# THE HISTORY OF THE COURT OF APPEALS OF INDIANA

JUDGE ROBERT H. STATON*
GINA M. HICKLIN**

## INTRODUCTION

Two significant developments surround the history of the Court of Appeals of Indiana. One development involves its birth and struggle to exist as a part of the judicial landscape. The other development is its growth in jurisdiction and number of judges. It was the latter that finally allowed the supreme court to become a court of last resort as it intended from its inception in 1816.

In the beginning, the supreme court served double functions. It functioned as the sole appellate processing and clearing house for the young Indiana society and government. Its second and most important function, acting as a court of last resort and fashioning principles of law, was hindered considerably by a rapidly growing caseload.

Early Indiana history reflects a lack of appreciation by the legislature of the most important function of the supreme court. When the appellate caseload became overwhelming, the legislature provided commissioners, on a very limited basis, to give temporary relief.[1] Later, an appellate court was provided to alleviate the caseload problem; however, it was on a limited and temporary basis.[2] As a result, the supreme court was never given an opportunity to fully exercise its law-making function. Too, history reflects a lack of understanding on the part of the legislature regarding the importance of a court of last resort. On several occasions, the legislature made the new appellate court a court of last resort.

After the appellate court became permanent, it grew in size and jurisdiction. One temporary adjustment in its jurisdiction by the legislature later proved to shackle the supreme court and, in the 1970s, strangled the supreme court's law-making ability. The legislative jurisdictional adjustment gave the appellate court temporary criminal jurisdiction.[3] When the temporary jurisdiction ended, all of the criminal jurisdiction was transferred to the supreme court. The appellate court then handled only civil appeals.[4] When the constitution was amended in 1970, it expanded and reorganized the appellate court as a constitutional court.[5] With the increase in the number of criminal appeals, the supreme court at that time spent approximately ninety-three percent of its time handling criminal cases

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*. The Honorable Robert H. Staton, Court of Appeals of Indiana, Third District; B.A., Indiana University; J.D., Indiana University School of Law—Indianapolis. Judge Staton has been on the court for twenty-five years and has written more than 2500 majority opinions.

**. Law clerk to the Honorable Theodore R. Boehm, Supreme Court of Indiana, 1996; law clerk to the Honorable Robert H. Staton, Court of Appeals of Indiana, 1995; B.A., 1990, California State University, Fullerton; J.D., 1995, Indiana University School of Law— Indianapolis.

1. Act of Apr. 14, 1881, ch. 17, 1881 Ind. Acts 92 (expired 1883).
2. Act of Feb. 28, 1891, ch. 37, § 1, 1891 Ind. Acts 39, 39-40 (repealed 1971).
3. Act of Mar. 12, 1929, ch. 123, § 1, 1929 Ind. Acts 429, 429 (repealed 1963).
4. *Id.*; *In re* Petition to Transfer Appeals, 174 N.E. 812 (Ind. 1931).
5. IND. CONST. art. VII, § 5.

which left the development of the law in civil cases solely to the court of appeals as a court of last resort.[6] The most important function of the supreme court, reshaping the common law and devising new principles of law, had been completely frustrated.

In 1988, Proposition Two amended the Indiana Constitution so that much of the criminal caseload pending in the supreme court would be shifted to the court of appeals.[7] With the expansion of the number of districts and judges on the court of appeals, the judicial systems of Indiana were finally placed in balance. The supreme court was finally able to fully function as a court of last resort. At the same time, the court of appeals was able to manage the ever-menacing appellate caseload which had plagued the supreme court since its inception. In 1995, the court of appeals handed down 1825 majority opinions.[8] From the time these appeals are fully briefed and ready for decision making, the average handdown time is only several months—one of the most outstanding appellate court performances in the United States.[9]

Section I of this article explores the birth and struggle of the appellate court. An attempt is made to cover the priorities of the legislature in coping with a limited economy and an infant government structure as well as the rapid increase of demands upon the judiciary. Section II covers in greater detail the expansion of jurisdiction which at times appeared to ignore the constitutional concept that the supreme court was a court of last resort. Section III explains the expansion from five to fifteen judges on the court. It covers their qualifications for appointment and manner of selection. The selection of a chief judge and of the presiding judges on the court are also reviewed, and a short explanation of the assignment of cases is covered. Section IV discusses the concept of districts. Originally, the district concept was applied to the supreme court and was later borrowed by the legislature as a platform for the court of appeals. The retention of judges and how the retention process is related to the districts are covered. Finally, section V discusses the publication of opinions. In addition, this section addresses memorandum decisions or unpublished opinions and the debate over citing them as authority.

## I. THE APPELLATE COURT'S STRUGGLE FOR EXISTENCE

The Northwest Territory frontiersmen were faced with political indecision, an inadequate tax base, and a sparse population when they petitioned Congress for Indiana statehood in 1815. In 1816, when President Madison signed the congressional resolution making Indiana the nineteenth state in the Union, Indiana surpassed the statehood population requirement of 60,000 by only 3897.[10]

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6. Jack Averitt, *Amendment Would Ease High Court's Load*, INDIANAPOLIS NEWS, Apr. 14, 1988, at B1.

7. IND. CONST. art. VII, § 4.

8. COURT OF APPEALS OF INDIANA, 1995 ANNUAL REPORT 1 (1996).

9. *Id.*

10. JAMES H. MADISON, THE INDIANA WAY 50 (1986).

The budget for the territory had been $10,000, two-thirds of which had been contributed by the federal government.[11] Statehood meant that the federal subsidy of $6600 would vanish, and taxes would have to be drastically increased. Opponents to statehood argued for delaying statehood until Indiana was more populated and economically mature.[12] Governor Thomas Posey, who had been appointed governor of the territory by President Madison in 1813, believed that statehood should wait because of "a very great scarcity of talents, or men of such information as are necessary to fill the respective Stations, & offices of government."[13] Despite the opposition, Indiana became a state and little time was wasted filling "the Stations, & offices of government."

The first Indiana Constitution created one supreme court with three judges and seven circuit courts. The constitution made no mention of an intermediate appellate court.[14] The legislature vested the supreme court with jurisdiction in all cases in law and equity. Not long after statehood, the supreme court acquired a reputation that it could not cope with its workload.[15] There was a chronic two or three-year delay in handing down decisions. Moreover, the opinions were tedious, lengthy and demonstrated an unwarranted fascination with meaningless technicalities.[16]

Over the next few decades, many of the people migrating westward settled in Indiana. Coupled with this wave of migration was the rapid spread of railroads. This drastic change in transportation brought about the immigration of people from farms to urban areas. Manufacturing was erupting over the landscape, and the shadow of the industrial revolution was cast on the horizon. James Whitcomb, Paris C. Dunning, and finally in 1849, Joseph A. Wright, all Democrats, had succeeded each other as governors of Indiana. The 1816 Constitution which reflected a liberal Jeffersonian spirit had become outdated in the wake of Jacksonian democracy. In the mid-1840s, a rumbling could be heard from all segments of society for a constitutional convention. Indiana had outgrown its constitution—the 1816 Constitution was suited for a much younger state.[17] In the spirit of Jacksonian democracy, limitations on government and tenure of office gained popular appeal. This would mean the election of all officials by popular vote, including judges—a cardinal tenet of the Jacksonian

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11. *Id.*

12. *Id.*

13. MADISON, *supra* note 10, at 50 (quoting Donald F. Carmony, *Fiscal Objection to Statehood in Indiana*, IND. MAG. HIST., XLII, Dec. 1946, at 317).

14. The first state constitution provided: "The judiciary power of this state, both as to matters of law and equity, shall be vested in one supreme court, in circuit courts, and in *such other inferior courts* as the general assembly may from time to time direct and establish." IND. CONST. of 1816, art. V, § 1 (emphasis added).

15. 1 LEANDER J. MONKS, COURTS AND LAWYERS OF INDIANA 181 (1916).

16. 1 *id.* at 258-59.

17. 2 JOHN BARNHART & DONALD F. CARMONY, INDIANA, FROM FRONTIER TO INDUSTRIAL COMMONWEALTH 85 (1954); William W. Thorton, *Laws of Indiana as Affected by the Present Constitution*, IND. MAG. HIST., I, 1905, at 27-32.

philosophy.[18]

By 1850, the population of Indiana had increased to almost one million.[19] Times and attitudes had changed. The stress of industrialization provided the potential for class conflict and radical change.[20] The backlog of cases in the supreme court continued to rise. The need for an intermediate appellate court was becoming apparent, but there would be no provision for it in the new constitution. The struggle to exist was still ahead.

On November 1, 1851, the new Indiana Constitution was ratified. The new judiciary article provided for an increase in the number of supreme court judges—"not less than three, nor more than five."[21] The judges would come from all sectors of the state because the constitution required that each judge reside in a separate district. However, the judges were elected by statewide ballot, rather than by district.[22] The article also vested the court with jurisdiction in appeals and writs of error and with such original jurisdiction as the legislature may confer.[23] These changes reflected the Jacksonian philosophy and changing attitudes of the times.

In 1852, the legislature convened to implement the new constitution. The most notable statutes which affected the judiciary included: 1) the addition of a fourth supreme court judge; 2) the division of the state into four districts for the election of judges; 3) the creation of the office of reporter; and 4) the requirement that the court hold two sessions per year. [24]

By the early 1870s, despite the addition of another judge, the supreme court continued to accumulate a tremendous backlog of cases. The docket became so congested that the general assembly convened a special session in December 1872. In an attempt to provide relief, the legislature added a fifth supreme court judge and created a fifth district.[25]

By 1880, the population of Indiana increased to nearly two million.[26] From 1870 to 1880, the number of opinions handed down by the supreme court had increased by only slightly more than one hundred.[27] Adding two judges to the Indiana Supreme Court did little to hold back the crushing backlog of pending

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18. 2 BARNHART & CARMONY, *supra* note 17, at 92-94.

19. U.S. CENSUS OFFICE, SEVENTH CENSUS OF THE UNITED STATES: 1850, at cxxxvi, 1022 (Washington, Robert Armstrong, Public Printer, 1853), *microformed on* United States Decennial Census Publication 1790-1970.

20. MADISON, *supra* note 10, at 167.

21. IND. CONST. art. VII, § 2 (as adopted 1851) (amended 1970).

22. *Id.* § 3 (as adopted 1851) (amended 1970).

23. *Id.* § 4 (as adopted 1851) (amended 1970).

24. 1 MONKS, *supra* note 15, at 246; Act of Feb. 19, 1852, ch. 20, 1852 Ind. Acts 100 (superseded); Act of Feb. 28, 1855, ch. 42, 1855 Ind. Acts 90 (superseded).

25. 1 MONKS, *supra* note 15, at 259; Act of Dec. 16, 1872, ch. 20, 1872 Ind. Acts 25 (repealed 1971).

26. George T. Patton, Jr., *Recent Developments in Indiana Appellate Procedure: Reforming the Procedural Path to the Indiana Supreme Court*, 25 IND. L. REV. 1105, 1113 n.52 (1992).

27. *Id.* at 1113 n.53.

cases. Now that the supreme court had reached the maximum number of judges allowed by the constitution, the general assembly was forced to find other ways to reduce the court's burgeoning caseload. In 1881, the legislature took two big steps to alleviate the supreme court's congested docket.

First, with the thought of adding another court, the legislature initiated a constitutional amendment—a seemingly insignificant change that was to change the judicial landscape in the years to come. The 1851 constitution provided: "The Judicial power of the State shall be vested in a Supreme Court, in Circuit Courts, *and in such inferior Courts* as the General Assembly may establish."[28] The amendment substituted the word "other" for the word "inferior."[29] The supreme court's earlier interpretation of the phrase "such inferior courts" implied that the legislature could not create courts on a parity in rank and jurisdiction with the circuit courts, such as an intermediate appellate court.[30]

Second, the legislature created the Supreme Court Commission of 1881. In order to decrease the crushing caseload pressure on the supreme court, the legislature created a commission as a temporary solution, rather than establishing a permanent appellate court. The act which created the commission mandated the court to appoint five commissioners with each of the five judges appointing a commissioner from his district.[31] The commissioners were to "aid and assist the Court in the performance of its duties" and would act "under such rules and regulations as the Court shall adopt."[32] The term of office of the commissioners was limited to two years because the legislature was advised that the supreme court was two years behind in its work.[33] Each commissioner received a salary equal to that of a supreme court judge. Each judge assigned cases to his commissioner who then prepared an opinion to be submitted for consideration by the full supreme court. The supreme court would accept, reject or modify the opinion.[34] Although this procedure appeared to save the judges time, they could not delegate their judicial responsibility to decide cases.

Because the backlog of cases did not completely disappear as planned, the legislature extended the life of the Supreme Court Commission for two more years.[35] By 1885, the court was relieved of its congested docket, and the legislature allowed the terms of the commissioners to expire. However, the relief

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28. IND. CONST. art. VII, § 1 (as adopted 1851) (amended 1970) (emphasis added).

29. The amendment was ratified by the voters and made part of the constitution on March 14, 1881. However, the legislature proposed the amendment in 1877. The supreme court's decision in *State v. Swift*, 69 Ind. 505 (1880), that a constitutional amendment must pass by a majority of *all* voters, not just a majority of those voting on the amendment, delayed the ratification of the amendment. *Swift* was later overruled by *In re Todd*, 193 N.E. 865 (Ind. 1935).

30. Cropsey v. Henderson, 63 Ind. 268, 271 (1878); Clem v. State, 33 Ind. 418, 421 (1870). *See also* Patton, *supra* note 26, at 1112-13.

31. Act of Apr. 14, 1881, ch. 17, §§ 1-2, 1881 Ind. Acts 92 (expired 1883).

32. *Id.* § 1.

33. 1 MONKS, *supra* note 15, at 298.

34. 1 *id.* at 297-99.

35. Act of Mar. 3, 1883, ch. 60, 1883 Ind. Acts 77 (expired 1885).

enjoyed by the supreme court was short-lived. In only four years, the congestion reappeared to plague the supreme court. Several proposals were made to relieve the congestion, many of which included increasing the number of judges on the supreme court. Those proposals failed, and in 1889, the Supreme Court Commission was resurrected with one important difference. The commissioners were to be appointed by the general assembly instead of by the supreme court judges.[36] The change in appointments was prompted by bitter partisan differences. The Democratic Party, although it had regained control of both houses of the legislature, suffered a stinging defeat for the major state offices in the election of 1888. Thus, the legislature apparently wanted to create patronage and state offices for Democrats.[37] Governor Hovey, a Republican, thought the act was unconstitutional and vetoed the bill. The legislature ignored the governor's message, and both houses voted to override the veto.

The legislature then appointed five people to serve as commissioners. However, before they were allowed to open the doors of their offices, the Indiana Supreme Court declared the Act unconstitutional.[38] In an eloquent opinion authored by Chief Judge Byron Elliott, the court unanimously stated that the provisions of the 1851 Constitution:

> [p]rescribe, define, and limit the powers of the other departments of government, remove all doubt, and make it incontrovertibly plain that the courts possess the entire body of the intrinsic judicial power of the state, and that the other departments are prohibited from assuming to exercise any part of that judicial power.[39]

The supreme court made it abundantly clear that the constitutional duties of deciding legal disputes and writing opinions were to be strictly left to the court, not to the legislature.

By 1891, the caseload of the supreme court loomed large and insurmountable. Pending cases were engulfing the court. Although the 1881 constitutional amendment cleared constitutional obstacles, the cost of a second permanent appellate court gave the legislature reason to hesitate.[40] A temporary, second appellate court would be the compromise. Finally, Indiana had its first statutory intermediate appellate court.[41]

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36. Act of Feb. 22, 1889, ch. 32, 1889 Ind. Acts 41.

37. JEROME L. WITHERED, A HISTORY OF THE SUPREME COURT OF INDIANA 168 (1983) (on file with the Indiana Supreme Court Library).

38. State *ex rel.* Hovey v. Noble, 21 N.E. 244 (Ind. 1889).

39. *Id.* at 246.

40. CHARLES W. TAYLOR, BENCH AND BAR OF INDIANA 79 (Indianapolis, Bench & Bar Publ'g Co. 1895).

41. Act of Feb. 28, 1891, ch. 37, §§ 1-27, 1891 Ind. Acts 39; *id.* §§ 1, 5 at 28, 41 (repealed 1971); *id.* §§ 2-4, 8, 10, 12, 13, 15, 16, 18-20, 24-25, 27 at 29-44 (superseded); *id.* §§ 6, 7, 9, 11, 17, 21, 22 at 41-43 (codified at IND. CODE §§ 33-3-1-3 to -6, -8 to -10 (1993)). In creating the appellate court, the Indiana General Assembly was not original or innovative. The concept of having an intermediate appellate court had been experimented with by a number of states. In 1844,

Then known as the Appellate Court of Indiana, its judges' terms were limited to four years.[42] The cost-conscious legislature limited the life of the court to "six years from the first day of March, 1891, and no longer."[43] At the end of this period, the "Supreme Court shall assume jurisdiction of all causes pending in and other business of said Appellate Court as if this act had never been passed."[44]

The new appellate court consisted of five judges, one from each of the five districts previously carved out for the Indiana Supreme Court.[45] Each judge was to receive a salary of $3500 per year.[46] The governor appointed the first five judges of the court, only three of which could be selected from the same political party.[47] Those judges served until they could stand for election.[48]

The general assembly limited the types of appeals that the new appellate court judges would decide. The legislature granted the court final jurisdiction only in minor matters.[49] The statute provided:

> When the Appellate Court shall be organized and ready to proceed with business, the Supreme Court shall, by an order entered upon its record, transfer to it all cases then pending in such Supreme Court of the nature and description of those of which jurisdiction is by this act given to said Appellate Court . . . , and the action of said Appellate Court shall have the same force and effect in all respects as if the said cause had been heard and disposed of by the Supreme Court.[50]

Three of the five appellate judges had to concur in order to decide a case or to make any order of the court.[51] Although the statute did not authorize the supreme court to review any decision made by the appellate judges, an exception to this rule occurred when one of the five judges on the court had a conflict of interest when considering an appeal. The statute then provided that the judge could not participate. If there was a tie among the remaining four judges, the appeal would have to be certified to the supreme court and decided as if it had been originally

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New Jersey had an intermediate court with trial jurisdiction as well. N.J. CONST. of 1844, art. VI. Other states having an intermediate appellate court prior to 1891 included: New York, 1846; Ohio, 1852; Missouri, 1855; Illinois, 1877; Louisiana, 1879; and Kentucky, 1882. *See* N.Y. CONST. of 1846, art VI, § 2; OHIO CONST. art. IV; Act of Mar. 23, 1852, 1852 Ohio Laws 93; MO. CONST. of 1875, art. VI, §12; ILL. CONST. of 1870, art. 6, § 11; LA. CONST. of 1879, arts. 80, 95-97, 101; Act of May 5, 1880, ch. 1525, 1880 Ky. Acts 798.

42. Act of Feb. 28, 1891, ch. 37, § 3, 1891 Ind. Acts 39, 40 (superseded).
43. *Id.* § 26 at 44.
44. *Id.*
45. *Id.* § 4 at 40.
46. *Id.* § 16 at 43.
47. *Id.* § 2 at 40.
48. *Id.* § 3.
49. *Id.* § 1 at 39-40; *see* discussion *infra* Part II.
50. *Id.* § 19 at 43.
51. *Id.* § 21.

appealed to that court.[52]

The statute also stated that the appellate court "shall be a Court of Record and shall have all the powers of the Supreme Court to punish for contempt of its authority, and to enforce its judgments and orders, which judgments shall be liens, as are judgments of the Supreme Court."[53] What is remarkable is that the appellate court was made a court of record. There is no indication that the supreme court was a court of record except through its clerk's docket and its written opinions.

A time limit for deciding appeals was also placed upon the newly created court. If an appeal had not been taken up for consideration within one year after its submission, on a motion by either party, the appeal could be certified to the supreme court as if it had been originally submitted to the supreme court.[54] However, this provision could potentially work against the party attempting to remove the case to the supreme court. The supreme court had its own backlog of cases and a reputation of two-year delays. After a year had passed on the appellate court, a party could move to certify the case to the supreme court where the appeal could remain unresolved for another two years.

In 1893, the legislature realized that the jurisdiction of the appellate court was not broad enough. Two years after the appellate court was created, the supreme court was still overloaded with appeals.[55] Thus, the legislature amended the 1891 act by increasing the amount in controversy from $1000 to $3500.[56] The legislature also changed the appellate court's limited jurisdiction by adding some exceptions.[57]

In 1897, the legislature extended the life of the appellate court for four additional years.[58] Then, in 1899, the legislature added another two years, which extended the court's temporary life to 1903.[59] Finally, in 1901, before the term of the court was allowed to expire, the legislature made the appellate court a permanent fixture on the judicial landscape.[60]

The 1901 statute which made the appellate court permanent also gave the court an additional judge.[61] The court's function began to shift from a court of last resort to an intermediate appellate court. The legislature divided the state into two districts, designated as the Appellate Court of Indiana, Divisions Number One and Two.[62] The previous statutes specified cases over which the appellate court had final jurisdiction. However, the 1901 act provided that "[n]o

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52. *Id.*
53. *Id.* § 10 at 42.
54. *Id.* § 25 at 44.
55. TAYLOR, *supra* note 40, at 55.
56. Act of Feb. 16, 1893, ch. 32, sec. 1, § 1, 1893 Ind. Acts 29, 29-30 (repealed 1971).
57. *Id.*
58. Act of Jan. 28, 1897, ch. 9, § 3, 1897 Ind. Acts 10, 10 (repealed 1901).
59. Act of Feb. 7, 1899, ch. 22, § 1, 1899 Ind. Acts 24, 24-25 (repealed 1901).
60. Act of Mar. 12, 1901, ch. 247, § 19, 1901 Ind. Acts 565, 570 (superseded).
61. *Id.* § 2 at 565 (repealed 1971).
62. *Id.*

appealable case shall hereafter be taken directly to the Supreme Court unless it be within" a list of nine classes of appeals.[63] Another notable change was that appeals decided by the appellate court could be transferred to the supreme court in certain circumstances. A basic procedure for transfer was created which has survived to the present.[64]

It took another seventy years before the appellate court finally became a constitutional court. The first section of the judiciary article of the Constitution was amended to state: "The judicial power of the State shall be vested in one Supreme Court, one Court of Appeals, Circuit Courts, and such other courts as the General Assembly may establish."[65] Thereafter, the appellate court became officially known as the Court of Appeals of Indiana.

## II. THE JURISDICTION EVOLUTION

The gradual inflation of the jurisdictional balloon for the Appellate Court of Indiana developed grudgingly. In the beginning, the jurisdiction of the court was extremely limited due to the fact that the appellate court was seen as a temporary measure to reduce the backlog of supreme court cases. But as times changed and the number of appeals increased, the jurisdiction of the appellate court expanded. In 1995, the fifteen-judge court of appeals handed down a record number of decisions—1825 majority opinions.[66]

Looking back to 1891, the legislature granted the new appellate court *final* jurisdiction in minor matters including: all cases for recovery of less than $1000; all appeals in cases of misdemeanors; appeals from justice of the peace judgments where the amount in controversy exceeded fifty dollars; recovery of specific personal property; all actions regarding recovery of the possession of leased premises; and all claims against decedents' estates.[67] This legislative grant of jurisdiction, although limited, made the appellate court a court of last resort. Suits in equity were not within the jurisdiction of the appellate court. Therefore, in cases where any relief beyond a money recovery was available, the entire case fell to the supreme court. This included "[s]uits for injunction, for the specific performance of contracts, for the rescission of contracts, . . . foreclosure of liens against real property . . ." and all similar cases.[68] In addition, the supreme court made it clear that the appellate court could only decide those cases specifically included in the 1891 act. In *Ex parte Sweeney*, the Indiana Supreme Court emphasized:

It is so evident that the act recognizes the general and superior appellate

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63. *Id.* § 9 at 566 (repealed 1971).

64. *Id.* § 10 at 567 (repealed 1971). *See* Patton, *supra* note 26, at 1119; *see also* discussion *infra* Part II.

65. IND. CONST. art VII, § 1.

66. COURT OF APPEALS OF INDIANA, 1995 ANNUAL REPORT 1 (1996).

67. Act of Feb. 28, 1891, ch. 37, § 1, 1891 Ind. Acts 39, 39-40 (repealed 1971); *see also Ex parte* Sweeney, 27 N.E. 127 (Ind. 1891).

68. *Sweeney*, 27 N.E. at 129-30.

> jurisdiction of the supreme court that little else is required than the bare statement that the appellate authority not expressly or impliedly vested in the newly-created tribunal remains where the constitution and the law place it, in the supreme court of the state. . . . [I]f the case is one of appellate cognizance, and it does not fall within one of the classes over which the appellate court is given jurisdiction, it is within the jurisdiction of the supreme court.[69]

Because the jurisdiction of the appellate court was so limited, its existence did little to help alleviate the backlog of cases the supreme court had accumulated on its docket. The legislature jumped in again and, in 1893, attempted to bail out the supreme court by increasing the jurisdiction of the appellate court. The 1893 amendment increased the amount in controversy from $1000 to $3500.[70] In addition, the appellate court was given "exclusive jurisdiction" of appeals from the circuit, superior, and criminal courts subject to these exceptions: 1) constitutionality of federal or state statutes or a municipal ordinance; 2) suits in equity (e.g., injunctions and writs of mandate or prohibition); and 3) cases where title to real estate was at issue.[71] Too, the appellate court was to certify cases which fell into these categories to the Indiana Supreme Court.

In 1901, the legislature attempted to place a tighter rein on the cases that were appealable to the supreme court. Rather than specifying the cases over which the appellate court had final jurisdiction, as had prior statutes, the 1901 act provided that no appeal could be taken directly to the supreme court unless it fell within a list of nine classes of appeals.[72] All other appealable cases were to be taken to the appellate court.[73]

In addition, for the first time, the legislature provided a procedure for transfer from the appellate court to the supreme court—a basic procedure which remains with us today.[74] A party could file an application for transfer of the appeal to the supreme court on the following grounds: 1) the appellate court's opinion contravened a ruling precedent of the supreme court; 2) the appellate court erroneously decided a new question of law; 3) if two appellate court judges believed that a ruling precedent of the supreme court was erroneous; or 4) if the

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69. *Id.* at 127-28.

70. Act of Feb. 16, 1893, ch. 32, § 1, 1893 Ind. Acts 29, 29 (repealed 1971).

71. *Id.* at 29-30.

72. The nine classes of appeals included: 1) cases involving constitutional questions; 2) all prosecutions for felonies; 3) actions to contest the election of public officers; 4) cases of mandate and prohibition; 5) cases of habeas corpus; 6) actions to contest wills; 7) interlocutory orders appointing or refusing to appoint receivers, and interlocutory orders regarding temporary injunctions; 8) proceedings to establish public drains and to change or improve water courses; and 9) proceedings to establish gravel roads. Act of Mar. 12, 1901, ch. 247, § 9, 1901 Ind. Acts 565, 566 (superseded).

73. *Id.*

74. *Id.* § 10 at 567 (repealed 1971).

party lost in the appellate court and the amount in controversy exceeded $6000.[75] The purpose of authorizing transfers was to give the supreme court "a revising hand over the opinions of the Appellate Court, when necessary, in order to control the declaration of legal principles."[76] Gradually, final jurisdiction began to slip away from the appellate court.

During this decade, the legislature continued to make revisions to the jurisdiction of the appellate court. In 1903, the legislature added the requirement that in order to take an appeal to the appellate court or the supreme court, the amount in controversy must exceed fifty dollars.[77] The legislature also gave the right to appeal to defendants in criminal cases involving misdemeanors.[78] Could a defendant now appeal to the supreme or appellate court but the state could not? Two years later, in 1905, the legislature passed another act concerning criminal appeals. This time the general assembly clarified its intent stating that "in all criminal cases of misdemeanor, touching the sufficiency of an affidavit, information or indictment, or touching upon any question of law occurring upon the trial, the state shall have the right to appeal to the supreme or appellate courts . . . ."[79]

In 1907, again the legislature amended the jurisdictional act. This time the general assembly provided that decisions of the juvenile court were appealable to the appellate court.[80] The legislature also expanded the list of types of cases directly appealable to the supreme court from nine to eighteen.[81] Later in 1911, that list was expanded again to twenty-one types of cases.[82] The legislature also

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75. *Id.*

76. Patton, *supra* note 26, at 1119 (quoting *Ex parte* France, 95 N.E. 515, 520 (Ind. 1911) (citations omitted)).

77. Act of Mar. 9, 1903, ch. 156, § 1, 1903 Ind. Acts 280, 280-81 (codified at IND. CODE § 33-3-2-4 (1993)).

78. *Id.* § 2 at 281 (repealed 1971).

79. Act of Mar. 6, 1905, ch. 135, § 1, 1905 Ind. Acts 429, 429 (repealed 1978). *See* IND. CODE § 35-38-4-2 (1993).

80. Act of Mar. 9, 1907, ch. 136, § 1, 1907 Ind. Acts 221, 221-22 (repealed 1963).

81. The new classes of direct appeals to the supreme court included: 1) proceedings to construe wills, in which no other relief is asked; 2) condemnation proceedings for the appropriation of lands for public use; 3) judgments granting or denying licenses to sell intoxicating liquors; 4) prosecutions for contempt of the lower courts; 5) applications for admission to the bar and proceedings to disbar an attorney; 6) all cases wherein the amount in controversy exceeds $6000; 7) interlocutory orders for the payment of money or to compel the execution of any instrument, or the delivery or assignment of any securities, evidences of debt, documents or things in action; 8) interlocutory orders for the delivery of the possession of real property or the sale thereof; and 9) interlocutory orders upon writs of habeas corpus. *Compare* Act of Mar. 12, 1901, ch. 247, § 9, 1901 Ind. Acts 565, 566 *with* Act of Mar. 9, 1907, ch. 148, sec. 1, § 9, 1907 Ind. Acts 237, 237-38 (repealed 1963). In addition, all criminal prosecutions could now be directly appealed to the supreme court. The prior act limited direct appeals to felony convictions.

82. In redefining the classes of direct appeals, the legislature added four classes and deleted one. The following classes were added: 1) all actions involving the title to real estate or the

abolished the amount in controversy requirement.[83] That same year, the legislature declared, "The jurisdiction of the appellate court in all cases in which jurisdiction is hereby conferred upon said court shall be *final*."[84] However, the jurisdiction of the appellate court was not final when two or more judges of the appellate court were of the opinion that the ruling precedent of the supreme court was erroneous.[85] In those instances, the case was transferred to the supreme court.

The legislative provision that gave the appellate court final jurisdiction went too far. Its attempt to grant additional jurisdiction to the appellate court and to cure the congestion of cases on the supreme court raised a serious constitutional question. In *Ex parte France*, the Indiana Supreme Court stated that when a constitution places a court at the head of the judicial system of the state, the legislature may not interfere with its existence or supremacy nor create a court of coordinate final jurisdiction.[86] Then again, in 1913, the supreme court struck down the final jurisdiction provision as unconstitutional.[87] In *Curless v. Watson*, the Indiana Supreme Court set forth the issue by stating, "[T]he question at issue is not what cases may be appealed to the Appellate Court, but can the legislature vest the Appellate Court with complete and final jurisdiction to review cases, under appeals or writs of error, without being subject to review by the Supreme Court?"[88] The court explained:

> [t]he right to confer jurisdiction, in any particular case, is in the legislature, but the power to receive it is fixed by the Constitution in the

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possession thereof; 2) all cases involving the granting or refusal to grant injunctions; 3) all cases for the specific performance of contracts; and 4) all probate matters. The legislature deleted the class which allowed direct appeals in any case wherein the amount in controversy exceeded $6000. *Compare* Act of Mar. 9, 1907, ch. 148, § 1, 1907 Ind. Acts at 237-38 (repealed 1971) *with* Act of Mar. 3, 1911, ch. 117, § 1, 1911 Ind. Acts 201, 201-03 (repealed 1963).

83. *Compare* Act of Mar. 9, 1907, ch. 148, § 1, 1907 Ind. Acts at 238 (fourteenth enumerated class) *with* Act of Mar. 3, 1911, ch. 117, § 1, 1911 Ind. Acts 201, 201-03. However, in 1915, cases in which the amount in controversy exceeded $6000 were made only appealable directly to the supreme court. Act of Mar. 6, 1915, ch. 76, § 1, 1915 Ind. Acts 149, 150 (repealed 1971).

84. Act of Mar. 3, 1911, ch. 117, § 4, 1911 Ind. Acts 201, 204 (repealed 1963) (emphasis added).

85. *Id.*

86. *Ex parte* France, 95 N.E. 515, 522 (Ind. 1911).

87. Curless v. Watson, 102 N.E. 497 (Ind. 1913). "The substance of the appellants' contention [was] that by abolishing the right of transfer, the act of 1913 makes the Appellate Court a tribunal of final appellate jurisdiction equal in rank with the Supreme Court [which is] unconstitutional and void." *Id.* at 502 (Spencer, C.J., concurring). The final appellate tribunal concept was carried forward from the 1891 legislation when it struck a reef in the 1913 legislation and was declared unconstitutional. Act of Feb. 28, 1891, ch. 37, § 1, 1891 Ind. Acts 39, 39-40 (repealed 1971).

88. *Curless*, 102 N.E.2d at 499.

> Supreme Court, and the legislature has no right to vest any other tribunal with authority to take final jurisdiction in appeals and writs of error; that is '[t]o review errors of law arising upon the face of the proceedings, so that no evidence is required to substantiate or support it,' which is a power fixed by the Constitution in the Supreme Court.[89]

In short, the supreme court held that the legislature may withhold jurisdiction in certain cases, but it cannot confer final jurisdiction upon any other tribunal to determine questions of law. The appellate court was no longer considered a court of last resort, rather it became an intermediate appellate court as it is today.

With the debate over whether the appellate court was a court of final resort decided, the jurisdictional changes subsided. In 1913 and 1915, the legislature again amended the list of types of cases directly appealable to the supreme court. In 1915, the list was shortened from twenty-one to eighteen types of appeals.[90]

It was not until 1929 that the next notable change in the jurisdiction of the appellate court occurred. The legislature granted the appellate court temporary jurisdiction of all criminal appeals where the punishment was not death or imprisonment until January 1, 1931.[91] The appellate court decisions in those cases were to be "final and conclusive" and not subject to transfer to the supreme court.[92] Thus, the act purported to give the appellate court final jurisdiction over appeals from misdemeanor convictions. When the temporary jurisdiction of the appellate court ended, the act required that all pending criminal appeals be transferred to the supreme court. The supreme court upheld the constitutionality of the act.[93] However, ten years later, the supreme court repeated its doubts concerning the constitutional authority of the legislature to make a decision of the appellate court final.[94]

The debate, which began in 1891, over whether the appellate court was an intermediate court subject to the supervisory power of the supreme court or a court of last resort regarding minor matters, finally came to an end in 1940. In *Warren v. Indiana Telephone Co.*, the Indiana Supreme Court stated:

> Uniformity in the interpretation and application of the law is the keystone of our system of jurisprudence. . . . [U]niformity cannot be attained or

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89. *Id.* at 501.

90. In redefining the classes of direct appeals, the legislature added one new class and deleted four classes. The legislature reinstated the amount in controversy requirement for direct appeal, wherein the amount in controversy must exceed $6000. The four deleted classes of appeals included: 1) all actions involving title to real estate; 2) all cases involving injunctions; 3) all cases for the specific performance of contracts; and 4) all probate matters. *Compare* Act of Mar. 3, 1911, ch. 117, § 1, 1911 Ind. Acts 201, 202-03 (repealed 1963) *with* Act of Mar. 10, 1913, ch. 166, § 1, 1913 Ind. Acts 454, 454-55 *and with* Act of Mar. 6, 1915, ch. 76, § 1, 1915 Ind. Acts 149, 150-51 (repealed 1971).

91. Act of Mar. 12, 1929, ch. 123, § 1, 1929 Ind. Acts 429, 429 (repealed 1963).

92. *Id.*

93. *In re* Petition to Transfer Appeals, 174 N.E. 812 (Ind. 1931).

94. Warren v. Indiana Tel. Co., 26 N.E.2d 399, 405-06 (Ind. 1940).

> preserved if the courts that interpret and apply the laws are not required to take their controlling precedents from some common source. If other courts than this court are to be permitted to construe statutes and state rules of substantive law, without recourse being provided for review by this court, the result will be as destructive to uniformity as if the Legislature was permitted to enact local and special laws for every county in the state.[95]

From that point on, the appellate court was known as an intermediate court of appeals.

As to the transfer process, the legislature seized the opportunity in 1933 to once again clarify the procedure. The general assembly reiterated that when two or more judges of the appellate court were of the opinion that the ruling precedent of the supreme court was erroneous, the case was to be transferred to the supreme court.[96] It also provided that the losing party could file a petition for rehearing with the appellate court. If that petition was denied, the party could file an application for transfer to the supreme court.[97] The grounds for transfer included: 1) the opinion of the appellate court contravened a ruling precedent of the supreme court; or 2) a new question of law was directly involved and decided erroneously.[98]

Thereafter, the jurisdictional provisions remained basically the same for forty years, until the judiciary article of the Indiana Constitution was substantially amended in 1970. The revised article specifically provided for an intermediate appellate court, now known as the Indiana Court of Appeals.[99] The constitution conferred no original jurisdiction upon the court of appeals, except that the supreme court could authorize the court of appeals to directly review decisions of administrative agencies.[100] In all other cases, the court of appeals was to exercise jurisdiction in accordance with rules specified by the supreme court.[101] For the first time, the constitution guaranteed the right to one appeal in all cases, including criminal cases. All appeals from a judgment imposing a sentence of death or life imprisonment, or for a term greater than ten years were taken directly to the supreme court.[102]

Also in 1970, the Indiana Supreme Court promulgated the first Indiana Rules of Appellate Procedure.[103] The new appellate rules further solidified the position

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95. *Id.*

96. Act of Mar. 8, 1933, ch. 151, § 1, 1933 Ind. Acts 800, 800 (repealed 1971).

97. *Id.* at 801.

98. *Id.*

99. IND. CONST. art VII, § 1.

100. *Id.* § 6.

101. *Id.*

102. *Id.* § 4 (as amended 1970) (amended 1981).

103. The 1969 legislature adopted Rules of Civil Procedure, effective Jan. 1, 1970. Act of Mar. 13, 1969, ch. 191, § 1, 1969 Ind. Acts 546, 546-715 (repealed 1984). It also reserved power to the Indiana Supreme Court to adopt rules and to rescind the rules adopted by the general

of the court of appeals as an intermediate appellate court. Indiana Appellate Rule 11(B)(3) provided:

> The decision of the Court of Appeals shall be final except where a petition for transfer was granted by the Supreme Court. If transfer be granted, the judgment and decision of the Court of Appeals shall thereupon be vacated and held for naught, and the Supreme Court shall have jurisdiction of the appeal as if originally filed therein. . . .[104]

In addition, Appellate Rule 11(B)(2) expanded the grounds for transfer to the Indiana Supreme Court.[105]

At one point, the legislature removed a class of cases from the jurisdiction of the appellate court. In 1985, the legislature created the Indiana Tax Court with exclusive jurisdiction over any case which arises under the tax laws of Indiana and that is an initial appeal of a final determination made by: 1) the department of state revenue; or 2) the state board of tax commissioners.[106] The new court handled all tax appeals after July 1, 1986.[107]

Meanwhile, the criminal docket was expanding. According to Chief Justice Shepard, two factors fueled the growth.[108] First, was the increased use of the new habitual offender statute by prosecutors. Second, was the result of a 1976 revision to the Indiana Criminal Code. Mandatory sentences were attached to certain kinds of cases, adding considerable time to sentences that used to be less

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assembly. *Id.* (codified at IND. CODE § 34-5-2-1 (1993)). The order of the court adopting these rules, instead of rescinding or abrogating the legislature rules stated in part, "The rules appended to this Order shall supersede all procedural statutes in conflict therewith," thus leaving uncertainty as to which of the rules enacted by the legislature may remain in effect. *See* Richards v. Crown Point Community Sch. Corp., 269 N.E.2d 5 (Ind. 1971). This uncertainty was cleared up in 1984 when the legislature adopted and incorporated the Indiana Rules of Trial Procedure into the Indiana Code. IND. CODE § 34-5-1-6 (1993).

104. IND. APP. R. 11(B)(3) (as amended 1971) (amended 1994).

105. The rules provided that a petition for transfer must be based upon one of the following errors: 1) the decision of the court of appeals contravenes a ruling precedent of the supreme court; 2) the decision of the court of appeals erroneously decides a new question of law; 3) there is a conflict in the decision with another decision of another district of the court of appeals; 4) the decision of the court of appeals correctly followed ruling precedent of the supreme court, but such ruling precedent is erroneous or is in need of clarification or modification; or 5) the decision of the court of appeals fails to give a statement in writing of each substantial question arising on the record and argued by the parties. IND. APP. R. 11(B)(2) (as amended 1971) (amended 1990).

106. Act of Apr. 18, 1985, No. 291, §§ 1-2, 1985 Ind. Acts 2270, 2270-90 (codified as amended at IND. CODE §§ 33-3-5-1 to -20 (1993)).

107. *Id.* § 20 at 2290 (expired 1971).

108. Randall T. Shepard, *Changing the Constitutional Jurisdiction of the Indiana Supreme Court: Letting a Court of Last Resort Act Like One*, 63 IND. L.J. 669, 681-83 (1988); David J. Remondini, *Big Caseload May Greet New Appellate Judge*, INDIANAPOLIS STAR, Sept. 25, 1988, at B17.

than ten years.[109] Because the supreme court was overburdened with mandatory criminal appeals, the only civil cases the supreme court could hear involved either issues of first impression or contradictory rulings by the court of appeals in each of its four different districts. Thus, the burgeoning criminal docket crowded out important civil matters that needed to be clarified or modified and inadvertently turned the court of appeals into a court of last resort on civil matters.[110] The historic problem that Indiana faced with its appellate system resurfaced: the supreme court was not able to function as a court of last resort on all matters as provided by the state constitution.[111]

By 1988, criminal appeals comprised approximately ninety-three percent of the caseload of the supreme court.[112] This intolerable imbalance of appellate review rallied Indiana judges and lawyers behind Proposition Two, a proposed constitutional amendment which was aimed at reducing the growing workload of the state supreme court and increasing the workload of the court of appeals. Proposition Two provided that only sentences of fifty years or more would go directly to the supreme court, instead of the prior ten year or more sentence requirement. This change meant that three hundred criminal cases would be transferred to the court of appeals.[113] As Chief Justice Randall T. Shepard explained:

> The amendment would allow the Supreme Court to hear more oral arguments, deliberate more thoroughly, and write more reasoned opinions on legal questions of statewide importance. It will give the Supreme Court time for creativity, for lawmaking, for rethinking and readjusting the common law. That is the proper function of a state's court of last resort.[114]

The state's electorate voted in favor of Proposition Two, and the jurisdictional landscape of Indiana's appellate courts changed—a gigantic shift in the review of criminal appeals. Now, under the amended section of the constitution, only criminal cases with sentences of fifty years or more for a single offense would go directly to the supreme court.[115] The court of appeals handles the rest. For the court of appeals this meant a dramatic increase in the number of appeals to be reviewed. As a result, the legislature added three judges to the court of appeals, and each one started with a backlog of about forty-four cases, the same as the other twelve judges.[116] Subsequently, the court of appeals' docket exploded. In 1988, prior to the constitutional amendment, the court of appeals

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109. Remondini, *supra* note 108, at B1.

110. Patton, *supra* note 26, at 1124.

111. *Id.*

112. Averitt, *supra* note 6, at B1.

113. *Id.*

114. *Id.*

115. IND. CONST. art. VII, § 4; IND. APP. R. 4(A)(7).

116. David J. Remondini, *3 New Judges Fail To Make Dent In Appeals Backlog*, INDIANAPOLIS STAR, Jan. 22, 1991, at D1.

handed down 1121 majority opinions.[117] In 1995, just seven years later, that number skyrocketed to 1825, with 837 of those being decisions in criminal appeals.[118]

## III. JUDGES OF THE COURT OF APPEALS

At the present time (1996) the Court of Appeals of Indiana consists of fifteen judges.[119] All of the judges' offices are located in Indianapolis, Indiana. Nine of the judges are located in the State House, and the remaining six are located across the street on the twelfth floor of the National City Center. When the fourth and fifth districts were added to the court, sufficient space at the State House no longer existed, so the fourth and fifth districts were relocated across the street. Although there have been plans prepared for a new judicial building, the legislature has not appropriated funds to build it. For the present, a judicial building has been placed on the back burner. A more adequate housing arrangement for the Court of Appeals of Indiana is yet to be achieved.

During the first century of the court's existence, the number of judges on the court expanded from five to fifteen. In 1891, the act creating the appellate court allowed for only five judges, one from each of the five districts previously carved out for the supreme court.[120] In 1901, when the appellate court became a permanent court, the legislature added an additional judge and created two divisions, each with three judges.[121] The number of judges remained at six for over fifty years. In 1959, when the docket of the appellate court became congested, the legislature decided to increase the number of judges to eight.[122] The legislature was forced to increase the number of judges to nine when the 1970 constitutional amendment required that each of the three geographic districts consist of three judges.[123]

In 1978, the nagging problem of a huge backlog of cases resurfaced. The population of Indiana had increased substantially, and with it the number of legal disputes to be resolved by the court expanded. The nine-member court of appeals could not keep up with the influx of new cases. The result was a waiting period of one and a half to two years for an appeal to be completed.[124] A survey of the court revealed that although nearly 800 cases a year were being disposed of, there remained a backlog of 800 additional cases.[125] Recognizing the familiar

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117. COURT OF APPEALS OF INDIANA, 1988 ANNUAL REPORT 1 (1989).

118. COURT OF APPEALS OF INDIANA, 1995 ANNUAL REPORT 1 (1996).

119. IND. CODE § 33-21-2-2(a) (1993). For a chronological listing of the judges of the Indiana Court of Appeals and the Indiana Appellate Court, see Appendix.

120. Act of Feb. 28, 1891, ch. 37, § 1, 1891 Ind. Acts 39, 39 (repealed 1971).

121. Act of Mar. 12, 1901, ch. 247, § 2, 1901 Ind. Acts 565, 565 (repealed 1971).

122. Act of Mar. 12, 1959, ch. 238, § 1, 1959 Ind. Acts 567, 568 (repealed 1971).

123. IND. CONST. art. VII, § 5; IND. CODE §§ 33-2.1-2-1 to -7 (1993).

124. *House Committee Oks Adding 3-Judge Court*, INDIANAPOLIS NEWS, Feb. 15, 1978, at 4.

125. *Id.*

congestion, the legislature added three judges to the court in 1978.[126] As a result, twelve judges sat on the court of appeals.

The 1988 constitutional amendment to the judiciary article brought yet another dramatic caseload increase to the court of appeals.[127] The amendment increased the number of criminal appeals in that court because only cases involving a sentence of more than fifty years for a single offense would be appealed directly to the supreme court.[128] Before the amendment, criminal appeals having sentences of more than ten years were directly appealed to the supreme court. This change meant a transfer from the supreme court to the court of appeals of approximately three hundred criminal cases.[129] A short time later in 1991, three additional court of appeals judges were added which brought the total number of judges to its present strength of fifteen judges.[130]

### *A. Selection of Judges*

To be eligible to serve on the Indiana Court of Appeals, a person must have been admitted to the practice of law in Indiana for a minimum of ten years or have served as an Indiana trial court judge for at least five years.[131] In addition, he or she must be domiciled within the appropriate state geographic district and a citizen of the United States.[132]

The process used today for the selection of judges is set forth in the 1970 amendment to the Indiana Constitution. New judgeships and vacancies are filled by the governor from a list of three nominees submitted by a seven-member, non-partisan judicial nominating commission.[133] Those judges appointed serve a minimum of two years before they are subject to a yes-or-no retention vote at the next general election. Only the electorate of the geographic district which the judge serves votes on the question of approval or rejection.[134] Thus, the fourth and fifth district judges who stand for retention must be voted upon by the electorate of the entire geographic limits of the state. This points up an anomaly in the district representation concept, because the judges in districts one, two and three are voted on only in the geographic limits of their district; yet, these nine judges decide appeals from all over the state as do the judges in the fourth and

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126. Act of Mar. 2, 1978, No. 137, § 1, 1978 Ind. Acts 1287, 1287-88 (codified as amended at IND. CODE § 33-2.1-2-2 (1993)).

127. *See* discussion *supra* Part II.

128. IND. CONST. art VII, § 4; IND. APP. R. 4(A)(7).

129. Remondini, *supra* note 108, at B1.

130. Act of Mar. 13, 1990, No. 158, § 1, 1990 Ind. Acts 2156, 2156-57 (codified at IND. CODE § 33-2.1-2-2 (1993)).

131. IND. CONST. art. VII, § 10.

132. *Id.*

133. *Id.* See *id.* § 9 and IND. CODE §§ 33-2.1-4-1 to -17 (1993) for requirements and duties of the judicial nominating commission.

134. IND. CONST. art VII, § 11.

fifth districts who must stand for statewide retention.[135]

Those retained in office serve for ten years and may then run for retention for additional ten-year terms.[136] By statute, all judges must retire at age seventy-five.[137] Once a person is appointed to the court, the constitution mandates that person may not engage in the practice of law during his or her term of office.[138] In addition, a judge cannot run for an elective office, directly or indirectly make any contribution to, or hold any office in, a political party or organization, or take part in any political campaign.[139]

The process for selecting judges has changed dramatically over the years. In 1891, the governor appointed the first five judges of the court.[140] Only three of the five judges could be selected from the same political party.[141] Those judges served until they could stand for election.[142] If a vacancy occurred for any cause, the governor had the power to appoint a person to fill the vacancy until the next general election.[143] One of the most important mainstays was the requirement that "the Judges shall be elected from each district, and reside therein."[144] This requirement remains with us today, although a bit modified.

In order to be eligible to be appointed to the court today, a person must be domiciled within one of the three geographic districts.[145] The judges of the first, second and third districts must have resided in their respective districts before appointment to the court.[146] However, the legislature abolished the requirement that judges must continue to reside in that district.[147] As for the fourth and fifth districts, each judge of the three judge panel must have resided in a different one of the three geographic districts before appointment to the court.[148] As a result, the fourth and fifth districts consist of one judge who resided in the first district, one who resided in the second district, and one who resided in the third district.

Before the 1970 constitutional amendments, the appellate court judges had to be elected. Each judge was nominated at a party convention and chosen by statewide, party-label voting.[149] The idea of partisan election of judges had taken

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135. See discussion *infra* Part IV regarding geographic districts.

136. IND. CONST. art. VII, § 11.

137. IND. CODE § 33-2.1-5-1 (1993).

138. IND. CONST. art. VII, § 11.

139. *Id.*

140. Act of Feb. 28, 1891, ch. 37, § 2, 1891 Ind. Acts 39, 40 (superseded).

141. *Id.* § 2.

142. *Id.* §§ 2-3.

143. *Id.* § 2.

144. IND. CONST. art. VII, § 3 (as adopted 1851) (amended 1970).

145. IND. CONST. art. VII, § 10.

146. IND. CODE § 33-2.1-2-3(a) (1993).

147. *See* IND. CODE § 33-2.1-2-3 (1993).

148. IND. CODE § 33-2.1-2-3(b) (1993).

149. Paul M. Doherty, *Judicial Measure Fails in 'Quick' Senate Vote*, INDIANAPOLIS STAR, Mar. 5, 1969, at 6.

hold when the Jacksonian and Populist movements reached their heights.[150] Initiated primarily as an attack on aristocratic control of the government, this philosophy gradually led to the advocacy of universal election of all public officials, including judges. This concept captured people's imagination and led to sweeping changes in state governments across the nation. Indiana was typical of the states affected by this movement. Many of the delegates to the Constitutional Convention of 1851 were Jacksonians and Populists, and it was primarily through their efforts that partisan election of judges was brought to Indiana.[151]

In 1967, a huge movement began to remove judges from the political arena.[152] The Judicial Study Commission surveyed Indiana attorneys and found that sixty-six percent of those responding would be unwilling to run for judicial office under the election system.[153] In addition, both judges and attorneys considered court decisions to be affected by political influences.[154] In its report, the Commission detailed the difficulties confronting the political election of judges. It was unrealistic for a candidate to run for judicial office unless the candidate was a member of one of the major political parties. Candidates had to acquire support of the influential politicians. If candidates garnered enough support, they would run expensive political campaigns which required that each candidate supply the necessary capital or solicit it from others.[155] Because the appellate court nomination had to be secured in the state convention, candidates had to actively solicit the support of convention delegates. Candidates who secured the party's nomination had to campaign against opponents for several months prior to the election. Campaigning took the candidates away from their normal work, because they had to attend party dinners and party rallies, give speeches, declare their positions on issues, and further solicit votes for election. If the candidate was a judge seeking re-election, then this was done at the expense of the taxpayers because the courtroom sat idle. Candidates who were practicing attorneys could rarely afford to leave their offices; if they did so, they were forced to neglect their clients' interests.[156]

Supporters of nonpartisan selection argued that the measure would take politics out of the selection of members of the state's highest courts and would

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150. REPORT OF THE JUDICIAL STUDY COMMISSION 106 (report is not dated) (commission members include Dr. Herman B. Wells, Sen. F. Wesley Bowers, Rep. Robert V. Bridwell, Rep. Robert D. Anderson, Rep. John W. Donaldson, C. Ben Dutton, Sen. William W. Erwin, William M. Evans, Carl M. Gray, Sen. A. Morris Hall, Gilmore S. Haynie, Rep. David F. Metzger, and Sen. Leonard Opperman) [hereinafter COMMISSION REPORT].

151. *Id.*

152. *Bill Would Reform Courts, Take Judges From Politics*, INDIANAPOLIS STAR, Jan. 13, 1967, at 6.

153. COMMISSION REPORT, *supra* note 150, at 105.

154. *Id.*

155. *Id.* at 112-14.

156. *Id.*

lead to better judges.[157] Representative Helen E. Achor believed the measure would "improve the quality of justice in Indiana."[158] On the other hand, opponents argued that the measure took away from the people their right to pick judges.[159] Representative R. Slenker blasted the bill, declaring, "We are about to give one of our main liberties away."[160] He described the measure as a "monstrosity."[161]

Mindful of the philosophy that Indiana's judges should be kept close to the people, the Judicial Study Commission could not disregard the comments of Indiana's attorneys and judges who, although firmly dedicated to a free and just government, severely questioned the propriety of electing judges. The Commission proposed that the legislature create a nominating commission which would recommend three candidates to the governor. In turn, the governor would be obligated to appoint a judge from the three names submitted by the nominating commission.[162]

After much debate and four years of drafting, the legislature passed a resolution calling for a constitutional amendment which provided for the nonpartisan selection of judges as outlined above.[163] On November 3, 1970, the people of Indiana ratified the new judicial article for the state's constitution and adopted today's merit system for the selection and tenure of its appellate judges.[164]

Ten years later in 1979, the old controversy resurfaced when the Indiana House of Representatives apparently felt that judges of the state's highest courts should run for their offices the same way legislators do.[165] The lawmakers, many of them miffed by decisions of the supreme court and court of appeals, blocked an attempt which would keep all judges out of the political arena.[166] Several members criticized what they thought was an encroachment by the two courts on the authority of the legislature.[167] Representative Craig Campbell told the House, "If these judges are going to determine public policy, they should be answerable to the people."[168] The Indiana Court of Appeals Chief Judge Paul H. Buchanan,

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157. *Hot Floor Fight Expected on Judge Selection Issue*, INDIANAPOLIS STAR, Jan. 24, 1969, at 12.

158. *Judicial Reform Approved By House*, INDIANAPOLIS NEWS, Jan. 25, 1969, at 3.

159. *Hot Floor Fight Expected on Judge Selection Issue*, *supra* note 157, at 12.

160. *Judicial Reform Approved By House*, *supra* note 158, at 3.

161. *Id.*

162. COMMISSION REPORT, *supra* note 150, at 108.

163. *Judicial Reform Approved By House*, *supra* note 158.

164. James E. Farmer, *Indiana Modernizes Its Courts*, 54 JUDICATURE 327, 327. The approval of the electorate was substantial. The referendum question prevailed by 141,323 votes. Giving approval were 527,978 voters or 57.7% of those balloting on the question, and voting against were 386,655 or 42.3%. *Id.*

165. *Back To Elected Judges?*, INDIANAPOLIS NEWS, Feb. 22, 1979, at 10.

166. *Id.*

167. *Id.*

168. *Id.*

Jr. responded by stating that the merit system had created a "trained, professional judiciary."[169] The chief judge noted that the record of the court of appeals was improving because of the merit judicial selection process and that a return to the former elective procedure would be a mistake.[170] The former partisan system required judges to take time away from legal work to run their political campaigns. Chief Judge Buchanan "added that highly qualified lawyers often shied away from seeking judgeships under the elective system because of political trends unrelated to the judiciary."[171]

Despite the efforts of opponents, the merit system withstood their challenges and remains the selection process for today's court of appeals judges.[172] The court of appeals judges are now appointed by the governor from a list of three nominees submitted by the judicial nominating commission. The court of appeals judges face retention elections two years after their appointment and thereafter every ten years.

### *B. Chief Judge and Presiding Judges*

The Indiana Court of Appeals judges elect a chief judge, who retains that office for three years.[173] This process dates back to the beginning of the appellate court in 1891. The act creating the appellate court required that at the term of court, the judges were to meet and choose a chief judge, "who shall preside at the consultation of such Judges and in Court, but no Judge shall be chosen to preside at two terms consecutively, nor until the other Judges have each presided one term."[174] Today's requirements are distinguishable in two ways: 1) the elected chief judge serves a term of three years rather than a term of court, and 2) not every judge is required to serve as chief judge. In addition, each district, other than the district from which the chief judge is chosen, has a presiding judge who is elected from the three-judge district panel.[175] The presiding judge usually serves for the same period of time as the chief judge or until the judge resigns and is replaced by another judge within that district. The chief judge and the presiding judges perform administrative duties for the court.

### *C. Assignment of Appeals to the Judges*

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169. *Chief Judge Of Appeals Court Heaps Praise On Merit System*, INDIANAPOLIS STAR, Feb. 23, 1979, at 6.

170. *Id.*

171. *Id.*

172. Similar unsuccessful efforts occurred in 1983, 1985 and 1989. *See* Richard D. Walton, *Bill Places Judges Back On Ballot*, INDIANAPOLIS STAR, Feb. 11, 1983, at 19; Rich Schneider, *Senate Panel Barely Oks Judicial Elections Proposal*, INDIANAPOLIS NEWS, Feb. 1, 1985, at 27; and Peter L. Blum, *Panel Strikes Down Change in Judicial Retention*, INDIANAPOLIS NEWS, Feb. 1, 1989, at A12.

173. IND. CODE § 33-2.1-2-4(a) (1993).

174. Act of Feb. 28, 1891, ch. 37, § 18, 1891 Ind. Acts 39, 43 (superseded).

175. IND. CODE § 33-2.1-2-4(b) (1993).

Each appeal is assigned to rotating panels of three judges, a process which began in 1987. Each panel has statewide jurisdiction. Chief Justice Shepard commented on this assignment process in his 1988 State of the Judiciary address:

> [T]he Court [of Appeals] demonstrated its commitment to innovation by adopting a rotation system under which one judge from another district sits on each panel deciding a case. This system affirms the district method of organization while promoting uniformity of decision-making and greater collegiality among the members of the Court. It is an excellent example of progressive action by Indiana judges.[176]

Once an appeal is assigned to a panel of three judges, the writing judge prepares a draft opinion which is circulated to the other two judges on the panel. After discussion and debate, each of the two judges who received a copy of the rough draft opinion decides whether to concur, concur in result or dissent. Should both judges decide to dissent, the case is transferred from the original writing judge to the first dissenting judge for the majority opinion.

Very few oral arguments are heard by the court of appeals. If an oral argument is requested by one of the parties, the court will order oral argument in those cases it deems proper.[177] In 1995, the court of appeals decided 1825 cases and heard only 115 oral arguments.[178]

## IV. ORGANIZING THE COURT INTO DISTRICTS

The 1891 appellate court consisted of five judges, one from each of the five districts previously carved out for the supreme court.[179] This soon changed. In 1901, the court became a permanent court with six judges, and the legislature required that the judges sit in two districts—the southern half of the state constituted the first district and the northern half constituted the second district.[180] In 1959, when the number of judges grew to eight, four judges sat in each of the two districts.[181]

The judges continued to sit in two districts until the 1970 amendments to the judiciary article of the Indiana Constitution substantially altered the structure of the appellate court. The previous two districts were abolished, and three new districts were created. Each district consisted of three judges.[182] These three geographic districts divided Indiana into three approximately equal population

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176. Chief Justice Randall T. Shepard, State of the Judiciary Address to the Indiana General Assembly (Jan. 11, 1988) (transcript on file with Indiana Supreme Court).

177. IND. APP. R. 10. The court may also order oral argument on its own motion. *Id.*

178. COURT OF APPEALS OF INDIANA, 1995 ANNUAL REPORT 1 (1996).

179. *See* IND. CONST. art. VII, § 1 (as adopted 1851) (amended 1970); *id.* § 4 (as adopted 1851) (amended 1988).

180. Act of Mar. 12, 1901, ch. 247, § 2, 1901 Ind. Acts 565, 565 (repealed 1971); *id.* § 3 (repealed 1971).

181. Act of Mar. 12, 1959, ch. 238, § 1, 1959 Ind. Acts 567, 568 (repealed 1973).

182. IND. CONST. art. VII, § 5 (amended 1970).

segments.[183] The court was served by nine judges—three from each of the three geographic districts.[184] Later, when the fourth and fifth districts were added, the segmented geographic population formula was abandoned in favor of a statewide concept.[185]

On August 17, 1977, a judicial study commission held a public hearing to determine if the court of appeals should be enlarged. During the hearing, several of the speakers discussed their views on the proposal of a fourth geographic district based upon population. Jeanne Miller, chairperson for the Indiana Bar Association Committee on Improvements in the Judicial System, proposed a geographic district at-large.[186] She argued that the constitution requires geographic districts, but it does not state the size of those districts. She suggested that a reasonable interpretation would allow some of the districts to overlap with one another.[187] What was not considered was the gross inequity that would be worked by the retention process. Some of the judges would be retained by a small number of voters in their district while others would have to stand for retention on a statewide vote.

In 1978, the legislature created a fourth district. In so doing, the general assembly refused to redistrict the entire state into four geographic districts. It abandoned the procedure it had used before when it created the three original districts and instead created an at-large district. The new fourth district encompassed the entire state and its population. The judges who filled the new fourth district each came from a different one of the three originally established geographic districts. In 1991, the legislature followed the same procedure when the fifth district was created as an at-large district.[188]

This scheme results in some rather harsh political consequences for the judges of the fourth and fifth districts when they stand for retention. The Indiana Constitution provides that the judges are subject to a retention vote by the electorate of the geographic district he or she serves.[189] Therefore, the judges of the fourth and fifth districts are subject to statewide election, while the judges of the other three districts are subject to a retention vote only by the electorate of their particular district which consists of only a few counties. Instead of being retained from a specific geographic district of, perhaps, nineteen counties, the fourth and fifth district judges must be retained in office by holding themselves out to the voters of all ninety-two counties of the state.

The concept of geographic districts also plays an important role in how the court decides cases. All appeals are placed upon the docket of one of the original

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183. Act of Apr. 14, 1971, No. 427, § 3, 1971 Ind. Acts 1979, 1981-82 (codified as amended at IND. CODE §§ 33-2.1-2-1 to -7 (1993)).

184. *Id.* at 1981.

185. IND. CODE § 33-2.1-2-2(4) and (5) (1993).

186. JUDICIAL STUDY COMMISSION OF INDIANA, IN THE MATTER OF: THE PROPOSED FOURTH DISTRICT FOR THE COURT OF APPEALS 35-36 (1977).

187. *Id.*

188. IND. CODE § 33-2.1-2-2 (1993).

189. IND. CONST. art VII, § 11.

three geographic districts from which the appeal may have been taken.[190] The jurisdiction of the court is conferred by subject matter and not according to particular geographic districts or a particular judge.[191] So, if there is an undue disparity in the number of cases pending on the dockets of any district, the court of appeals may reduce the disparity by transferring cases to other districts.[192] The Indiana Supreme Court discussed the procedure of transferring cases between districts in *State ex rel. Shortridge v. Court of Appeals.*[193] In *Shortridge*, the appellant argued that the appellate court "exceeded its jurisdiction by transferring the cases from the statutorily-designated districts without orders or order book entries reflecting: the transfer of the cases and reasons for the transfers; the disqualification or inability to sit the judges in the districts to which the cases were originally assigned; and the designation of the judges who ultimately comprised the respective panels."[194] The supreme court held that "jurisdiction of the Court of Appeals lies with the court as a whole, not with the statutorily-designated districts or the judges thereof."[195] The court reasoned that neither the Indiana Constitution nor the general assembly provided for separate and independent courts. The supreme court refused to compel the court of appeals to make entries reflecting each internal action taken in the administration of its caseload. Consequently, the court of appeals continues to transfer cases between districts. The district transfer process and the statewide at-large districts allow the court of appeals administration to divide the docket more evenly among the five districts, thereby promoting a more efficient judicial system.

## V. PUBLICATION OF WRITTEN OPINIONS

To publish or not to publish every opinion is still a question for many state courts today. In Indiana, our courts and our legislature have struggled with that same question for years. Back in 1851, the state constitution required the Indiana Supreme Court to answer in writing every question raised by the parties in their appeal.[196] A court reporter's office was established by the general assembly to publish those decisions.[197] However, in 1891, when the legislature created the appellate court, written opinions were only necessary when the appellate court reversed a lower court's decision.[198] In 1901, when the appellate court became

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190. IND. CODE 33-2.1-2-2(d) (1993).

191. *See* State *ex rel.* Shortridge v. Court of Appeals of Indiana, 468 N.E.2d 214, 216 (Ind. 1984).

192. IND. CODE § 33-2.1-2-2(d) (1993).

193. *Shortridge*, 468 N.E.2d 214.

194. *Id.* at 215-16.

195. *Id.* at 216.

196. "The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the Court thereon." IND. CONST. art. VII, § 5 (as adopted 1851) (amended 1970).

197. *Id.* § 6 (as adopted 1851) (amended 1970).

198. The act stated:

a permanent court, the legislature retained that provision continuing the requirement that a written opinion need only be issued when a case was reversed.[199]

In *Craig v. Bennett*, the Indiana Supreme Court reiterated the "only when reversed" principle by stating that the 1901 statute "makes it the duty of the appellate court to give and file a written opinion on each material question involved and duly presented in the appeal, only when the judgment of the trial court is reversed."[200] The supreme court elaborated:

> If the judgment is affirmed, the court is not, under the law, required to give a written opinion disclosing the reasons for the judgment of affirmance. It may, however, in the exercise of its discretion, if it deems the questions presented of sufficient importance, do so; but in regard to that question the legislature has left the court alone to determine.[201]

In addition, the supreme court concluded that the appellate court was not controlled by the 1851 constitutional provision which required the supreme court to give a statement in writing of each question arising in the record.[202]

But thirty years later, the Indiana Supreme Court changed its mind and expressly overruled *Craig v. Bennett*.[203] In *Hunter*, the supreme court stated that the *Craig* court failed to take notice of a section in the 1901 act which required: "Appeals to the Appellate Court shall be taken in the same manner and with the same effect and subject to the same limitations and restrictions as are now or hereafter may be provided in cases of appeals to the Supreme Court."[204] The supreme court in effect held that article VII, section 5 of the 1851 Indiana Constitution applied to the appellate court. Section 5 required that the supreme court "give a statement in writing of each question arising in the record of such case, and the decision of the Court thereon."[205] Additionally, the court held that the statute which allowed the appellate court to give a written opinion only in

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> In every case reversed, an opinion shall be given upon the material questions therein in writing, stating the reasons, and judgment shall be entered with directions therein to the lower Court, as required of the Supreme Court in such cases, and the opinion and judgment shall be certified to the Court below.

Act of Feb. 28, 1891, ch. 37, § 13, 1891 Ind. Acts 39, 42 (superseded).

199. Act of Mar. 12, 1901, ch. 247, § 17, 1901 Ind. Acts 565, 570 (codified as amended at IND. CODE § 33-3-2-15 (1993)). The pertinent section of the act reads: "In every case reversed by a division of the Appellate Court, an opinion shall be given on the material questions therein in writing, and the appropriate judgment shall be entered with directions to the lower court." *Id.*

200. Craig v. Bennett, 62 N.E. 273, 274 (Ind. 1901).

201. *Id.*

202. *Id.* Interestingly, the supreme court had felt the oppressiveness of the 1851 constitutional provision and narrowed its scope in *Willets v. Ridgeway*, 9 Ind. 367 (1857).

203. Hunter v. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co., 174 N.E. 287, 289 (Ind. 1930).

204. Act of Mar. 12, 1901, ch. 247, § 15, 1901 Ind. Acts 565, 569 (repealed 1971).

205. IND. CONST. art. VII, § 5 (as adopted 1851) (amended 1970).

cases reversed did not relieve the appellate court of the duty imposed by the constitution regarding all cases, which included cases affirmed.[206] The court further held that it would be the duty of the appellate court to comply with the law as stated in *Hunter*.[207]

Prior to the supreme court's decision in *Hunter*, the appellate court affirmed the judgments of lower courts in approximately sixty cases each year. None of the sixty cases were decided by a written opinion or statement in writing of the material questions arising in the record.[208] After the *Hunter* opinion, Noel C. Neal, Chief Judge of the Indiana Appellate Court stated, "It is obvious that the disposition of 60 cases without a written opinion or statement in writing was equivalent to the work of one judge for an entire year."[209] Chief Judge Neal's cry for help went unheeded. The "lost judge" was to remain so for the next forty years.

Written opinions for each question presented continued until the 1970 constitutional amendments were drafted. The section requiring a statement in writing of each question arising in the record was deleted, but not overlooked by the legislature. Later in 1972, the legislators passed a statute which stated: "The judicial opinion or decision in each case determined by the supreme court or the court of appeals shall be reduced to writing."[210] Now, each opinion or decision had to be in writing. No longer did the courts have to give a statement in writing of each question. In fact, the Indiana Supreme Court later commented on the change and determined: "The Supreme Court and the Court of Appeals are thus required to issue written decisions, as opposed to oral ones, but are not constitutionally *required* to give a written statement of reasons for every action taken by the court."[211]

This was taken one step further in 1976, when the supreme court revamped the Indiana Rules of Appellate Procedure.[212] The 1976 rule, which is the current rule, allows the court of appeals to issue written memorandum decisions which will not be published or apply to any other case than the one appealed.[213] The rule requires a written published opinion if the case: 1) establishes, alters, modifies or clarifies a rule of law; 2) criticizes existing law; or 3) involves a legal or factual issue of unique interest or substantial public importance.[214] In contrast, a memorandum decision is to be used in routine cases where precedent has been

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206. *Hunter*, 174 N.E. at 289.

207. *Id.*

208. Noel C. Neal, Address at the 35th Annual Meeting of the State Bar Association (Jul. 9-10, 1931), *in* 7 IND. L.J. 40, 40-43 (1931).

209. *Id.* at 41.

210. IND. CODE § 33-2.1-3-2 (1993).

211. Tyson v. State, 593 N.E.2d 175, 180 n.10 (Ind. 1992) (emphasis in original).

212. Interestingly, the legislature introduced a similar measure in 1963 which failed. *See Bill Would Aid Appellate Court*, INDIANAPOLIS STAR, Feb. 11, 1963, at 17.

213. IND. APP. R. 15(A); *see also* Byron C. Wells, *New Rules for Judicial System Adopted*, INDIANAPOLIS STAR, Nov. 30, 1975, at 18.

214. IND. APP. R. 15(A).

set. However, a dissent from a memorandum decision may be expressed by a published opinion.[215]

Whether a party may cite an unpublished decision as authority varies from jurisdiction to jurisdiction. In Indiana, memorandum decisions cannot be regarded as precedent nor cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel or the law of the case.[216] There is a huge debate going on across the country as to whether all opinions, published officially or not, should be citable in a court. There are many reasons why unpublished decisions are disfavored. A primary argument is that their content is often not of acceptable quality.[217] The decisions generally do not disclose rationale or present sufficient legal analysis. In addition, there are valid concerns regarding judicial overproduction which have persisted throughout the twentieth century.

On the other hand, there is a very vocal segment of the practicing bar which contends that unpublished opinions are damaging to the legal system. There is a concern that courts are deliberately burying their work product and suppressing precedent. They believe that nonpublication is "nothing less than censorship . . . shaping common law."[218] However, the vast majority of federal and state courts place severe limitations on the use of unpublished decisions and orders as legal precedent.[219] Nevertheless, there are other members of the bar who argue that the trend may be toward more liberal rules on citing unpublished decisions and allowing greater access to all opinions of the court.[220]

The debate and controversy will likely continue.[221] For now, the rule remains in Indiana that the court of appeals may issue written but unpublished, memorandum decisions to decide routine cases where precedent has already been established.

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215. *Id.*

216. *Id.* In Indiana, nonpublished memorandum decisions of the Indiana Court of Appeals can be accessed through a computer bulletin board system (BBS). The BBS retains memorandum decisions for sixty days. Any interested party with appropriate equipment may access the system which is available twenty-four hours a day, seven days a week. For instructions on using the BBS, contact the Clerk of the Indiana Supreme Court and the Indiana Court of Appeals.

217. John J. Zodrow, *Citing Unpublished Opinions: Being Resourceful or Breaking the Rules?*, FOR THE DEFENSE, Jan. 1996, at 34.

218. Peter A. Joy, *Unpublished Opinions Stunt Common Law*, NAT'L L.J., Jan. 29, 1996, at A19.

219. Zodrow, *supra* note 217, at 35.

220. *Id.* at 39.

221. For additional interesting articles on nonpublication of opinions, see John G. Kester, *Appeals Courts Keep More and More Opinions Secret*, WALL S. J., Dec. 13, 1995, at A19; David M. Gunn, *"Unpublished Opinions Shall Not Be Cited as Authority": the Emerging Contours of Texas Rule of Appellate Procedure 90(i)*, 24 ST. MARY'S L.J. 115 (1992); Lauren K. Robel, *The Myth of the Disposable Opinion: Unpublished Opinions and Government Litigants in the United States Courts of Appeals*, 87 MICH. L. REV. 940 (1989); and George M. Weaver, *The Precedential Value of Unpublished Judicial Opinions*, 39 MERCER L. REV 477 (1988).

## CONCLUSION

With the electronic information revolution coming on the heels of the 1972 constitutional amendment, new administrative demands are bound to follow. Written opinions can now be read on your computer screen the same day they are handed down. Too, unpublished opinions *are* available. They may not be cited as authority, but the debate whether to cite them still persists. The electronic revolution has changed the ability of the court of appeals to absorb more cases, so the legislature may be able to look forward to a long rest before any more demands are made to expand the court. In addition, there are other pressure valves available to settle disputes in a society which is growing more complex each year. Alternative dispute resolution is one solution. Another is the senior judge program where retiring judges may still pitch in and reduce the caseload on the court of appeals and trial courts. For the immediate future, it appears that the Indiana judicial landscape is in very good condition.