FILED
SEP 10 2007
CLERK OF THE
INDIANA SUPREME COURT
COURT OF APPEALS
AND TAX COURT

In the
Indiana Supreme Court

CAUSE NUMBER: 94S00-0702-MS-49

ORDER AMENDING RULES OF TRIAL PROCEDURE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rules 4.11, 26, 34, 37, 42, 55, 56, 63, 72, 77, 79.1, and 80 of the *Indiana Rules of Trial Procedure* are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

INDIANA RULES OF TRIAL PROCEDURE

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Rule 4.11. Summons: Registered or certified mail

Whenever service by registered or certified mail or other public means by which a return receipt may be requested is authorized, the clerk of the court or a governmental agent under Rule 4.10 shall send the summons and complaint to the person being served at the address supplied upon the summons, or furnished by the person seeking service. In his return the clerk of the court or the governmental agent shall show the date and place of mailing, a copy of the mailed or electronically-transmitted return receipt if and when received by him showing whether the mailing was accepted or returned, and, if accepted, by whom. The return along with the receipt shall be promptly filed by the clerk with the pleadings and become a part of the record. If a mailing by the clerk of the court is returned without acceptance, the clerk shall reissue the summons and complaint for service as requested, by the person seeking service.

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Rule 26. General provisions governing discovery

(A) Discovery methods. Parties may obtain discovery by one or more of the following methods:

(1) depositions upon oral examination or written questions;

(2) written interrogatories;

(3) production of documents, electronically stored information, or things or permission to enter upon land or other property, for inspection and other purposes;

(4) physical and mental examination;

(5) requests for admission.

Unless the court orders otherwise under subdivision (C) of this rule, the frequency of use of these methods is not limited.

Electronic Format. In addition to serving a hard copy, a party propounding or responding to interrogatories, requests for production or requests for admission shall comply with (a) or (b) of this subsection.

(a) The party shall serve the discovery request or response in an electronic format (either on a disk or as an electronic document attachment) in any commercially available word processing software system. If transmitted on disk, each disk shall be labeled, identifying the caption of the case, the document, and the word processing version in which it is being submitted. If more than one disk is used for the same document, each disk shall be labeled and also shall be sequentially numbered. If transmitted by electronic mail, the document must be accompanied by electronic memorandum providing the forgoing identifying information.

or

(b) The party shall serve the opposing party with a verified statement that the attorney or party appearing pro se lacks the equipment and is unable to transmit the discovery as required by this rule.

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

(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject-matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party,

including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought or; (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(C).

(2) *Insurance agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial preparation: Materials.* Subject to the provisions of subdivision (B)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (B)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(A)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is

(a) a written statement signed or otherwise adopted approved by the person making it, or

(b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (B)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(a) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (B)(4)(c) of this rule, concerning fees and expenses as the court may deem appropriate.

(b) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(B) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(c) Unless manifest injustice would result,

(i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivision (B)(4)(a)(ii) and (B)(4)(b) of this rule; and

(ii) with respect to discovery obtained under subdivision (B)(4)(a)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (B)(4)(b) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection.

(a) **Information withheld.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(b) **Information produced.** If information is produced in discovery that is subject to a claim of privilege or protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

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

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

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

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

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

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

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

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

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

(D) Sequence and timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(E) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:

(a) the identity and location of persons having knowledge of discoverable matters, and

(b) the identity of each person expected to be called as an expert witness at trial, the subject-matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which

(a) he knows that the response was incorrect when made, or

(b) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(F) Informal Resolution of Discovery Disputes. Before any party files any motion or request to compel discovery pursuant to Rule 37, or any motion for protection from discovery pursuant to Rule 26(C), or any other discovery motion which seeks to enforce, modify, or limit discovery, that party shall:

(1) Make a reasonable effort to reach agreement with the opposing party concerning the matter which is the subject of the motion or request; and

(2) Include in the motion or request a statement showing that the attorney making the motion or request has made a reasonable effort to reach agreement with the opposing attorney(s) concerning the matter(s) set forth in the motion or request. This statement shall recite, in addition, the date, time and place of this effort to reach agreement, whether in person or by phone, and the names of all parties and attorneys participating therein. If an attorney for any party advises the court in writing that an opposing attorney has refused or delayed meeting and discussing the issues covered in this subsection (F), the court may take such action as is appropriate.

The court may deny a discovery motion filed by a party who has failed to comply with the requirements of this subsection.

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

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

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

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

(B) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request may specify the form or forms in which electronically stored information is to be produced. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Service is dispensed with if the whereabouts of the parties is unknown.

The party upon whom the request is served shall serve a written response within a period designated in the request, not less than thirty [30] days after the service thereof or within such shorter for longer time as the court may allow. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless it is objected to, including an objection to the requested form or forms for producing electronically stored information, stating in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. If objection is made to the requested form or forms for producing electronically stored information – or if no form was specified in the request – the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(A) with respect to any

objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Unless the parties otherwise agree, or the court otherwise orders, a ~~A~~ party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

If a request for electronically stored information does not specify the form or forms of production, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable.

A party need not produce the same electronically stored information in more than one form.

(C) Application to Non parties:

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

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

(3) The request shall contain the matter provided in subsection (B) of this rule. It shall also state that the witness or person to whom it is directed is entitled to security against damages or payment of damages resulting from such request and may respond to such request by submitting to its terms, by proposing different terms, by objecting specifically or generally to the request by serving a written response to the party making the request within thirty (30) days, or by moving to quash as permitted by Rule 45(B). Any party, or any witness or person upon whom the request properly is made may respond to the request as provided in subsection (B) of this rule. If the response of the witness or person to whom it is directed is unfavorable, if he moves to quash, if he refuses to cooperate after responding or fails to respond, or if he objects, the party making the request may move for an order under Rule 37(A) with respect to any such response or objection. In granting an order under this

subsection and Rule 37(A)(2) the court shall condition relief upon the prepayment of damages to be proximately incurred by the witness or person to whom the request is directed or require an adequate surety bond or other indemnity conditioned against such damages. Such damages shall include reasonable attorneys' fees incurred in reasonable resistance and in establishing such threatened damage or damages.

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

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

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

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(E) Electronically stored information. ~~A~~ Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.

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Rule 42. Consolidation - Separate trials

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(D) Actions Pending in Different Courts. When civil actions involving a common question of law or fact are pending in different courts, a party to any of the actions may, by

motion, request consolidation of those actions for the purpose of discovery and any pre-trial proceedings. Such motion may only be filed in the court having jurisdiction of the action with the earliest filing date and the court shall enter an order of consolidation for the purpose of discovery and any pre-trial proceedings unless good cause to the contrary is shown and found by the court to exist. In the event two or more actions have the same earliest filing date, the motion may be filed only in the court having the lowest court identifier number under Administrative Rule 8(B)(1), which court shall be considered as having the action with the earliest filing date. Upon completion of discovery and any pre-trial proceedings, each case which has been subject to the order of consolidation shall be ordered returned to the court in which it was pending at the time the order of consolidation was made unless, after notice to all parties and a hearing, the court finds that the action involves unusual or complicated issues of fact or law or involves a substantial question of law of great public importance. In the event the court makes such a finding, it may enter an order of consolidation for the purpose of trial. Except for cause pursuant to IC ~~34-1-13-1~~ 34-35-1-1, the right to a change of venue in any action consolidated under this rule shall be suspended during the period of consolidation. Such right shall be reinstated on entry of an order remanding the action to the court in which it was pending at the time of consolidation and the time prescribed for the filing of a motion for change of venue shall be deemed tolled during the period of suspension. Nothing in this Rule shall restrict the equitable discretion of the court having the earliest filed action to dismiss or stay that action. If such an order is entered, that court shall no longer be considered the court in which is pending the action with the earliest filing date for purposes of this Rule. This Subsection (D) shall not apply to actions pending in courts of limited jurisdiction and no such action may be consolidated with another under the provisions of this Subsection (D).

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Rule 55. Default

(A) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise comply with these rules and that fact is made to appear by affidavit or otherwise, the party may be defaulted by the court.

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Rule 56. Summary judgment

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(C) Motion and proceedings thereon. The motion and any supporting affidavits shall be served in accordance with the provisions of Rule 5. An adverse party shall have thirty (30) days after service of the motion to serve a response and any opposing affidavits. The court may conduct a hearing on the motion. However, upon motion of any party made no later than ten (10) days after the response was filed or was due, the court shall conduct a hearing on the motion which shall be held not less than ten (10) days after the time for filing the response. At the time of filing the motion or response, a party shall designate to the court all parts of pleadings, depositions, answers to interrogatories, admissions, matters of judicial notice, and any other matters on which it relies for purposes of the motion. A party opposing the motion shall also designate to the court each material issue of fact which that party asserts precludes entry of summary judgment and the evidence relevant thereto. The judgment sought shall be rendered forthwith if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment may be rendered upon less than all the issues or claims, including without limitation the issue of liability or damages alone although there is a genuine issue as to damages or liability as the case may be. A summary judgment upon less than all the issues involved in a claim or with respect to less than all the claims or parties shall be interlocutory unless the court in writing expressly determines that there is not just reason for delay and in writing expressly directs entry of judgment as to less than all the issues, claims or parties. The court shall designate the issues or claims upon which it finds no genuine issue as to any material facts. Summary judgment shall not be granted as of course because the opposing party fails to offer opposing affidavits or evidence, but the court shall make its determination from the evidentiary matter designated to the court.

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Rule 63. Disability and unavailability of a judge

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(E) Judge pro tempore when judge is unable to attend. A judge who is unable to attend and preside at his court for any cause may appoint in writing a judge pro tempore to conduct the business of this court during his absence. The written appointment shall be entered in the records of the court. When duly sworn, or without being sworn if he is a judge of a court of this state, the judge pro tempore shall have the same authority during the period of his appointment as the judge he replaces. A judge appointed under this provision must meet the qualifications prescribed in subdivision (C) of this rule. Such judge shall be allowed the sum of $25.00 for each day or part thereof actually served, per diem as provided in Rule 79~~(14)~~(P) and in the manner provided by subdivision (D) of this rule. In his absence or when he shall be unable to make such appointment, the appointment may be made by the clerk of his court, or the deputy clerk assigned to his court or in his absence by any available county officer.

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Rule 72. Trial Court and Clerks

(A) Trial courts always open. The trial courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning ~~mesne and final~~ process and of making and directing all interlocutory motions, orders, and rules. Terms of court shall not be recognized.

(B) Trials and hearings - Orders in chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom in or outside the county seat. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the circuit; but, no hearing other than one ex parte, shall be conducted outside the state without the consent of all parties affected thereby.

(C) Clerk's office and orders by clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the circuit court judge may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day,

Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the clerk's office for issuing ~~mesne~~ process, ~~for issuing~~ including final process to enforce and execute judgments, ~~for entering defaults or judgments by default,~~ and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but ~~his~~ the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

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Rule 77. Court records

(A) Required records. The clerk of the circuit court shall maintain the records for all circuit, superior, county, probate and municipal courts in the county.

(1) The clerk of the circuit court shall maintain any record required by an act of the general assembly or a duly promulgated rule of any state agency, including the following:

(a) Lis pendens record (IC 32-30-11-1);

(b) Record of transcripts and foreign judgments (IC 33-32-3-2(d));

(c) Judgment Docket (IC 33-32-3-2), wherein all orders requiring entry in the judgment docket shall include the term "judgment" in the title and shall set forth the specific dollar amount of the judgment in the body of the order;

(d) Execution docket (IC 33-32-3-5);

(e) Records specified under the probate code; and

(f) Records specified by the state board of accounts as to the fiscal matters relating to the court and clerk.

(2) The clerk of the circuit court shall also maintain the following records as specified under this rule:

(a) Chronological case summary;

(b) Case file;

(c) Record of judgments and orders (order book); and

(d) Indexes.

(B) Chronological case summary. For each case, the clerk of the circuit court shall maintain a sequential record of the judicial events in such proceeding. The record shall include the title of

the proceeding; the assigned case number; the names, addresses, telephone and attorney numbers of all attorneys involved in the proceeding, or the fact that a party appears pro se with address and telephone number of the party so appearing; and the assessment of fees and charges (public receivables). Notation of judicial events shall set forth the date of the event and briefly define any documents, orders, rulings, or judgments filed or entered in the case. The chronological case summary shall also note the entry of orders, rulings and judgments in the record of judgments and orders, the entry of judgments in the judgment docket (IC 33-32-3-2), and file status (pending/decided) under section (G) of this rule. The chronological case summary shall be an official record of the trial court and shall be maintained apart from other records of the court and shall be organized by case number.

~~The chronological case summary shall also note the entry of orders, rulings and judgments in the record of judgments and orders, the entry of judgments in the judgment docket (IC 33-17-2-31), and file status (pending/decided) under section (G) of this rule. The chronological case summary shall be an official record of the trial court and shall be maintained apart from other records of the court and shall be organized by case number.~~

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Rule 79.1. Special judge - selection: city, town, and Marion county small claims courts

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(G) Marion county small claims court. In the event it becomes necessary to appoint a special judge in the Marion county small claims court and the parties fail to agree under Section (D) or (E), the procedure set forth in this section shall apply.

(1) *Naming of panel.* Within two (2) days of deciding that a special judge must be appointed under this section, the presiding judge shall submit to the parties for striking a panel of three judges, who, pursuant to IC ~~33-11.6-7-6~~33-34-5-6 must be other judges of the Marion county small claims court.

(2) *Striking from panel* . Each party shall be entitled to strike one name from the panel. The moving party shall be entitled to strike first. The parties shall have not less than seven (7) days nor more than fourteen (14) days to strike as the court may allow.

(3) *Failure to strike* . If the moving party fails to timely strike, the presiding judge shall resume jurisdiction of the case. If a non-moving party fails to timely strike, the clerk of court shall strike in such party's stead.

(4) *Transfer of case*. Upon completion of the striking process, the case shall be transferred to the court of the judge remaining on the panel without the assessment of additional costs.

(5) *Inability to transfer* . In the event the case cannot be transferred, for any reason, to the designated special judge, the case shall be transferred to the court having the highest court identifier number, as provided in Administrative Rule 8, of the Marion county small claims court judge who is not disqualified by reason of interest or relationship. No fees will be assessed for such transfer.

(H) Eligibility. Pursuant to IC ~~33-11.6-7-5~~33-34-5-6, no person other than a small claims court judge may serve as a special judge in the small claims court. Any regular judge of a circuit, superior, probate, municipal, or county court, a senior judge, or any member of the bar of the state of Indiana is eligible for appointment as a special judge in a city or town court unless this judge or attorney:

(1) has previously served as judge or been a member of a panel for selection as special judge in the case;

(2) is disqualified by interest or relationship; or

(3) is serving as a bailiff, reporter, referee, commissioner, magistrate, or other appointed official of the court where the case is pending, except as expressly authorized by statute.

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Rule 80. Supreme Court Committee on Rules of Practice and Procedure

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(E) Comments of the bench, bar, and public . All comments on and amendments proposed by the bench, bar, and public of this state to the Supreme Court committee on rules of practice and procedure, whether on or to preliminary drafts of amendments published for comment or otherwise, shall be delivered in writing to the Committee's Executive Secretary, ~~115~~

~~W. Washington Street~~ 30 South Meridian Street, Suite ~~1080~~ 500, Indianapolis, Indiana 46204-~~3466~~, for the committee's consideration and recommendation to the Supreme Court.

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Appendix B. Appearance by Attorney in Civil Case

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Should you have any questions or comments about this format, you may contact the Division of State Court Administration at the following address:

~~115 W. Washington~~ 30 South Meridian Street, Suite ~~1080~~ 500 *Indianapolis, Indiana 46204-~~3417~~*	Phone: (317) 232-2542 FAX: (317) 233-6586

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These amendments shall take effect January 1, 2008.

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; 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 the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

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

DONE at Indianapolis, Indiana, this 10th day of September, 2007.

Randall T. Shepard

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.