

Case Initiation & Filings

Filing with the Court: What is Filed and When is it Officially a Part of the Court File (Including Public Access)

Trial Rules 5(E), (F) and (G), 86, 87, and 88; Access to Court Records Rule 5

Contact: Richard T. Payne; email: richard.payne@courts.in.gov

Indiana Supreme Court E-filing System (IEFS)

Transition from a Paper World to an Electronic World – Trial Rules 86, 87 and 88

The means and methods of creation, storage and retention of court records have been a continual process. Documents once written, copied, and entered in longhand have moved through creation by typewriter and carbon paper to computers using document software and now to digital images that will result in courts working in a paperless environment. The transition dictates that not only lawyers but also judges and clerks will learn to carry out traditional tasks in new ways.

The Indiana Supreme Court implemented a statewide E-filing system that requires all case filings through the internet with few exceptions. The process reduces the need for costly paper copies, postage, and trips to the clerk's office. The project, announced in 2014 and started as pilot projects in 2015, is now in use in all Indiana counties.

The manner of filing, signing documents, paying court costs and fees, implementing service of process, and providing notice are different in e-filing, but the basic nature of what documents are filed and when they are considered filed has not greatly changed using this digital process.

How Filings Are Made

Cases are initiated in the trial court clerk's office under Ind. Trial Rules 3, 86, 87, and 88. In the initiation process, cases are assigned case numbers consistent with Ind. Administrative

Rule 8. T.R. 86(B) in conjunction with T.R. 5 governs all subsequently filed documents. Because the trial court clerk and staff are custodians of the court files, the trial court clerk must understand when a document is “filed” under T.R. 5.

What Documents Shall Be Filed?

T.R. 5(E) requires that all pleadings and other papers subsequent to the complaint or other initiating document which must be served upon a party, are filed with the court. The only exceptions include discovery documents covered by T.R. 27 (deposition before action is commenced), 30 (regular depositions), 31 (depositions on written questions), 33 (interrogatories), 34 (requests for production and entry upon land for inspection), and 36 (requests for admissions). T.R. 37 or other rules allow the later filing of these documents under certain conditions, but they are not filed with the court upon service on the relevant parties.

Depositions are filed with the court only under circumstances delineated by T.R. 5(E)(2), but the litigants are the ones who must comply with those provisions.

Once a document is accepted for filing and file stamped showing date and time, it is not discarded even if accepted in error. The only method to correct the error is to file a Motion to Withdraw the document. All accepted and file stamped documents become the property of the trial court. If the error involves an accidental violation of Ind. Access to Court Records Rule 5 about confidentiality, the trial court clerk can help in correcting the violation as noted below and in the section on Ind. Access to Court Records Rule 8.

Rejection Of E-filed Documents

A clerk may reject an e-filed document **ONLY** if the user:

- did not pay the applicable filing fee,
- selected an incorrect case management system,
- or requested rejection.

It is incumbent upon the person filing the document to make sure it is captioned correctly and deals with non-public information properly. In addition, if a county has adopted local

rules about filings, the trial court clerk must follow those rules and may reject proposed filings if there is a violation.

If an e-filed document cannot be electronically processed, the clerk must return the document through the e-filing system to the user for correction. The user may cure the defect within three days of the return.

In all other cases where an e-filed document does not conform to the IEFS or other applicable rules, the clerk must process the document and return it to the user through the IEFS for correction.

Often *unrepresented* litigants will send correspondence to the court in an effort to make it part of a court record. The court may receive documents that are not served on all required parties or that do not have the proper captioning information, **but those documents are not file stamped**. The filing party must certify that the document in its entirety was served on all required parties under T.R. 5 before it is eligible for file stamping. The Court will not consider correspondence due to its *ex parte* nature. Ind. Judicial Conduct Rule 2.9 generally prohibits a judge from considering a communication made to the judge outside the presence of all parties or not served on all parties.

When Is A Document Considered “Filed?”

If a Party is Exempt from E-filing.

Who is exempt? Unrepresented Litigants or Parties Represented by Exempted Lawyers. See T.R. 87(B).

A pleading or other document may be filed by various means, as noted in T.R. 5(F). The most direct method is to present the filing in person to the receiving trial court clerk. The trial court clerk will then file stamp the filing with the current date. The trial court clerk may NOT backdate a filing made in person or received by regular United States Mail. Likewise, the trial court clerk may not surrender the only copy of the document after the file stamp is affixed. If the litigant did not provide enough copies for file stamping, the court may return the filing without a stamp.

If the county has approved filings via facsimile under Ind. Admin. Rule 12, the trial court clerk shall accept the duplicate document for filing. If it is transmitted during

regular court business hours, it is file stamped for that day. If it is transmitted after regular business hours, it is file stamped for the following business day.

If the filing party mails the document via registered, certified or express mail, return receipt requested, or by depositing it with a third-party commercial carrier for delivery to the clerk within three (3) calendar days, cost prepaid and properly addressed, the trial court clerk file stamps the document for the day indicated by the postmark or deposit. **The trial court clerk may ONLY backdate a document that was sent via registered, certified, or express mail or by third-party commercial carrier.** Backdating refers only to the date file stamped on the document. The CCS entry is dated with the date the entry is made and the text of the entry should state the date file stamped on the document.

The filing party may simply mail a filing to the court. The trial court clerk will file stamp the document on the date it was received. The filing party may also, with permission, file the document with the Judge, who will then forward it to the trial court clerk for file stamping with the relevant date.

Per T.R. 87(D), the clerk or court must convert conventionally filed documents into an electronic record. The filing party must also conventionally serve these documents per the Rules of Trial Procedure, applicable Local Rules, and file a Certificate of Service. If the original documents cannot be converted into a legible electronic document, then an annotation is made in the Chronological Case Summary and the documents are returned to the filer.

If A Party Is Required To E-file.

Per T.R. 87(H), a document is considered E-filed with the court on the date and time reflected in the Notice of Electronic Filing [NEF]. See T.R. 86(A)(8) associated with the document. E-filing must be completed by midnight to be considered filed that day, and compliance with filing deadlines is determined by the time zone in the location of the court where the case is filed.

Filing Orders

Sometimes the Court enters orders in open court and serves the parties at that time, making the order effective as to the parties at once. However, based on several rules, the

clerk must make sure the Orders are filed as well because they are not effective as to the world until the orders are entered into the public record. T.R. 5 requires the service of orders as well as other filings. If the parties are served in court, T.R. 72(D) requires the clerk to note the manner of service (“in open court”) on the Chronological Case Summary (CCS).

If the court enters an order in open court on one day, the court staff file-stamps the order but does not make a CCS entry at all and does not deliver the order to the clerk until the next day, the use of a “received” stamp by the clerk is appropriate to show the date that the order is received for entry into the public record. If the clerk makes a CCS entry on the date it is received, the order is entered into the public record on that date. If the clerk does not make the CCS entry on the same day that the order is received in the office, the CCS entry is dated with the date that it is entered on the CCS, and in the text of the entry the date the order was signed by the Judge and the date received by the clerk is noted.

Confidential Filings

A.C.R. 5 identifies the information that is confidential and excluded from public access. The information may still be relevant to the court files and is “filed” by the trial court clerk.

Entire Document is Confidential

Under conventional filing, if an entire document is confidential under A.C.R. 5, the document is accompanied by a Notice of Exclusion that identifies the specific basis under A.C.R. 5 upon which the exclusion is based. In this situation, the document is not filed on green paper and a redacted version is not required. The only **exception** to the Notice of Exclusion requirement are cases in which the entire Court Record is excluded from public access under A.C.R. 5.

Under E-filing, the confidential document is marked as a Non-Public Document

Part of a Document is Confidential

Public Access Version

This version is placed on white paper with the non-public information omitted or redacted. The omissions or redactions are indicated in their location within the document.

In the event only a part of a document is considered confidential under A.C.R. 5, the filing party tenders the Public Access Version of the document

- created on white paper with the non-public information omitted or redacted and
- the omissions or redactions are indicated in their location within the document, and
- accompanied by a Notice of Exclusion that identifies the specific basis under A.C.R. 5 upon which the exclusion is based.

For E-filing purposes, the public access version is marked as a Public Document.

A Non-Public Access Version is only required if the omitted or redacted information is necessary for the disposition of the case.

Thus, if the information is not required for disposition of the case, a green paper, non-public access version is not required.

When a Non-Public Access version containing the omissions or redactions, is filed, it should be conspicuously marked NOT FOR PUBLIC ACCESS or CONFIDENTIAL and will be E-filed as a Non-Public Document.

Other Filings

From time to time, litigants and other agencies will present documents for filing that may require special attention by the trial court clerk. Examples of documents that require special attention include Protection Orders, Domestic Relations Counseling Bureau (DRCB) reports, sealed documents, and unsolicited correspondence related to a case.

Protection Orders are covered in the Special Processes & Procedures section. Each trial court clerk is obligated to maintain the security of the confidential portions of Protective Orders.

Documents sealed by a court order are maintained separate from the public file. Most courts keep the sealed documents with the "green" documents even though they are confidential under Ind. Code 5-14-3-5.5.

It is permissible to place correspondence in a court file, but it is never file stamped unless the filing party provides a certificate of service pursuant to T.R. 5(C).

To protect the parties, DRCB reports are not part of the public file. These reports are maintained separately from the related domestic relations case.

It is important that judges, clerks and members of the Bar know and understand the requirements of the E-filing system. T.R. 86, 87, and 88 are the paramount rules governing E-filing and provide details of the complete process. Substantial information is available at <http://www.in.gov/judiciary/4267.htm> concerning:

- how to start e-filing,
- choosing an e-filing service provider (EFSP), and
- obtaining training and support.

Important Differences

One Lead Document per Upload

In the paper world, filing parties commonly tendered multiple pleadings or documents which were all filed at one time. In E-filing, when a document is filed in a case, it is placed in a digital “envelope” for review by the court. The mechanics of the process requires that documents are filed one at a time to properly account for each filing event within an “envelope”, but multiple documents filed contemporaneously in a particular case are placed in the same “envelope” for review.

Original Documents

Commonly, original documents, i.e., contracts or wills, were filed and maintained in court case records. Under E-filing, the original documents are converted to digital images when scanned into the filing system and the filing party retains the originally signed document. Pursuant to T.R. 86 (D), the electronic version of the document is the official court record.

A special provision has been adopted concerning the filing of a will. The following provision was added to T.R. 8(E):

A person filing a will for probate shall file an accurate and complete copy of the will and an affidavit, signed under the penalties of perjury, containing substantially the following information:

- Affiant possesses the Decedent's original Last Will and Testament or the Will has been deposited with the clerk of the court;
- The affiant is filing a true and accurate copy of the Last Will and Testament.
- Unless the Last Will and Testament has been deposited with the clerk of the court, Affiant will retain the original Last Will and Testament until the Decedent's estate is closed and the Personal Representative is released from liability, or the time to file a will contest has expired, whichever is later; and,
- The affiant will file the original Last Will and Testament upon order of the court or as otherwise directed by statute.

Clerk Processing of E-filed Documents

T.R. 88(A) - A clerk is only allowed to reject a filing if

- the User did not pay the applicable filing fee (defined by I.C. 33-37-3),
- the User selected in incorrect case management system, or
- the User requested rejection.

T.R. 88(B) - Non-Conforming Documents

All other non-conforming documents are processed by the clerk and directed to the applicable court which may issue an appropriate order to cure the document within three days.

Cured documents are considered filed as of the date and time originally submitted to the EFSP.

Notice versus Service

Service relates only to initial service of process under T.R. 4 and service upon each party and special judge of specific documents listed in T.R. 5(A) and is accomplished by the filer.

Under T. R. 86(B)(2), service of the initial complaint or equivalent pleading and the summons is made by the filer using a method provided for by T.R. 4.1 through 4.14 after the clerk has received the filer's summons, signed, dated it, and transmitted it back to the filer. Under T. R. 5(A), the filing party has the duty to serve the other parties or special judge with every:

- order required by its terms to be served;
- pleading subsequent to the original complaint;
- written motion except one which may be heard ex parte;
- brief submitted to the trial court;
- paper relating to discovery required to be served upon a party; and
- written notice, appearance, demand, offer of judgment, designation of record on appeal, or similar paper.

Exception – T.R. 86(B)(2)(b & e) & I.C. 33-37-3-2

The clerk, as opposed to the filer, provides *service* in a limited number of situations:

- a litigant is not required to pay filing fees due to a determination of indigency,
- a case initiated by the Prosecuting Attorney, or
- the court has specifically ordered the clerk to issue *service*.

In these situations, the litigant will not pay the cost of issuing *service*, e.g., certified mail costs, and the Sheriff will not receive the Sheriff's Service Fee.

Notice is given to the parties of action taken by the court and notice is given by the clerk as required by T.R. 72(D), and accomplished in a manner provided for in T.R. 5(B).

Other Statutory Notices Given by the Clerk

- Issuance of Letters Testamentary or of Administration – I.C. 29-1-7-7(c),
- Records of Adoptions – I.C. 31-19-12-3

T.R. 86(B)(3) - Subsequent Pleadings

Users serve all subsequent pleadings through E-service using the IEFS and is complete upon transmission of the e-mail to the e-mail address on the recipient's appearance or the Public Service List as confirmed by the NEF Service to unrepresented litigants, non-users, and exempt parties.