

In the
Indiana Supreme Court



CAUSE NUMBER: 94S00-1101-MS-17

ORDER AMENDING INDIANA 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, Indiana Trial Rules 3.1, 53.1, 59 and 81.1 are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

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Rule 3.1 Appearance

(A) **Initiating party.** At the time an action is commenced, the attorney representing the party initiating the proceeding or the party, if not represented by an attorney, shall file with the clerk of the court an appearance form setting forth the following information:

- (1) Name, address and telephone number of the initiating party or parties filing the appearance form;
- (2) Name, address, attorney number, telephone number, FAX number, and e-mail address of any attorney representing the party, as applicable;
- (3) The case type of the proceeding [Administrative Rule 8(B)(3)];
- (4) A statement that the party will or will not accept service by FAX;

- (5) In domestic relations, Uniform Reciprocal Enforcement of Support (URESAs), paternity, delinquency, Child in Need of Services (CHINS), guardianship, and any other proceedings in which support may be an issue, the Social Security Identification Number of all family members;
- (6) The caption and case number of all related cases;
- (7) Such additional matters specified by state or local rule required to maintain the information management system employed by the court;
- (8) In a proceeding involving a protection from abuse order, a workplace violence restraining order, or a no-contact order, the initiating party shall provide to the clerk a public mailing address for purposes of legal service. The initiating party may use the Attorney General Address Confidentiality program established by statute; and
- (9) In a proceeding involving a mental health commitment, except 72 hour emergency detentions, the initiating party shall provide the full name of the person with respect to whom commitment is sought and the person's state of residence. In addition, the initiating party shall provide at least one of the following identifiers for the person:
 - (a) Date of birth;
 - (b) Social Security Number;
 - (c) Driver's license number with state of issue and date of expiration;
 - (d) Department of Correction number;
 - (e) State ID number with state of issue and date of expiration; or

(f) FBI number.

- (B) **Responding parties.** At the time the responding party or parties first appears in a case, the attorney representing such party or parties, or the party or parties, if not represented by an attorney, shall file an appearance form setting forth the information set out in Section (A) above.
- (C) **Intervening Parties.** At the time the first matter is submitted to the court seeking to intervene in a proceeding, the attorney representing the intervening party or parties, or the intervening party or parties, if not represented by an attorney, shall file an appearance form setting forth the information set out in Section (A) above.
- (D) **Confidentiality of Information Excluded from Public Access.** Any appearance form information or record defined as not accessible to the public pursuant to Administrative Rule 9(G)(1) shall be filed in a manner required by Trial Rule 5.
- (E) **Completion and correction of information.** In the event matters must be filed before the information required by this rule is available, the appearance form shall be submitted with available information and supplemented when the absent information is acquired. Parties shall promptly advise the clerk of the court of any change in the information previously supplied to the court.
- ~~In a motion for leave to withdraw appearance, an attorney shall certify the last known address and telephone number of the party, subject to the confidentiality provisions of Sections (A)(8) and (D) above, before the court may grant such a motion.~~
- (F) **Forms.** The Division of State Court Administration shall prepare and publish a standard format for compliance with the provisions of this rule.

(G) **Service.** The Clerk of the Court shall use the information set forth in the appearance form for service by mail under Trial Rule 5(B)(2).

(H) **Withdrawal of Representation.** An attorney representing a party may file a motion to withdraw representation of the party upon a showing that the attorney has sent written notice of intent to withdraw to the party at least ten (10) days before filing a motion to withdraw representation, and either:

(1) the terms and conditions of the attorney's agreement with the party regarding the scope of the representation have been satisfied, or

(2) withdrawal is required by Professional Conduct Rule 1.16(a), or is otherwise permitted by Professional Conduct Rule 1.16(b).

An attorney filing a motion to withdraw from representation shall certify the last known address and telephone number of the party, subject to the confidentiality provisions of Sections (A)(8) and (D) above, and shall attach to the motion a copy of the notice of intent to withdraw that was sent to the party.

A motion for withdrawal of representation shall be granted by the court unless the court specifically finds that withdrawal is not reasonable or consistent with the efficient administration of justice.

(I) Temporary Appearance or Limited Representation. ~~In the event an attorney, different from any specifically identified in a previously filed appearance, is temporarily representing a party in a proceeding before the court, through filing a pleading with the court or in any other capacity including discovery, the new attorney shall file an appearance form. The appearance form shall contain the~~

~~information set out in Section (A) (1) and (2) above, shall provide the name, attorney number and all contact information of the attorney who has filed the prior appearance in the case, the new attorney's temporary status, and the date the temporary appearance shall end. The court shall not be required to act on the temporary appearance unless the new temporary attorney has not appeared at the request of a party's previously identified counsel. If an attorney seeks to represent a party in a proceeding before the court on a temporary basis or a basis that is limited in scope, the attorney shall file a notice of temporary or limited representation. The notice shall contain the information set out in Section (A) (1) and (2) above and a description of the temporary or limited status, including the date the temporary status ends or the scope of the limited representation. The court shall not be required to act on the temporary or limited representation. At the completion of the temporary or limited representation, the attorney shall file a notice of completion of representation with the clerk of the court.~~

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Rule 53.1. Failure to rule on motion

- (A) **Time limitation for ruling.** In the event a court fails for thirty (30) days to set a motion for hearing or fails to rule on a motion within thirty (30) days after it was heard or thirty (30) days after it was filed, if no hearing is required, upon application by an interested party, the submission of the cause may be withdrawn from the trial judge and transferred to the Supreme Court for the appointment of a special judge.
- (B) **Exceptions.** The time limitation for ruling on a motion established under Section (A) of this rule shall exclude any period after which the case is referred to alternative dispute

resolution and until a report on the alternative dispute resolution is submitted to the court. The time limitation for ruling on a motion established under Section (A) of this rule shall not apply where:

- (1) The Court, within thirty (30) days after filing, orders that a motion be considered during the trial on the merits of the cause; or
- (2) The parties who have appeared or their counsel stipulate or agree on record that the time limitation for ruling on a motion shall not apply; or
- (3) The time limitation for ruling has been extended by the Supreme Court as provided by Section (D) of this rule; or
- (4) The ruling in question involves a repetitive motion, a motion to reconsider, a motion to correct error, a petition for post-conviction relief, or a ministerial post-judgment act.

(C) Time of ruling. For the purposes of Section (A) of this rule, a court is deemed to have set a motion for hearing on the date the setting is noted in the Chronological Case Summary, and to have ruled on the date the ruling is noted in the Chronological Case Summary.

(D) Extension of time for ruling. A judge may apply to the Supreme Court of Indiana to extend the time limitation set forth under Trial Rule 53.1, 53.2, or 53.3. The application must be filed prior to the filing of a praecipe with the Clerk under Trial Rules 53.1, 53.2, or 53.3, must be verified, must be served on the Clerk and all parties of record, and must set forth the following information:

- (1) The nature of the matter under submission;

- (2) The circumstances warranting the delay; and
- (3) The additional time requested.

The withdrawal of submission under Trial Rule 53.1 or 53.2 or denial of a motion to correct error under Trial Rule 53.3 may not take effect during the pendency of the application for an extension of time to rule. However, if the time limitation expires while the application is pending before the Supreme Court, the jurisdiction of the trial judge shall be suspended at that point pending the action of the Supreme Court.

(E) Procedure for withdrawing submission. Upon the filing by an interested party of a praecipe specifically designating the motion or decision delayed, the Clerk of the court shall enter the date and time of the filing in the Clerk's praecipe book, record the filing in the Chronological Case Summary under the cause, and promptly forward the praecipe and a copy of the Chronological Case Summary to the Executive Director of the Division of State Court Administration (Executive Director). The Executive Director shall determine whether or not a ruling has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2.

- (1) If the ~~Clerk~~Executive Director determines that the ruling or decision has not been delayed, the Executive Director shall provide notice of the determination in writing to the Clerk of the court where the case is pending and the submission of the cause shall not be withdrawn. The Clerk of the court where the case is pending shall notify, in writing, the judge and all parties of record in the proceeding and record ~~this~~the determination in the Chronological Case Summary under the cause. ~~The Clerk's determination under this subparagraph shall not be filed with the Indiana Supreme Court.~~

(2) If the Executive Director Clerk determines that a ruling or decision has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2, the Executive Director Clerk shall give written notice of the determination to the judge, the Clerk of the trial court, and the Clerk of the Supreme Court of Indiana that the submission of the case has been withdrawn from the judge. of the cause and the Supreme Court of Indiana that submission of the cause has been withdrawn. The withdrawal is effective as of the time of the filing of the praecipe. The Clerk of the trial court shall ~~and~~ record this determination in the Chronological Case Summary under the cause and provide notice to all parties in the case. The Executive Director shall submit the case to the Supreme Court of Indiana for appointment of a special judge or such other action deemed appropriate by the Supreme Court. Accompanying the written notice to the Supreme Court of Indiana, the Clerk shall provide a copy of the praecipe filed and the Chronological Case Summary for the case.

(F) Report to Supreme Court. When a special judge is appointed under Trial Rule 53.1 or 53.2, the judge from whom submission was withdrawn shall, within ten (10) days from receipt of the order appointing a special judge, file a written report in the Supreme Court under the cause appointing the special judge. This report shall fully state the nature of the matters held in excess of the time limitations. Additionally, the report may relate any other facts or circumstances which the judge deems pertinent.

(G) Permanent record. The Supreme Court shall maintain a permanent record of special judge appointments under Trial Rules 53.1 and 53.2.

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Trial Rule 59. Motion to Correct Error

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(G) **Cross errors.** If a motion to correct error is denied, the party who prevailed on that motion may, in the appellate brief and without having filed a statement in opposition to the motion to correct error in the trial court, defend against the motion to correct error on any ground and may first assert grounds for relief therein, including grounds falling within sections (A)(1) and (2) of this rule. In addition, if a notice of appeal rather than a motion to correct error is filed by a party ~~in the trial court~~, the opposing party may raise any grounds as cross-errors and also may raise any reasons to affirm the judgment directly in the appellate brief, including those grounds for which a motion to correct error is required when directly appealing a judgment under Sections (A)(1) and (2) of this rule.

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Trial Rule 81.1. Procedures for Cases Involving Family or Household Members

A. Definitions.

(1) An individual is a "family or household member" of another person if the individual:

(a) is or was a spouse of the other person;

(b) is or was living as if a spouse or a domestic partner of the other person,

this determination to be based upon:

(i) the duration of the relationship;

(ii) the frequency of contact;

(iii) the financial interdependence;

(iv) whether the two (2) individuals are or previously were raising children together;

(v) whether the two (2) individuals are or previously have engaged in tasks directed toward maintaining a common household; and,

(vi) such other factors as the court may consider relevant.

(c) has a child in common with the other person;

(d) is related by blood or adoption to the other person;

(e) has or previously had an established legal relationship:

(i) as a guardian of the other person;

(ii) as a ward of the other person;

(iii) as a custodian of the other person;

(iv) as a foster parent of the other person; or,

(v) in a capacity with respect to the other person similar to those listed in clauses (i) through (v).

(2) “Family Procedures” entails coordination of proceedings and processes, and information sharing among cases in a court or courts involving family or household members.

B. Type of Cases. Courts using Family Procedures for a case may exercise jurisdiction over other cases involving the same family or a household member of the family. An individual case to which Family Procedures is being applied may maintain its separate integrity and separate docket number, but may be given a common case number if multiple cases are being heard before one judge. Subject to applicable rules and

statutes, the individual cases may all be transferred to one judge or may remain in the separate courts in which they were originally filed.

C. Notice. A court intending to use Family Procedures for a case must enter an order notifying all parties of the court's intention and, within thirty (30) days after a case is selected, the court shall provide each party with a list of all cases that have been selected to be heard using Family Procedures.

D. Designation by Court of Intent to Use Family Procedures and Change of Judge for Cause. Within fifteen (15) days after notice is sent that a case has been selected to be heard using Family Procedures, a party may object for cause to the designation or selection of a party's case.

Once notice is sent to the parties that a case has been selected to be heard using Family Procedures, no motion for change of venue from the judge may be granted except to the extent permitted by Indiana Trial Rule 76. A motion for change of venue from the judge in any matter being heard in a court using Family Procedures, or any future cases joined in the court after the initial selection of cases, shall be granted only for cause. If a special judge is appointed, all current and future cases in the court proceeding may be assigned to the special judge.

E. Concurrent Hearings. A court using Family Procedures may, in the court's discretion, set concurrent hearings on related cases, take evidence on the related cases at these hearings, and rule on the admissibility of evidence for each case separately as needed to adequately preserve the record for appeal.

F. Judicial Notice. Indiana Evidence Rule 201 shall govern the taking of judicial notice in courts using Family Procedures.

G. Court Records Excluded from Public Access. In a court using Family Procedures, each party shall have access to all records in cases joined under this Rule, with the exception of court records excluded from public access pursuant to Administrative Rule 9. A party may seek access to such confidential records from another case joined under this Rule by written petition based on relevancy and need. Records excluded from public access shall retain their confidential status and the court using Family Procedures shall direct that confidential records not be included in the public record of the proceedings.

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These amendments shall take effect January 1, 2012.

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.

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 20th day of September, 2011.

/s/Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

All Justices concur.