

In the Indiana Supreme Court

In the Matter of the Adoption of A.H.
(Minor Child);

E.S.,
Appellant(s),

v.

C.H. and J.H.,
Appellee(s).

Court of Appeals Case No.
25A-AD-01167

Trial Court Case No.
49D10-2307-AD-26654



Published Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 9/23/2026.

FOR THE COURT

A handwritten signature in black ink, appearing to read "Loretta H. Rush", written over a horizontal line.

Loretta H. Rush
Chief Justice of Indiana

Massa, Slaughter, and Molter, JJ., concur.

Rush, C.J., concurs in the denial of transfer with separate opinion in which Goff, J., joins.

Rush, C.J., respecting the denial of transfer.

I join my colleagues in voting to deny transfer because the Court of Appeals properly affirmed the trial court's judgment. *See E.S. v. C.H.*, No. 25A-AD-1167 (Ind. Ct. App. Dec. 23, 2025) (mem.), *aff'd on reh'g*, No. 25A-AD-1167 (Ind. Ct. App. Feb. 27, 2026) (mem.). But this case presents a rare opportunity to clarify a judge's obligations when the court inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter. I therefore write separately to explain those obligations and to highlight that they provide parties with neither sword nor shield in the underlying litigation.

This case involves a mother's multiple, belated attempts to contest her child's adoption. The record is clear that she did not file the written motion required to contest the adoption within fifteen days of receiving notice. *See* Ind. Code § 31-19-10-1(b). But the notice incorrectly stated she had thirty days. And within that time frame, she emailed the trial court stating she opposed the adoption, asking the court not to proceed, and seeking guidance. The court's chief bailiff responded the same day, informing her that the court could not "consider or take action on" the "improper ex-parte communication." The bailiff also gave her information about a hearing the judge scheduled and advised her "to seek legal counsel for the proper steps/procedures to take." The mother responded appreciatively, provided her contact information, and said she was in contact with Indiana Legal Services for assistance with representation. About a month and a half later, she filed a written motion to contest the adoption, which the trial court deemed untimely. Her consent to the adoption was therefore irrevocably implied. I.C. § 31-19-9-18(b)(1).

The bailiff's response gave the mother no reasonable basis to believe the court would treat her email as a filing. But the response was incomplete; the judge should have promptly notified the other parties of the mother's email and allowed them to respond.

Rule 2.9 of the Indiana Code of Judicial Conduct provides the necessary guidance. When "a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the

communication and provide the parties with an opportunity to respond.” Ind. Judicial Conduct Rule 2.9(B). A judge must also “make reasonable efforts, including providing appropriate supervision, to ensure” court staff do not violate Rule 2.9 and require staff to act consistently with the judge’s own obligations under the Code. Jud. Cond. R. 2.9(D), 2.12(A). Together, these provisions require a judge to make reasonable efforts to ensure court staff promptly bring substantive communications directed to the court to the judge’s attention so the judge can provide the requisite notice and opportunity to respond. As a best practice, the judge should also note the communication on the chronological case summary and preserve any correspondence in the record.

That did not happen here. The prospective adoptive parents did not receive the mother’s email until well after she filed her written objection. But that failure does not alter the outcome. Rule 2.9 governs judicial conduct; it does not determine whether an email to the court satisfies a statutory filing requirement. And the Code of Judicial Conduct is not intended to be a “basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.” Jud. Cond. Scope ¶ 7. Thus, the court’s failure to promptly disclose the email neither converted it into a filing nor excused the mother’s untimely motion.

Ultimately, a judge must accord every person who has a legal interest in a proceeding “the right to be heard according to law.” Jud. Cond. R. 2.6(A). Protecting that right requires more than declining to consider an unauthorized ex parte communication bearing upon the substance of a matter. A judge must make reasonable efforts to ensure that court staff promptly bring any such communication to the judge’s attention. The judge must then promptly notify the parties of the communication’s substance and afford them an opportunity to respond. Adhering to these requirements safeguards the parties’ right to be heard and preserves public confidence in impartial adjudication.

Goff, J., joins.