

Recent Amendments to the Rules of Appellate Procedure

**Maggie Smith
Frost Brown Todd LLC**

This article addresses the following amendments to the Indiana Rules of Appellate Procedure that go into effect on January 1, 2012:

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1. Notice Of Appeal now Must Be Filed With The Appellate Clerk.

Perhaps the most significant amendment to the appellate rules is where the Notice of Appeal is filed. Under the prior rules, the Notice of Appeal was filed in the trial court or administrative agency, and served on the Appellate Clerk. Now, the Notice of Appeal is filed with the Appellate Clerk.

Rule 9. Initiation Of The Appeal

A. Procedure for Filing the Notice of Appeal with the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court.

- (1) *Appeals from Final Judgments.* A party initiates an appeal by filing a Notice of Appeal with the ~~trial court~~ eClerk (as defined in Rule 2(D)) within thirty (30) days after the entry of a Final Judgment is noted in the Chronological Case Summary. However, if any party files a timely motion to correct error, a Notice of Appeal must be filed within thirty (30) days after the court's ruling on such motion is noted in the Chronological Case Summary or thirty (30) days after the motion is deemed denied under Trial Rule 53.3, whichever occurs first. ~~Copies of the Notice of Appeal, which need not be file stamped by the trial court clerk, shall be served on all parties of record in the trial court, the Clerk, and upon the Attorney General in all Criminal Appeals and any appeals from a final judgment declaring a state statute unconstitutional in whole or in part. (See Form if App.R. 9-1)~~

Rule 14. Interlocutory Appeals

A. **Interlocutory Appeals of Right.** Appeals from the following interlocutory orders are taken as a matter of right by filing a Notice of Appeal with the ~~trial court~~ eClerk within thirty (30) days after the notation of the interlocutory order in the Chronological Case Summary . . . The Notice of Appeal shall be in the form prescribed by Rule 9, and served in accordance with Rule 9(F)(10).

B. **Discretionary Interlocutory Appeals.**

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- (3) *Filing of Notice of Appeal.* ~~If the Court of Appeals accepts jurisdiction,~~ The appellant shall file a Notice of Appeal with the ~~trial court~~ eClerk within fifteen (15) days of the Court of Appeals' order accepting jurisdiction over the interlocutory appeal. The Notice of Appeal shall be in the form prescribed by Rule 9, and served in accordance with Rule 9(F)(10).

C. **Interlocutory Appeals From Orders Granting Or Denying Class Action Certification.**

- (3) *Filing of Notice of Appeal.* ~~If the Court of Appeals accepts jurisdiction,~~ The appellant shall file a Notice of Appeal with the ~~trial court~~ eClerk within fifteen (15) days of the Court of Appeals' order accepting jurisdiction over the interlocutory appeal. The Notice of Appeal shall be in the form prescribed by Rule 9, and served in accordance with Rule 9(F)(10). The appellant shall also comply with Rule 9(E).

Rule 14.1. Expedited Appeal for Payment of Placement and/or Services

B. **Notice of Expedited Appeal.**

- (1) The Department of Child Services ("DCS") shall file a Notice of Expedited Appeal with the ~~trial court~~ Clerk within five (5) business days after the trial court's order of placement and/or services is noted in the Chronological Case Summary. (See Form #App.R. 44T4-4-9-1T).
- (2) On the same day DCS files the Notice of Expedited Appeal, it shall serve the Notice on the trial court judge, the clerk of the trial court, the court reporter (if a transcript or any portion of a transcript is requested), the court clerk, the county commissioners, the guardian ad litem, CASA, any juvenile who is the subject of the order if 14 years of age or older, counsel for the juvenile, the parents of the juvenile, the Attorney General, in the case of a juvenile delinquency matter the Chief Probation Officer and Prosecutor, and any other party of record.
- (3) The Notice of Expedited Appeal, ~~in a form proscribed by this rule, shall designate the order from which the appeal is taken and any Transcript that is to be provided~~ shall include all content required by Rule 9(F).

There is a two year grace period while practitioners get used to this change. After that, a party will forfeit their right to an appeal if they file the Notice of Appeal in the trial court or administrative agency.

2. Notice of Appeal Must Include Some Of The Information Previously Required In The Appellant's Case Summary, Which Is Now Abolished

Information that was previously required in the Appellant's Case summary is now required in the Notice of Appeal, and the Appellant's Case Summary has been abolished.

In particular, the Notice of Appeal must contain information about:

- the parties and counsel;
- trial information;
- the date and title of the judgment or order appealed;
- the date on which any Motion to Correct Error was denied or deemed denied (if applicable);
- the basis for appellate jurisdiction;
- designation of the court to which the appeal is taken;
- preparation of the Clerk's Record;
- Transcript preparation;
- whether all or any portion of the court records were sealed or excluded from public access by court order; and
- whether Appellant is willing to participate in appellate alternative dispute resolution.

The party or counsel must also certify in the Notice of Appeal:

- whether the case involves issues of child custody, support, visitation, adoption, paternity, determination that a child is in need of services, termination of parental rights, and all other appeals entitled to priority by rule or statute; and

- that the attorney or pro se party has reviewed and complied with any requirements dealing with excluding documents from public access.

Finally, the Notice of Appeal must have attached to it:

- a copy of the judgment or order being appealed;
- if applicable, a copy of the order denying the Motion to Correct Error or, if deemed denied, a copy of the Motion to Correct Error;
- a copy of all orders and entries relating to the trial court or agency's decision to seal or exclude information from public access; and if proceeding pursuant to Rule 14(B)(3),
- a copy of the order from the Court of Appeals accepting jurisdiction over the interlocutory appeal.

9(F). Content of Notice of Appeal. The Notice of Appeal shall include the following:

(1) Party Information.

- Name and address of the parties initiating the appeal, and if a party is not represented by counsel, the party's FAX number, telephone number, and electronic mail address, if any; and
- Name, address, attorney number, FAX number (if any), telephone number and electronic mail address of each attorney representing the parties initiating the appeal.

(2) Trial Information.

- Title of case;
- Names of all parties;
- Trial court or Administrative Agency;
- Case number;
- Name of trial judge;

~~(3) Designation of Appealed Order or Judgment. The Notice of Appeal shall designate the appealed judgment or order and whether it is a final judgment or interlocutory order~~

- The date and title of the judgment or order appealed;
- The date on which any Motion to Correct Error was denied or deemed denied, if applicable;
- The basis for appellate jurisdiction, delineating whether the appeal is from a Final Judgment, as defined by Rule 2(H); an interlocutory order appealed as of right pursuant to Rule 14(A),(C), or (D); an interlocutory order accepted for discretionary appeal pursuant to Rule 14(B); or an expedited appeal pursuant to Rule 14.1; and

(d) A designation of the court to which the appeal is taken.

~~(2) Designation of Court to which Appeal is Taken. The Notice of Appeal shall designate the court to which the appeal is taken.~~

(34) Direction for Assembly of Clerk's Record. ~~The Notice of Appeal shall direct~~ Directions to the trial court clerk to assemble the Clerk's Record.

- (45) *Request for Transcript.* ~~The Notice of Appeal shall designate~~ A designation of all portions of the Transcript necessary to present fairly and decide the issues on appeal. If the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence. In Criminal Appeals, the Notice of Appeal must request the Transcript of the entire trial or evidentiary hearing, unless the party intends to limit the appeal to an issue requiring no Transcript.
- (6) *Public Access Information.* A statement whether all or any portion of the court records were sealed or excluded from public access by court order.
- (7) *Appellate Alternative Dispute Resolution Information.* In all civil cases, an indication whether Appellant is willing to participate in appellate alternative dispute resolution and, if so, provide a brief statement of the facts of the case.
- (8) *Attachments.*
- (a) A copy of the judgment or order being appealed (including findings and conclusions in civil cases and the sentencing order in criminal cases);
 - (b) A copy of the order denying the Motion to Correct Error or, if deemed denied, a copy of the Motion to Correct Error, if applicable;
 - (c) A copy of all orders and entries relating to the trial court or agency's decision to seal or exclude information from public access, if applicable;
 - (d) A copy of the order from the Court of Appeals accepting jurisdiction over the interlocutory appeal, if proceeding pursuant to Rule 14(B)(3);
 - (e) The documents required by Rule 40(C), if proceeding *in forma pauperis*.
- (9) *Certification.* A certification, signed by the attorney or pro se party, certifying the following:
- (a) That the case does or does not involve issues of child custody, support, visitation, adoption, paternity, determination that a child is in need of services, termination of parental rights, and all other appeals entitled to priority by rule or statute;
 - (b) That the attorney or pro se party has reviewed and complied, and will continue to comply, with the requirements of Rule 9(J) and Administrative Rule 9(G)(4), to the extent they apply to the appeal; and
 - (c) That the attorney or pro se party will make satisfactory payment arrangements for any transcripts ordered in the Notice of Appeal, as required by Rule 9(H).
- (10) *Certificate of Filing and Service.* The Certificate of Service required by Rule 24. This Certificate shall also certify the date on which the Notice of Appeal was filed with the Clerk. (See Form # App.R. 9-1)

Rule 15. Appellant's Case Summary

The Appellant's Case Summary is abolished.

The Court also amended Forms 9-1 and 9-2 and deleted Form 15-1 to take into account these changes.

3. Paying the Court Reporter and Motions to Compel Completion of Transcript.

The new amendments require that an Appellant must enter into an agreement with the court reporter to pay for the Transcript within thirty days after filing the Notice of Appeal.

- 9(H). Payment for Transcript.** ~~When a Transcript is requested,~~ Within thirty (30) days after the filing of a Notice of Appeal a party must enter into an agreement ~~make satisfactory arrangements~~ with the court reporter for payment of the cost of the Transcript. Unless a court order requires otherwise, each party shall be responsible to pay for all transcription costs associated with the Transcript that party requests.

If a motion to compel completion of the Transcript is ultimately required, an Appellant must verify that the required Rule 9(H) agreement for payment was made and that the appellant complied with that agreement.

- 11(D). Failure to Complete Transcript.** If the court reporter fails to file the Transcript with the trial court clerk within the time allowed, the appellant shall seek an order from the Court on Appeal compelling the court reporter to do so. The motion to compel shall be verified and affirmatively state that service as required under Rule 24(A)(1) was properly made and that the appellant has complied with the agreement for payment made in accordance with Rule 9(H). Failure of appellant to seek such an order not later than fifteen (15) days after the Transcript was due to have been filed with the trial court clerk shall subject the appeal to dismissal.

4. Appearances in Certain Interlocutory Appeals

Parties seeing discretionary interlocutory review under Rules 14(B) and (C) must now file an appearance instead of an Appellant's Case Summary (which has been abolished).

- 14(B). Discretionary Interlocutory Appeals.** An appeal may be taken from other interlocutory orders if the trial court certifies its order and the Court of Appeals accepts jurisdiction over the appeal.

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(2) *Acceptance of the Interlocutory Appeal by the Court of Appeals.* If the trial court certifies an order for interlocutory appeal, the Court of Appeals, in its discretion, upon motion by a party, may accept jurisdiction of the appeal. The motion shall be accompanied by an appearance as required by Rule 16(H).

- 14(C). Interlocutory Appeals From Orders Granting Or Denying Class Action Certification.** The Court of Appeals, in its discretion, may accept jurisdiction over an appeal from an interlocutory order granting or denying class action certification under Ind. Trial Rule 23.

(1) *Time for Filing Motion.* A motion requesting that the Court of Appeals accept jurisdiction over an interlocutory appeal from an order granting or denying class action certification shall be filed within thirty (30) days after the notation of the order in the Chronological Case Summary. The Motion shall be accompanied by an appearance as required by Rule 16(H).

Rule 16. Appearances

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H. **Appearances in Certain Interlocutory Appeals.** In the case of an Interlocutory Appeal under Rules 14(B)(2) or 14(C), a party shall file an appearance setting forth the information required by Rule 16(B) at the time the motion requesting the Court on Appeal to accept jurisdiction over the interlocutory appeal is filed. (See Form # App.R. 16-2).

5. Service of Appellate Documents-Who must be served.

There are several changes to the Rule dealing with service of document filed with the Appellate Clerk. Who must be served depends on what the document is or when the document is filed:

- The Notice of Appeal must be served on everyone who was connected to the proceedings below or has a statutory right to be notified of the appeal;
- Documents filed in the first thirty days of an appeal must be served on those who appeared below, anyone who has appeared on appeal, and those who have a statutory right to be served;
- Documents filed thereafter must be served only on those who have appeared on appeal, and those who have a statutory right to be served.

Rule 24. Service Of Documents

A. Required Service. ~~The Appellant's Case Summary and appearances must be served on all parties to the appeal (see Rule 17), any persons seeking party status, and any persons required by statute to be served. Unless otherwise provided by those Rules, all other documents tendered to the Clerk for filing must be served upon all parties who have filed an Appellant's Case Summary or an appearance under Rules 15 or 16, any persons seeking party status, and any persons required by statute to be served. However, in Criminal Appeals only, any Appendix or Supplemental Appendix need not be served on the Attorney General.~~

(1) **Notice of Appeal.** A party filing a Notice of Appeal shall contemporaneously serve a copy upon:

- (a) all parties of record in the trial court or Administrative Agency;
- (b) the clerk of the trial court or Administrative Agency;
- (c) the court reporter;
- (d) any persons identified in Rule 14.1, if applicable;
- (e) the Attorney General in all Criminal Appeals and any appeals from a final judgment declaring a state statute unconstitutional in whole or in part;
- (f) the judge of the trial court or hearing officer of an Administrative Agency before whom the case was heard; and,
- (g) any other persons required by statute to be served. (See Form #App.R. 9-1).

(2) **Documents filed in the thirty-day period following the filing of Notice of Appeal.** A party filing any document in the thirty- day period after a Notice of Appeal is filed shall contemporaneously serve a copy upon:

- (a) all parties of record in the trial court or Administrative Agency;
- (b) all parties of record who have filed a Notice of Appeal or an appearance with the Clerk;
- (c) any persons seeking party status, and,

- (d) any persons required by statute to be served.
- (3) Other documents. Unless otherwise provided by these Rules, all other documents tendered to the Clerk for filing must contemporaneously be served upon:
 - (a) all parties of record who have filed a Notice of Appeal or an appearance with the Clerk;
 - (b) any persons seeking party status; and,
 - (c) any persons required by statute to be served.
- (4) Appendix in Criminal Appeals. In criminal appeals only, any Appendix or Supplemental Appendix need not be served on the Attorney General.
- ...
- Parties appealing pursuant to Rule 14.1 must comply with the additional requirements found in that Rule.

6. Content of the Certificate of Service.

The content of the certificate of service now requires that practitioners/parties specifically list the persons served by name. The certificate of service for a Notice of Appeal now must also specifically certify the date on which the Notice of Appeal was filed with the Appellate Clerk.

24(D). Certificate of Service.

- (1) Content. ~~Anyone attorney or unrepresented party~~ tendering a document to the Clerk for filing shall:
 - (a) certify that service has been made;
 - (b) specifically list the ~~parties~~ persons served by name; and
 - (c) specify the date and means of service;
 - (d) include any information required by Rule 14.1, if applicable; and,
 - (e) if the document is a Notice of Appeal, certify the date on which the Notice of Appeal was filed with the Clerk. (See Form # App.R. 9-1).
- (2) Placement. 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.~~

7. Extension of Time for Service by Mail

The amendments now make clear that the extension of time for service by mail is always computed using calendar days, not business days.

Rule 25. Computation Of Time

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- C. **Extension of Time When Served by Mail or Carrier.** When a party serves a document by mail or third-party commercial carrier, the time period for filing any response or reply to the document shall be extended automatically for an additional three (3) calendar days from the date of deposit in the mail or with the carrier. This Rule does

not extend any time period that is not triggered by a party's service of a document, such as the time for filing a Petition for Rehearing or a Petition to Transfer.

8. Trial Court Clerk and Court Reporter Must Serve Notices On All Parties Who Have Appeared At Appellate Level.

The Rules now make clear that any notice filed with the Appellate clerk by the trial court clerk and the court reporter must be served on all parties who have appeared at the appellate level, not just the parties who have appeared in the trial court.

Rule 10. Duties Of Trial Court Clerk Or Administrative Agency

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C. Notice of Completion of Clerk's Record. On or before the deadline for assembly of the Clerk's Record, the trial court clerk or Administrative Agency shall issue and file a Notice of Completion of Clerk's Record with the Clerk and shall serve a copy on the parties to the appeal in accordance with Rule 24 to advise them that the Clerk's Record has been assembled and is complete. The Notice of Completion of the Clerk's Record shall include a certified copy of the Chronological Case Summary and shall state whether the Transcript is (a) completed, (b) not completed, or (c) not requested. (See Form # App.R.10-1). Copies of the Notice of Completion of Clerk's Record served on the parties shall include a copy of the Chronological Case Summary included with the original, but the copies served on the parties need not be individually certified.

D. Notice of Completion of Transcript. If the Transcript has been requested but has not been filed when the trial court clerk or Administrative Agency issues its Notice of Completion of the Clerk's Record, the trial court clerk or Administrative Agency shall issue and file a Notice of Completion of Transcript with the Clerk and shall serve a copy on the parties to the appeal in accordance with Rule 24 within five (5) days after the court reporter files the Transcript. (See Form #App.R. 10-2)

E. Extension of Time to Complete Clerk's Record. The trial court clerk or Administrative Agency may move the Court on Appeal designated in the Notice of Appeal for an extension of time to assemble the Clerk's Record pursuant to Rule 35 (A) and shall state in such motion the factual basis for inability to comply with the prescribed deadline despite exercise of due diligence. (See Form # App.R. 10-3). The trial court clerk shall file an original and one copy of the motion with the Clerk and shall serve a copy of the motion on the parties to the appeal in accordance with Rule 24. Motions for extension of time in interlocutory appeals, appeals involving worker's compensation, issues of child custody, support, visitation, paternity, adoption, determination that a child is in need of services, and termination of parental rights are disfavored and shall be granted only in extraordinary circumstances.

Rule 11. Duties Of Court Reporter

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C. Extension of Time to File Transcript. If the court reporter believes the transcript cannot be filed within the time period prescribed by this rule, then ~~The~~the court reporter ~~may~~shall move the Court on Appeal designated in the Notice of Appeal for an extension of time to file the Transcript pursuant to Rule 35 (A) and shall state in such motion the factual basis for inability to comply with the prescribed deadline despite exercise of due diligence. (See Form # App.R. 11-2). The court reporter shall file an original and one copy of the motion with the Clerk and shall serve a copy of the motion on the parties to the appeal in accordance with Rule 24. Motions for extension of time in interlocutory appeals, appeals involving worker's compensation, issues of child custody, support, visitation, paternity, adoption, determination that a child is in need of services, and termination of parental rights are disfavored and shall be granted only in extraordinary circumstances.