

Judicial Officers: Authority and Responsibility

Mandate of Funds

Trial Rule 60.5

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When a court is denied funds reasonably necessary for the operation of the court or court-related functions, the judge of the court may seek to mandate the appropriation or payment of the funds pursuant to Ind. Trial Rule 60.5. Prior to issuing an order to show cause why the appropriation or payment should not be made, the judge is required to meet with the mandated party and demonstrate the need for the appropriation or payment sought.

Once the order to show cause, captioned "Order for Mandate of Funds," is issued, the judge shall promptly notify the Supreme Court. The Supreme Court will appoint an attorney as the special judge who: 1) is not a current or former regular judge, and 2) does not reside nor regularly practice law in the county where the mandate was issued or any contiguous county. The dispute may be submitted to mediation by agreement of the parties or by order of the Supreme Court or the special judge.

The matter shall be set for trial on the merits of the order to show cause unless the legislative body, chief executive officer, or affected officer files a written waiver of a trial and agrees to make the appropriation or payment. Trial of the matter is without a jury, and a change of venue is not allowed.

If after a trial the special judge enters a decree or order mandating the appropriation or payment of funds, the matter is automatically reviewed by the Supreme Court unless the party subject to the mandate expressly waives review. A mandate order made by a court other than the Supreme Court or the Court of Appeals may not assess attorney fees at a rate greater than the reasonable and customary hourly rate for an attorney in the county.

If the mandate results in the appropriation or payment of funds for the operation of the court or court-related functions, the amount must be reported on the court's Report on Budget and Expenditures, using the INcite system. Because the amount resulting from

the mandate was not covered by the original budget, the item, amount, and related attorneys' fees should be reflected in the report. The expenditure must be reported on the worksheet under both the appropriate line item and the "Mandated Funds" section. The Line number indicates where the expense was reflected on the worksheet, and the Item indicates the category of expense. On INcite, some frequently mandated expense categories are provided in the dropdown menu. If the expense is not listed, choose OTHER. The actual amount mandated, rather than the amount requested, should be entered in the amount column. If the court and/or county incurred legal fees in association with the mandate process, indicate the amounts incurred in the relevant columns to the extent known. Each instance of mandated funds is reported separately by clicking ADD to enter each one.

Examples of mandated fund categories include lengthy, expensive jury trials, unforeseen replacement of computer equipment, pauper attorney service, expensive guardian ad litem services, and court interpretation fees. If your office did not incur a need for mandated funds, click the box DOES NOT APPLY. However, choosing DOES NOT APPLY, all entries already made will be erased.