

Indiana Commercial Court Rules

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Rule 1. Introduction and Scope

(A) These Commercial Court Rules apply to all cases on the Commercial Court Docket.

(B) Definitions

- (1) Business entity. “Business entity” means a for-profit or nonprofit corporation, partnership, limited partnership, limited liability company, limited liability partnership, professional association, professional corporation, business trust, joint venture, unincorporated association, sole proprietorship, or any other legal entity recognized by any state and doing business in the State of Indiana, including entities under I.C. 23-18.1.
- (2) Commercial Court. “Commercial court” means a court with a specialized Commercial Court Docket as described, organized, and administered under these Commercial Court Rules and any applicable Indiana Supreme Court Order.
- (3) Rule. “Rule”, as used in these Commercial Court Rules, means any rule promulgated by the Indiana Supreme Court or by administrative district rule or local rule.

Commentary

Commercial Courts employ and encourage electronic information technologies, such as e-filing, e-discovery, telephone/video conferencing, and also employ early alternative dispute resolution interventions, as consistent with Indiana law.

Rule 2. Cases Eligible for the Commercial Court Docket

(A) Cases Eligible.

Any civil case is eligible for assignment to the Commercial Court Docket under Commercial Court Rule 4 if the principal claims or defenses relate to:

- (1) The formation, governance, dissolution, liquidation, or other internal affairs of a business entity;
- (2) The rights or obligations between a business entity and its owners, shareholders, officers, directors, managers, trustees, partners, or members of a business entity;
- (3) The rights and obligations between a business entity and its owners, shareholders, officers, directors, managers, trustees, partners, or members;
- (4) A trade-secret, non-disclosure, non-compete, or employment agreement involving a business entity and one or more of its employees, owners, shareholders, officers, directors, managers, trustees, partners, or members;
- (5) An indemnity agreement involving a business entity and one or more of its employees, owners, shareholders, officers, directors, managers, trustees, partners, or members;
- (6) The rights, obligations, liability, or indemnity of an owner, shareholder, officer, director, manager, trustee, partner, or member of a business entity owed to or from the business entity;
- (7) Business-related torts, including
 - a) unfair competition;
 - b) false advertising;
 - c) unfair trade practices;
 - d) fraud;
 - e) interference with contractual relations; or
 - f) interferences with prospective contractual relations;
- (8) A violation of the antitrust laws;
- (9) A violation of the securities laws;
- (10) A commercial insurance contract, including a coverage dispute;
- (11) A breach of a contractual or indemnity obligation between business entities relating to an environmental dispute; or
- (12) Any other dispute between business entities, between a business entity and an individual conducting business activities, or between individuals conducting business activities that concern their contracts, transactions, or relationships, including:

- a) Transactions governed by the Uniform Commercial Code, except for claims described in Commercial Court Rule 3(B);
- b) The purchase, sale, lease, or license of patents, trademarks, service marks, copyrights, trade secrets, or other intellectual property;
- c) A security interest in patents, trademarks, service marks, copyrights, trade secrets, or other intellectual property;
- d) The infringement or misappropriation of patents, trademarks, service marks, copyrights, trade secrets, or other intellectual property;
- e) The purchase or sale of a business entity, whether by merger, acquisition of shares or assets, or otherwise;
- f) A business entity's sale of goods or services to another business entity;
- g) Non-consumer bank or brokerage accounts, including loan, deposit, cash management, and investment accounts;
- h) Surety bonds and suretyship or guarantee obligations or individuals given in connection with business transactions;
- i) The purchase, sale, lease, or license of a security interest in commercial property, whether tangible or intangible personal property or real property;
- j) Franchise or dealer relationships; or
- k) Cases with a gravamen substantially similar to those listed in subsections (a)–(j) and are not ineligible under Commercial Court Rule 3.

(B) Eligibility Based on Consent.

A case is eligible for transfer to the Commercial Court Docket if:

- (1) All parties agree to a transfer of the case to the Commercial Court Docket; and
- (2) A Judge of a Commercial Court accepts jurisdiction over the case.

(C) Eligibility of Class Actions and Derivative Actions.

A class action or derivative action is eligible for assignment to the Commercial Court Docket if it meets the requirements of subsection (A) or subsection (B).

(D) Eligibility Not Limited by Nature of Trial or Relief Requested.

Both cases triable to a jury and cases triable to the bench, including cases seeking damages, an injunction, a temporary restraining order, or a declaratory judgment are eligible for assignment to the Commercial Court Docket if they meet the requirements of subsection (A) or subsection (B).

Rule 3. Cases Not Eligible for the Commercial Court Docket

A civil case is not eligible for assignment to the Commercial Court Docket under Commercial Court Rule 4 if:

(A) The case does not relate to any of the topics provided under Commercial Court Rule 2(A) or 2(B);
or

(B) the gravamen of the case relates to any of the following:

(1) Personal injury, survival, or wrongful death matters;

(2) Consumer claims against a business entity or an insurer of a business entity, including a claim concerning:

a) breach of warranty;

b) product liability;

c) personal injury; or

d) violation of consumer-protection laws;

(3) Consumer debts, including:

a) a debt or account incurred or obtained by an individual primarily for a personal, family, or household purpose;

b) a credit-card debt incurred by an individual;

c) a medical-services debt incurred by an individual;

d) a student loan;

e) a tax debt of an individual;

f) a promissory note not primarily associated with purchasing an interest in a business;

g) a personal automobile loan;

h) legal fees incurred for family or household purposes, such as probate, divorce, child custody, child support, criminal defense, negligence, and other tortious acts;
or

i) other similar consumer debts;

(4) A dispute involving wages or hours, occupational health or safety, workers' compensation, unemployment compensation, or other employment-law matters other than those described in Commercial Court Rule 2(A)(4);

(5) Employment law cases, except those as described in Commercial Court Rule 2(A)(4);

- (6) An environmental claim other than a claim described in Commercial Court Rule 2(A)(11);
- (7) Matters in eminent domain;
- (8) Discrimination cases based upon the federal or state constitution or the applicable federal, state, or political subdivision, rules, regulations, or ordinances;
- (9) An appeal from a decision of an administrative agency or a tax or zoning decision;
- (10) A petition to change the name of an individual;
- (11) A petition or action under a mental health act;
- (12) A guardianship proceeding;
- (13) Any matter subject to the jurisdiction of the domestic relations, juvenile, or probate divisions of a court;
- (14) An individual residential real estate dispute, including a foreclosure action;
- (15) A non-commercial landlord-tenant dispute;
- (16) A governmental election;
- (17) Any matter subject to the exclusive jurisdiction of a city court, a town court, or the small claims division of a court;
- (18) Any matter required by law to be heard in some other court or division of a court; or
- (19) Any criminal matter, other than criminal contempt, in connection with a matter pending on the Commercial Court Docket.

This Rule does not limit the ability of the parties to agree to assignment to the Commercial Court of other cases consistent with the purposes of the Commercial Court.

Rule 4. Assignment of Case to the Commercial Court Docket

(A) Applicability.

This Rule supersedes the case-assignment requirements of any applicable Rule.

(B) Request for Assignment.

(1) Parties that May Request Assignment.

Any party may request to have an eligible case assigned to the Commercial Court Docket.

(2) Identifying Notice.

A party requesting assignment to the Commercial Court Docket must file with the clerk of the court a “Notice Identifying Commercial Court Docket Case” (“Identifying Notice”).

a) Timing. A party may file an Identifying Notice at any time before trial.

b) Effect of Filing an Identifying Notice. A party that files an Identifying Notice waives:

- i. Any right to apply for a change of judge or county under Trial Rule 76, except as provided in Trial Rule 76(A) or (C)(6); and
- ii. Any right to contest, at any time during the proceedings or on appeal, the case’s eligibility for assignment to the Commercial Court Docket.

c) Withdrawal of an Identifying Notice. A party’s election to file an Identifying Notice is binding and irrevocable. A party may not withdraw an Identifying Notice unless all parties consent to withdrawal of the Identifying Notice. If all other parties so consent, the clerk of the court must transfer and assign the case to a non-Commercial Court Docket in accordance with applicable Rules.

(C) Responses to Request for Assignment.

(1) Parties that May Object or Consent to Assignment.

When one party files an Identifying Notice, each other party may:

- a) Object to the assignment of an eligible case to the Commercial Court Docket;
- b) Consent to the assignment of an eligible case to the Commercial Court Docket; or
- c) Waive objection to the assignment of an eligible case to the Commercial Court Docket.

(2) Objection to Assignment - Refusal Notice.

A party objecting to the assignment of an eligible case must file and serve on all other parties a Notice of Refusal (“Refusal Notice”)

a) Timing. A party must file a Refusal Notice by the later of the following dates:

- i. Thirty (30) days after service of the Identifying Notice; or
- ii. Thirty (30) days after appearing in the case.

b) Effect of Filing a Timely Refusal Notice. When any party files a timely Refusal Notice, the clerk of the court must transfer and assign the case to a non-Commercial Court Docket in accordance with applicable Rules, including a case that has been provisionally assigned to the Commercial Court Docket under Commercial Court Rule 5(D).

c) Withdrawal of Refusal Notice. A party’s election to file a Refusal Notice is binding and irrevocable. A party may not withdraw a Refusal Notice unless all other parties consent to withdrawal of the Refusal Notice. If all other parties consent, the clerk of the court must transfer and assign the case to a Commercial Court Docket.

d) Failure of Filing a Timely Refusal Notice. A party that fails to timely file a Refusal Notice waives:

- i. Any right to apply for a change of judge or county under Trial Rule 76, except as provided in Trial Rule 76(A) or (C)(6); and
- ii. Any right to contest, at any time during the proceedings or on appeal, the case's eligibility for assignment to the Commercial Court Docket.

(3) Consent to Assignment; Waiver of Objection to Assignment.

a) Consent. A party consents to the assignment of an eligible case to the Commercial Court Docket by filing and serving a "Notice Consenting to Assignment to the Commercial Court Docket" ("Consent Notice").

b) Waiver. A party waives objection to the assignment of an eligible case to the Commercial Court Docket by failing to file and serve a timely Refusal Notice.

c) Effect of Consent or Waiver.

- i. When each party either consents to assignment or waives objection to assignment, the clerk of the court must transfer and assign the case to a Commercial Court Docket.
- ii. A party that either consents to assignment or waives objection to assignment waives:

A. Any right to apply for a change of judge or county under Trial Rule 76, except as provided in Trial Rule 76(A) or (C)(6); and

B. Any right to contest, at any time during the proceedings or on appeal, the case's eligibility for assignment to the Commercial Court Docket.

d) Withdrawal of Consent or Waiver. A party's consent to assignment or waiver of objection to assignment is binding and irrevocable unless all other parties agree to permit the party to file a Refusal Notice. When all other parties consent, the Refusal Notice will be deemed timely, and the clerk of the court must transfer and assign the case to the non-Commercial Court Docket of the Commercial Court Judge in accordance with applicable Rules.

(D) Provisional and Permanent Assignment; Notice to the Court.

(1) Assignment before Appearance.

If a plaintiff files an Identifying Notice before the appearance of any other party:

- a) The Clerk of the Court must provisionally assign the case to the Commercial Court Docket;

b) If no Refusal Notice is timely filed by any party that appears in the case or all parties after appearance either consent to assignment or waive objection to assignment, the assignment of the case is deemed permanent; and

c) If a Refusal Notice is timely filed, the clerk must transfer the case to the non-commercial Court Docket of the Commercial Court Judge.

(2) Assignment after Appearance.

If a party files an Identifying Notice after the appearance of at least one other party:

a) The Clerk of the Court must notify the court in which the case is pending that an Identifying Notice has been filed and the case is subject to transfer and assignment to the Commercial Court Docket if no Refusal Notice is timely filed;

b) If no Refusal Notice is timely filed, all parties consent to assignment, or all parties waive objection to assignment, the Clerk must notify the court in which the case is pending that the transfer and assignment of the case to the Commercial Court Docket is permanent; and

c) If a Refusal Notice is timely filed, the Clerk must notify the court in which the case is pending that a Refusal Notice has been filed and the case will not be transferred to the Commercial Court Docket.

(3) Exception to Notice.

Notice by the Clerk of receipt of an Identifying Notice, Refusal Notice, or Notice of Assignment is not necessary if the case is already pending before a Commercial Court Judge.

(E) Termination of Assignment.

If a Commercial Court Judge determines at any time that a case is ineligible for assignment to a Commercial Court Docket, the judge must order the Clerk of the Court to transfer and assign the case to a non-Commercial Court Docket in accordance with applicable Rules. The judge's determination is not subject to appeal.

(F) Retention of Jurisdiction for Emergency Matters.

The court to which an eligible case was originally assigned retains jurisdiction to hear and determine requests for temporary restraining orders and other emergency matters until the Commercial Court has assumed jurisdiction over the case.

(G) Addition of Parties after Assignment.

(1) Rights of New Parties.

A party that first appears in the case—whether as a result of a cross-claim, a counterclaim, a third-party complaint, an amendment, or otherwise—after the case is permanently assigned to the Commercial Court Docket may file a Refusal Notice.

(2) Timing.

a) The new party must file the Refusal Notice within thirty (30) days of appearance.

b) If a new party does not file a Refusal Notice within thirty (30) days of appearance, the case remains on the Commercial Court Docket.

(3) Effect of Filing a Refusal Notice.

When a Refusal Notice is timely filed, the Clerk must transfer and assign the case to a non-Commercial Court Docket in accordance with applicable Rules.

(H) Effect of Appeal.

(1) Assignment after Remand.

If a party appeals a case assigned to the Commercial Court Docket and a court on appeal either orders a new trial or otherwise remands the case such that a further hearing and receipt of evidence are required to reconsider all or some of the issues heard during the earlier trial, the Clerk of the Court must provisionally assign the case on remand to the Commercial Court Docket.

(2) Filing Refusal Notice after Remand.

Any party may file a Refusal Notice within thirty (30) days of the Clerk's assignment of the case to the Commercial Court Docket.

(3) Effect of Filing Refusal Notice.

If a party files a timely Refusal Notice after remand, the Clerk of the Court must transfer and assign the case to a non-Commercial Court Docket in accordance with applicable Rules.

(4) Effect of Not Filing Refusal Notice.

If no party files a timely Refusal Notice after remand, the case's assignment to the Commercial Court Docket becomes permanent.

Commentary

1. A crucial feature of Rule 4 is that any party can seek to have a case placed on the Commercial Court Docket at any time, even after the case has been pending on a non-Commercial Court Docket for an extended period of time. Commercial Court Rule 4(B) is an "opt-out" provision. The default is that a case identified by one party as a Commercial Court Docket case is assigned to the Commercial Court Docket unless another party timely objects to the assignment or the judge determines that the case is not eligible for the Commercial Court Docket. However, transfer of a well-underway proceeding is normally not contemplated.

2. Permitting any party to seek to have the case placed on the Commercial Court Docket at any time accommodates the case that is not initially eligible for assignment to the Commercial Court Docket but subsequently becomes eligible as a result of a cross-claim, counterclaim, third-party complaint, amendment, or otherwise.

3. Commercial Court Rules 4(B)(2)(B)(1) and 4(C)(3)(C)(2)(A) reference Trial Rules 76(A)—(C)(6), which provide a limited change of venue and judge right for cause.

4. The provisions of Commercial Court Rule 4(F) concerning emergency matters are intended to operate in the same way as Trial Rule 79(O), which provides: “Emergencies. Nothing in this rule shall divest the original court and judge of jurisdiction to hear and determine emergency matters between the time a motion for change of judge is filed and the appointed special judge accepts jurisdiction.”
5. Commercial Court Rule 4(G) accommodates a new party who is added to the litigation later as a result of a cross-claim, counterclaim, third-party complaint, amendment, or otherwise.
6. The language of Commercial Court Rule 4(G)(1) “first appears in the case” is the same as used in Trial Rule 3.1(B) governing the filing of the appearance form by responding parties.
7. The provisions of Commercial Court Rule 4(H)(1) concerning assignment to the Commercial Court Docket after remand are intended to operate in the same way as Trial Rule 76(C)(3), which provides: “[I]f the trial court or a court on appeal orders a new trial, or if a court on appeal otherwise remands a case such that a further hearing and receipt of evidence are required to reconsider all or some of the issues heard during the earlier trial, the parties thereto shall have ten days from the date the order of the trial court is entered or the order of the court on appeal is certified.”

Rule 5. Venue for Jury Trials

(A) In all cases triable to a jury, the jury trial must be held in the county of the Commercial Court Judge or, with good cause found by the Commercial Court judge, in another county with preferred venue.

(B) The venire for any jury trial must be drawn from the county where the jury trial will be held.

Rule 6. Commercial Court-Appointed Neutrals

(A) Appointment.

(1) Definition.

A Commercial Court-Appointed Neutral (“Appointed Neutral”) includes:

- a) An attorney;
- b) A senior judge; or
- c) A non-attorney agreed upon by the Commercial Court Judge and the parties who has special skills or training appropriate to perform the tasks that may be required.

(2) Reference.

A Commercial Court Judge may appoint an Appointed Neutral and refer any matter in a pending Commercial Court Docket case if:

- a) All parties to the case consent to the appointment and reference of an Appointed Neutral; or
- b) If all parties do not consent, the Commercial Court Judge, after giving notice to the parties and an opportunity to be heard, finds it probable that:
 - i. Appointment of an Appointed Neutral will materially assist the Court in resolving the case in a just and timely manner;
 - ii. The anticipated costs associated with the appointment of an Appointed Neutral are proportionate to the value of the case; and
 - iii. The anticipated costs associated with the appointment of an Appointed Neutral will not be unduly burdensome to any party.

(B) Compensation.

- (1) The compensation allowed to the Appointed Neutral must be reasonable. The rate of compensation and the allocation of the cost between the parties must be established by the Court in the Order of Reference with consideration of input provided by the parties and the Appointed Neutral.
- (2) The parties are responsible for payment of the compensation of the Appointed Neutral. In a request for an Order of Reference, the parties must agree on the allocation of responsibility for paying the compensation of the Appointed Neutral.
- (3) If the parties seek appointment of a senior judge as an Appointed Neutral, the appointment must be approved by the Supreme Court and compensation determined under Trial Rule 53(A).

(C) Powers of the Appointed Neutral.

- (1) The Order of Reference to the Appointed Neutral must specify the Appointed Neutral's powers.
- (2) The order of reference may direct the Appointed Neutral:
 - a) To report only upon particular issues;
 - b) To perform particular acts;
 - c) To receive and report evidence only;
 - d) To fix the time and place for beginning and closing hearings and for the filing of the Appointed Neutral's report; and/or
 - e) Anything else the Commercial Court Judge deems appropriate.
- (3) Subject to the directions, specifications, and limitations stated in the Order of Reference, the Appointed Neutral has the power to regulate all proceedings before the Appointed Neutral and to take all measures necessary or proper for the efficient performance of the duties assigned under the Order, including but not limited to:

- a) Requiring the production of evidence on all matters embraced in the Order of Reference, including the production of records and documents of all kinds, including electronic media.
- b) Ruling upon the admissibility of evidence unless otherwise directed by the Order of Reference
- c) Placing witnesses and parties under oath; and
- d) Examining witnesses under oath and placing reasonable limits on the examination of witnesses by the parties.

(D) Duty of the Appointed Neutral.

(1) An Appointed Neutral must proceed with all reasonable diligence and within any time frames established by the Commercial Court Judge. On notice to all parties and the Appointed Neutral, any party may apply to the Commercial Court Judge for an order requiring the Appointed Neutral to expedite the proceedings and to make a report by a date certain.

(2) If a party so requests, the Appointed Neutral must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided for a court sitting without a jury.

(E) Proceedings before the Appointed Neutral.

(1) Order.

When a reference is made, the Clerk must forthwith furnish the Appointed Neutral and the parties with a copy of the Order of Reference. The Commercial Court Judge may direct counsel for the parties to submit a proposed Order of Reference with the terms of the final order being determined by the Commercial Court Judge in its sound discretion.

(2) Initial Meeting.

Unless the Order of Reference provides otherwise, the Appointed Neutral must set a time and place for the initial meeting of the parties or their attorneys and the Appointed Neutral to be held within twenty (20) days after the date of the Order of Reference. The Appointed Neutral must notify the parties or their attorneys of the date, time, and place of the initial meeting.

(3) Further Proceedings.

The Order of Reference may fix the time and place for further meetings and hearings before the Appointed Neutral. Otherwise, the Appointed Neutral may fix the time and place for further meetings and hearings.

(4) Failure of a Party to Appear.

If a party fails to appear at the time and place fixed for a meeting or hearing, the Appointed Neutral may proceed ex parte or, in the Appointed Neutral's discretion, may postpone the proceedings to a future date, giving notice to the absent party of the postponement.

(5) Witnesses.

The parties may procure the attendance of a witness before the Appointed Neutral by the issuance and service of a subpoena as provided in Trial Rule 45. If a witness fails to appear or give evidence without adequate excuse, the witness may be punished for the contempt by the Commercial Court Judge and may be subjected to the consequences, penalties, and remedies provided in Trial Rules 37 and 45 upon request of a party or the Appointed Neutral.

(6) Statement of Accounts.

When matters of accounting are in issue, the Appointed Neutral may prescribe the form in which the accounts must be submitted by the parties. In any proper case, the Appointed Neutral may require or receive in evidence only a statement by a certified public accountant who is called as a witness by a party. Upon objection of a party to any of the items submitted or upon a showing that the form of statement is insufficient, the Appointed Neutral may:

- a) Require a different form of statement to be furnished;
- b) Order oral examination of the accountants regarding the accounts or specific items thereof;
- c) Order written interrogatories to be answered regarding the accounts or specific items thereof; or
- d) Otherwise direct the parties to provide necessary information.

(F) Report.

(1) Filing a Report.

The Appointed Neutral must prepare a report on the matters or issues submitted by the Order of Reference. The Appointed Neutral must file the report with the Clerk of the Court, who must notify all parties of the filing.

(2) Timing.

The Order of Reference may fix a time for filing the Report. On request of any party or the Commercial Court Judge, the Appointed Neutral must submit the report before the Commercial Court Judge conducts a hearing or takes evidence in a matter.

(3) Reports in Non-Jury Cases.

a) Contents. Unless the Order of Reference in a non-jury case otherwise directs, the Appointed Neutral must file with the Report:

- i. A transcript of the proceedings, including any testimony or statements received; and
- ii. All original exhibits, admitted or excluded.

b) Objecting to the Report. Within ten (10) days after being served with notice of the Report's filing with the Clerk of the Court, any party may file written objections to the Report and serve them on the other parties.

c) Moving for Action on the Report. A party may apply to the Commercial Court Judge for action on the report and on objections thereto by motion and upon notice, as prescribed in Trial Rules 5 and 6.

d) Reviewing Factual Findings. The Commercial Court Judge must accept the Appointed Neutral's findings of fact unless clearly erroneous.

e) Action on the Report. The Commercial Court Judge may adopt the Report, reject it in whole or in part, receive further evidence, or return the Report to the Appointed Neutral with instructions.

(4) Reports in Jury Cases.

a) Contents. In a case to be tried by a jury, the Appointed Neutral may report findings of fact but must not report the evidence.

b) Objecting to the Report. Within ten (10) days after being served with notice of the Report's filing with the Clerk of the court, a party may file written objections to the Report and serve them on the other parties.

c) Use at Trial. The Appointed Neutral's findings upon the issues submitted are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the Commercial Court Judge upon any legal obligations made to the Report.

(5) Stipulation as to Findings of Fact.

When the parties stipulate that the findings of fact in an Appointed Neutral's Report are final, only questions of law arising from the Report may thereafter be considered.

(6) Draft Report.

Before filing the Report with the Clerk of the Court, an Appointed Neutral may submit a draft to the parties to receive their suggestions.

Rule 7. Discovery

(A) In General.

(1) Unless otherwise limited by court order, a party may obtain discovery regarding any matter that is:

- a) Nonprivileged;
- b) Relevant; and
- c) Proportional to the needs of the case, considering
 - i. The importance of the issues at stake in the action;
 - ii. The amount in controversy;
 - iii. The parties' relative access to resolving the issues; and

iv. Whether the burden or expense of the proposed discovery outweighs its likely benefit.

(2) All Discovery, including Initial Disclosures, must be supplemented in accordance with Rule 26(E) of the Indiana Rules of Trial Procedure.

(B) Discovery of Inadmissible Information.

Information within this scope of discovery need not be admissible in evidence to be discoverable.

(C) Required Initial Disclosures.

(1) Initial Disclosures.

Without awaiting a discovery request, a party must disclose to the other parties:

a) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

b) A copy or description by category and location of all documents, electronically stored information, and tangible documents or items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

c) A list of each category of damages claimed; the amount of damages in each category. The parties must also list and make available for inspection the documents or evidentiary material (unless privileged or protected from disclosure) supporting the type and amount of damages in each category claimed, including materials bearing on the nature and extent of injuries suffered.

d) For inspection and copying any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in an action or to indemnify or reimburse for payments made to satisfy the judgment; and

e) Documents that support any irreparable harm alleged by a party seeking injunctive relief.

(2) Limitations on Initial Disclosures.

Unless an agreement of the parties or a court order sets a different time, a party need not disclose any document that was prepared or created more than six (6) years before the date of the event that forms the basis of the party's claim or defense.

(3) Timing.

Unless an agreement of the parties or a court order sets a different time, a party must make the initial disclosures no later than twenty-one (21) days before the initial case management conference.

(4) Additional Disclosures.

The Commercial Court Judge may order additional disclosures in a specific case.

(D) Limitations on Discovery.

(1) Interrogatories.

Unless an agreement of the parties or a court order sets a different limit, a party must not serve more than twenty-five (25) interrogatories, including sub-parts.

(2) Depositions.

a) Unless an agreement of the parties or a court order sets a different limit, a party must not depose more than ten (10) persons.

b) Unless an agreement of the parties or a court order sets a different limit, a deposition must not last more than seven (7) hours.

(E) Discovery Plan.

(1) Contents.

The parties must jointly submit to the Commercial Court a proposed Discovery Plan that describes:

- a) How the parties will fairly and expeditiously conduct discovery;
- b) The issues that might arise concerning disclosure, discovery, and preservation of information; and
- c) Specific provisions for the fair and efficient resolution of discovery disputes, including:
 - i. A requirement that counsel seeking relief first specify to opposing counsel a concise statement of the alleged deficiencies or objections and then meet in good faith to try to effectuate a written resolution of the dispute before submission to the Court for resolution;
 - ii. A mechanism for the expedient submission to the Court of discovery disputes that counsel were not able to resolve, including submissions via conference call or email;
 - iii. Restrictions on the length of motions, memoranda, and supporting materials, and time limits for their submission;
 - iv. A prohibition, in all but extraordinary circumstances, on conducting discovery with respect to a discovery dispute itself; and
 - v. Appointing an Appointed Neutral to resolve discovery disputes.

(2) Timing.

a) Unless an agreement of the parties or a court order sets a different time, the parties must submit the Discovery Plan at least five (5) business days before the initial case management conference.

b) If the parties are unable to agree, they should timely submit the portions of a Plan on which they agree and their competing proposals for all other portions of the Plan.

(F) Failure to Preserve Electronically Stored Information.

(1) Litigants must preserve electronically stored information consistent with Rule 37(e) of the Federal Rules of Civil Procedure.

(2) If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it and it cannot be restored or replaced through additional discovery, the Court:

- a) Upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or
- b) Only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:
 - i. Presume that the lost information was unfavorable to the party;
 - ii. Instruct the jury that it may or must presume the information was unfavorable to the party; or
 - iii. Dismiss the party's claim(s) or enter a default judgment.

(G) Objections to Discovery.

If a party objects to a discovery request, either in whole or in part, the objecting party must concisely state in detail the basis for the objection.

(H) Incomplete or Partial Response to Discovery Request.

If a party provides a partial or incomplete answer or response to a discovery request, the responding party must state specifically the reason that the answer or response is partial or incomplete.

(I) Resolving Disputes Regarding Disclosure and Discovery.

(1) Obligation to Meet and Confer.

a) Protective Orders. Before moving for a protective order to limit disclosure or discovery, a party must meet and confer in good faith with the party seeking disclosure or discovery to try to resolve the dispute without submitting it to the Commercial Court Judge. The parties must discuss the need for a protective order and, when appropriate, the form of the order.

b) Motions to Compel. Before moving to compel disclosure or discovery, a party must meet and confer in good faith with the party resisting disclosure or discovery to try to resolve the dispute without submitting it to the Commercial Court Judge.

c) Content of the Meeting.

- i. The parties must meet and confer either in person by telephone, or by a remote meeting platform. An exchange solely of letters, emails, or other similar communications does not satisfy the obligation to meet and confer.

- ii. The party resisting disclosure or discovery must provide to the opposing party a concise statement of the specific reasons that disclosure or discovery is allegedly improper.

(2) Submission to the Court.

The Commercial Court Judge will resolve a motion for protective order regarding disclosure or discovery or a motion to compel disclosure or discovery only when:

- a) The motion includes a verification that the parties have fulfilled their obligation to meet and confer; or
- b) The moving party demonstrates that:
 - i. It was not possible through good-faith efforts to meet and confer; and
 - ii. Time is of the essence in resolving the dispute.

Commentary.

1. Commercial Court Rule 7 is derived in part from the amendment to Federal Rules of Civil Procedure 26(b)(1) that became effective on December 1, 2015. The developing case law concerning the 2015 amendments to the federal discovery rules is helpful to the Indiana Commercial Courts in determining the scope of discovery. Additionally, Commercial Court Rule 7 derives from the Indiana Supreme Court’s January 20, 2016, Order Establishing The Indiana Commercial Court Pilot Project and from the second paragraph of Indiana Trial Rule 26(B)(1).

In relevant part, the January 20, 2016, Order provides: “Specifically, the [Indiana Commercial Court] Pilot Project will operate pursuant to guidelines adopted by the Working Group addressing case eligibility, assignment, and transfer; caseload and workload; commercial court masters; the publication of commercial court orders and statistics; and other relevant matters.”

In relevant part, Trial Rule 26(B) provides: “Scope of discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: ... 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. The information and documents identified in the initial disclosures in Commercial Court Rule 7(C) are those most likely to be automatically requested by experienced counsel and are most likely to be useful in narrowing the issues. These initial disclosures are not intended to preclude other necessary discovery. For instance, Rule 6(D) limits disclosure of documents to those prepared within the six years of the events giving rise to the claim or defense. A party may seek discovery of

older documents, subject to the restrictions of relevance and proportionality described in Commercial Court Rule 7(A). Likewise, the initial disclosures are not intended to be exhaustive of information that should be shared by the parties.

3. Strict compliance with the meet-and-confer requirements of Indiana Trial Rule 26(F) is mandatory. This includes actual face-to-face or telephonic meetings. An exchange of emails or letters alone is insufficient. Prompt ruling on discovery disputes deters unreasonable and obstructive conduct and prevents the frustration of existing discovery deadlines and the delay of ongoing discovery while a ruling is pending. Cf. Fed. R. Civ. P. 26(a)(2) (requiring disclosure of expert witnesses); Fed. R. Civ. P. 26(a)(3) (requiring disclosure of witnesses and documents to be used at trial). Commercial Court Rule 6(C)(4) provides authority for the Commercial Court to order additional disclosures.
4. A request to seal information from public access must conform to the Administrative Rules.
5. Matters concerning disclosure and discovery that are not addressed in these Commercial Court Rules are governed by the Indiana Rules of Civil Procedure and other local rules that are applicable in the Commercial Courts.

Rule 8. Appointment of Commercial Court Judges.

The Indiana Supreme Court has sole authority to appoint Commercial Court Judges.

(A) If a judicial vacancy occurs or is expected to occur in an existing Commercial Court, or if a request is made to establish a new Commercial Court, the Indiana Supreme Court will announce the open position and establish a deadline for filing applications.

(B) Any Judge in the Administrative District where the open position occurs or is expected to occur or where a new Commercial Court is sought to be established, may submit an application for the open position to the Commercial Court Committee. Applications must be submitted by the established deadline to be considered.

(C) The Commercial Court Committee, or a designated subcommittee thereof, must review each application. The Committee must solicit input from members of the bench, bar, and business community, and may conduct other due diligence concerning each applicant.

(D) Within forty-five (45) days after the application deadline, the Commercial Court Committee must provide the Indiana Supreme Court a list of up to three (3) applicants that the Commercial Court Committee considers to be best suited to fill the open position.

(E) The Indiana Supreme Court will appoint the new Commercial Court Judge from the list submitted by the Committee. If no applications are submitted to fill the open position or the Supreme Court is not satisfied with the applicant(s) recommended by the Committee, the Supreme Court may solicit additional applications or appoint the new Commercial Court Judge from:

- (1) a county in the Administrative District where the open position occurs; or,

(2) an Administrative District adjacent to the Administrative District where the open position occurs, after further input from the Committee.

(F) Upon the appointment of the new Commercial Court Judge, the Clerk must transfer and assign the Commercial Court Docket of the outgoing Commercial Court Judge to the new Judge's docket without assessing any fees that might otherwise apply. Unless agreed to by the parties, all proceedings will occur in the county where the Commercial Court was first established, notwithstanding that the new Judge may be from a different county.

(G) Appointment of a new Commercial Court Judge does not affect the assignment of cases to that Judge's Commercial Court Docket. If the new Judge disqualifies or recuses himself/herself from a case, the parties may agree to have the case transferred to another Commercial Court Docket in the State, but if no agreement can be reached, the parties must seek the appointment of a Special Judge under Indiana Rule of Trial Procedure 79(D) and (H).