

In the  
Indiana Supreme Court



CAUSE NUMBER: 94S00-1205-MS-275

ORDER RESCINDING ORDER DATED SEPTEMBER 7, 2012  
AND AMENDING INDIANA ADMINISTRATIVE RULES

By Order dated September 7, 2012, this Court set out amendments to Administrative Rules 5, 7, 8, 9, and 10, effective January 1, 2013. Said Order is hereby rescinded in its entirety effective the date of this Order and shall not be published. In its place, the Court issues the following Order.

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Administrative Rules 5, 7, 8, 9, and 10 are amended as follows (deletions shown by ~~striking~~ and new text shown by underlining):

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**Rule 5. Payment and Notification Procedures**

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**(B) Senior Judges.** The Division of State Court Administration shall administer the use and payment ~~of procedures for~~ senior judges in accordance with the provisions set forth in this rule.

(1) *Appointment.* The Court of Appeals, the Tax Court, a circuit, superior or probate court may request that the Supreme Court provide senior judge services. The request must contain the reasons for the request and the estimated duration of the need for senior judge services. Upon approving the request, the Supreme Court may appoint one or ~~more~~ all senior judges currently certified by the Judicial Nominating Commission to serve the requesting court consistent with this rule. The Supreme Court shall fix the term or period of time for the senior judge appointment.

(2) *Number of Senior Judge Days for Requesting Court.* Each year, the Supreme Court shall fix, based upon the recommendation of the Executive Director of the Indiana Supreme Court Division of State Court Administration, who shall use the Indiana Weighted Caseload Measures System, the annual statistical reports, and other relevant criteria, the number of senior judge days that each court may use. Every court authorized in this rule to use senior judges will be entitled to a minimum of ten (10) days of senior judge service during the year of appointment.

(3) *Qualification for Senior Judge Status.* A person who is certified by the Indiana Judicial Nominating Commission may serve as senior judge. Each year the Indiana Judicial Nominating Commission shall certify to the Supreme Court that a person who is certified:

(a)(i) has served in their judicial capacity for at least four (4) years and (ii) at least one of those years was within five (5) years of the application or, in the event the four years of service was more than five (5) years prior to the application, has served at least thirty (30) days as a senior judge during a calendar year within five (5) years of the application; except that the Indiana Judicial Nominating Commission may, upon the finding of exceptional circumstances, waive the foregoing criteria and certify a senior judge with less service than specified above;

(b) agrees to serve as a senior judge for at least thirty (30) days in the year of appointment and has not in any previous year of service failed to serve for at least thirty (30) days without good cause as determined by the Indiana Judicial Nominating Commission.

(c) agrees to comply with the Code of Judicial Conduct; further agrees to not serve as an elected official or employee of a governmental entity or subdivision except with Supreme Court permission;

(d) agrees to serve where assigned; and that the service shall be substantially equivalent to the daily calendar of the court to which the senior judge is assigned;

(e) agrees to continue to serve in all special judge cases in which the person who is certified was serving as a special judge at the time the person left office, but will receive ~~without receiving~~

senior judge credit for such service; provided however, if the circumstances that led to the person who is certified being appointed as special judge no longer exist, and no other disqualification exists, then the case may be returned to the regular judge of the court where the case is pending. ~~however, upon the finding of exceptional circumstances at the discretion of the Supreme Court, a senior judge serving as a special judge may receive senior judge credit;~~

(f) agrees,

(i) in the case of a senior judge appointed or assigned to serve a trial court, not to represent any client in any case before a court in which the senior judge is appointed or assigned as senior judge and to disclose to the parties coming before him in his capacity as a senior judge whenever, within the previous one (1) year, he has served as an ADR neutral for: 1) a lawyer or lawyer's firm of a party to the case, or 2) a party currently before the court. Following the disclosure, unless all parties agree on the record that the senior judge may hear the case, the senior judge must recuse; and,

(ii) in the case of a senior judge appointed or assigned to serve an appellate court, (1) not to represent any client in any case before an Indiana appellate court, (2) not to serve as an ADR neutral in any case in which he or she participated as a judicial officer, (3) not to serve as a judicial officer in any case in which he or she participated as an ADR neutral, and (4) not to represent any client in any case before a tribunal whose decisions are subject to review by an Indiana appellate court.

(g) is fit to serve as a senior judge.

(4) *Jurisdiction.* A presiding judge wishing to use a senior judge shall issue an order naming the senior judge who will serve the court. The order shall specify the day(s) the senior judge is to serve the court and whether the service is limited to the regular business hours of the court or is for the full twenty-four (24) hours. The senior judge shall provide to the presiding judge, and the presiding judge shall attach to the order, a verified written statement from the senior judge that the senior judge does not practice law in the court. The order shall be filed in the Record of

Judgments and Orders of the court and a copy sent to the Division of State Court Administration.

A senior judge shall have the same jurisdiction as the presiding judge of the court where the senior judge is appointed serving but only during the time specified in the order naming the senior judge to serve the court. ~~day that the senior judge is serving in such court.~~ A senior judge who has been certified by the Judicial Nominating Commission appointed to serve in a court shall have jurisdiction at any time during the certification such appointment to officiate at marriages and administer oaths ~~the same as the judge of the court of service.~~ A senior judge retains jurisdiction in an individual case on the order of the presiding judge of the court in which the case is pending;

(5) *Oath of Office.* Upon initial certification as a senior judge, the senior judge shall take an oath of office and shall file it with the Clerk of the Indiana Supreme Court.

(6) *Per Diem Allowance.* As provided by statute, a senior judge is entitled to senior judge service credit and a per diem allowance of one hundred dollars (\$100.00) per day for the first thirty (30) days of service in a calendar year. Pursuant to statute, the Indiana Supreme Court may adjust the per diem rate and increase it to not more than two hundred fifty dollars (\$250.00) for each day of service after the first thirty (30) days. A senior judge ~~who serves less than the daily calendar of the court where the judge is serving~~ shall report only the portion fractional amount of the day served for payment and credit. However, in exceptional circumstances, upon joint application to the Supreme Court by a senior judge and the judge of the trial court, the Supreme Court, in its discretion, may grant additional senior judge credit to the senior judge and additional senior judge service time to the trial court. A senior judge residing outside of the county where service is rendered is entitled to reimbursement for mileage at a rate equal to other public officials as established by state law and reasonable expenses incurred in performing the duties of senior judge for each day served, all as provided by state travel guidelines. A senior judge may not be compensated as such for more than one hundred (100) calendar days in the aggregate during any one calendar year.

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## **Rule 7. Judicial Retention Schedules**

## I. GENERAL

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### B. Records Authorized to Be Microfilmed.

Records which call for microfilming under this Rule must be microfilmed in accordance with the provisions of Administrative Rule 6. The following are the only record series which are authorized to be microfilmed:

- (1) Records whose retention requires microfilming;
- (2) Records which may be maintained in original or microform, as provided in the retention schedules;
- (3) Records which must be retained permanently, as provided in the retention schedules;
- ~~(4) Before disposal or transfer of records deemed permanent under subsections (1), (2), and (3), the court or clerk shall submit to the Division of State Court Administration a written request for such disposal or transfer. The Division shall audit each microfilmed record series for compliance with Administrative Rule 6, in documentation, legibility and storage environment and, upon audit, shall authorize such disposal or transfer of papers and ledgers meeting the standards of Administrative Rule 7.~~

Microfilming other records is not authorized because the cost of microfilming exceeds the costs of storage for the duration of the retention period. If special circumstances arise, a circuit court clerk, judge, or other officer of the court may seek written authorization from the Division of State Court Administration to microfilm records other than those herein authorized.

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**CRIMINAL (2)**

85-2-01	Indictment Record-- Grand Jury (ledger)	1853-1973	transfer to Archives Division, Indiana Commission on Public Records.
85-2-02	Indictments/Grand Jury Reports	1790- +	transfer to Archives Division, Indiana Commission on Public Records after 20 years.

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09-2-38.3	Grand Jury Recordings and Transcriptions – dismissed misdemeanors	1881+	Destroy 1 year after order to dismiss granted
<a href="#">12-2-39</a>	<a href="#">Problem-Solving Court Case Files</a>	<a href="#">2002+</a>	<a href="#">Destroy no earlier than 6 years after discharge from problem-solving court or completion of probation whichever is later</a>

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**Rule 8. Uniform Case Numbering System**

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The last two characters of the first group shall distinguish between courts in counties having more than one court of a specific type. The following code sets forth the county and court identifier for all courts:

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- 29C01 Hamilton Circuit Court
- 29D01 Hamilton Superior Court 1
- 29D02 Hamilton Superior Court 2
- 29D03 Hamilton Superior Court 3
- 29D04 Hamilton Superior Court 4
- 29D05 Hamilton Superior Court 5
- 29D06 Hamilton Superior Court 6
- 29E01 Hamilton County Court (abolished)
- 29H01 Hamilton/Carmel City Court

29H02 Hamilton/Noblesville City Court

29H03I01 Hamilton/Fishers Town Court (effective January 1, 2012)

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**Rule 9. Access to Court Records**

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**(G) Court Records Excluded From Public Access.**

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

- (a) Information that is excluded from public access pursuant to federal law;
- (b) Information that is excluded from public access as declared confidential by Indiana statute or other court rule, including without limitation:

...

(xviii) All records of the Department of workforce Development as declared confidential by Ind. Code § 22-4-19-6.

(xix) Information regarding interception of electronic communications that is sealed or deemed confidential as set forth in Ind. Code § 35-33.5 et seq.

(c) Information excluded from public access by specific court order;

...

(g) All orders of expungement entered in criminal or juvenile proceedings, [orders to restrict access to criminal history information pursuant to Ind. Code § 35-38-5-5.5 or Ind. Code § 35-38-8-5 and records excluded from public access by such orders, and information related to infractions that is excluded from public access pursuant to Ind. Code § 34-28-5-15 or Ind. Code § 34-28-5-16;](#)

(h) All personal notes and e-mail, and deliberative material, of judges, jurors, court staff and judicial agencies, and information recorded in personal data assistants (PDA's) or

organizers and personal calendars.

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## **Rule 10. Security of Court Records**

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**(D) Reconstruction of Records.** Trial courts of this state, after a hearing, may reconstruct judicial records that have been lost or destroyed. A judicial officer whose court exercised jurisdiction of a case whose records have been lost or destroyed may reconstruct the lost or destroyed records, under the procedures set forth in this rule, and any party or interested person, for good cause shown, may file a verified petition seeking a judicial ruling on reconstruction from the best available sources. Notice of the petition shall be given by the petitioner in accordance with the Indiana Rules of Trial Procedure to all parties and any other interested persons in advance of the hearing, which shall take place no sooner than sixty (60) days after the petition is filed, unless good cause exists for a shorter period. Unless determined otherwise by the court, costs of notice shall be borne by the petitioner. Interested persons include the custodian of the lost or destroyed records and any person the court so designates, considering the facts and nature of the case. Certified copies of original records shall be as acceptable to such reconstruction as the original. “Best available sources” are the most credible sources to determine the contents of the lost or destroyed records and include, without limitation, certified copies, copies accompanied by verified statements, and verified statements. The court shall settle and reconstruct the lost or destroyed records following the hearing unless parties and any interested persons file a verified waiver of the hearing. Within one (1) year of the date of the court’s settlement and reconstruction of a record, any party or interested person not receiving notice of the proceedings may seek to set aside the court’s order, provided, however, that any reconstruction shall be conclusively presumed to be final following this period.

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These amendment shall take effect January 1, 2013.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each

circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Public Defender's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson Reuters. The Clerk is also directed to post this Order to the Court's website.

Thomson Reuters is directed to publish this Order in the advance sheets of this Court and is specifically directed to not publish the Order of September 7, 2012 entitled "ORDER AMENDING INDIANA ADMINISTRATIVE RULES".

The Clerks of the Circuit and Superior Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 11<sup>th</sup> day of October, 2012.

/s/Brent E. Dickson  
Brent E. Dickson  
Chief Justice of Indiana

All Justices concur.