

# In the Indiana Supreme Court

State of Indiana ex rel. Ashley Frounfelter,  
Relator,

v.

Cass Superior Court 1, et al.,  
Respondents.

Supreme Court Case No.  
26S-OR-53

Trial Court Case Nos.  
09D01-2305-CB-29  
25D01-2302-DC-66



## Published Order Denying Writ of Mandamus

Relator, by counsel, filed a verified petition for a writ of mandamus seeking relief under the rules governing original actions. Relator seeks a writ directing the respondent court to (1) sustain her objection to a motion for automatic change of judge, (2) deny the motion, and (3) resume jurisdiction over the underlying matter. Respondents filed a brief opposing the writ or, in the alternative, requesting that the respondent court resume jurisdiction only to the extent needed to issue the final divorce decree.

Even if the respondent court may have erred by prematurely granting a motion for change of judge before it issued the divorce decree, the proper remedy would have been to seek a discretionary interlocutory appeal before invoking this Court’s original jurisdiction. Therefore, the Court votes to deny the writ.

### Background

Relator petitioned for divorce in February 2023. Husband moved for change of judge, and the respondent judge assumed jurisdiction as special judge on May 4, 2023. This case was heavily litigated over the next two years, with the respondent judge entering several provisional orders governing custody, child support, and the division of property.

After a final hearing on November 5, 2025, the respondent court directed—and the parties agreed—that Husband’s counsel would draft the final dissolution decree to incorporate each of the previous provisional orders. The CCS entry from that date states: “Hearing commenced and concluded. Marriage found to be irretrievably broken and is dissolved. Counsel to submit Decree of Dissolution.”

But no decree was ever submitted because of a dispute about incorporating a provision from a prior provisional order requiring Husband to pay extracurricular expenses. On December 5, 2025, Relator filed a notice to the respondent court asserting that the work was done but Husband “refuses to incorporate” the extracurricular provision and Relator “does not accept his demand that that provision be deleted.” Before a hearing could be held, on December 18, 2025, Husband moved for change of judge—and over Relator’s objection, the motion was granted.

It appears that Husband relied on Ind. Trial Rule 76(B), which at the time provided that “a party shall be entitled to only one change from the judge. After a final decree is entered in a

dissolution of marriage case or paternity case, **a party may take only one change of judge in connection with petitions to modify that decree**, regardless of the number of times new petitions are filed.” T.R. 76(B) (2025) (emphases added). Effective February 2, 2026, that rule was modified to limit parties “to one change of county and one change of judge in all civil cases, including cases where a petition to modify any final decree is filed.” T.R. 76(D) (2026). Here, when Husband moved for a second change of judge, no “decree” yet existed.

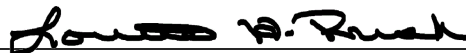
### Discussion and Conclusion

Relator seeks a writ directing the respondent court to vacate the change-of-judge order and resume jurisdiction over the case, asserting that it was improper for the trial court to grant the motion. Respondents concede that there was a “failure to enter a written order on the divorce decree prior to granting the change of judge”; however, they argue, this could be remedied *nunc pro tunc* by temporarily sending the case back to Respondents solely for the purpose of entering the written divorce decree. But because Trial Rule 76(B) no longer permits a post-dissolution change of judge if a party has already received one automatic change of judge, there is no authority for the Court to “re-vest” jurisdiction in the successor judge.

The version of Trial Rule 76(B) in effect when Husband moved for change of judge provided for one automatic change of judge before a decree was issued and a second change of judge “in connection with petitions to modify [a dissolution] decree.” Even if the order granting the change-of-judge motion was issued in error, Relator did not seek a discretionary interlocutory appeal of that order. Because an original action may issue only when “the remedy available by appeal will be wholly inadequate” and a successful appeal may have afforded the relief Relator seeks here, Relator has not met her burden. Ind. Orig. Act. R. 3(A)(6); *see also* Ind. Orig. Act. R. 1(C) (providing that original actions “are viewed with disfavor and may not be used as substitutes for appeals.”).

Being duly advised, the Court DENIES the petition for writ. No petitions for rehearing or motions to reconsider are permitted. Ind. Orig. Act. R. 5(C).

Done at Indianapolis, Indiana, on 4/23/2026.



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Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.