only after the withdrawing attorney has given a client ten (10) days' written notice of intention to withdraw. A copy of the notice of intention to withdraw shall be attached to the motion seeking leave to withdraw.
- (E)(2) In addition to the information required for withdrawal under Trial Rule 3.1(H), the withdrawing attorney shall certify the last known email address of the client, if any.
- (G) Upon receiving an order of withdrawal, the withdrawn attorney shall remove their name and contact information, replacing it with the name, contact information, including email address, if any, of their former client on the Odyssey distribution list. The requirement to add a former client's information does not apply where a substitution of counsel has occurred.

- **Madison County, LR48-TR3.1 Rule 20**
  - (B) Unless otherwise ordered by the court, a public defender appointed to the case shall be considered and shown to be withdrawn upon the entry of the sentencing order in criminal case or the entry of order determining the civil issue for which they were appointed. Otherwise, an attorney's appearance for a party will be withdrawn upon the filing of a motion, if: (1) Another attorney simultaneously appears for the party; (2) The attorney provides satisfactory evidence that the party has discharged the attorney; or (3) The party acquiesces to the withdrawal.
  - (C) In all other circumstances, an attorney seeking permission to withdraw an appearance shall file a written motion stating justification for the withdrawal. The attorney shall give the party ten (10) day written notice of the attorney's intention to seek permission to withdraw. This notice shall (1) inform the party that failure to secure new counsel may result in dismissal of the party's case or in entry of a judgment or ruling against the party, (2) set forth the date of any scheduled hearing or trial, and (3) include any other pertinent information.
  - (D) Except for good cause shown, a withdrawal of appearance shall not be granted within 5 days of trial commencement.

- **Marion County, LR49-TR3.1 Rule 201**
  - Permission to withdraw shall be given only after the withdrawing attorney has given his client ten days written notice of his intention to

withdraw, has filed a copy of such with the Court; and has provided the Court with the party's last known address; or upon a simultaneous entering of appearance by new counsel for said client. The letter of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client's case or a default judgment may be entered against him, whichever is appropriate, and other pertinent information such as trial setting date or any other hearing date. The Court will not grant a request for withdrawal of appearance unless the same has been filed with the Court at least ten days prior to trial date, except for good cause shown.

- **Porter County, LR64-TR03 Rule 3100**
  - 3100.10 Permission to withdraw shall be given only after the withdrawing attorney has given the attorney's client ten (10) days written notice of the attorney's intention to withdraw and has filed a copy of such with the Court. The Court will not grant a request for withdrawal of appearance unless the same has been filed with the Court not less than 30 days prior to any scheduled hearing, except for good cause shown as determined by the Court.
  - 3100.20 The letter of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client's case or a default judgment may be entered against the client, whichever is appropriate, and other pertinent information such as any scheduled hearing date or trial date.
- **St. Joseph County, LR71-TR3.1 Rule 204**
  - 204.2 Unless authorized by the party in open Court or in writing or upon appearance of other counsel, an attorney will be permitted to withdraw his appearance for a party only after filing a Motion to Withdraw and setting the matter for hearing not fewer than fourteen (14) days from the date of filing. If a trial date has already been set, a motion to withdraw appearance must be filed at least thirty (30) days prior to that date unless the attorney has leave of the court to file in a shorter amount of time.
  - 204.3 The attorney must present to the Court adequate proof of notice to his client, as well as all other counsel and unrepresented litigants, of the intent to withdraw and of any impending pretrial, hearing, or trial dates. The notice to his client shall be by postage prepaid, certified mail,

return receipt requested and received or returned by the Postal Service undeliverable or refused addressed to the last known address of the client

- 204.4 In cases where the withdrawal of appearance shall leave the client unrepresented, the Motion to Withdraw must contain the address and, if known, telephone number of the client where service of documents can be delivered or other notice can be provided. As required by AR 9(G), this contact information may be designated as confidential and excluded from public access.

- 204.5 The appearance of a certified legal intern may be withdrawn upon notice to the Court, which shall be signed by the supervising attorney of the certified legal intern.

- **Tippecanoe County, LR74-TR3.1 Rule 8**

  - No mention of withdrawal deadline before trial.

  - Motions to withdraw an appearance shall be in writing with an attached notice to the client of intention to withdraw. The notice to the client of the intention to withdraw shall include an explanation to the client of (i) the present status of the case; (ii) the dates of scheduled hearings or other pending matters in the case; and (iii) the potential consequences to the client's case resulting from failure of the client to act promptly or to secure new counsel.

- **Vanderburgh County, LR82-TR3.1 Rule 1.15**

  - No mention of deadline before trial

  - (A) Leave of Court shall be granted only upon the following circumstances: (1) The filing of an appearance by new counsel for said client; or (2) Upon notice and hearing of the Petition for Leave to Withdraw, which said notice of hearing shall be served on the client at least 10 days prior to the hearing on the Petition for Leave to Withdraw. The Notice to the client shall include a copy of the Petition for Leave to Withdraw. Notice to the client shall also inform the client that the client can obtain new counsel or the client can represent himself/herself, if permissible, and that the client is required to notify the Court within 30 days of the withdrawal of the client's decision. The Notice shall also include the name of the Judge assigned to the case and the address of the Court with information sufficient to advise the client that a failure to respond may result in the dismissal of the matter before the Court. Proof

of service of the Notice shall be made by certified mail, return receipt, to be filed with the court on or before the date of the hearing.

- (B) Petition for Leave to Withdraw shall include the following: (1) The last known address and telephone number of the client; (2) The date the case is assigned for trial, if any; (3) A statement of any current motions pending before the Court and (4) A statement of the status of the case, including a verified statement that all entries have been filed.

- **Vigo County, LR84-TR3.1 Rule 1**
  - (B) Counsel desiring to withdraw their appearance in any action shall file a written petition requesting leave of Court to do so. Permission to withdraw shall be given only after the withdrawing attorney has given his or her client ten (10) days written notice of the attorney's intention to withdraw and has filed a copy of such notice with the Court. The notice of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client's case or a default judgment may be entered against the client, whichever is appropriate, and other pertinent information such as trial setting date or any other hearing date. The Court will not grant a request for withdrawal of appearance unless the request has been filed with the Court at least thirty (30) days prior to any scheduled hearing or trial date, except for good cause shown as determined by the Court.
- **Wayne County, LR89-TR3.1 Rule 001**

  The Court may deny a request for withdrawal of Appearance unless the same has been filed with the Court at least ten (10) days prior to any hearing scheduled in the cause as unreasonable or not consistent with the administration of justice.

- Trial Rule 56. Summary Judgment
  - **Allen County, LR02-TR56 Rule 9**
    - (7) A Reply Memorandum shall be filed not later than fourteen (14) calendar days after the Response to Motion for Summary Judgment is filed.
  - **Hamilton County, LR29-TR56 Rule 213**
    - (b) Unless a Case Management Order or other court order provides differently, any motion filed pursuant to TR 56 must be filed at least 90

days prior to any scheduled trial date. A Reply, which may be filed without request or permission, if filed, shall be filed not later than fourteen (14) days after service of the Response.

- **Lake County, LR45-TR7 Rule 4**
  - (B) [T]he moving party shall have ten (10) days after service of the response brief in which to serve and file a reply brief.
- **Vanderburgh County, LR82-TR12 Rule 1.16**
  - (A)(1)The adverse party shall have thirty (30) days after service of the initial brief within which to serve and file an Answer Brief, and the moving party shall have fifteen (15) days after service of the Answer Brief within which to serve and file a Reply Brief.
  - (B)(1) Any Motion for Summary Judgment shall be filed no later than one hundred twenty (120) days before the trial date.
- **Wayne County, LR89-TR56 Rule 007**
  - All Trial Rule 56 Motions for Summary Judgment shall be filed at least one hundred fifty (150) days prior to trial.

- General Discovery – Time to Serve
  - **Allen County, LR02-TR33 Rule 24**
    - (G)(1) All written discovery, whether directed to a party or nonparty to an action, must be served at least thirty-three (33) days prior to the expiration of any discovery deadline which is established by the Court.
  - **Wayne County, LR89-TR33 Rule 005**
    - (D) All written discovery, whether directed to a party or nonparty to an action, must be served at least thirty-three (33) days prior to the expiration of any discovery deadline which may be established by the Court, unless leave of Court directing otherwise is granted prior to the service of such discovery.

Local rules related to trial procedure should be approved by the Indiana Supreme Court

- Trial Rule 56. Summary Judgment
  - Both Allen and Hamilton County have extensive formal requirements for Motions for Summary Judgment that far exceed the requirements of the Indiana

Trial Rules and all other counties' local rules. Included are pagination and length requirements, formalities for the designation of evidence such as requiring a table of contents and specific labeling on exhibits, and organization strictures.

- **Allen County, LR02-TR56 Rule 9**
- **Hamilton County, LR29-TR56 Rule 213**

- Form of Summons
  - **Johnson County**, LR41-TR4 Rule 146
    - (A) In addition to the information required under Trial Rule 4(C), the form of the Summons must include the following information:
      - The Answer or response of the Defending or Responding Party must be in writing, signed by the party, and filed with the Court within the time period allowed for a response.
      - The response must dispute the allegations of the Complaint or Petition by including the Defending or Responding Party's response(s) or defense(s) to each claim contained within the Plaintiff's or Moving Party's Complaint in short and plain terms.
      - If a response is required and does not deny the allegations of the Complaint or Petition, the allegations in the Complaint or are admitted, and the moving party will be entitled to the relief requested.
      - Responses are not required in Domestic Relations cases.
- Discovery, Generally
  - **Bartholomew County, LR03-TR Rule 26-1**
    - In all [Civil Tort] cases, parties are required to file a "Notice of Discovery Requests" with the Court upon sending another party or entity Requests for Production, Interrogatories, or Requests for Admission. The Notice of Discovery Requests shall state to whom the discovery request was sent and the date it was sent. It shall also specify the number of Interrogatories, number of Requests for Admission, or number of Requests for Production. The Notice of Discovery Requests shall be no more than one page in length.
  - **Lake County, LR45-TR26 Rule 8**

- (A) In general, counsel are expected to begin discovery promptly and shall be granted extensions only upon a showing of diligence and good cause.

- **Porter County, LR64-TR35 Rule 3600**
  - 3600.10 Counsel are expected to begin discovery promptly. In all cases, discovery shall be completed prior to the pre-trial conference unless otherwise ordered by the Court. For good cause shown, the physical or mental examination of a party, as provided for in T.R. 35 may be ordered at any time prior to the trial.
  - 3600.20 For good cause shown and prior to the expiration of the time within which discovery is required to be completed, time may be extended for completion of discovery. Motions and stipulations for additional time for completion of discovery must set forth reasons justifying the additional time. Stipulations extending the discovery period must be approved by the Court.
- **Vigo County, LR84-TR26 Rule 7**
  - (A) Counsel are expected to begin discovery promptly. In all cases, discovery shall be completed prior to the pre-trial conference unless otherwise ordered by the Court. Any physical or mental examination of a party pursuant to T.R. 35 must be completed no later than sixty (60) days prior to the discovery cut-off set by the Court.
  - (B) For good cause shown and prior to the expiration of the time within which discovery is required to be completed, time may be extended for completion of discovery. Motions and stipulations for additional time for completion of discovery must set forth reasons justifying the additional time. Stipulations extending the discovery period must be approved by the Court.

- <u>Discovery: Interrogatories</u>
  - **Allen County, LR02-TR33 Rule 24**
    - (B)(1) A party may serve on any other party no more than fifty (50) written interrogatories, including subparts. For purposes of this rule, each question asked, as well as each subpart, constitutes a separate interrogatory, regardless of whether that part is logically or factually related to another subpart.

- (C) Any party desiring to serve interrogatories in excess of the limit set above shall either: (1) file a stipulation of the parties, agreeing to the additional interrogatories; or (2) if agreement cannot be obtained, file a written motion requesting leave of the Court to serve more than fifty (50) interrogatories. The motion must set forth those additional proposed interrogatories, and must explain their necessity.

- **Bartholomew County, LR03-TR Rule 33-1**
  - A party may not submit more than forty (40) Interrogatories, including subparts, without obtaining permission from the Court.
- **Clark County, LR10-AR00 Rule 9**
  - (D) The number of interrogatories which may be served pursuant to Trial Rule 33 shall be limited so as to require the answering party to make no more than forty (40) answers, each sub-part of an interrogatory counting as one (1) answer. This limitation does not mean a limit of forty (40) interrogatories and answers for the entire case but rather to each set of interrogatories propounded. Waiver of this limitation will be granted by the Court in cases in which this limitation would work a manifest injustice or would be impractical because of the complexity of the issues in the case.
  - (E) Each motion requesting a waiver of the above limitation of interrogatories shall contain, as an exhibit, the interrogatories which the party proposes to serve.
- **Floyd County, LR22-TR26 Rule 110**
  - (D) SAME RULE AS **CLARK COUNTY**
- **Lake County, LR45-TR26 Rule 8**
  - (B) No party shall serve on any other party more than thirty (30) interrogatories . . . including subparagraphs, without leave of court. Any party desiring to serve additional interrogatories . . . shall file a written motion setting forth those proposed and the necessity therefor.
- **Madison County, LR48-TR33 Rule 19**
  - Interrogatories shall be limited to a total of fifty (50), including subparts, and be used solely for the purpose of discover and shall NOT be used as a substitute for the taking of a deposition. For good cause shown, additional interrogatories may be permitted.

- **Marion County, LR49-TR33 Rule 213**
  - (A) Interrogatories shall be limited to a total of 25 including subparts and shall be used solely for the purpose of discovery and shall not be used as a substitute for the taking of a deposition. For good cause shown and upon leave of Court additional interrogatories may be propounded.
- **Monroe County, LR53-TR00 Rule 0205**
  - (A) The number of interrogatories which may be served pursuant to Rule 33 shall be limited so as to require the answering party to make no more than 50 answers. Waiver of this limitation by order of the court will be granted in cases in which such limitation would work a manifest injustice or would be impractical because of the complexity of the issues of the case.
- **Porter County, LR64-TR35 Rule 3600.30**
  - (B) Interrogatories shall be kept to a reasonable limit not to exceed a total of twenty-five (25) including subparts and shall be used solely for the purpose of discovery and shall not be used as a substitute for the taking of a deposition. For good cause shown and upon leave of Court additional interrogatories may be propounded.
- **Shelby County, LR73-TR33 Rule 2**
  - 2.1 Interrogatories shall be limited to a total of 25 including subparts and shall be used solely for the purpose of discovery and shall not be used as a substitute for the taking of a deposition. For good cause shown and upon leave of Court additional interrogatories may be propounded.
- **Vanderburgh County**, **LR82-TR33 Rule 1.19**
  - A party may, without leave of Court, serve upon another party up to thirty (30) interrogatories including sub-parts. Any party desiring to serve additional interrogatories upon another party, shall first file a written motion with the Court, identifying the proposed additional interrogatories and setting forth the reasons demonstrating good cause for their use.
- **Vigo County, LR84-TR33 Rule 10**
  - (A) No fill-in the blank or photocopied forms containing interrogatories shall be filed or served upon a party unless all

interrogatories on such forms are consecutively numbered and applicable to the case in which the same are filed and served. The intent and purpose of this rule is to prohibit the filing of fill-in the blank or photocopied forms of interrogatories except where the nature of the case or the number of the parties makes the use of such forms necessary and feasible.

- (C) The number of interrogatories shall be kept to a reasonable limit and shall not require the answering party to make more than one hundred twenty-five (125) responses. For good cause shown and upon leave of Court, additional interrogatories may be propounded if the Court finds this limitation would work a manifest injustice or would be impractical because of the complexity of the issues of the case. Interrogatories shall be used solely for the purpose of discovery and shall not be used as a substitute for the taking of a deposition

- **Wayne County, LR89-TR33 Rule 005**

  - (B) Interrogatories shall be limited to a total of twenty-five (25), including subparts. For good cause shown and upon leave of Court, only additional interrogatories may be propounded to the extent authorized by leave of Court.

- Discovery: Requests for Admission

  - **Allen County, LR02-TR33 Rule 24**

    - (E) Ordinarily, a party may not serve more than 30 requests for admission on another party (not counting requests that relate to the authenticity of a document).

  - **Lake County, LR45-TR26 Rule 8**

    - (B) No party shall serve on any other party more than . . . thirty (30) requests for admission (other than requests relating to the authenticity or genuineness of documents in the aggregate), including subparagraphs, without leave of court. Any party desiring to serve additional . . . requests for admission shall file a written motion setting forth those proposed and the necessity therefor.

  - **Wayne County, LR89-TR33 Rule 005**

    - (E) Request for Admissions are limited to thirty (30) in number (not counting requests related to the authenticity of a document). Leave of Court may be granted allowing for the service of more than thirty (30)

Request for Admissions provided the moving party fully complies with TR 26(F), and files a motion setting forth the proposed additional Requests and why they are necessary

- Discovery: Depositions
  - **Howard County, LR34-TR32 Rule 36**
    - (B) All depositions of experts shall be admissible at trial unless objection to the admissibility be given in writing five (5) days prior to the taking of said deposition or within ten (10) days subsequent to notice of the deposition, whichever deadline occurs first. A copy of the notice shall be tendered to the reporter at the time of taking the deposition for inclusion with the deposition. In the absence of such written notification, the deposition of an expert may be admitted by stipulation. The presence of the expert within the limits of the subpoena area shall not be grounds, in and of itself, for the inadmissibility of the deposition at trial. Notwithstanding the above, either party may subpoena such expert for the trial.
  - **Monroe County, LR53-TR00 Rule 0206**
    - (C) Depositions of experts shall be admissible at trial regardless of the availability of the witness or other limitations in Trial Rule 32(A), unless objection to the admissibility is made in writing 5 days prior to the taking of said deposition or within 10 days subsequent to notice of the deposition, whichever deadline occurs first. A copy of the notice shall be tendered to the reporter at the time of taking the deposition for inclusion with the deposition. In the absence of such written objection, the deposition of an expert may be admitted by stipulation.
  - **St. Joseph County, LR71-TR26 Rule 208**
    - 208.4 Pursuant to their obligations under the Indiana Rules of Professional Conduct and as officers of the St. Joseph Circuit, Superior or Probate Courts, attorneys shall make a good faith effort to schedule depositions in a manner in which avoids scheduling conflicts. Unless agreed by counsel or otherwise authorized by the court, no deposition shall be scheduled on less than ten (10) days notice.
  - **Vigo County, LR84-TR30 Rule 8**

- A party may take the deposition of an expert or treating physician, timely listed on a party's witness list, after the cut off of discovery if the purpose of the same is for the presentation of the deposition at trial.

- **Vigo County, LR84-TR32 Rule 9**
  - The deposition of an expert or treating physician taken for the purpose of presentation of the deposition at trial shall be admissible, if otherwise ruled to be admissible by the Court, without the necessity of a party showing the unavailability of the expert to personally appear at trial.

Appendix D: Discovery Related Forms

Protective Order

	)	
	)	Case Number: _____
	)	
Plaintiff(s),	)	[STIPULATED] PROTECTIVE ORDER
	)	
vs.	)	
	)	
Defendant(s).	)	

I. INTRODUCTION

This Stipulated Protective Order (Protective Order) governs the production and handling of any Confidential or Attorneys' Eyes Only information (collectively referred to as "Protected Information) in this action. This Protective Order is binding upon all current and future Parties in this action (including their respective corporate parents, subsidiaries, affiliates, successors, and attorneys and all other representatives or agents), their counsel, and all signatories to Exhibit A, and all other persons or entities authorized under this Protective Order or any other Order of this Court to receive or view Protected Information.

II. SCOPE OF PROTECTED INFORMATION

A. Definitions of Confidential and Attorneys' Eyes Only:

The parties anticipate production of the following categories of Protected Information:

1. "**Confidential**": Proprietary, trade secret and/or sensitive commercial information, and which is believed to have the potential, if disclosed, for causing competitive harm to it or giving a competitive advantage to others; Personal identifying information (PII) or subject to federal, state, or foreign data protection laws or other similar privacy obligations imposed by law.
    a. Additional matter-specific examples include: [Here, the parties may provide additional examples of "Confidential" information clearly and

definitely so that the Court's burden of enforcement, if called upon, is minimized.]

2. "**Attorneys' Eyes Only**": Highly confidential financial or research and development information, including manufacturing and production information (including formulation); business and prospective marketing plans; customer lists; pricing, market share, product cost and projected sales data; data relating to mergers and acquisitions; Protected Health Information (PHI), as that phrase is defined in the Health Insurance Portability and Accessibility Act of 1996, Pub. L. 104-191 and the regulations promulgated thereunder.
    a. Additional matter-specific examples include: [Here, the parties may provide additional examples of "Attorneys' Eyes Only" information clearly and definitely so that the Court's burden of enforcement, if called upon, is minimized.]

III. DESIGNATION OF PROTECTED INFORMATION

A. Designating and Receiving Parties: "Designating Party" means the party or non-party who so designates the Protected Information; "Receiving Party" means the party or non-party to whom such Protected Information was produced or disclosed.

B. Application to Non-Parties: Before a non-party (e.g., persons attending depositions, witnesses, experts or other professionals retained to provide professional advice or services) is given copies of or shown Protected Information as permitted by the terms of this Order, it must first sign the acknowledgment attached to this Order as Exhibit A that it will be bound by the terms and conditions of this Protective Order. In the event the non-party fails to do so, the parties to this action must resolve any such dispute before making disclosure of Protected Information as permitted by this Order to the non-party. If a non-party wishes to make designations hereunder, it must first sign Exhibit A.

C. Timing and Provisional Protection: Designations may be made at any time. To avoid potential waiver of protection hereunder, the Designating Party should designate Protected Information at the time of production or disclosure, including on the record during the taking of any testimony. Deposition testimony will be deemed provisionally protected for a period of 30 days after the transcript is released to the

parties by the court reporter, although the parties may agree at any time to different timelines of provisional protection of information as Confidential or Attorneys' Eyes Only as part of one or more specific depositions. To retain any Protected Information designations beyond the provisional period, a Designating Party must designate in writing specific pages and lines of deposition testimony before the provisional period has expired. Deposition transcript or exhibit pages containing Protected Information shall be separately bound by the Court reporter, who must affix to each page the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," as applicable.

D. Manner of Designation: Whenever possible, the Designating Party must designate only those portions of a document, deposition, transcript, or other material that contain the Protected Information and refrain from designating entire documents. The Designating Party should stamp a legend of "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" on each designated page of the document that contains Protected Information. The legend shall not obscure any content of the original document. If Protected Information is produced natively, the title of the document should contain "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," as applicable. For Protected Information in a form not addressed herein, the Designating Party shall affix in a prominent place on the exterior the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," as applicable. Or, if it is impracticable to affix such a legend, such legend shall be placed on a slip sheet accompanying the Protected Information.

IV. CHALLENGES TO PROTECTED INFORMATION

In the event that a Receiving Party disagrees at any time with any designation made by the Designating Party, the Receiving Party must first try to resolve such challenge in good faith on an informal basis with the Designating Party. The Receiving Party must provide written notice of the challenge (by Bates number where possible) and its grounds to the Designating Party, who must respond in writing to the challenge within 15 days. At all times, the Designating Party carries the burden of establishing the propriety of the designation and protection level. Unless and until the challenge is resolved by the parties or ruled upon by the Court, the Protected Information will remain protected under this Order. The failure of any Receiving Party to challenge a designation does not constitute a concession that the designation is proper or an admission that the Protected Information is otherwise competent, relevant, or material.

V. LIMITED ACCESS / USE OF PROTECTED INFORMATION

A. Restricted Use: Protected Information that is produced or exchanged in the course of this action may be used solely for the preparation, trial, and any appeal of this action, as well as related settlement negotiations, and for no other purpose, without the written consent of the Designating Party. No Protected Information may be disclosed to any person except in accordance with the terms of this Order. Nothing in this Protective Order shall limit a Designating Party's use of its own documents.

B. Secure Storage of Protected Information and Notice: All persons in possession of Protected Information agree to exercise reasonable care with regard to the custody, use, or storage (e.g., industry standard data-security practices such as encryption, access controls, malware protection, etc.) of such information to ensure that its confidentiality is maintained. This obligation includes, but is not limited to, the Receiving Party providing to the Designating Party prompt notice of the receipt of any subpoena that seeks production or disclosure of any Protected Information and consulting with the Designating Party before responding to the subpoena. This obligation also includes prompt written notice to Disclosing Party of any disclosure – whether advertent or inadvertent (e.g., security breach) – of any Protected Information. Any use or disclosure of Confidential or Attorneys' Eyes Only information in violation of the terms of this Order may subject the disclosing person or party to sanctions.

C. Access to "Confidential" Information: The parties and all persons subject to this Order agree that information designated as "CONFIDENTIAL" may only be accessed or reviewed by the following:

1. The Court, its personnel, court reporters, and any court-appointed Special Master;
2. Mediators or arbitrators, and any other employees of mediators or arbitrators who are actively engaged in assisting in connection with this matter;
3. Counsel of record for any party in this action and their employees who assist counsel of record in this action and are informed of the duties hereunder;
4. Discovery service providers hired by counsel of record or parties to provide professional services in this matter;
5. The parties, including their agents and employees who are assisting or have reason to know of this action, so long as each has signed the

acknowledgment to be bound to these terms that is attached hereto as Exhibit A;

6. Experts or consultants employed by the parties or their counsel for purposes of this action, so long as each such expert or consultant has signed the acknowledgment to be bound to these terms that is attached hereto as Exhibit A; and
7. Other witnesses or persons with the Designating Party's written consent or by Court order.

D. Access to "Attorneys' Eyes Only" Designations: The parties and all persons subject to this Order agree that information designated as "ATTORNEYS' EYES ONLY" may only be accessed or reviewed by the following:

1. The Court, its personnel, court reporters, and any court-appointed Special Master;
2. Mediators or arbitrators, and any other employees of mediators or arbitrators who are actively engaged in assisting in connection with this matter;
3. Counsel of record for any party in this action and their employees who assist counsel of record in this action and are informed of the duties hereunder;
4. Discovery service providers hired by counsel of record or parties to provide professional services in this matter; and
5. Other witnesses or persons with the Designating Party's written consent or by Court order.

E. Review of Witness Acknowledgments: At any time and for any purpose, including to monitor compliance with the terms hereof, any Designating Party may demand to review all copies of Exhibit A in any Receiving Party's possession. The Receiving Party must, within 3 business days of the demand, provide all such copies to the Designating Party making the demand. Notwithstanding the foregoing, if the Receiving Party has retained an expert whose identity has not yet been disclosed to the Designating Party, the Receiving Party may generically identify how many acknowledgments that it has in its possession attributable to non-disclosed experts, whose acknowledgements must later be provided contemporaneously with any reports issued by one or more of said experts. If a Receiving Party is not required to disclose

the identity of any consulting experts, it may not be compelled to produce any acknowledgments from those experts to the Designating Party. However, if the Designating Party provides to the Court evidence of breach of this Order via unauthorized leak of Protected Information, the Court may require an *in camera* production of all acknowledgments held by a Receiving Party in order to determine breach and consider enforcement of this Order.

F. Non-Waiver Effect of Designations: Neither the taking of, nor the failure to take, any action to enforce the provisions of this Order, nor the failure to object to any designation, will constitute a waiver of any party's claim or defense in this action or any other action or proceeding, including but not limited to a claim or defense that any Protected Information is or is not confidential, is or is not entitled to particular protection, or embodies or does not embody information protectable by law. Nothing in this Protective Order shall be construed as a waiver by a party of any objections that may be raised as to the admissibility at trial of any evidentiary materials.

G. In-Court Use of Protected Information: If Protected Information will or may be offered in evidence at a hearing or trial, then the offering party must give advance notice to the party or non-party that designated prior to offering the information so that any use or disclosure may be addressed in accordance with the Court's case-management or other pre-trial order, or by a motion *in limine*. This Protective Order, including any discussion of the provisions herein, designation itself, or reasons for designating Protected Information, shall not be admissible in evidence.

VI. CLAW-BACK REQUESTS

A. Failure to Make Designation: If, at any time, a party or non-party discovers that it produced or disclosed Protected Information without designation, it may promptly notify the Receiving Party and identify with particularity the information to be designated and the level of designation (the claw-back notification). The Receiving Party may then request substitute production of the newly-designated information. Within 30 days of receiving the claw-back notification, the Receiving Party must (1) certify to the Designating Party it has appropriately marked or, if substitute production has been requested, destroyed all unmarked copies that it received, made, and/or distributed; and (2) if it was practicably unable to mark or destroy any information

because disclosures occurred while the Receiving Party was under no duty of confidentiality under the terms of this Order regarding that information, the Receiving Party must reasonably provide as much information as practicable to aid the Designating Party in protecting the information, consistently with the Receiving Party's attorney-client, work-product, and/or trial-preparation privileges.

VII. DURATION / CONTINUED RESTRICTIONS

A. Handling of Protected Information Upon Conclusion of Action: Upon conclusion of this action, including all appeals, each party and any nonparty subject to Exhibit A shall return to the Designating Party its Protected Information, shall destroy it, or otherwise shall comply with any applicable Order of the Court. Within 60 days after the later of dismissal of this action or expiration of all deadlines for appeal, the Receiving Party must certify to each Designating Party that all Protected Information hereunder has been disposed of in accordance with the Protective Order, Section VII(A) by all parties and witnesses for whom that party is responsible. Counsel of record may retain one copy for their respective legal files, but must continue to comply with this Protective Order. This provision does not apply to the Court or Court staff.

B. Continued Restrictions Under this Order: The restrictions on disclosure and use of Protected Information survive the conclusion of this action.

VIII. REQUESTS TO SEAL

This protective order does not authorize a party to file or maintain a document under seal. Any party that seeks to file any document, or any portion of a document, under seal is required to follow the policy and procedure set forth in I.C. 5-14-3-5.5 and the Indiana Rules on Access to Court Records to exclude court filings and records not automatically excluded from public access under I.C. 5-14-3-4(a) and the Indiana Rules on Access to Court Records.

IX. AMENDMENT

This Protective Order may be modified by the parties in writing, or by Court order. The parties reserve the right to move the Court to amend or set aside the Protective Order, in whole or in part, upon good cause shown.

IT IS SO STIPULATED, through parties and/or Counsel of Record.

Dated: _____ _____

Plaintiff(s) / Counsel for Plainitiff(s)

Dated: _____ _____

Defendant(s) / Counsel for Defendant(s)

EXHIBIT A

[INSERT CAPTION FOR CASE]

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

The undersigned acknowledges having been provided with and having read the "Stipulated Protective Order" in this matter (Protective Order). The undersigned further agrees: (i) to be bound under the Protective Order, (ii) to comply with all of its provisions, and (iii) to be subject to the jurisdiction of the Court for all purposes arising under the Protective Order, including enforcement of its terms.

Dated: _____

By: _____

Printed: _____

Address: _____

Phone: _____

Email: _____

Preservation Order

	)	
	)	Case Number: _____
	)	
Plaintiff(s),	)	[STIPULATED] PRESERVATION ORDER
	)	
vs.	)	
	)	
Defendant(s).	)	

Pursuant to Indiana Trial Rules 26 and 34, the Court Orders:

I. GENERAL

A. This Order is entered into per:

_____ All parties consent to the entry of this Preservation Order, or

_____ All parties do not consent, but the Court, after giving notice to the parties and an opportunity to be heard finds it probable that entry of the Preservation Order will materially assist the Court in resolving the case in a just and timely manner.

II. SCOPE OF ORDER

A. As used herein, the terms "Documents, Data, and Tangible Things" is to be interpreted broadly and includes all forms of writing, tangible things, and other documents contemplated by Trial Rule 34 and/or Indiana Evidence Rule 1001. This includes without limitation: is defined broadly and includes, but is not limited to, the following: sent and received emails, as well as attachments to those emails; documents generated in Word, Excel, PowerPoint, PeopleSoft, and/or Adobe; text messages, voice messages, blogs, and instant messages; photos and videos; and any other electronically

stored information in draft, final, original or reproduced form. Sources that you should consider as you preserve and retain Documents include: Outlook, local and shared drives, SharePoint, websites, iPads, Apps, phones, hard drives, cloud-based storage such as Box, social media, hard copy, journals and offsite storage. Tangible Things (e.g., returned product or samples) may also need to be preserved, if applicable.

B. "Preservation" and "Preserve" are to be interpreted broadly to accomplish the goal of maintaining the integrity of all Documents, Data, and Tangible Things. Preservation includes without limitation taking reasonable steps to prevent the partial or full destruction, alteration, deletion, degradation, shredding, incineration, wiping, relocation, migration, theft, or mutation of such material, as well as negligent or intentional handling that would make any such Documents, Data or Tangible Things incomplete or inaccessible.

III. PRESERVATION OBLIGATIONS

A. The parties shall not knowingly erase, delete or otherwise destroy any Documents, Data, and Tangible Things, electronic or otherwise, within its possession, custody or control, that the party knows, or reasonably should know, is relevant in the action, is reasonably likely to be requested during discovery, and/or is the subject of a pending discovery request (Relevant Material). This includes, but is not limited to:

1) [Insert Subjects of Documents to Preserve]

B. The parties shall take reasonable steps, including the dissemination of a legal hold notice to Preserve all Relevant Material. The parties shall also take affirmative steps to suspend all routine document destruction programs, including those that automatically delete Relevant Material. If auto-delete cannot be turned off without significant burden, the party shall immediately take other measures to back-up or preserve the Relevant Material, and promptly alert the other party of same.

C. The parties may stipulate and agree in writing that specific Documents, Data and Tangible Things need or need not be Preserved. If the parties are unable to agree as to what Documents, Data, or Tangible Things: (i) are outside the scope of this Order, (ii) may be destroyed, lost or otherwise altered pursuant to routine policies and programs, or (iii) otherwise need not be Preserved, the parties shall follow Section V. of this Order.

D. To the extent practicable, Relevant Material shall be Preserved in their native format, unless another format is agreed upon by the parties. For Documents

and Data that exist solely in paper form, the parties must preserve at least one in paper form. This Order does not obligate a party to retain paper Documents and Data if a party in the ordinary course of its business practices scans, microfiches or otherwise images hard copies of documents for purposes of records retention. Nothing in the Order limits or specifies the form of production, which may be agreed to by the Parties or separately ordered by the Court.

E. This Order shall not constitute a waiver of any objection, including, but not limited to the ultimate discoverability, authenticity, privilege, admissibility, or relevance of any Documents, Data, and Tangible Things addressed herein.

F. The preservation obligations of this Order shall continue until final adjudication of this action, including any appeals.

IV. COMMUNICATION OBLIGATIONS

A. The parties must communicate the existence and substance of this Order to (i) those individuals, entities or employees responsible for carrying out the party's obligations set forth herein and (ii) employees and entities whom the party reasonably believes possesses Relevant Material required to be Preserved in this Order.

B. The parties should send third party preservations letters, as needed to preserve potentially Relevant Material.

V. DISPUTES OR MODIFICATION OF ORDER

A. If the provisions of this Order present particular and/or unique problems for a party, or make it unreasonably burdensome or impossible for a party to comply with, that party and opposing counsel may negotiate and agree in writing to any reasonable exception to or modification of the Order.

B. Strict compliance with the Trial Rule 26(F) meet and confer requirements in resolving disputes under this Order is mandatory. Counsel seeking relief or enforcement must first specify to opposing counsel a concise statement of the issue, exception or modification of the Order requested and then meet in good faith to try to effectuate a written resolution of the dispute before submission to the Court for resolution. This includes actual face-to-face or telephonic meetings. An exchange of emails or letters alone is insufficient. Disputes that counsel are not able to resolve should be submitted to the Court via Motion. The parties agree that discovery dispute Motions (and any

accompanying Memoranda and supporting materials) shall not exceed fifteen (15) double-spaced pages.

C. The parties consent to the use of a Discovery Master to resolve disputes under this Order.

D. Each party reserves its right to seek reimbursement of the costs associated with Preservation under this Order.

VI. FAILURE TO PRESERVE

A. Nothing in this Order is intended to suggest or imply that the parties were not previously under preservation obligations as required by applicable law, nor is it intended to act as a waiver for any claim of spoliation and/or other relief in the event Relevant Material has been destroyed in violation of applicable law.

B. If any Relevant Material that should have been preserved in the anticipation or conduct of litigation are lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the Court:

2) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or
3) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:
    a. presume that the lost information was unfavorable to the party;
    b. instruct the jury that it may or must presume the information was unfavorable to the party; or
    c. dismiss the action or enter a default judgment.

DATE: _____ _____

JUDGE

Appointment of Special Master

	)	
	)	Case Number: _____
	)	
Plaintiff(s),	)	[STIPULATED] APPOINTMENT OF SPECIAL MASTER
	)	
vs.	)	
	)	
Defendant(s).	)	

Pursuant to Indiana Trial Rule 53 (Rule 53), the Court Orders:

1. Method of Appointment: The Discovery Master is hereby appointed per:

   _____ All parties consent to appointment of a Discovery Master; or

   _____ All parties do not consent, but the Court, after giving notice to the parties and an opportunity to be heard finds it probable that:

   a. Appointment of a Discovery Master will materially assist the Court in resolving the case in a just and timely manner;

   b. The anticipated costs associated with the appointment of a Discovery Master are proportionate to the value of the case; and

   c. The anticipated costs associated with the appointment of a Discovery Master will not be unduly burdensome to any party.

2. Selection of Discovery Master: The Discovery Master appointed to serve in this case is: _____. This person is currently an attorney licensed and in good standing in the state of Indiana. The Discovery Master has no relationship to the parties that would disqualify the Discovery Master. This Discovery Master has been selected as follows:

   _____ By agreement of the parties; or

   _____ Selected by the Court.

3. Discovery Master Powers: The Discovery Master shall possess and may exercise the following limited powers: [Insert description.]

   The Discovery Master may require the production of evidence on all matters in the Discovery Master's powers, including the production of records and

documents. When a party so requests, the Discovery Master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43(C) for a Court sitting without a jury.

The Discovery Master may rule upon the admissibility of evidence unless otherwise directed by the Order and has the authority to place witnesses under oath. The Discovery Master may examine witnesses, including the parties to the action, under oath. The Discovery Master may permit the parties to examine witnesses under oath, and may place reasonable limits on the examination of witnesses by the parties. The Discovery Master may also procure the attendance of witnesses pursuant to Rule 53(D)(2).

The Discovery Master shall take all steps necessary, including issuing scheduling orders, issuing orders to compel, holding periodic hearings, and recommending sanctions as may be appropriate, to ensure that discovery within the Master's powers in this case is thorough and complete in accordance with all the requirements of the Indiana Rules of Civil Procedure, the Orders of this Court, and all other applicable law.

This Order is limited to the duties specified herein unless the Court shall expand the Discovery Master's duties.

4. Confidentiality: For cases involving a Protective Order, the Discovery Master shall execute a Non-Party agreement subjecting the Master to the terms of the Protective Order.

5. Meeting: The Discovery Master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within ___ days after the date of this Order and shall notify the parties or their attorneys. It is the duty of the Discovery Master to proceed with all reasonable diligence.

6. Discovery Master Report: The Discovery Master shall report to the Court in writing on all matters within the Discovery Master's powers every ____ days from the effective date of this Order until the Court considers the issue(s) within the Master's powers resolved and/or the Final Report is submitted. The interim (non-Final Report) report(s) ____ shall or ____ shall not be made available to the parties. The Court may also request a report from the Discovery Master at any time. The Final Report shall be submitted to the Court on or before _____. Rule 53(E) shall be followed with regard to the Report. The Court retains the power to accept, reject or modify the Discovery Master's Report.

7. Allocation of Costs: The Court, having considered the rate of compensation and the allocation of the costs between the parties with input provided by the parties

and the Discovery Master, orders costs to be allocated ____ % to Plaintiff(s) and ____% to Defendant(s). The allocation of costs is subject to change by the Court based on the recommendation of the Discovery Master.

8. Discovery Master Compensation: The Discovery Master shall bill the parties on a monthly basis for fees and disbursements, and those bills shall be promptly paid by Plaintiff(s) and Defendant(s) as outlined in this Section. The Discovery Master shall be paid [$ ____ per hour or a fixed fee of $_____] for work done pursuant to this Order, and shall be reimbursed for all reasonable expenses incurred.

9. Termination or Amendment of Order: This Order of reference shall terminate upon submission by the Discovery Master of a Final Report, unless extended by further order of the Court. This Order is subject to amendment by the Court, on its own accord or upon application of the parties or the Discovery Master. Jurisdiction of this action, as well as any dispute under this Order, is retained by the Court.

DATE: _____ _____

JUDGE

Instructions for Discovery Protocol

This Stipulated Discovery Protocol is provided to aid the parties to facilitate the exchange of electronically stored information (ESI) and hard copy documents. It is expected that the parties will use this Protocol as a starting point to discuss best practices in discovery and the parties will meet-and-confer to select the provisions most applicable to each party and the case. The Protocol provides different options dependent on the case, and the parties may strike through, or add any provision as necessary.

After conferring, the parties should select, strikethrough, or add the applicable provisions and file with the Court, confirming their agreement to the Protocol.

Initial Disclosures and Search and Production Limitations (Pathway-Specific)

These sections are divided into three (3) categories intended to mirror the Case Management Pathways: Streamlined, Complex, and General. The information, documents, and limitations identified in these are those most likely to be automatically requested by experienced counsel in a similar case and which will most likely to be useful in narrowing the issues. Unless otherwise indicated by the Court or the parties herein, these are not intended to be exhaustive of what should be shared by the parties or to preclude other necessary discovery. For each of these provisions, the parties should select the option most applicable to their case, or may choose "other" and fill-in a different provision (which may use portions of the suggested provisions with the parties' agreed changes). The Discovery Protocol even allows a "NONE" selection, if this best fits the needs of the case.

Search and Production Limitations (All Pathways)

These discovery provisions were derived from "best-practices" from experienced eDiscovery and Information Governance attorneys. The parties may choose whether they expect to exchange "hard-copy" or ESI documents and information (or both). The Protocol provides the standard provisions for the format and scope of the documents and information to be exchanged. Except in the most complex cases, it is not expected that each of these provisions will be necessary. The parties should meet-and-confer on each of the suggested provisions to determine if the information and documents that

will be exchanged will require the suggested provision, and strikethrough and/or delete any unnecessary provision.

Discovery Protocol

	)	
	)	Case Number: _____
	)	
Plaintiff(s),	)	STIPULATED DISCOVERY PROTOCOL
	)	
vs.	)	
	)	
Defendant(s).	)	

1. PURPOSE

This Stipulated Discovery Protocol (Protocol) will facilitate the exchange of electronically stored information (ESI) and hard copy documents in this case as a supplement to the Indiana Rules of Trial Procedure, Local Rules, and any other applicable Protocols and rules.

2. COOPERATION

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout discovery in the matter consistent with this Protocol. The parties have agreed that this Protocol governs discovery in the case, and intend to be mutually bound thereby.

3. INITIAL DISCLOSURES

The information and documents identified in the Initial Disclosures are those most likely to be automatically requested by experienced counsel in a similar case and which will most likely to be useful in narrowing the issues. Unless otherwise indicated by the Court or the parties herein, these Initial Disclosures are not intended to be exhaustive of what should be shared by the parties or to preclude other necessary discovery.

☐ NONE / NOT APPLICABLE

☐ STREAMLINED PATHWAY

Within thirty (30) days of execution of this Protocol, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name, last-known title and dates of employment, if applicable, and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

☐ COMPLEX PATHWAY

Within forty-five (45) days of execution of this Protocol, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name, last-known title and dates of employment, if applicable, and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Trial Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered;

(iv) for inspection and copying as under Trial Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment; and

(v) documents that support any irreparable harm being alleged by the Plaintiff or any concerning any damages that Plaintiff is seeking in the Complaint.

☐ **GENERAL PATHWAY**

Within forty-five (45) days of execution of this Protocol, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name, last-known title and dates of employment, if applicable, and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Ind. R. Trial P. 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) documents that support any irreparable harm being alleged by the Plaintiff or any concerning any damages that Plaintiff is seeking in the Complaint.

☐ **OTHER:**

4. SEARCH AND PRODUCTION LIMITATIONS – PATHWAY SPECIFIC

☐ **NONE / NOT APPLICABLE**

☐ **STREAMLINED PATHWAY**

Discovery Limitations

Unless otherwise agreed to by the parties or Court order, no party shall serve more than: fifteen (15) interrogatories, fifteen (15) requests for production, and fifteen (15) requests for admission (excluding authenticating business records). Sub-parts to interrogatories, requests for productions and requests for admission shall not be counted as part of the number served, provided that the subparts are related to the same topic (i.e., multiple questions within one question, such as 1(A)-(D))). Each party is limited to note more than two (2) depositions (excluding experts and parties or party representatives), with a

seven-hour (7) limit for each deposition (unless the deposition is of an expert, a party, or a party representative), unless otherwise agreed to by the parties or Court order.

☐ **COMPLEX PATHWAY**

Discovery Limitations

Unless otherwise agreed to by the parties or Court order, no party shall serve more than: forty (40) interrogatories, forty (40) requests for production, and forty (40) requests for admission (excluding authenticating business records). Sub-parts to interrogatories, requests for productions and requests for admission shall not be counted as part of the number served, provided that the subparts are related to the same topic (i.e., multiple questions within one question, such as 1(A)-(D))). Each party is limited to not more than ten (10) depositions (excluding experts and parties or party representatives), with a seven-hour (7) limit for each deposition (unless the deposition is of an expert, a party, or a party representative), unless otherwise agreed to by the parties or Court order.

☐ **GENERAL PATHWAY**

Discovery Limitations

Unless otherwise agreed to by the parties or Court order, no party shall serve more than: twenty-five (25) interrogatories, twenty-five (25) requests for production, and twenty-five (25) requests for admission (excluding authenticating business records). Sub-parts to interrogatories, requests for productions and requests for admission shall not be counted as part of the number served, provided that the subparts are related to the same topic (i.e., multiple questions within one question, such as 1(A)-(D))). Each party is limited to note more than five (5) depositions (excluding experts), with a seven-hour (7) limit for each deposition (unless the deposition is of an expert, a party, or a party representative), unless otherwise agreed to by the parties or Court order.

☐ **OTHER:**

5. SEARCH AND PRODUCTION LIMITATIONS – ALL PATHWAYS

Scope and Proportionality

Unless otherwise limited by Court order, the scope of discovery is as follows: Parties may obtain discovery regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or the claim or defense of any other party,

including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter and is proportional to the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, the importance of the proposed discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Relevant Time Period

Generally, the relevant time period for all discovery is a period of six (6) years prior to the date of the adverse event/ action that forms the basis of the claim/counterclaim or defense, unless a different time is set by agreement of the parties or Court order.

Objections

If a party objects to a discovery request, either in whole or in part, the objecting party must concisely state in detail the basis for the objection. If a party provides a partial or incomplete answer or response to a discovery request, the responding party must state specifically the reason that the answer or response is partial or incomplete. Any general objections (e.g., an objection that does not specifically state the grounds on which it was based or an objection that applies globally, not to specific requests) will be stricken and have no effect.

Excluded File Types

The parties agree that the cost of preserving, searching, collecting, processing, reviewing, and producing ESI from certain known sources is expected to outweigh the anticipated benefit of the ESI stored in those locations. Accordingly, the following categories of ESI are presumed to be not discoverable:

- ESI deleted in the normal course of business before the time a preservation obligation in this matter came into effect;
- Backup data files that are maintained in the normal course of business for purposes of disaster recovery;

- Deleted, "slack," fragmented, or unallocated data only accessible by forensics;
- Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- On-line access data such as (without limitation) temporary internet files, history files, cache files, and cookies;
- Electronic data (*e.g.*, call logs, email, calendars, contact data, notes, *etc.*) sent to or from mobile devices, if a copy of such electronic data is routinely saved elsewhere (such as on a server, laptop, desktop computer, or "cloud" storage);
- Ephemeral data not retained in the ordinary course of business;
- Text messages and instant messages not retained in the ordinary course of business;
- Server, system, network, or software application logs;
- Data remaining from systems no longer in use that is unintelligible on the systems in use;
- Electronic data temporarily stored by laboratory equipment or attached electronic equipment, provided that such data is not ordinarily preserved as part of a laboratory report;
- Software files included on the National Institute of Standards and Technology (NIST) Modern RDS (minimal) list obtained from https://www.nist.gov/itl/ssd/software-quality-group/national-software-reference-library-nsrl/nsrl-download/current-rds
- Structural files not material to individual file contents (e.g. .CSS, .XSL, .XML, .DTD, etc.);
- Operating System files that do not store user-created content (e.g. CAT, DLL, DMP, EXE, FON, PNF, OPS, SYS, *etc.*);
- Application source code, configuration, and other similar files necessary for the function of an application that do not store user-created content during ordinary use (*E.g.* BAK, BIN, CFG, DBF, DAT, JS, JSON, JAR, LUA, MSB, RES, WINNT, YTR, *etc.*).

Mobile Devices

If any responsive electronic data (e.g., call logs, email, calendars, contact data, notes, etc.) sent to or from mobile devices uniquely resides on the mobile device (i.e., is not routinely saved elsewhere (such as on a server, laptop, desktop computer, or "cloud" storage)), the parties will meet and confer, including assessing burden and cost, and, if applicable, production format.

Proprietary Software

If responsive and non-privileged documents uniquely reside (i.e., not duplicative of any other source) on propriety software, which cannot be rendered or reviewed without the use of proprietary software, the Parties shall meet and confer to assess the production, including assessing burden and cost, and, if applicable, production format.

Search Terms

The parties agree to the use of reasonable search filters such as word/phrase filters, proximity filters, or date filters, among other possible filters. If any other party believes in good faith that use of the search filters resulted in deficiencies in production, the Parties will share the search filters applied, including an STR hit report, and work collaboratively on any revisions to such filters, on the understanding that this may be an iterative process.

Outside the United States

If any identified custodian or data source is located outside the United States, the parties shall meet and confer. Proportionality, availability from other sources, and privacy rights should be considered.

Discovery on Discovery

Discovery concerning the preservation and collection efforts of another party can contribute to unnecessary expense and delay and may inappropriately implicate work product and attorney-client privileged matter. Discovery on discovery may only be allowed by Court Order.

6. TECHNOLOGY ASSISTED REVIEW (TAR)

The parties agree to the use of TAR. Nothing in this Protocol shall require the use of TAR. Only if any other party believes in good faith that use of the TAR resulted in

deficiencies in production, the Parties will share information related to the TAR process and work collaboratively on any revisions to the TAR process, on the understanding that this may be an iterative process. If the parties desire to share additional information related to TAR, the parties will develop a separate TAR Protocol.

7. GENERAL PRODUCTION FORMATTING

Global De-Duplication

The parties may use global de-duplication across custodians from within their unique possession, custody or control to remove exact duplicates (based on MD-5 or SHA-1 hash values at the family level) so long as the suppression of documents from review tracks where the duplicates were residing so that it can be produced if warranted.

In addition, in order to reduce unnecessary volume in the review and production of e-mails, the parties may utilize e-mail threading, which means in instances in which a group of e-mails are captured in an e-mail string, only the latest e-mail in the string will be produced along with all attachments included in the e-mail string. Emails containing unique attachments not otherwise contained in the inclusive email shall also be produced along with their parent email. E-mails suppressed under this paragraph need not be reflected on the party's privilege log.

Color

Generally speaking, documents can be produced in black and white. However, if an original document contains color and is incomprehensible without color, the party producing the document should, upon request, produce the document in color to assist the party requesting the document in understanding the document. The parties expect that there will be few instances in which such requests will be necessary and such requests should not unreasonably be denied by the Producing party. Production of color images will be in JPEG format.

Load File Format

Unless otherwise agreed, each production will include a data load file in Concordance (*.dat) format and an image load file in Opticon (*.opt) format. Load file names should contain the volume name of the production media.

Encryption

All data transfers need to be done with some sort of Encryption (secure FTP or other mode of encryption such as password protected .ZIP, .RAR files or hard drives).

Metadata Fields

See Exhibit A.

Time Zone

All provided metadata pertaining to dates and times will be standardized to Eastern Time.

8. SPECIFIC PRODUCTION FORMAT

☐ **ELECTRONICALLY STORED INFORMATION**

De-NISTing

Electronic files will be De-NISTed, removing commercially available operating system and application file information contained on the current NIST file list.

File Formats

All spreadsheet (e.g., Microsoft Excel, Corel Quattro, etc.) files shall be produced as native files with TIFF placeholder images.

If spreadsheet files require redaction, the redacted spreadsheet(s) may be produced as TIFF image(s), if native redaction tools are not available or are costly.

All photographs (e.g., .jpg, .gif) shall be produced as native files with TIFF placeholder images.

All media files, such as audio and video files, shall be produced as native files with TIFF placeholder images.

Emails, word processing (e.g., Microsoft Word, WordPerfect), presentations (e.g., Microsoft PowerPoint), and PDF files shall be produced as TIFFs.

The Parties shall produce other file types in TIFF format, where possible, and for other file types not suitable for imaging, in a reasonably useable format.

Technical Issues

Parties shall take reasonable steps to resolve any technical issues prior to production. If a technical issue cannot be resolved, the Producing Party will either produce a slip-sheet or mark the document not responsive, as directed by the Receiving Party.

Embedded and Encrypted Files

Embedded files, except for images embedded in emails, are to be produced as family groups. Embedded files should be assigned Bates numbers that directly follow the Bates numbers on the documents within which they are embedded.

Parties shall take reasonable steps to unencrypt all files prior to production. If a password protected document is found during review, parties will take all reasonable steps to produce the password and/or cure the encryption associated with the document.

Structured Data

If data from structured data systems (e.g. databases) are responsive to particular requests and will otherwise be produced, the parties agree that the responding party will notify the requesting party of its intended production format prior to the actual production and the parties will discuss in good faith the most reasonable production format for the particular information. Where possible, relevant and responsive information from databases will be either produced in standard (a/k/a canned) reports or as pipe-delimited ASCII format with the first row including data field headings/names.

Email Threading

Parties may utilize email thread suppression. E-mail threads are email communications that contain prior or lesser-included e-mail communications that also may exist separately in the electronic files. A most inclusive e-mail thread is one that contains all of the prior or lesser-included e-mails, including attachments, for that branch of the e-mail thread. For the avoidance of doubt, only email messages for which the parent document and all attachments are contained in the more inclusive email message will be considered less inclusive e-mail messages that need not be produced; if the later message contains different text (such as where the later message adds in-line comments to the body of the earlier message, or branches to a different conversation string), or does not include an attachment that was part of the earlier message, the earlier message must be produced. To the extent that an e-mail thread contains privileged

communications, such communications can be redacted. If an e-mail thread contains responsive, non-privileged communications, the entire e-mail thread cannot be withheld as privileged.

Parent-Child Relationships

Producing Party may elect to produce or slip-sheet non-responsive family members. Parent-child relationships (the association between an attachment and its "parent" document) that have been maintained in the ordinary course of business should be preserved (i.e., consecutively produced) to the extent reasonably practicable.

☐ **HARD COPY**

Unitization

In scanning hardcopy documents, multiple distinct documents should not be merged into a single record, and single documents should not be split into multiple records (*i.e.*, hard copy documents should be logically or physically unitized).

In the case of an organized compilation of separate hardcopy documents—for example, a binder containing several separate documents behind numbered tabs—the document behind each tab should be scanned separately, but the relationship among the documents in the binder should be reflected in proper coding of the family fields set out below.

Production Format

When the parties produce hard copy (paper) documents, the paper will be scanned and produced electronically as single page TIFF images, 300 DPI, named the same as their Bates number (Acrobat PDF scans will comply with this requirement). To the extent an image is illegible or difficult to read, the Requesting Party may ask to for the document to be rescanned; if rescanning does not resolve the issue, the Requesting Party may ask to see the original document, in which case the original shall promptly be made available by the producing party. Each TIFF should be endorsed with a unique document identifier (i.e., Bates Label). The scanning of original hardcopy documents does not otherwise require that the scanned images be treated as ESI.

OCR

For scanned images of hard copy documents, OCR should be performed on a document level and provided in document-level *.txt files named to match the production number of the first page of the document to which the OCR text corresponds. OCR text should not be delivered in the data load file or any other delimited text file.

☐ **OTHER:**

9. CONFIDENTIALITY

Native File Names

For each native file produced, the production will include a TIFF image slip-sheet indicating the production number of the native file and the confidentiality designation, and stating "File Provided Natively." The file name of the native will include the Bates number, and if the file is anything other than not confidential, the confidentiality designation must be placed in the file name.

Requests to Seal Information

Requests to seal information from public access must conform with Administrative Rule 9(G).

Protective Order

Before seeking a protective order from the Court, the parties must confer in good faith in an effort to agree to a stipulated protective order regarding the disclosure and exchange of any discovery documents. The Court will not consider any protective order unless:

- the parties verify to the court that they have face-to-face or telephonically conferred regarding the need for and form of the protective order, or
- the party seeking the protective order can demonstrate that its meaningful and continued efforts to confer face-to-face or telephonically were unsuccessful, and time is of the essence in considering the need for a protective order. A single exchange of an email or letter alone is insufficient.

10. BATES LABELING AND BRANDING

Bates Labelling

For each Custodial Document, produced as TIFF images, the Producing party should electronically endorse a legible, unique Bates number onto each page at a location that does not obliterate, conceal or interfere with any information from the source document. For documents produced in native format, the Bates number shall be included in the file name of the produced document. Each Producing party should use unique Bates Labels to identify its images and documents. A Bates Label should begin with at least three alphabetical characters and followed by at least seven numbers (e.g. ABC0000001 or ACME00000023 or JUPITER0000004).

Confidentiality Branding

Confidentiality branding should be applied consistent with the Protective Order. If the Protective Order does not address such branding, then confidentiality branding shall be done by agreement of the parties. As an example, for a Confidential documents, the documents shall be branded with "Confidential" in the bottom left corner of each page of the Confidential document.

11. REDACTIONS

Available Redactions

The parties agree to the use of the following redactions: privacy, privilege, unrelated to subject matter, confidentiality, and any other per agreement of the parties.

Redaction Format

The redaction shall be clearly indicated on the face of the document, with each redacted portion of the document stating that it has been redacted and the basis for the redaction, and a metadata field shall indicate that the document contains redactions and the basis for the redaction (e.g., "A/C Privilege"). Where a responsive and non-privileged document contains both redacted and non-redacted content, the parties shall produce the remainder of the non-redacted portions of the document and the text/OCR corresponding to the non-redacted portions.

12. FOREIGN LANGUAGE

If foreign language documents are responsive and not privileged, the parties will produce in the original language or the language collected. Producing Party will not be required to translate documents to English or any other language.

13. TIMING OF PRODUCTION

Productions shall be made within forty-five (45) days of receipt of the Request, unless otherwise agreed to by the parties in writing or ordered by the Court. For the Complex Pathway, parties may employ rolling productions starting within forty-five (45) days of receipt of the Request.

14. PRIVILEGED DOCUMENTS

Contents of Privilege Log

Unless otherwise agreed by the parties or ordered by the Court, the Privilege Log shall contain the following fields:

- CONTROL NUMBER
- FIRST BATES
- LAST BATES
- CUSTODIAN (LAST, FIRST, MIDDLE)
- DUPLICATE CUSTODIANS (LAST, FIRST, MIDDLE)
- AUTHOR / FROM
- RECIPIENT / TO
- CC
- BCC
- DATE SENT / RECEIVED / CREATED
- FILE NAME
- FILE TYPE
- STATUS OF PRIVILEGE DESIGNATION (E.G., ATTORNEY-CLIENT OR WORK PRODUCT) OR BASIS FOR REDACTION
- FULLY PRIVILEGED OR REDACTED
- SUBJECT / PRIVILEGE OR REDACTION CLAIM DESCRIPTION

Redactions for Privilege

Where a responsive and non-privileged document contains both redacted and non-redacted content, the parties shall produce the remainder of the non-redacted portions

of the document and the text/OCR corresponding to the non-redacted portions. These documents should be added to the Privilege Log.

Inadvertently Produced Privileged Information

If, at any time, a party discovers that it produced information that it reasonably believes is subject to protection under the attorney/client, work-product, trial-preparation privileges or any other applicable protection, then it must promptly notify each Receiving Party of the claim for protection, the basis for it, amend its privilege log accordingly, if applicable. All Receiving Parties shall promptly return or destroy (and certify destruction in writing to the Producing Party) all copies of the information. Whenever possible, the producing party must produce substitute information that redacts the information subject to the claimed protection. The parties must also comply with Trial Rule 26(F) before seeking Court intervention to resolve any related dispute.

This production, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.

Privilege Log Exclusions

A party need only log the topmost e-mail in a thread so long as the description of the subject matter includes enough information sufficient to demonstrate the privilege and as long as all lesser-contained e-mails are also independently privileged. If all lesser-contained e-mails are not independently privileged, the topmost e-mail thread must be redacted rather than withheld.

Documents comprising attorney client communications and/or attorney work product relating solely to the defense of this litigation, and solely between outside counsel or outside counsel and in-house counsel, and dated after the start of the litigation, need not be included on a privilege log.

15. NON-PARTY PRODUCTIONS

Notice

Any party that requests discovery from a non-party via subpoena or FOIA shall provide notice to all other parties in advance of serving the non-party request, pursuant to Trial Rule 34 (C). Production

Any party that obtains discovery from a non-party via subpoena or FOIA shall produce a copy of the discovery to all other parties within thirty (30) days, unless other deadlines necessitate a need for earlier production. The party in possession of the non-party discovery may produce an exact copy of the non-party's production to all other parties and is under no obligation to satisfy the production format requirements set forth in this Protocol.

The producing party is encouraged, however, to ask the non-party to comply with this Protocol or at a minimum, Bates number the documents consistent with this Protocol.

16. EFFECT OF PROTOCOL AND DISPUTES

Duration

This agreement will remain in effect during the pendency of the Case, including any appeals.

Supplementation

This Protocol shall not modify the requirement in Trial Rule 26(E) that all Discovery, including Initial Disclosures, for supplementation.

Resolving Discovery Disputes

Strict compliance with the Trial Rule 26(F) meet and confer requirements in resolving discovery disputes is mandatory. Counsel seeking relief must first specify to opposing counsel a concise statement of the alleged deficiencies or objections and then meet in good faith to try to effectuate a written resolution of the dispute before submission to the Court for resolution. Actual face-to-face or telephonic meetings are preferred to show good faith, but if effort to obtain face-to-face or telephonic meetings are unsuccessful, meaningful and continued efforts to obtain same are sufficient. A single exchange of an email or letter alone is insufficient. Discovery disputes that counsel are not able to resolve should be submitted to the Court via Motion. The parties agree that discovery dispute Motions (and any accompanying Memoranda and supporting materials) shall not exceed fifteen (15) double-spaced pages.

The parties' consent to the use of a special master to resolve discovery disputes.

No Waiver

This Agreement shall not constitute a waiver of any objection, including, but not limited to the ultimate discoverability, authenticity, privilege, admissibility, or relevance of any records addressed herein.

Enforcement

The Parties agree that this Agreement has the same force as an order of the Court, and that the Court may enforce it accordingly.

17. MODIFICATION OR AMENDMENT TO PROTOCOL

This Protocol may be modified by written agreement of the parties or by the Court for good cause shown.

IT IS SO STIPULATED, through parties and/or Counsel of Record.

Dated: _____ _____

Plaintiff(s) / Counsel for Plaintiff(s)

Dated: _____ _____

Defendant(s) / Counsel for Defendant(s)

EXHIBIT A

The following is a list of field names and definitions required for all productions:

Field Name	Field Description	Example	Hard Copy	Email	Other ESI
VOLUME	Production volume number	PROD001	X	X	X
CUSTODIANS	All custodians of a document -- format: Last, First	Doe, Jane; Smith, John	X	X	X
TIME_ZONE	The Time Zone from which the native file was processed.	EST	X	X	X
BEGDOC	The starting Bates number of a document.	DOJ00000001	X	X	X
ENDDOC	The Bates number of the last page of a document.	DOJ00000002	X	X	X
BEG_ATTACH	First Bates number of attachment range	DOJ00000003		X	X
END_ATTACH	Last Bates number of attachment range	DOJ00000015		X	X
PAGE_COUNT	Number of pages in a document (image records)	3	X	X	X
FROM	Email Author	Doe, John		X	
TO	Recipients of the Email	Doe, Jane; LeeW@MSN.com		X	

Field Name	Field Description	Example	Hard Copy	Email	Other ESI
CC	Names of the individuals who were copied on the Email	Frank Thompson [mailto: frank_Thompson@cdt.com]		X	
BCC	Names of the individuals who were blind-copied on the Email	Dodson, John		X	
SUBJECT	Email subject	Board Meeting Minutes		X	
AUTHOR	Author field value extracted from the metadata of a native file	Smith, John			X
FILE_NAME	File name of native file (E-Docs or attachments to Email)	Board Meeting Minutes.docx			X
FILE_EXTENSION	File extension of native file	.xls		X	X
DOC_DATE	For EDoc, EDoc Attachment, Email Attachment: populate with DATE_MODIFIED, and if unavailable, DATE_CREATED For Emails: populate with DATE_SENT	2018/05/22		X	X
DATE_SENT	Date email was sent -- Format: YYYY:MM:DDD	2018/05/22		X	

Field Name	Field Description	Example	Hard Copy	Email	Other ESI
TIME_SENT	Time Email was sent -- Format: HH:MM:SS	7:22:13 PM		X	
DATE_CREATED	Date electronic file was last created -- Format: YYYY:MM:DD	2018/05/22			X
TIME_CREATED	Time E-Doc was created -- Format: HH:MM:SS	7:22:13 PM			X
DATE_MODIFIED	Date electronic file was last modified -- Format: YYYY:MM:DD	2018/05/22			X
TIME_MODIFIED	Time E-Doc was modified - Format: HH:MM:SS	7:22:13 PM			X
FILE_SIZE	File size in Bytes	58,164		X	X
NATIVE_LINK	Hyperlink to the native file document	NATIVE/003/DOJ00000305.xls			X
TEXT_PATH	Path to extracted text of the native file	TEXT/001/DOJ00000001.txt	X	X	X

Discovery Cost-Shifting Order

	)	
	)	Case Number: _____
	)	
Plaintiff(s),	)	DISCOVERY COST-SHIFTING ORDER
	)	
vs.	)	
	)	
Defendant(s).	)	

Pursuant to Indiana Rules of Trial Procedure 26, 34 and 37, the Court Orders:

I. GENERAL

A. This Order is entered into per:

☒ All parties consent to the entry of this Cost-Shifting Order, or

☐ All parties do not consent, but the Court, after giving notice to the parties and an opportunity to be heard finds it probable that entry of the Cost-Shifting Order will materially assist the Court in resolving the case in a just and timely manner.

II. SCOPE OF ORDER

B. Each party shall bear the expenses of collection, review, and production of materials identified as follows (herein after referred to as "Discovery subject to Cost-Sharing"): [Insert scope of materials subject cost-sharing].

C. The requesting party shall reimburse the producing party for by payment of:

☐ ____ percent of the expenses of collection, review, and production incurred by the producing party to produce the Discovery subject to Cost-Sharing above.

☐ $.15 per page of Discovery subject to Cost-Sharing produced by the producing party.

☐ a set, predetermined amount of $_____, regardless of the amount of Discovery subject to Cost-Sharing produced by the producing party.

D. Nothing in this rule alters the scope and limits of discovery as defined by Indiana Trial Rule 26(b).

III. TERMINATION OR AMENDMENT OF ORDER

This Order of reference shall terminate upon production of all Discovery subject to Cost-Sharing, unless extended by further order of the Court. This Order is subject to amendment by the Court, on its own accord or upon application of the parties or a Discovery Master.

DATE: _____ **_____**

JUDGE

Appendix E: Other States' Recent Discovery-Related Updates

California

Discovery forms

- *See* Form Interrogatories – General; Form Interrogatories – Employment Law; Form Interrogatories – Unlawful Detainer; Form Interrogatories – Limited Civil Cases (Economic Litigation); Form Interrogatories – Construction Litigation; Case Questionnaire – For Limited Civil Cases (Under $25,000); Request for Statement of Witnesses and Evidence – For Limited Civil Cases (Under $25,000); Request for Admission; Commission to Take Deposition Outside California (California - Find Your Court Forms - forms_and_rules)

Special master

Section 638 - Appointment upon agreement of parties or upon motion of party to contract or lease.

- "A referee may be appointed upon the agreement of the parties…(c) in any matter in which a referee is appointed pursuant to this section…"

Stipulated order appointing special master

- https://www.sanmateocourt.org/documents/forms_and_filing/cv-67.pdf

Cost shifting

- California Code of Civil Procedure Section 2031.280 opens the door to courts ordering the requesting party to bear the costs of producing data (p. 17-18).

Colorado

Colorado Civil Access Pilot Project (CAPP) Summary of Changes (p. 4-5)

- Beginning in 2012, five state district courts began testing a pilot project for new pretrial procedures for civil business cases.
  - Procedures included: Pleadings, Disclosures, Discovery, and Case Management.

- (1) Proportionality principles guide the application and interpretation of rules.
- (3) Initial disclosures are more robust, accompanied by a privilege log.
- (5) Parties meet and confer on preservation shortly after the answer and prepare a joint case management report.
- (7) Scope of discovery is limited to matters that would "enable a party to prove or disprove a claim or defense or to impeach a witness," and is subject to proportionality considerations.
- (8) Only one expert witness per side per issue or specialty is permitted. No depositions of expert witnesses are permitted.

Findings

- Docket study shows that the pilot program reduced the time of resolution over existing procedures.
- Docket study shows that parties are 4.6 times more likely to see the judge earlier and will see him or her twice as often.
- Docket study and survey data suggest that the pilot program reduces motions practice.
- Three out of four surveyed attorneys indicated that litigation costs were proportionate to the subject case.
- Supreme Court adopted most of CAPP changes along with incorporating the 2015 amendments to the federal rules.

Illinois

Rule changes

Rule 201(c)(3). Proportionality

- "When making an order under this Section, the court may determine whether the likely burden or expense of the proposed discovery…outweighs the likely benefit…"

Rule 222. Limited and Simplified Discovery in Certain Cases

- Cases subject to mandatory arbitration, civil actions seeking money damages not in excess of $50,000 exclusive of interest and costs, and to cases for the collection of taxes not in excess of $50,000 are subject to limited and simplified discovery rules.

Rule 287. Depositions, Discovery and Motions

- "No depositions shall be taken or interrogatories or other discovery proceeding or requests to admit be used prior to trial in small claims…"

Iowa

Iowa Task Force: summary of changes (p. 29-46)

- (2) Discovery should be proportional to size and nature of the case
- (4) Requirement of initial disclosures
- (5) Reasonable limitations on expert discovery
- (6) Discovery should proceed pursuant to an agreement of the parties

Findings

- The Iowa Task Force did not institute a pilot program, but rather conducted a wide-ranging survey of more than 9,000 licensed Iowa attorneys and judges
- The Iowa Supreme Court adopted many of the changes outlined in the Iowa Task Force's report including initial disclosures, export report requirements, and expedited case procedures for actions involving $75,000 or less in money damages.

Massachusetts

Massachusetts adopted a "wait and see" approach to Rule 26 discovery changes.

Committee's considered changes (2016)

- (1) Refine the scope of discovery under Rule 26(b) by removing language that discovery must be "relevant to the subject matter" and replacing it with language that discovery must be "relevant to the party's claim or defense."
- (2) Adopt the proportionality standard from the 2015 federal amendments.
- (3) Delete language in Rule 26(b)(1), that information must be "reasonably calculated to lead to discovery of admissible evidence."

Committee proposed changes

- The committee favored a "wait and see approach" advising the Supreme Judicial Court (SJC) not to revise the discovery rules at this time.
- However, the Committee drafted language that alluded to the principle of proportionality but limited it to granting protective orders in discovery disputes under Rule 26(c).

- Ultimately, SJC approved the draft amending Rule 26(c) as described above for protective orders and left untouched the remaining portions of the discovery rules.

Michigan

Special master

Rule 3.913 Referees

- Referees can conduct preliminary inquiries and can preside at hearing other than a jury trial or preliminary examination.

Rule changes

Rule 2.302(B) Scope of Discovery

- "Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case…"

Rule 2.401(C) Discovery Planning

- "Upon court order or written request by another party, the parties must confer among themselves and prepare a propose a discovery plan"

Rule 2.401(J) ESI Conference, Plan, and Order

- "Where a case is reasonably likely to include the discovery of ESI, parties may agree to an ESI Conference, the judge may order the parties to hold an ESI Conference, or a party may file a motion requesting an ESI Conference."

Other findings

Civil Discovery - Special Committee Final Report and Proposal

The Guidebook to the New Civil Discovery Rules

New Hampshire

Pilot program: summary of changes (p. 2-3)

- Enacted on October 1, 2010 and applies to all newly filed non-domestic civil cases in Strafford and Carroll counties.
  - Exempts some types of civil matters, primarily filings related to criminal matters.
- PR 2: Required parties to meet within 20 days of the filing to establish deadlines.
- PR 3: "Requires the parties to automatically disclose the names and contact information of individuals with information about the disclosing party's claims and defends, and a brief summary of the information possessed by each person." This rule also requires the parties to automatically disclose all documents, ESI, and tangible things. Additionally, "the parties have an affirmative duty to supplement their disclosures with any newly acquired evidence."
- PR 4: Restricts the number of interrogatories to no more than 25, and number of hours of depositions to 20 hours.
- PR 5: Establishes a separate meeting to discuss preservation, deadlines, procedures of production of ESI.

Findings

- Proportion of default judgements fell from 11% to 8% of cases (p. 17).
  - Attributed to requirements of fact pleadings and automatic disclosures
- Rate at which cases were disposed showed no difference (p. 19).
  - Attributed to small sample size, New Hampshire lawyers were familiar with fact pleadings and automatic disclosure, and budgetary constraints.
- Rate of discovery disputes did not decrease as result of the automatic disclosure requirements (p. 21).
  - Pre-implementation disputes were already very low.
- Reduced the need for structuring conferences from 34% to 9% (p. 13).
  - Attributed to requirement in PR 2 for attorneys to meet and confer within 20 days of filing the Answer.
- Sufficiently positive reports of rule changes and adopted statewide effective March 1, 2013 (p. 21).
- Committee's further recommendations based on findings. (p. 21-22).

New York

Discovery forms

Preliminary Conference Stipulation and Order for Discovery

Special master

Section 202.14 Special Masters

- "The Chief Administrator of the Courts may authorize the creation of a program for the appointment of attorneys as special masters in designated courts to preside over conferences and hear and report on applications to the court. Special masters shall serve without compensation."

Rule changes

Section 245.20 – Automatic discovery

- "The prosecution shall disclose to the defendant, and permit the defendant to discover, inspect, copy, photograph, and test, all items and information that relate to the subject matter of the case…"

Other findings

Discovery Reform in NY courts

The Discovery Process

Pennsylvania

Special master

Rule 1920.51 – Hearing by the Court. Appointment of Master. Notice of Hearing

- "A master shall hear claims in an action of divorce under 3301(a), (b) and (d)(1)(ii) of the Divorce Code, in an action for annulment, and claims for alimony, equitable distribution of marital property, counsel fees, costs and expenses…"

Rule 1558 – Preliminary Conference. Appointment of Master

- "...(b) the court, at any time after the preliminary conference, may appoint a master to hear the entire matter or to conduct any sale, or to act upon only specific issues or matters relating to the carrying out of the order of partition.")

Wisconsin

Discovery forms

Motion for Discovery

Special master

Section 805.06 Referees

- (3) "The order of reference to the referee may specify or limit the referee's powers and may direct the referee to report only upon particular issues or to do or perform particular acts..."

Rule changes

Section 804.01 – General provisions governing discovery

- "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case..."

Cost shifting

- Wisconsin Statute Section 804.01(2)(e) includes limitations regarding the discovery of ESI and a requirement that parties meet and discuss cost of proposed discovery of ESI and to the extent it can be limited. Courts also have authority to intervene when necessary. Kauffman, Brittany K.T. "Allocating the Costs of Discovery: Lessons Learned at Home and Abroad" (2014), p. 21.

Miscellaneous findings

Tracking State Discovery Reform

Special masters

American Bar Association: "A Brainstorming Session: Using Special Masters to Help Courts Deal with the Challenges of the Pandemic"

Sample form master appointment order/affidavit of master

- American Bar Association, "A Brainstorming Session: Using Special Masters to Help Courts Deal with the Challenges of the Pandemic" (2020)
- Academy of Court Appointed Masters, "Appointing Masters and Other Judicial Adjuncts" (2020). Discovery Master (p. 2); Electronic Discovery Master (p. 5); Details of Appointment Order (p. 8-22); ABA Guidelines for the Appointment and Use of Special Masters (p. 40-43); Table of State Court Authorities Governing Judicial Adjuncts (p. 44-48).

Appendix F: Proposed Trial Rule Changes

The relevant portion of the Trial Rules that contain proposed changes are included in red font. Footnotes throughout elaborate on proposed changes. The proposed Forms above in **Appendix D** are in line with the proposed discovery-related Indiana Trial Rule changes below.

Indiana Trial Rule 4.6 (In Relevant Part)

....

(B) Manner of service. Service under subdivision (A) of this rule shall be made on the proper person in the manner provided by these rules for service upon individuals, but a person seeking service or his attorney shall not knowingly direct service to be made at the person=s dwelling house or place of abode, unless such is an address furnished under the requirements of a statute or valid agreement, or unless an affidavit on or attached to the summons states that service in another manner is impractical. A registered agent that has consented to electronic service may be served in such manner.

....

Indiana Trial Rule 5 (In Relevant Part)

Rule 5. Service and Filing of Pleadings, Documents, and Other Papers

(A) Service: When Required. Unless otherwise provided by these rules or an order of the court, each party and special judge, if any, shall be served with each of the following papers[31]:

(1) every order required by its terms to be served;
(2) every pleading subsequent to the original complaint;
(3) every written motion except one which may be heard ex parte;
(4) every brief submitted to the trial court;
(5) every paper relating to discovery required to be served upon a party; and
(6) every written notice, appearance, demand, offer of judgment, designation of record on appeal, or similar paper.

No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided by service of summons in Rule 4.

(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 is ordered by the court. Service upon the attorney or party shall be made by delivering or mailing a copy of the papers to the last known address, or where service is by FAX or e-mail, 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 or other public means by which a written acknowledgement of receipt may be requested and obtained 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.

(C) Certificate of Service. An attorney or ~~unrepresented~~ self-represented party tendering a document to the Clerk for filing shall ~~certify that~~ cause a certificate of service ~~has been~~ to be made, listing the parties served, and specifying the date and means of service. The certificate of service shall be placed at the end of the document and shall not be separately filed. The separate filing of a certificate of service, however, shall not be grounds for rejecting a document for

filing. The Clerk may permit documents to be filed without a certificate of service but shall require prompt filing of a separate certificate of service.

(D) Same: Numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order

(1) that service of the pleadings of the defendants and replies thereto need not be made as between the defendants;

(2) that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties; and

(3) that the filing of any such pleading (as referenced in (D)(1) & (D)(2)) and service thereof upon the plaintiff constitutes due notice of it to ~~the~~ all parties.

A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(E) Filing.[32]

(1) Except as otherwise provided in subparagraph (2) hereof, all pleadings and papers ~~subsequent to~~ after the complaint ~~which~~ that are required to be served upon a party shall be filed with the Court either before service or within a reasonable period of time thereafter.

(2)

....

Indiana Trial Rule 16 (In Relevant Part)

Rule 16. Pre-trial procedure: Formulating issues

(A) When required—Purpose. In any action except criminal cases, the court may in its discretion and shall upon the motion of any party, direct the attorneys for the parties to appear before it for a conference to consider:

(1) the simplification of the issues;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) a limitation of the number of expert witnesses;

(5) an exchange of names of witnesses to be called during the trial and the general nature of their expected testimony;

(6) the entry of a Discovery Order;

(7) the desirability of using one or more types of alternative dispute resolution under the rules therefor;

(8) the desirability of setting deadlines for dispositive motions in light of the date set for trial; and

(9) such other matters as may aid in the disposition of the action.

....

(C) Conference of attorneys. Unless otherwise ordered by the court, at least ten [10] days prior to the pre-trial conference, attorneys for each of the parties shall meet and confer for the following purposes:

(1) Exhibits. Each attorney shall mark for identification and provide opposing counsel an opportunity to inspect and copy all exhibits which he expects to introduce at the trial. Numbers or marks placed on such exhibits shall be prefixed with the symbol "P/T", denoting its pre-trial designation. When the exhibit is introduced at the trial of the case, the "P/T" designation will be stricken and the exhibits must also indicate the party identifying same. Exhibits of the character which prohibit or make impracticable their production at conference shall be identified and notice given of their intended use. Necessary arrangements must be made to afford opposing counsel an opportunity to examine such exhibits.

(2) Exhibit stipulations. Written stipulations shall be prepared with reference to all exhibits exchanged or identified. The stipulations shall contain all agreements of the parties with reference to the exchanged and identified exhibits, and shall include, but not be limited to, the agreement of the parties with reference to the authenticity of the exhibits, their admissibility in evidence, their use in opening statements, and the provisions made for the inspection of identified exhibits. The original of the exhibit stipulations shall be presented to the court at the pre-trial conference.

(3) Fact stipulation. The attorneys shall stipulate in writing with reference to all facts and issues not in genuine dispute. The original of the stipulations shall be presented to the court at the time of the pre-trial conference.

(4) Exchange list of witnesses. Attorneys for each of the parties shall furnish opposing counsel with the written list of the names and addresses of all witnesses then known. The original of each witness list shall be presented to the court at the time of the pre-trial conference.

(5) Discuss Rules on Access to Court Records issues that may arise during the proceedings.

(6) Discuss discovery, including a Discovery Order.

(7) Discuss settlement. The possibility of compromise settlement shall be fully discussed and explored.

....

Indiana Trial Rule 26

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 these rules provide otherwise or the court orders otherwise under subdivision (C) of this rule, the frequency of use of these methods is not limited. However, duplication of discovery methods to obtain the same information and discovery requests that are disproportionate in terms of burden or expense should be avoided.[33]

....

(B) Scope of discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to ~~the subject-matter involved in the pending action, whether it relates to~~ the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter and is proportional to the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, the importance of the proposed discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit.[34] It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking

discovery has had ample opportunity by discovery in the action to obtain the information sought or; (iii) the discovery is not proportional to ~~burden or expense of the proposed discovery outweighs its~~ the needs of the case, taking into account the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, ~~and~~ the importance of the proposed discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.[35] The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(C).

....

(C) Protective orders. Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is being taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time, ~~or~~ place, manner of sharing costs[36];

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except the parties and their attorneys and persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Trial Rule 37(A)(4) apply to the award of expenses incurred in relation to the motion.

(9) that a party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because

of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause. The court may specify conditions for the discovery.

....

Indiana Trial Rule 30 (In Relevant Part)

Rule 30. Depositions Upon Oral Examination[37]

(A) When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in Rule 30(A)(2). A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(B)(1): ~~of court, granted with or without notice, must be obtained only~~

(1) ~~-~~if the plaintiff seeks to take a deposition prior to the expiration of twenty [20] days after service of summons and complaint upon any defendant except that leave is not required in these circumstances: ~~(1)~~ if a defendant has served a notice of taking deposition or otherwise sought discovery; or~~(2)~~ if special notice is given as provided in subdivision (B)(2) of this rule.

(2) if the parties have not stipulated to the deposition and: the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by plaintiffs, or by the defendant, or by the third-party defendant; the deponent has already been deposed in the case; or the deponent is confined in prison, in which case the deposition may be taken only on such terms as the court prescribes.

The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. ~~The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.~~

(B) Each party is limited to not more than ten (10) depositions (excluding experts and parties or party representatives), with a seven-hour (7) limit for each deposition (unless the deposition is of an expert, a party, or a party representative), unless otherwise agreed to by the parties or Court order.[38]

(C) Notice of examination: General requirements—Special notice—Non-stenographic recording—Production of documents and things—Deposition of organization.

....

(6) A party may in his notice name as the deponent an organization, including without limitation a governmental organization, or a partnership and designate with reasonable particularity the matters on which examination is requested. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination.[39] The organization so named shall designate one or more officers, directors, or managing agents, executive officers, or other persons duly authorized and consenting to testify on its behalf. The persons so designated shall testify as to matters known or available to the organization. This subdivision (B)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

....

Indiana Trial Rule 33

Rule 33. Interrogatories to Parties

(A) Availability—Procedures for use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is an organization including a governmental organization, or a partnership, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories 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.

(B) Number.[40] Unless otherwise agreed to by the parties or Court order, no party shall serve more than: [25-40] interrogatories. Sub-parts shall not be counted as part of the number served, provided that the subparts are related to the same topic (i.e., multiple questions within one question, such as 1(A)-(D)).

(C) Format of interrogatory and response. A party who serves written interrogatories under this rule shall provide, after each interrogatory, a reasonable amount of space for a response or an objection. Answers or objections to interrogatories shall include the interrogatory which is being answered or to which an objection is made. The interrogatory which is being answered or objected to shall be placed immediately preceding the answer or objection.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objections shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. Any general

objections (e.g., an objection that does not specifically state the grounds on which it was based or an objection that applies globally, not to specific requests) will be struck and have no effect.

(D) Time for service, response, and sanctions. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within a period designated by the party submitting the interrogatories, not less than thirty (30) days after the service thereof or within such shorter or longer time as the court may allow. The party submitting the interrogatories may move for an order under Rule 37(A) with respect to any objection to or other failure to answer an interrogatory.

The party upon whom the interrogatories have been served may object to the failure to follow the Format requirements in subpart (B) by returning the interrogatories to the party who caused them to be served. If this objection is to be made, the interrogatories shall be returned to the party who caused them to be served not later than the seventh (7th) day after they were received. If the interrogatories are not returned in that time, then this objection is waived.

(E) Scope—Use at trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(B) and must be stated with reasonable particularity, and the answers may be used to the extent permitted by the rules of evidence. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion, contention, or legal conclusion, but the court may order that such an interrogatory be answered at a later time, or after designated discovery has been completed, or at a pre-trial conference.

(F) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Indiana Trial Rule 34

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

(A) Scope. Any party may serve on any other party a request:

(1) to produce and permit the party making the request, or someone acting on the requester's behalf, to inspect and copy, any designated documents or electronically stored information (including, without limitation, writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations from which information can be obtained or translated, if necessary, by the respondent into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 26(B) and which are in the possession, custody or control of the party upon whom the request is served; or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(B).

(B) Number. Unless otherwise agreed to by the parties or Court order, no party shall serve more than: [25-40] requests for production. Sub-parts shall not be counted as part of the number served, provided that the subparts are related to the same topic (i.e., multiple questions within one question, such as 1(A)-(D)).

(C) 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 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. Any general objections (e.g., an objection that does not specifically state the grounds on which it was based or an objection that applies globally, not to specific requests) will be struck and have no effect. 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.

(D) Application to Non-parties:

(1) A witness or person other than a party may be requested to produce or permit the matters allowed by subsection (A) of this rule. Such request shall be served upon other parties and included in or with a subpoena served upon such witness or person.

(2) Neither a request nor subpoena to produce or permit as permitted by this rule shall be served upon a non-party until at least ~~fifteen (15)~~ seven (7)[41] days after the date on which the party intending to serve such request or subpoena serves a copy of the proposed request and subpoena on all other parties. Provided, however, that if such request or subpoena relates to a matter set for hearing within such ~~fifteen (15)~~ seven (7) day period or arises out of a bona fide emergency, such request or subpoena may be served upon a non-party one (1) day after receipt of the proposed request or subpoena by all other parties.

(3) The request shall contain the matter provided in subsection (B) of this rule. It shall also state that the witness or person to whom it is directed is

entitled to security against damages or payment of damages resulting from such request and may respond to such request by submitting to its terms, by proposing different terms, by objecting specifically or generally to the request by serving a written response to the party making the request within thirty (30) days, or by moving to quash as permitted by Rule 45(B). Any party, or any witness or person upon whom the request properly is made may respond to the request as provided in subsection (B) of this rule. If the response of the witness or person to whom it is directed is unfavorable, if he moves to quash, if he refuses to cooperate after responding or fails to respond, or if he objects, the party making the request may move for an order under Rule 37(A) with respect to any such response or objection. In granting an order under this subsection and Rule 37(A)(2) the court shall condition relief upon the prepayment of damages to be proximately incurred by the witness or person to whom the request is directed or require an adequate surety bond or other indemnity conditioned against such damages. Such damages shall include reasonable attorneys' fees incurred in reasonable resistance and in establishing such threatened damage or damages.

(4) A party receiving documents from a non-party pursuant to this provision shall serve copies on all other parties within fifteen (15) days of receiving the documents. If the documents are voluminous and service of a complete set of copies is burdensome, the receiving party shall notify all parties within fifteen (15) days of receiving the documents that the documents are available for inspection at the location of their production by the non-party, or at another location agreed to by the parties. The parties shall agree to arrangements for copying, and any party desiring copies shall bear the cost of reproducing them.

(E) Exception to best evidence rule. When a party or witness in control of a writing or document subject to examination under this rule or Rule 9.2(E) refuses or is unable to produce it, evidence thereof shall be allowed by other parties without compliance with the rule of evidence requiring production of the original document or writing as best evidence.

Indiana Trial Rule 36

Rule 36. Requests for admission

(A) Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(B) to establish a fact as set forth in the request, including the genuineness of any documents described in the

request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. 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.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within a period designated in the request, not less than thirty [30] days after service thereof or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. If objection is made, the reasons therefor shall be stated. Any general objections (e.g., an objection that does not specifically state the grounds on which it was based or an objection that applies globally, not to specific requests) will be struck and have no effect. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny or that the inquiry would be unreasonably burdensome. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(C), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move for an order with respect to the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(A)(4) apply to the award of expenses incurred in relation to the motion.

(B) Number. Unless otherwise agreed to by the parties or Court order, no party shall serve more than: [25 to 40] requests for admission (excluding authenticating business records). Sub-parts shall not be counted as part of the number served, provided that the subparts are related to the same topic (i.e., multiple questions within one question, such as 1(A)-(D)).

(C) Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

Indiana Trial Rule 37 (In Relevant Part)

Rule 37. Failure to make or cooperate in discovery: Sanctions

....

(E) Electronically stored information. ~~Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.~~ If electronically stored information is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the Court, upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may: presume that the lost information was unfavorable to the party; instruct the jury that it may or must presume the information was unfavorable to the party; or dismiss the action or enter a default judgment.

(F) Cost-sharing and Electronically stored information.[42] Each trial court may order cost-sharing in discovery in a case pending therein if: (1) All parties consent; or (2) If all parties do not consent, the Court, after giving notice to the parties and an opportunity to be heard finds it probable that cost-sharing in discovery will materially assist the Court in resolving the case in a just and timely manner.

Indiana Trial Rule 53

Rule 53. Masters[43]

(A) Appointment and compensation. Each trial court ~~with the concurrence of the Supreme Court~~ may appoint a ~~special~~ master in a case pending therein if: (1) All parties consent to appointment of a master; or (2) If all parties do not consent, the Court, after giving notice to the parties and an opportunity to be heard finds it probable that appointment of a master will materially assist the Court in resolving the case in a just and timely manner; the anticipated costs associated with the appointment of a master are proportionate to the value of the case; and the anticipated costs associated with the appointment of a master will not be unduly burdensome to any party. As used in these rules the word "master" includes without limitation an attorney, a senior judge, a referee, an auditor, an examiner, a commissioner, ~~and~~ an assessor or any attorney or non-attorney who has special skills or training appropriate to perform the tasks that may be required. If an attorney, the master must be an attorney licensed and in good standing in the State of Indiana. Selection of the master may be by agreement of the parties or selected by the Court. The compensation to be allowed to a master shall be resaonable~~allowed in the manner and amount paid to judges pro tem and such additional compensation as is fixed by the Supreme Court~~. The rate of compensation and the allocation of the cost between the parties shall be established by the Court, with consideration of input provided by the parties and the master. However, if the parties seek appointment of a senior judge as a master, the appointment must be approved by the Supreme Court.

(B) Reference. ~~A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it. Reference shall be allowed when the parties agree prior to trial as provided by these rules or by statute. The order of reference to the Commercial Court Master must specify the Master's powers.~~ The order of reference may also direct the master to report only upon particular issues, to perform particular acts, or to receive and report evidence only, and fix the time and place for beginning and closing hearings, and for the filing of the master's report.

(C) Powers. ~~The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform~~

~~particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 43(C) for a court sitting without a jury.~~ Subject to the specifications and limitations stated in the order of reference, the master has the power to regulate all proceedings before the master, and to take all measures necessary or proper for the efficient performance of the duties assigned under the order.

(D) Proceedings.

(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty [20] days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The master may examine witnesses, including the parties to the action, under oath. The master may permit the parties to examine witnesses under oath, and may place reasonable limits on the examination of witnesses by the parties. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or

give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) Evidence and Statement of accounts. The master may require the production of evidence on all matters embraced in the order of reference, including the production of records and documents of all kinds, including electronic media. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to place witnesses under oath. If a party so requests, the Master must make a record of the evidence offered and excluded in the same manner, and subject to the same limitations, as provided for a court sitting without a jury. When matters of accounting are in issue before the master, he may prescribe the form in which the amounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be provided by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(E) Report.

(1) Contents and filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required by request of any party or the court prior to hearing or the taking of evidence by him to make findings of fact, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, ~~unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing~~.

(2) In nonjury actions. ~~In an action to be tried without a jury the court shall accept the master's decision or his findings of fact unless clearly erroneous.~~ Within ten [10] days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rules 5 and 6. The court after hearing may adopt the report or may reject it in whole or in part or may receive further evidence or may re-commit it with instructions.

(3) In jury actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulation as to findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft report. Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions. The Court may also request interim report(s) from the master at any time.

(F) Particular laws not affected. Nothing in this rule shall affect laws providing for the appointment and duties of probate commissioners; and nothing shall prevent any probate or other similar court from appointing a master under this rule.

Indiana Trial Rule 86 (In Relevant Part)

Rule 86. General electronic filing and electronic service

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(B) Service of Pleadings, Documents, and Other Papers.

...

(3) *Service of Pleadings~~Subsequent Documents~~ and Other Papers following the Complaint*

(a) *Service on Users*. Except for service required by Trial Rule 4 and except as provided for in this rule, users must serve all pleadings and papers [44]~~documents~~ in a case upon every other party who is a User through E-Service using the IEFS. E-Service has the same legal effect as service of an original paper document. E-Service of a document through the IEFS is deemed complete upon transmission to the email address for the User shown on the appearance filed in the case or the Public Service List, as confirmed by the NEF associated with the document. Exempt parties must serve all documents in a case as provided by Trial Rules 4 or 5.

(b) *Service on Others*. Trial Rules 4 and 5 shall govern service of documents on attorneys of record and on unrepresented parties who are not Users.

(C) Official Court Record. The electronic version of a document filed with or generated by the court under this rule is an official court record.

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Appendix G: Description of Optional Cost Allocation Pilot in Indiana Commercial Courts

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The Discovery Committee met on several occasions with members of Lawyers for Civil Justice (LCJ). LCJ is an organization comprised of three categories – corporations, law firms, and defense bar organizations. Its corporate members including insurance companies, pharmaceuticals companies, and manufacturing companies. LCJ has various discovery-related initiatives, including disclosure of third-party litigation funding, "requester pays" discovery, preserving judicial independence, and "fix[ing]" Rule 30(B)(6). According to its website, "LCJ has helped to streamline rules in our civil justice system that waste businesses' time and resources and has been honored by the Institute of Legal Reform at the U.S. Chamber for its success reforming current rules that require businesses of all sizes to retain massive amounts of information irrelevant to their cases." LCJ is the organization who brought the Cost Allocation Pilot discussed below to the Taskforce.[45]

The main goal of the Cost Allocation Pilot (Pilot) is to streamline litigation—reducing the burdens on court resources and speeding resolution—by focusing parties on the dispositive issues in the case and providing a commonsense incentive to avoid discovery and related disputes. More specifically, the Pilot encourages the parties to think more critically about what they are asking for as part of discovery because the party who requests discovery outside the scope of certain initial disclosures would be responsible for reimbursing the producing party a percentage of its expenses to respond to the additional discovery requests. Given the significant shift from current practice, combined with concerns that the parties often have different resources, this portion of the Report received the most discussion and dissent among the Taskforce members. Despite significant, well-thought-out discussions, the Taskforce did not come to a consensus as to the Pilot; it is therefore not included as a recommendation. The details provided are to inform the Court of the research and information available for further consideration. Based on feedback discussed below from certain judges, if the Pilot goes forward, it should be optional to the courts and not mandatory. Ultimately, the Cost Allocation

Pilot would be just another tool in a court's toolbox for discovery. If a Pilot goes forward, initially it should be available to only the Indiana Commercial Courts.

Because this is a new concept in Indiana, the courts would need guidance regarding when cost-sharing in discovery may be appropriate, particularly where there are bad actors in discovery. The proposed additions to Rule 37 in **Appendix F**, and the Form Order for Cost-Sharing in **Appendix D**, can assist the courts. The idea is to deter litigants from unduly burdensome discovery requests by making cost-sharing easier for the courts while retaining the judges' discretion on a case-by-case basis.

Considerations in favor of the Pilot for cost-sharing

A basic economic principle predicts that "underpriced commodities are overconsumed." When litigants don't have to shoulder a proportionate burden of their discovery requests, they have less incentive to focus their demands on what they need to resolve the merits of the case but instead ask for more than they need. Additionally, the ability to impose economic hardship on the other side provides an incentive—whether in bad faith or not—to seek more discovery than is necessary. Of course, the cost of reviewing discovery production that results from excessive requests acts as a restraint, but this is not always sufficient. Discovery requests that go beyond what is required to litigate or resolve the dispositive issues not only delay resolution of matters, but also frequently require court resources to sort out motions to compel production and for protective orders. By better aligning the parties' economic and other incentives, the Pilot would ensure that the court can adjudicate disputes most efficiently on their merits.

Incentivizing efficient discovery is also an important cutting-edge topic among judges,[46] academics, and practitioners,[47] and has been codified into several state rules.[48] Participating in this Pilot would establish Indiana courts as a leader in innovating practical solutions to procedural challenges, as Lawyers for Civil Justice has indicated that this Pilot would be a first of its kind. Furthermore, if implemented, LCJ has offered to bring academic expertise to bear upon the analysis of the Pilot's results, which could lead to additional long-term benefits.

There are good reasons to limit the Pilot to Indiana Commercial Courts. According to LCJ, "We chose the business court specifically because parties are generally sophisticated and represented by counsel such that the prospect of discovery cost

allocation will not implicate important concerns about access to the courts in matters brought by those of lesser means who have important issues that should be heard. As such, we view business court as a distinct tier in your court system and believe that is where our proposed pilot program can have the most impact. Limiting the pilot to business court will also help ensure that resulting data will enable a more reliable apples-to-apples analysis."

Considerations against the Pilot for cost-sharing

Article 1 Section 12 of the Indiana Constitution provides that "[a]ll courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay."

While purely economic principles may favor the cost-sharing pilot program, our judicial system is and should always be centered on access to justice. Members of the legal profession, our court system, and various partners in government have worked diligently to improve public faith and confidence in the court system, but the pilot program could undermine that work. The cost-sharing pilot hinders access to justice by presupposing that the trial court is required to place an economic burden on the requesting party rather than leaving it to the trial court to implement an economic sanction against those deemed to be bad actors or who are overreaching in their claim or their discovery.

This Taskforce was specifically charged with reviewing and considering Call to Action, which sets forth the fundamental framework for any recommendations. Members of this Taskforce expressed concern that the principles for recommendations are not satisfied by this pilot program:

- The pilot program (which is the creation of Lawyers for Civil Justice a self-proclaimed "defense group") systematically favors defendants and represented litigants, over plaintiffs and self-represented litigants.
- The pilot program fails to enhance public confidence in the courts and the perception of fairness, and focuses not on rich and poor being treated equally in the eyes of the law but on how much a person can pay, disadvantaging

the marginalized. For example, $500 to a large business is not the same as $500 to an individual working a minimum wage job; a self-represented litigant who spends 20+ hours responding to discovery requests on her own could go uncompensated but could be ordered to pay a company's counsel thousands of dollars for five hours of time spent responding to discovery.

While members of the Taskforce expressed concerns about the Pilot program, it was widely recognized that trial court judges should and do have resources available to implement sanctions in the form of cost-sharing when deemed necessary.

Concerns about the pilot program have also been expressed by Indiana's Commercial Court Judges. Concerns noted by Indiana Commercial Court Judges when the idea of this pilot was presented to them, include in part:

- "I'm particularly opposed to the suggestion that if the court must simply choose between two opposing proposals as to allocation of costs, that either or choice will cause the parties to be reasonable. That assumption is based in part on the notion that the parties have equal bargaining power. …. "I am not opposed to allowing some cost shifting occur. I would rather see that shifting of costs be left to the discretion of all of us as judges than resolved on a formulaic basis." …. "The idea that having some "skin in the game" will promote reasonableness resonates with me. But even a nominal shifting of the expenses may be sufficient to achieve the desired reasonable restraint on discovery activity." …. "Commercial Court Rules committee ought to meet and consider the proposal."
- "In some cases, this tool may be beneficial, but would it be overkill to employ it universally in all Commercial cases?" …. "As an alternative, the Indiana Innovation Initiative Civil Litigation Taskforce might approach the Supreme Court Committee on Rules of Practice and Procedure to bring Indiana up to date with most of the country by embracing the proportionality concept in our discovery rules…."
- "The concept--cost allocation in the context of proportionality--is worthy but, rather than a hard and fast rule, the language should permit the judge to allocate on a case-by-case basis."

- "I am willing to consider this but the rule would need to be discretionary and not just give a court two options. The great part about the Commercial Court in Indiana is we have many tools to apply to a case when appropriate and needed." …. "In addition, if they were to make the rule discretionary then I would suggest that it be used by the pilot project judges selected by the Indiana Supreme Court to implement the recommendations of the Civil Justice Initiatives Committee. Then in a pilot project they can track this issue and then get feedback from attorneys generally on the civil side to really decide if this is a discretionary tool need in civil courts in Indiana."

With these considerations in favor and against the Pilot in mind, the Taskforce describes the Pilot in this Report, but does not make it a recommendation. Should the Court wish to move forward with the Pilot or continue discussions on the Pilot, the Court should appoint a taskforce to effectuate the Pilot while further exploring the ramifications of the program.

Concept

To effectuate the Pilot, two items would be necessary: 1) Initial Disclosures; and 2) Decision on a percentage of cost allocation. Certain States already have Initial Disclosures in place, including:

- Arizona, which recently introduced Rule 26.2 that provides tiered limits on discovery based upon attributes of cases. Arizona also requires initial disclosures in Rule 26.1. As one article described it, "Rule 26.2 now emphasizes keeping discovery proportional based on the understanding that proportional discovery follows up on robust initial disclosures under Rule 26.1"
- Utah requires initial disclosures in its Rule 26(a)(1).
- The Federal Rules of Civil Procedure also require initial disclosures at 26(a)(1).

The LCJ initially proposed an automatic cost allocation of 50/50 beyond the Initial Disclosures.

Based on feedback from Indiana judges, a survey of litigants, further discussion with the LCJ, as well as a thorough discussion among the Taskforce members, this report does not include a recommendation for adding Initial Disclosures to the Indiana Trial Rules at

this time. Instead, for the Commercial Courts, if the Pilot were to go forward, would rely on Indiana Commercial Court Rule 6(B), "Initial Discovery / Required Initial Disclosures."

Potential Commercial Court Rule changes to support pilot

The Pilot would potentially require a new section D(3) to the Indiana Commercial Court Rules. Any changes to the Commercial Court Rules would need to be reviewed by the Indiana Commercial Court Committee and recommendations submitted to the Indiana Supreme Court. Updates considered are in red.

> D. Limitations on Discovery and Cost Allocation
>
> (3) Each party shall bear the expenses of collection, review, and production of materials identified in its initial disclosures pursuant to section B above, Initial Discovery / Required Initial Disclosures. Except as otherwise agreed by the parties or ordered by the Court for good cause shown, taking into consideration the resources of the parties and the particular circumstances of the litigation, the requesting party shall reimburse the producing party by payment of fifty (50) percent of the reasonable expenses of collection, review, and production incurred by the producing party to comply with any discovery requests beyond the scope of Section B and Section D sub-parts (1) and (2). If the parties are unable to agree on the reasonable expenses to be reimbursed under this Rule, each party shall provide the Court with its evidence of expenses incurred along with the proposed dollar amount, and the Court shall enter one of the proposed dollar amounts as the award of expenses. Nothing in this rule alters the scope and limits of discovery as defined by this Rule and Indiana Trial Rule 26(b).

Another alternative considered for Rule 6(D)(3): "payment of fifty (50) percent of the reasonable expenses in accordance with the fees associated with the copying of records by state agencies under the Indiana Access to Public Records Act, of collection, review, and production incurred by the producing party to comply with any discovery requests beyond the scope of section B. …."

Alternative options to the Pilot for cost-sharing

In addition to or as an alternative to the Pilot, the proposed additions to Trial Rule 37 discussed in **Appendix F**, as well the Form Order for Cost-Sharing in discovery in **Appendix D**, will be helpful. For example, should a court wish to utilize cost-shifting, the court could allocate costs for any discovery beyond the Initial Disclosures set forth in the Discovery Protocol. Another example would be for the court to utilize the proposed Cost-Shifting Order to help resolve a discovery dispute completely separate from any Initial Disclosures.

Appendix H: ADR Information Sheet

The purpose of this information sheet is to inform litigants of the various methods of Alternative Dispute Resolution which may be available for resolving matters which would otherwise have to proceed in a court of law.

Did you know that most civil lawsuits settle without a trial? Did you know that you don't have to always try your case in court in order to solve your dispute? Other ways to resolve lawsuits are known as alternative dispute resolution (also called ADR). ADR is a general term which includes mediation, facilitation, and other out-of-court strategies for resolving cases without going to trial. ADR allows the parties to play a more active role in resolving their dispute in a more informal setting. Cases can usually be resolved more quickly when ADR is used.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. Neutrals are normally chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court and follow the formal courtroom procedures. You often have more time and flexibility to fully explain your side of the case using ADR than you would in court.

Advantages to ADR

- You and the other party maintain more control over the resolution of your own problems.
- Disputes can be settled promptly. A mediation session can be scheduled as soon as everyone agrees to use mediation to resolve your disputes, even before a lawsuit is filed.
- ADR costs can be significantly less than taking a case to court.
- ADR can promote better relationships through cooperation, creative problem-solving, and improved communications.
- Resolving the case cooperatively helps avoid further conflict and involvement of the children in family law matters.
- Parties are more likely to abide by agreements that they create themselves.

- In most types of ADR, settlement is entirely voluntary. If you cannot reach an agreement on all the issues, you still have the right to take your disputes before a judge.

Because of these advantages, many parties choose ADR to resolve a dispute instead of filing a lawsuit. Even when a lawsuit has been filed, ADR can be used before the parties' positions harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

Mediation

One of the most popular forms of Alternative Dispute Resolution is **mediation**. Mediation is an informal process in which a neutral third party – known as a Mediator – helps you and the other party reach an agreement on some or all of your differences. In the mediation process, the mediator helps the parties identify important issues, clarify misunderstandings, explore solutions, and negotiate a settlement rather than having a costly and time-consuming trial. In mediation, decision-making by the parties must be voluntary, so only those issues upon which both parties can agree will be included in the settlement. For a complete explanation of mediation, the selection of mediators, the mediation process, and other questions about mediation, please read the Indiana Rules for Alternative Dispute Resolution.

Some Indiana county courts have programs for low-cost or no-cost mediation services to families who are involved in divorce or paternity cases and are unable to pay for private mediators. In such cases, if you meet financial eligibility requirements, you typically only pay a small fee. If you have read this page and would like more information on mediators, you can visit the [website]

Arbitration

Arbitration is a form of ADR that replaces the full trial process with a chosen individual(s) who serve as judge(s) in your case. Arbitration is generally regarded as less time-consuming, more flexible, and more cost-effective than traditional litigation in court. The arbitrator(s) make decisions about evidence and give written opinions (which can be binding or non-binding). Although arbitration is sometimes conducted with one arbitrator, the most common procedure is for each side to select an arbitrator. Then,

those two arbitrators select a third arbitrator, at which point the dispute is presented to the three chosen arbitrators.

Other ADR Methods

Mediation and arbitration are the two most commonly used methods of ADR. However, there are a wide variety of methods that may be beneficial in certain cases. Rule 1 of the Indiana Rules for Alternative Dispute Resolution lists such additional methods of ADR. Also, cases often can be resolved simply by making a settlement offer directly to the other party to the dispute.

Appendix I: Indiana Commission for Continuing Legal Education Correspondence

Office of Admissions & Continuing Education

Bradley Skolnik, Executive Director • 317-232-2552 • courts.in.gov

November 29, 2021

Steven M. Badger, Chair
Civil Litigation Taskforce
11 South Meridian Street
Indianapolis, IN 46204

Dear Mr. Badger:

The Indiana Commission for Continuing Legal Education ("CLE Commission") is charged with maintaining the Indiana Mediator Registry. There are presently 959 active mediators listed on the Indiana Mediator Registry.

On October 21, 2021, the CLE Commission voted unanimously to support the following two proposals of the Civil Litigation Task Force:

1. Functionality should be added to the Mediator Registry so that it is searchable to identify mediators who have agreed to provide their services on a no-charge basis. Such search functionality would allow litigants, lawyers, and judges to find mediators willing to mediate without charge and enhance the availability of mediation throughout the state in cases where the parties otherwise lack sufficient resources to engage a mediator.

2. To encourage mediators to conduct mediations at no cost, they should receive 1 hour of CME per calendar year for completing at least one free mediation during the year. Being an effective mediator requires skills that are improved only through practice. Therefore, unlike lawyers, practicing mediators often benefit more from actual practice than they do through updates on developments in the law. By offering mediators 1 hour of CME per year for completing a free mediation, we will be creating an incentive for them to sharpen their mediation skills while providing a service to the community.

The CLE Commission commends and thanks the Civil Litigation Task Force for its diligence and hard work. If either the CLE Commission or the Office of Admissions & Continuing Education can be of any further assistance to the Task Force, please contact me at any time.

Sincerely,

Bradley W. Skolnik
Bradley W. Skolnik
Executive Director
Office of Admissions & Continuing Education

Indiana Supreme Court Office of Judicial Administration
Office of Admissions & Continuing Education • 251 N. Illinois Street, Suite 550 • Indianapolis, IN 46204

Appendix J: Proposed ADR Rule Changes

The relevant portion of the ADR Rules that contain proposed changes are included in red font.

Rule 1. General Provisions

Rule 1.1. ~~Recognized~~ Alternative Dispute Resolution Methods

Alternative dispute resolution methods ~~which are recognized~~ include, without limitation, settlement negotiations, binding and non-binding arbitration, documents only arbitration, mediation, online mediation, online mediation, conciliation, facilitation, mini-trials, summary jury trials, private judges and judging, convening or conflict assessment, neutral evaluation and fact-finding, multi-door case allocations, and negotiated rulemaking. Any method alternative dispute resolution may, with the parties' agreement, include, in whole in or in part, online and remote proceedings.

Rule 1.2. Scope of These Rules

Alternative dispute resolution methods which are governed by these rules are (1) Mediation, and (2) Arbitration~~, (3) Mini Trial, (4) Summary Jury Trials, and (5) Private Judges~~. The absence of rules relating to other forms of alternative dispute resolution is not intended to preclude use of such other reasonable methods to which the parties may agree to resolve their dispute.

Rule 1.3. Alternative Dispute Resolution Methods Described in These Rules

(A) Mediation. This is a process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two (2) or more parties. This is an informal and nonadversarial process. The objective is to help the disputing parties reach a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute. Decision-making authority rests with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives, and in other ways consistent with these activities.

(B) Arbitration. This is a process in which a neutral third person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments which are presented by the parties and renders a decision. The decision may be binding or nonbinding. ~~Only non-binding arbitration is governed by these rules.~~

~~**(C) Mini-Trials.** A mini-trial is a settlement process in which each side presents a highly abbreviated summary of its case to senior officials who are authorized to settle the case. A neutral advisor may preside over the proceeding and give advisory opinions or rulings if invited to do so. Following the presentation, the officials seek a negotiated settlement of the dispute.~~

~~**(D) Summary Jury Trials.** This is an abbreviated trial with a jury in which the litigants present their evidence in an expedited fashion. The litigants and the jury are guided by a neutral who acts as a presiding official who sits as if a judge. After an advisory verdict from the jury, the presiding official may assist the litigants in a negotiated settlement of their controversy.~~

~~**(E) Private Judges.** This is a process in which litigants employ a private judge, who is a former judge, to resolve a pending lawsuit. The parties are responsible for all expenses involved in these matters, and they may agree upon their allocation.~~

Rule 1.4. Application of Alternative Dispute Resolution

These rules shall apply in all civil and domestic relations litigation filed in all Circuit, Superior, County, Municipal, and Probate Courts in the state.

Rule 1.5. Immunity for Persons Acting Under This Rule

A registered or court approved mediator; arbitrator; person acting as a neutral advisor or conducting, directing, or assisting in alternative dispute resolution, ~~a mini trial; a presiding person conducting a summary jury trial and the members of its advisory jury; and a private judge;~~ shall each have immunity in the same manner and to the same extent as a judge in the State of Indiana.

Rule 1.6. Discretion in Use of Rules

Except as herein provided, a presiding judge may order any civil or domestic relations proceeding or selected issues in such proceedings referred to mediation or~~,~~ non-binding arbitration ~~or mini trial~~. The selection criteria which should be used by the court are defined under these rules. Binding arbitration and any other form of alternative

dispute resolution in which a neutral makes a binding decision of the parties' dispute ~~a summary jury trial~~ may be ordered only upon the agreement of the parties as consistent with provisions in these rules which address each method.

***

Rule 2. Mediation

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Rule 2.5. Qualifications of Mediators

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(D) Continuing Mediation Education ("CME") Requirements for All Registered Mediators.

(1) A registered mediator must complete a minimum of six hours of Commission approved continuing mediation education anytime during a three-year educational period. A mediator's initial educational period commences January 1 of the first full year of registration and ends December 31 of the third full year. Educational periods shall be sequential, in that once a mediator's particular three-year period terminates, a new three-year period and six hour minimum shall commence. Mediators registered before the effective date of this rule shall begin their first three-year educational period January 1, 2004

(2) A registered mediator who completes at least one pro bono mediation in a calendar year may receive credit for one hour of continuing mediation education during that same calendar year. Such pro bono service shall be reported to the Commission on a form provided by the Commission. A pro bono service report received more than thirty (30) days after a mediation is completed must include a late processing fee as approved by the Indiana Supreme Court.

***

Rule 3. Arbitration

Rule 3.1. Agreement to Arbitrate

At any time fifteen (15) days or more after the period allowed for a peremptory change of venue under Trial Rule 76(B) has expired, the parties may file with the court an agreement to arbitrate wherein they stipulate whether arbitration is to be binding or nonbinding, whether the agreement extends to all of the case or is limited as to the issues subject to arbitration, and the procedural rules to be followed during the arbitration process. The parties' written agreement may specify arbitration procedures that vary from those below. Upon approval, the agreement to arbitrate shall be noted on the Chronological Case Summary of the Case and placed in the Record of Judgments and Orders for the court.

***

Rule 3.4. Arbitration Procedure

(A) Notice of Hearing. Where the parties have agreed that the arbitration proceeding include a hearing, the arbitrator or the Chair of an arbitration panel, u~~U~~pon accepting the appointment to serve~~, the arbitrator or the Chair of an arbitration panel~~ shall meet with all attorneys of record to set a time and place for ~~an~~ the arbitration hearing. (Courts are encouraged to provide the use of facilities on a regular basis during times when use is not anticipated, i.e. jury deliberation room every Friday morning.)

****

(E) Documents-Only Arbitration. The parties may elect to have the arbitration proceedings conducted entirely based on written materials and documents submitted by the parties. The parties may elect to have only some issues within an arbitration addressed through this method. Documents may include medical records, bills, records, photographs, and other material supporting the claim of a party. Any agreement for documents only arbitration must be included in an order signed by the arbitrator and indicating that the parties have waived their right to a hearing in respect to all issues or some specific issues in the arbitration. The arbitrator's order should include detailed directions as to the actions to be taken by each party and by what dates. The order should include a timetable for exchange of documents if discovery is requested. The

taking of depositions and/or site inspections may be ordered for good cause but are generally discouraged in documents only arbitration. Upon the submission of all documents the arbitrator shall declare the record of the proceedings closed and issue a written determination in accordance with the Rule 3.4(G).

~~(E)~~**(F) Confidentiality.** Arbitration proceedings shall be considered as settlement negotiations as governed by Ind. Evidence Rule 408. For purposes of reference, Evid.R. 408 provides as follows:

> **Rule 408. Compromise and Offers to Compromise**
>
> *Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Compromise negotiations encompass alternative dispute resolution.*

~~(F)~~**(G) Arbitration Determination.** Within twenty (20) days after the hearing or, in the case of a documents-only arbitration, when the arbitrator declares the record of proceedings closed, the arbitrator or Chair shall file a written determination of the arbitration proceeding in the pending litigation and serve a copy of this determination on all parties participating in the arbitration. If the parties had submitted this matter to binding arbitration on all issues, the court shall enter judgment on the determination. If the parties had submitted this matter to binding arbitration on fewer than all issues, the court shall accept the determination as a joint stipulation by the parties and proceed with the litigation. If the parties had submitted the matter to nonbinding arbitration on any or all issues, they shall have twenty (20) days from the filing of the written determination to affirmatively reject in writing the arbitration determination. If a nonbinding arbitration determination is not rejected, the determination shall be entered as the judgment or accepted as a joint stipulation as appropriate. In the event a

nonbinding arbitration determination is rejected, all documentary evidence will be returned to the parties and the determination and all acceptances and rejections shall be sealed and placed in the case file.

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Rule 4. Mini Trials [Delete]

Rule 5. Summary Jury Trials [Delete]

Rule 6. Private Judges [Delete]

Rule 4~~7~~. Conduct and Discipline for Persons Conducting ADR

Rule 4~~7~~.0. Purpose

This rule establishes standards of conduct for persons conducting an alternative dispute resolution ("ADR") process governed pursuant to ADR Rule 1.2, hereinafter referred to as "neutrals."

Rule 4~~7~~.1. Accountability And Discipline

A person who serves with leave of court or registers with the Commission pursuant to ADR Rule 2.3 consents to the jurisdiction of the Indiana Supreme Court Disciplinary Commission in the enforcement of these standards. The Disciplinary Commission, any court or the Continuing Legal Education Commission may recommend to the Indiana Supreme Court that a registered mediator be removed from its registry as a sanction for violation of these rules, or for other good cause shown, including but not limited to any current or past suspension or revocation of a professional license by the respective licensing agency; any relinquishment of a professional license while a disciplinary action is pending; any current or past disbarment; any conviction of, plea of nolo contendere to, or any diversion or deferred prosecution to any state or federal criminal charges (felonies, misdemeanors, and/or infractions), juvenile charges, or violation of military law (unless the conviction, nolo plea, diversion, or deferred prosecution has been expunged pursuant to law).

Rule 4~~7~~.2. Competence

A neutral shall decline appointment, request technical assistance, or withdraw from a dispute beyond the neutral's competence.

Rule 47.3. Disclosure and Other Communications

(A) A neutral has a continuing duty to communicate with the parties and their attorneys as follows:

(1) notify participants of the date, time, and location for the process, at least ten (10) days in advance, unless a shorter time period is agreed by the parties;

(2) describe the applicable ADR process or, when multiple processes are contemplated, each of the processes, including the possibility in nonbinding processes that the neutral may conduct private sessions;

(3) in domestic relations matters, distinguish the ADR process from therapy or marriage counseling;

(4) disclose the anticipated cost of the process;

(5) advise that the neutral does not represent any of the parties;

(6) disclose any past, present or known future

(a) professional, business, or personal relationship with any party, insurer, or attorney involved in the process, and

(b) other circumstances bearing on the perception of the neutral's impartiality;

(7) advise parties of their right to obtain independent legal counsel;

(8) advise that any agreement signed by the parties constitutes evidence that may be introduced in litigation; and

(9) disclose the extent and limitations of the confidentiality of the process consistent with the other provisions of these rules.

(B) A neutral may not misrepresent any material fact or circumstance nor promise a specific result or imply partiality.

(C) A neutral shall preserve the confidentiality of all proceedings, except where otherwise provided.

Rule 47.4. Duties

(A) A neutral shall observe all applicable statutes, administrative policies, and rules of court.

(B) A neutral shall perform in a timely and expeditious fashion.

(C) A neutral shall be impartial and shall utilize an effective system to identify potential conflicts of interest at the time of appointment. After disclosure pursuant to ADR Rule 7.3(A)(6), a neutral may serve with the consent of the parties, unless there is a conflict of interest or the neutral believes the neutral can no longer be impartial, in which case a neutral shall withdraw.

(D) A neutral shall avoid the appearance of impropriety.

(E) A neutral may not have an interest in the outcome of the dispute, may not be an employee of any of the parties or attorneys involved in the dispute, and may not be related to any of the parties or attorneys in the dispute.

(F) A neutral shall promote mutual respect among the participants throughout the process.

Rule 4~~7~~.5. Fair, Reasonable and Voluntary Agreements

(A) A neutral shall not coerce any party.

(B) A neutral shall withdraw whenever a proposed resolution is unconscionable.

(C) A neutral shall not make any substantive decision for any party except as otherwise provided for by these rules.

Rule 4~~7~~.6. Subsequent Proceedings

(A) An individual may not serve as a neutral in any dispute on which another neutral has already been serving without first ascertaining that the current neutral has been notified of the desired change.

(B) A person who has served as a mediator in a proceeding may act as a neutral in subsequent disputes between the parties, and the parties may provide for a review of the agreement with the neutral on a periodic basis. However, the neutral shall decline to act in any capacity except as a neutral unless the subsequent association is clearly distinct from the issues involved in the alternative dispute resolution process. The neutral is required to utilize an effective system to identify potential conflict of interest at the time of appointment. The neutral may not subsequently act as an investigator for

any court-ordered report or make any recommendations to the Court regarding the mediated litigation.

(C) When multiple ADR processes are contemplated, a neutral must afford the parties an opportunity to select another neutral for the subsequent procedures.

Rule 4~~7~~.7 Remuneration

(A) A neutral may not charge a contingency fee or base the fee in any manner on the outcome of the ADR process.

(B) A neutral may not give or receive any commission, rebate, or similar remuneration for referring any person for ADR services.

Rule 5~~8~~. Optional Early Mediation

Preamble.

The voluntary resolution of disputes in advance of litigation is a laudatory goal. Persons desiring the orderly mediation of disputes not in litigation may elect to proceed under this Rule.

Rule 5~~8~~.1. Who May Use Optional Early Mediation.

By mutual agreement, persons may use the provisions of this Rule to mediate a dispute not in litigation. Persons may participate in dispute resolution under this Rule with or without counsel.

Rule 5~~8~~.2. Choice of Mediator.

Persons participating in mediation under this Rule shall choose their own mediator and agree on the method of compensating the mediator. Mediation fees will be shared equally unless otherwise agreed. The mediator is governed by the standards of conduct provided in Alternative Dispute Resolution Rule 7.

Rule 5~~8~~.3. Agreement to Mediate.

Before beginning a mediation under this Rule, participants must sign a written Agreement To Mediate substantially similar to the one shown as Form A to these rules. This agreement must provide for confidentiality in accordance with Alternative Dispute

Resolution Rule 2.11; it must acknowledge judicial immunity of the mediator equivalent to that provided in Alternative Dispute Resolution Rule 1.5; and it must require that all provisions of any resulting mediation settlement agreement must be written and signed by each person and any attorneys participating in the mediation.

Persons participating in mediation under this Rule shall have the same ability afforded litigants under Trial Rule 26(B)(2) of the Rules of Trial Procedure to obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a settlement under this Rule or to indemnify or reimburse for payments made to satisfy a settlement under this Rule.

Rule 5~~8~~.4. Preliminary Considerations.

The mediator and participating persons should schedule the mediation promptly. Before beginning the mediation session, each participating person is encouraged to provide the mediator with a written confidential summary of the nature of the dispute, as outlined in Alternative Dispute Resolution Rule 2.7(c).

Rule 5~~8~~.5. Good Faith.

In mediating their dispute, persons should participate in good faith. Information sharing is encouraged. However, the participants are not required to reach agreement.

Rule 5~~8~~.6. Settlement Agreement.

(A) In all matters not involving the care and/or support of children, if an agreement is reached, to be enforceable, all agreed provisions must be put in writing and signed by each participant. This should be done promptly as the mediation concludes. A copy of the written agreement shall be provided to each participant.

(B) Notwithstanding the other provisions of this Rule 8, in matters involving the care and/or support of children, mediated agreements put in writing and signed by all participants may be binding on the participants, but are only enforceable after review and approval by the appropriate court that would have jurisdiction over the care and/or support of the children.

Rule 5~~8~~.7. Subsequent ADR and Litigation.

If no settlement agreement is reached, put in writing, and signed by the participants, the participants may thereafter engage in litigation and/or further alternative dispute resolution.

Rule 5~~8~~.8. Deadlines Not Changed Absent a Tolling Agreement.

WARNING: Participation in optional early mediation under this Rule does not change the deadlines for beginning a legal action as provided in any applicable statute of limitations or in any requirement for advance notice of intent to make a claim (for example, for claims against government units under the Indiana Tort Claims Act). Parties concerned about the expiration or running of a statute of limitations are encouraged to obtain an agreement to toll the running of the statute of limitations when considering pre-suit mediation.

Endnotes

[1] Appointing A Special Master in Lawsuits In Washington State - Beresford Booth PLLC (beresfordlaw.com).

[2] Court-Appointed Special Masters: Dispute-Resolvers? (mediate.com).

[3] "A Brainstorming Session: Using Special Masters to Help Courts Deal with the Challenges of the Pandemic" (May 2020).

[4] The Taskforce is recommending a range in the discovery limits, which reflects differing opinions among members of the Taskforce on the recommended numerical limit. Rule 6 of the Commercial Court Rules limits each party to 25 interrogatories, including subparts, and anecdotal evidence indicates that such limit has not led to an increase in discovery disputes or frequent requests for additional interrogatories. Rule 33 of the Federal Rules of Civil Procedure also limits parties to 25 interrogatories, including "all discrete subparts." The contrary view is that 25 is too few in number in many cases and that the limit would lead to more discovery disputes over objections because the numerical limit may foreclose the propounding party from simply serving a revised interrogatory in order to avoid a dispute over an objection.

[5] Proposed changes to Trial Rules - July 2021 (The proposed amendment to Trial Rule 4.13 would add publication by website. The proposed amendment to Trial Rule 5 would broaden notice delivery methods.), https://www.in.gov/courts/files/rules-proposed-2021-jul-trial.pdf (*archived at https://perma.cc/H5FY-KNHW*).

[6] Coleman, Kristina, "Beyond *Baidoo v. Blood-Dzraku*: Service of Process Through Facebook and Other Social Media Platforms Through an Indiana Lens", 50 Ind. L. Rev. 645, 664-665 (2017) (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 315 (1950) ("Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed.")).

[7] Auxier, Brooke and Anderson, Monica, "Social Media Use in 2021", Pew Res. Ctr. (Apr. 7, 2021).

[8] *Id.*

[9] Colman, *supra* note 1, at 664 (citing *Newspapers: Daily Readership by Age*, PEW RES.CTR., http://www.journalism.org/mediaindicators/newspapers-daily-readership-by-age (*archived at https://perma.cc/8KST-KLCN*) (last visited Feb. 5, 2017)).

[10] *Id.*

[11] *See FTC v. PCCare247 Inc.*, 2013 U.S. Dist. LEXIS 31969 (S.D. N.Y. Mar. 7, 2013) (permitted service by electronic mail and Facebook, since the electronic mail accounts were used frequently and evidence was provided to show that the Facebook accounts were used by defendants); *Noel B. v. Anna Maria A.*, 2014 N.Y. Misc. LEXIS 4708 (Fam. Ct. Sept. 12, 2014) (permitted service by Facebook to a known active account and mailing to last known address); *Cf. Fortunato v. Chase Bank USA, N.A.*, 2012 U.S. Dist. LEXIS 80594 (S.D.N.Y. June 7, 2012) (service by Facebook or electronic mail was not allowed, since the plaintiff failed to provide evidence that the accounts were the defendant's accounts or that they were used by the defendant); *Silverman v. Sito Marketing LLC*, 2015 WL 197433 (E.D.N.Y. July 21, 2015) (service by Twitter and LinkedIn with a link to the documents not permitted, since plaintiff failed to provide evidence that

defendant would be likely to click on a link in a tweet or in a private message or details about how plaintiff would go about such service).

[12] *WhosHere, Inc. v. Orun*, 2014 U.S. Dist. LEXIS 22084 (E.D. Va. Feb. 20, 2014) (permitted service by Facebook, electronic mail, and LinkedIn, since the electronic mail account was verified and used by defendant and there was evidence that the social media accounts were the defendant's accounts and were regularly used by him).

[13] *Lipenga v. Kambalame*, 2015 U.S. Dist. LEXIS 172778 (D. Md. Dec. 28, 2018) (allowed service by electronic mail and Facebook, since evidence demonstrated that defendant was recently using the accounts).

[14] *Maharishi Foundation USA, Inc. v. Love*, 2016 U.S. Dist. LEXIS 201101 (S.D. Iowa Sept. 19, 2016) (permitted alternative service by electronic mail and Facebook, as evidence was presented showing that defendant frequently and regularly used the accounts).

[15] Alaska Rule of Civil Procedure 4(e)(3) allows alternative service by electronic mail and social media, upon a showing of diligent inquiry and that the person cannot be served by traditional methods, which is then followed by copy service to the person's residence or place where that person usually receives mail unless those addresses are unknown or cannot be determined.

[16] Texas Rule of Civil Procedure 106(b)(2) allows electronic service by," social media, email, or other technology" upon a proper showing that traditional methods were unsuccessful, and that the technology belongs to the person to be served and the person regularly uses or recently used it.

[17] *St. Francis Assisi v. Kuwait Finance House et al.*, 2016 WL U.S. Dist. LEXIS 136152 (N.D. Cal. Sept. 30, 2016) (permitted alternative service via Twitter, since there was evidence that defendant actively used the account); *Fabian v. LeMahieu*, 2020 U.S. Dist. LEXIS 109013 (N.D. Cal. June 19, 2020) (permitted service by electronic mail and social media followed by mail - return receipt requested); *Nowak v. XAPO, Inc.*, 2020 U.S. Dist. LEXIS 183332 (N.D. Cal. Oct. 2, 2020) (allowed service by electronic mail, Facebook, and Twitter for one corporation to its publicly listed accounts but not another, since service of process had not yet been unsuccessful for that other corporation); *Cf. Sameer v. Khera*, 2018 U.S. Dist. LEXIS 74590 (E.D. Cal. May 2, 2018) (service by electronic mail and Facebook, among others, not permitted as plaintiff failed to show that conventional methods were unsuccessful after diligent search and "exhaustive" attempts and failed to provide evidence that such service would comport with due process); *Entrepreneur Media, Inc. v. Doe*, 2019 U.S. Dist. LEXIS 230851 (C.D. Cal. Dec. 5, 2019) (service by Instagram direct message with link to documents not permitted due to lack of evidence that account was actively used or monitored); *Searles v. Archangel*, 60 Cal. App. 5th 43 (Cal. Ct. App. 2021) (service via Facebook, Twitter, and YouTube with a link to a website where the documents were posted was not allowed in a TRO/restraining order case where personal service is required). *See Searles*, 60 Cal. App. 5th 43, for a good synopsis of the "Developing Law of Service by Social Media".

[18] Courts in several other states have not allowed such service. *See Joe Hand Promotions, Inc. v. Carrette,* 2013 U.S. Dist. LEXIS 109731 (D. Kan. July 9, 2013) (service solely by Facebook not permitted, as there was no evidence that the account was the defendant's account); *Joe Hand Promotions, Inc. v. Shepard*, 2013 U.S. Dist. LEXIS 113578 (E.D. Mo. Aug. 12, 2013) (service by electronic means is not authorized in Missouri).

[19] Texas Supreme Court Order Amending Texas Rules of Civil Procedure 106 and 108a - August 20, 2020 - enables service by social media, email, or other technology.

[20] "E-file Indiana: Electronic Filing Across All 92 Counties," Indiana Court Times (October 10, 2019).

[21] *See* Trial Rule 5(C), Appellate Rule 24(D)(1). Some attorneys and parties have expressed confusion about affirming to having served a document on another party when, at the time of signature, the service has not yet taken place. Trial Rule 5(C): "An attorney or unrepresented party tendering a document to the Clerk for filing shall certify that service has been made [. . .]."). Appellate Rule 24(D)(1) accommodates the timing more clearly: "Anyone tendering a document to the Clerk for filing shall [. . .] certify that service has been made *or will be made contemporaneously with the filing [. . .]*." (emphasis added).

[22] Smith, D. Todd. "Automated Certificates of Service Are Here—But Are Traditional Certificates Still Required?" *JD Supra*, (Sep. 17, 2017)

[23] Quintanilla, Victor D. and Thelin, Rachel, "Indiana Civil Legal Needs Study and Legal Aid System Scan" (2019), p. 4.

[24] *Id.* (p. 5).

[25] Indiana Daily Lawyer, "Indiana Bar Foundation launching series of initiatives thanks to $13M grant" (Dec. 28, 2021).

[26] Lundberg, Donald R., "Unbundled legal services or limited scope representation" (June 2008), Res Gestae.

[27] The Indiana Supreme Court's website already has available a Notice of Temporary or Limited Representation.

[28] Examples of forms Bar Associations and Civil Legal Aid providers in other States have prepared can be found at the Self Represented Litigant Network and the State Bar of Wisconsin.

[29] Indiana Practitioner Series, Alternative Dispute Resolution, § 2.1, at 24 (West 1997).

[30] Howe, Mary Beth and Fiala, Robert, "Process Matters: Disputant Satisfaction in Mediated Civil Cases", 29 Justice Sys. J. 85, 85 (2008).

[31] This language is consistent with Fed. R. Civ. 5(a)(1) and attempts to define "papers."

[32] There was favorable feedback for revising this language to be consistent with Fed. R. Civ. P. 5(d)(1)(A). The definition of "papers" would be those "after the complaint that are required to be served upon a party." The use of "which" instead of "that" in the current version of the Rules makes that definition unclear.

[33] See Illinois 201(a).

[34] Modeled after FRCP 26(b)(1). Note FRCP also adds, "considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." But, this is already mostly covered in TRs in paragraph 2 of this section. *See also* Wisconsin Section 804.01 and Michigan Rule 2.302(B): "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case…" *See also* Colorado Rule 26(b)(1), which incorporated the principles of proportionality in discovery, mirroring the 2015 FRCP rule change, by changing the scope of discovery to matters that are "relevant to the claim or defense of any party *and proportional to the needs of the case*" considering a list of enumerated factors. Also, in line with Indiana Commercial Court Rule 6(A): "… Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense

and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit...." *C.f.,* Massachusetts: Committee drafted language that alluded to the principle of proportionality, but limited it to granting protective orders in discovery disputes under Rule 26(c).

[35] We repeated the language beginning "considering the important of the issues…" despite similar language being used in subsection (1) because this language defines what is proportional to the needs of the case, whereas subsection (2) provides additional specific grounds on which parties may object to discovery requests, one of which is lack of proportionality.

[36] *See* Massachusetts Civ. Proc. Rule 26(c).

[37] This language has been revised to be more consistent with Fed. R. Civ. 30, importantly including a limitation on the number of depositions and the depositions of people proposed before.

[38] Note that the Discovery Protocol for the Streamlined Pathway states, "Each party is limited to no more than two (2) depositions (excluding experts and parties or party representatives), with a seven-hour (7) limit for each deposition (unless the deposition is of an expert, a party, or a party representative), unless otherwise agreed to by the parties or Court order." The General Pathway and Complex Pathway have similar language, but limits at 5 and 10, respectively. Should the Court wish to not revise the Rule at this time, the Discovery Protocol could be used as a tool to limit here.

[39] This is modeled after the recent amendment to Federal Rule 30(b)(6).

[40] Originally, this was drafted to be consistent with Fed. R. Civ. P. 33, but after discussion among the entire Taskforce, it was revised to 40. There was significant debate within the Taskforce as to the subpart language. Many wanted the number to include subparts. Ultimately, the recommendation was written as above, and it is left to the Court to determine the best number between 25 and 40. The key is to have consistency across the entire State. Note also that the Discovery Protocol for the Streamlined Pathway states, "Unless otherwise agreed to by the parties or Court order, no party shall serve more than: fifteen (15) interrogatories, sub-parts shall not be counted as part of the number served, provided that the subparts are related to the same topic (i.e., multiple questions within one question, such as 1(A)-(D)); fifteen (15) requests for production, sub-parts shall not be counted as part of the number served, provided that the subparts are related to the same topic; and fifteen (15) requests for admission, shall not be counted as part of the number served, provided that the subparts are related to the same topic sub-parts." The General Pathway and Complex Pathway have similar language, but limits at 25 and 40, respectively. Should the Court wish to not revise the Rule at this time, the Discovery Protocol could be used as a tool to limit here.

[41] The Federal Rules do not require this notice period, although the Local Rules for the Southern District of Indiana require a 7-day notice period. It would be helpful in practice to at least shorten, if not eliminate, this notice period.

[42] This has been added to account for the optional Cost-Sharing Pilot proposed below. To the extent the Court does not wish to update the Rule, the proposed Order for Cost-Sharing may be an alternative option.

[43] This Rule should be updated to be more consistent with Indiana Commercial Court Rule 5. The proposed Order Appointing Discovery Master is drafted in line with these proposed Rule changes.

[44] *See also* comments to Indiana Trial Rule 5, which propose to better define "papers."

[45] The LCJ also noted the following background articles: Lawyers for Civil Justice et al., Reshaping the Rules of Civil Procedure for the 21st Century, 52 (2010); Robert D. Owen & Francis X. Nolan, Skin in the Game: A Proposed Co-Pay Requirement for Discovery-Requesting Parties, 32 Wash. Legal Foundation Legal Backgrounder 1 (2017); and Mary Nold Larimore & Matthew J. Hamilton, Cost-Shifting Can Stimulate More Focused, Efficient Discovery in MDL Proceedings, 33 Wash. Legal Foundation Legal Backgrounder 1 (2018).

[46] Hon. Paul Grimm and David Yelion, A Pragmatic Approach to Discovery Reform: How Small Changes Can Make a Big Difference in Civil Discovery, 64 S.C.L. Rev. 495, 523-224 (Spring 2013) (allocating some or all of the costs of discovery to the requesting party is neither radical nor unfair, if properly undertaken").

[47] Jonathan R. Nash and Joanna Shepherd, Aligning Incentives and Cost Allocation in Discovery, 71 Vanderbilt Law Review 2015 (2018).

[48] *See, e.g.,* Arizona R.Civ.P. 37(h), "Orders to Achieve Proportionality. Timely and full compliance with Rules 26, 26.1, and 26.2 being essential to the discovery process, achieving proportionality, and trial preparation, the court may make any order to require or prohibit disclosure or discovery to achieve proportionality under Rule 26(b)(1), including without limitation: …. (2) entry of any order allocating the costs, expenses, and attorney's fees of discovery or disclosure among the parties as justice requires."; and Utah R.Civ.P. 37(J) allowing courts to order that "that the costs, expenses and attorney fees of discovery be allocated among the parties as justice requires."