

# SUPREME COURT

Chief Justice Loretta H. Rush  
Indiana Supreme Court  
311 State House  
200 W. Washington Street  
Indianapolis, IN 46204-2732



# OF INDIANA

June 17, 2021

The Honorable Eric Holcomb  
Governor of Indiana  
200 W. Washington Street  
Room 206, State House  
Indianapolis, IN 46204

Dear Governor Holcomb:

The Indiana Judicial Nominating Commission met on Tuesday, June 8, 2021, and selected a panel of nominees for the vacancy on the Court of Appeals of Indiana, Second District, that will be created by Judge James S. Kirsch's retirement. On behalf of the Commission, I am submitting to you the three candidates the Commission nominated as the most highly qualified: Judge Mark K. Dudley, Madison Circuit Court; Mr. Derek R. Molter of Indianapolis; and Judge Heather A. Welch, Marion Superior Court.

In selecting these candidates, the Commission considered all information pertinent to the nonexclusive statutory factors: legal education and honors; legal writings; reputation in the practice of law; physical condition and health; financial interests; and public service activities, writings, speeches, and contributions to the improvement of the administration of justice.

With this letter, we are forwarding to your office the nominees' complete applications and letters of recommendation. As required by statute and on the Commission's behalf, I offer the following evaluations of each candidate's qualifications.

### **Madison Circuit Court Judge Mark K. Dudley**

Throughout his career, Mark Dudley has built a stellar reputation as a "man of unquestionable integrity who has a profound commitment to the rule of law," as one local practitioner described. A modest man with a calm demeanor, Judge Dudley impressed the Commission not only with his grasp of complex legal issues but also with his commitment to making the legal system easier for the ordinary citizen to understand. Whether writing a jury handbook, drafting a detailed order to explain to the parties a difficult decision, or participating in a public forum to address race, equity, and justice issues in his county,

Mark Dudley demonstrates empathy and compassion to court users while maintaining his duty to the law.

Mark Dudley earned his Bachelor of Arts in History and Political Science from Indiana University Bloomington. He then graduated *cum laude* from the Indiana University Maurer School of Law.

After graduation, Mark Dudley worked for a private practitioner in Anderson from 1991 to 1996. He then joined in 1997 the Indianapolis firm of Young Riley & Dudley as a partner. (The firm later became Young Riley Dudley & DeBrot.) Mark Dudley left the firm in 2003 to return to Anderson as a partner of Howard DeLey & Dudley. He remained with the firm until Governor Mike Pence appointed him Judge of Madison Circuit Court 6 in June 2015. Judge Dudley successfully retained his judicial seat in the 2016 election.

During his twenty-four years of private practice, Mark Dudley handled many areas of civil litigation—including personal injury, will contests, business dissolutions, property disputes, and asbestos injury claims—and conducted fifteen jury trials and five bench trials in state and federal court. His jury experience ranges from one-day trials to a two-month trial litigating a secondhand smoke exposure claim.

In one of his most significant cases, Mark Dudley represented parents whose son died from drowning when his high school class attended pool day, with a lifeguard present, at Anderson University. Seeking more than a monetary settlement, the family sought to effect meaningful change. Mark Dudley settled the case before trial with the University, which agreed to purchase and place AED devices around the pool area, alter its lifeguard practices, and fund a scholarship for students from the high school to attend Anderson University. As an attorney, Mark Dudley also performed pro bono work for his community, representing plaintiffs and defendants in small claims court over debts, leases, and neighbor disputes.

Judge Dudley presides over a general jurisdiction docket, officiating over criminal, family, civil, and probate cases, with approximately 66% of new filings (based on 2019 statistics) being civil cases and 34% criminal. Since taking the bench, Judge Dudley has prioritized reducing the caseload, starting with 2,379 pending cases in June 2016 to 1,454 in April 2021. As a judge, he has presided over thirteen criminal jury trials and two bench trials, ranging from murder to Level 6 felonies. He also has officiated two civil jury trials and six bench trials. And in 2020, Judge Dudley was appointed one of ten judges for the expanded Indiana Commercial Court pilot project.

His commitment to the administration of justice can be seen in his repeated collaborative efforts to streamline processes and improve court services. He suggested a team approach for probation assignments in Madison County in which each court would be assigned a permanent probation officer, promoting consistency and fostering trust

between probation officers and defendants. He also supported efforts to document and measure the success of the Problem-Solving Court Program (PSC); and, through those efforts, the Madison County Courts demonstrated lower recidivism rates for Problem-Solving Court graduates than defendants supervised by other programs. Notably, Judge Dudley proudly has the most PSC graduates in the past several years from his court referrals. He further actively supported his colleagues in the creation and implementation of procedures to meet Criminal Rule 26, which is aimed at releasing individuals charged with a crime who can be safely returned to the community pending trial.

Additionally, Judge Dudley implemented a closer review process of submitted invoices, eliminated unnecessary expenditures, and issued consistent reminders to fellow judges to be mindful of costs. These practices enabled the courts to return over \$116,000 to the county general fund in the last two fiscal years. Judge Dudley also edited the Madison County Local Rules and created a jury handbook to answer common questions jurors have.

And as Chief Judge of the Madison County Unified Court System, he led the courts' response to the COVID-19 pandemic by coordinating the courts' rules with those of the County Commissioners and other departments. Judge Dudley convened and led the re-opening committee, drafted and edited the Administrative Rule 17 petition for the Madison County Courts, worked to address concerns of transitioning to a virtual platform, and later helped to develop protocols for safe in-person hearings and trials.

Judge Dudley is also a graduate of the Graduate Program for Judges and is Chair of the Model Civil Jury Instruction Committee for the Judicial Conference of Indiana. He is a member of the Indiana State Bar Association; the Madison County Bar Association; the Indiana Judges Association (currently serving on the board of managers); and the American College of Business Court Judges. He is a former member of the Indiana Trial Lawyers Association and the American Association for Justice. Since 1994, Mark Dudley has presented various continuing legal education programs on topics such as adoption, personal injury, legislative updates, and civil litigation advice.

Dedicated to his community, Mark Dudley served as the former president and member of the board of directors of Intersect, Inc. Originally created to address tobacco issues in Madison County, Intersect's mission was later expanded to include drug and alcohol addiction and healthy lifestyles. During his tenure, Intersect lobbied the city and county to get "no smoking" bans passed, supervised Students Against Destructive Decisions (SADD) chapters in local schools, and created community programming to further the group's mission. Judge Dudley currently serves on the board of directors for the South Madison County Community Foundation, which manages funds and awards grants to charitable organizations that strive to make positive change in southern Madison County. The Foundation helped local recovery efforts in Pendleton after the May 29, 2019 tornado.

Mark Dudley has further aided his community through various roles at his local parish. He also has served meals to the homeless at the Christian Center, helped maintain the Pendleton Heights High School cross country course, and volunteered at other school events. To benefit the Community Hospital Anderson Foundation, he has volunteered as an amateur chef at annual fundraisers from 2016 to 2019, preparing an appetizer for 120 guests at each event.

In 2020, Judge Dudley collaborated with fellow judges and local leaders to conduct a virtual forum with the public to discuss race, equity, and justice in Madison County. As a result, the Madison County Unified Court System adopted a mandatory implicit bias training for all judges and court employees. The forum also led to the Madison County Courts' request for grant funding to hire a data analyst to help review criminal sentences in relation to race. Although the request was denied, the Madison County Courts have requested to be part of a pilot project on the subject. Further, Judge Dudley remains committed to addressing the issue and has attempted to keep a personal record of his own sentencing practices.

In his spare time, Mark Dudley likes to buy old tools and equipment at auctions to bring them back to life. Having earned his way through school by restoring old cars, Mark Dudley continues his love of fixing cars as well as other items with small engines. He also enjoys running or eating his favorite meal of a peanut butter and jelly sandwich.

### **Derek R. Molter, Esq.**

As a community leader, mentor, writer and presenter, and appellate advocate, Derek Molter has worked tirelessly to improve his local, state, and national communities. A Newton County native who grew up working on a farm, he distinguished himself early in his studies by spearheading efforts to tackle some of the most difficult issues of our times. Such drive has led Derek Molter to become one of the preeminent appellate lawyers in the state. Nominating Commission members further learned that he never lost his connection to the concerns of regular citizens, as he has dedicated over 900 hours of pro bono legal work to the claims of individual litigants.

Derek Molter began his undergraduate studies at Marquette University, having earned the Sara Scott Scholarship. He then transferred to Indiana University Bloomington, earning a Bachelor of Arts with high distinction in Political Science and Philosophy. As an undergraduate, he was inducted into the Mortar Board and Phi Beta Kappa Honor Societies and was awarded the Distinguished Alumni Scholar Award. He also organized an event with then-Chief Justice Randall T. Shepard titled "Judges and Elections are like Oil and Water," which described the problems with selecting judges by means of elections.

He then graduated *magna cum laude* from the Indiana University Maurer School of law, earning a place in the Order of the Coif Honor Society for graduating in the top 3%.

While attending law school, he was awarded the F.C. Turrell Scholarship. He also earned CALI Awards for the highest grades in Criminal Law, Constitutional Litigation, and Law Firm as a Business Organization. Additionally, he received the Scribe Award for being the top student in Legal Writing and was a quarterfinalist in the Moot Court Competition. Derek Molter also served as an Executive Notes and Comments Editor for the *Indiana Law Journal*.

During the summer of 2005, Derek Molter worked as a legal intern for the United States House of Representatives' Judiciary Committee. Following graduation from law school, he served as a judicial law clerk for the Honorable Theresa L. Springmann, United States District Court Judge for the Northern District of Indiana. In 2008, he joined Arnold & Porter LLP (now Arnold & Porter Kaye Scholer LLP) in Washington D.C., practicing in its litigation group. At the firm, he primarily worked with a team of lawyers who devoted much of their practice to appellate preservation issues.

Derek Molter returned to Indiana in 2013, joining the firm of Ice Miller LLP as an associate and becoming a partner in 2016. He is in the Litigation Practice Group and leads Ice Miller's appellate practice. His practice includes state and federal appellate courts around the country and covers a variety of subject matters, including corporate law, insurance coverage, constitutional challenges to statutes and ordinances, personal injury and wrongful death, product liability, zoning, trusts and estates, guardianships, indemnity claims, and real estate litigation. Some of his significant cases include separation of powers and federalism issues, such as his representation of a city court when the city's legislative body decided to abolish the court during the incumbent judge's term. His administrative responsibilities at the firm include chairing the Technology Adoption Committee, taking an active role in the firm's mentoring program, and serving on a task force to address the challenges of training attorneys while working remotely.

Besides his work at Ice Miller and other firms, Derek Molter has volunteered significant time to assist litigants on a pro bono basis. Some of his endeavors include representing an association of tenants suing building owners over deplorable housing conditions in Washington, D.C.; representing plaintiffs in a class action against a large construction company alleging systematic wage payment violations and retaliation; representing a plaintiff schoolteacher with degenerative arthritis suing for discrimination based on her disability and for failure to accommodate; and representing an individual on appeal who had sued various municipal entities and police officers under §1983 alleging racial profiling and unlawful arrest.

While he has not served as first chair on any jury or bench trials, Derek Molter has worked on trial teams for multi-week personal injury trials, conducting witness preparation, assisting with jury research, handling exhibit objections, and preparing demonstrative exhibits and motions. He also has been responsible for appellate preservation in dozens of trials that reached jury verdicts and appeals. Notably, Mr. Molter served as second chair

on an arbitration in an international stock lending dispute between two business entities with over millions in controversy.

Derek Molter has worked to improve the administration of justice, the legal system, and society by effecting rules changes, writing legal articles and teaching on nuanced areas of the law, performing substantial pro bono legal work, and cultivating important connections to benefit Indiana. Early in his studies as an undergrad, he introduced attorney Feisal al Istrabadi, who had a deep interest in the future of Iraq, to Senator Richard Lugar's foreign affairs staff. He later organized a student event to discuss foreign affairs, featuring Mr. Istrabadi and former Ambassador James Lilly, who had served as ambassador to China and South Korea. Years later, after Mr. Istrabadi had served as legal advisor to the Iraqi Minister for Foreign Affairs and become Iraq's Ambassador to the United Nations, Derek Molter reconnected with Ambassador Istrabadi and organized a Diversity and Inclusion event at Ice Miller, featuring the Ambassador.

Derek Molter's improvements to the administration of justice include the 2017 article he authored, *For the Record: District Court Clerks' Differing Protocols for Preparing the Record on Appeal in the Seventh District*. This article led to a rule change of Circuit Rule 10, streamlining the process for preparing the record on appeal in the Seventh Circuit and creating consistency among the districts' clerk's offices. He has written other legal articles interpreting the impact of significant U.S. Supreme Court decisions. And he has presented continuing legal education seminars on appellate advocacy and other subjects for the Indiana Continuing Legal Education Forum (ICLEF) and the Indiana State Bar Association (ISBA). As a member of the ISBA's Appellate Section Council, he has helped organize bench-bar events and fund scholarships for lawyers to attend the Appellate Judges Education Institute.

Derek Molter's dedication to improving the lives of others is exemplified by his various volunteer activities. After Hurricane Katrina, he and his wife travelled to Biloxi, Mississippi, with a group of law students in the Public Interest Law Foundation, volunteering to go door-to-door to speak to residents about relief resources available to them. While living in Washington, D.C., he regularly cooked breakfast at the soup kitchen, So Others Might Eat (SOME). Since 2011, he and his wife have contributed to and helped administer a leadership fund that provides scholarships to students at South Newton High School to pursue camps and leadership programs. In 2014, he volunteered on Butler University's campus to promote Indiana's Lifeline Law, which grants immunity for certain alcohol offenses if the arrest is due to the person reporting a medical emergency, being the victim of a sex crime, or witnessing and reporting what the person believes to be a crime. In 2015, he volunteered as a mentor at John Marshall High School in Indianapolis. He also has volunteered his time for other community services and helped raise money for charitable and legal aid organizations through the philanthropic initiatives of Ice Miller.

Derek Molter is a member of the Indiana State Bar Association (serving as Treasurer of the Appellate Section Council); the American Bar Association; the National Center for State Courts, Lawyers Committee; the Federalist Society; the Seventh Circuit Bar Association; and the Newton County Bar Association. He is a former member of the American Agricultural Law Association; the Indiana Law Society; the Indianapolis Bar Association; and the Sagamore American Inn of Court. He serves on the board of directors for the Indianapolis Legal Aid Society and on the College Alumni Board for Indiana University's College of Arts and Sciences. Derek Molter is an alumnus of the Indianapolis Bar Association Leadership Series and the Indiana Leadership Forum.

His hobbies include boating, reading, and following his children's sporting activities.

### **Marion Superior Court Judge Heather A. Welch**

Widely recognized around the state as a judicial leader, Heather Welch has built an impeccable reputation as a collaborative, dedicated, and highly intelligent jurist and problem solver. As former Chief Justice Randall T. Shepard noted, "For something like two decades, here's how the conversations have gone. Is there a new idea on how to improve Indiana's courts? Let's ask Heather Welch to help us check it out. Is there a problem with our system of justice that needs reform? Ask Judge Welch to help work on it. Are we in the midst of a crisis? We need Heather Welch on the team to deal with it. In short, nobody exceeds her role as a judicial leader." This leadership and determination, coupled with an affable demeanor, has led Judge Welch to successfully spearhead many court initiatives, with the Indiana Commercial Courts Project as one of her most recent successes.

Heather Welch obtained her Bachelor of Science in Business from Indiana University Bloomington and earned her law degree from Valparaiso University School of Law. While attending law school, Heather Welch gained significant work and trial experience, spending one summer as a law clerk at the Indiana Civil Rights Commission and another summer as a legal extern for the Honorable Andrew P. Rodovich, Magistrate Judge of the United States District Court for the Northern District of Indiana. She also worked as a certified legal intern at both the Lake County and Marion County Prosecutors' Offices. As a certified intern, Heather Welch tried thirteen felony jury trials under the supervision of a deputy prosecutor.

Upon graduation, Heather Welch joined the Marion County Prosecutor's Office as a deputy prosecutor. In 1995, she went to the Indiana Attorney General's Office to serve as a deputy attorney general in the Medical Licensing Division. She then returned to the Marion County Prosecutor's Office in 1996 as a felony deputy prosecutor and remained in that role until joining the Indianapolis firm Kiefer & McGoff as an associate in 1999. Her legal practice at Kiefer & McGoff primarily consisted of criminal defense, attorney and

judicial discipline, family law, and some civil matters. As an attorney, she tried over forty-five to fifty felony jury trials as a prosecutor; assisted in several murder trials; and defended individuals in two criminal jury trials, including a two-week mail fraud case. She also tried numerous bench trials.

In 2001, Heather Welch was appointed Master Commissioner for the Marion Superior Court, Criminal Division/Major Felony and Civil Division, serving in that role until she was elected in 2006 as Marion Superior Court Judge. She has since retained her judicial seat, once by election (2012) and once by a retention vote (2018) after endorsement from the Marion County Judicial Selection Committee. Judge Welch initially presided over a criminal docket but has been presiding over a civil docket since 2009. As a judge, she has presided over 160 jury trials (90 major felony, 8-10 D felony, and 60 civil cases). The civil jury trials include personal injury, medical malpractice, breach of contract, and defamation. These trials include two commercial court cases and a two-day jury trial in September 2020 that she safely executed during the global pandemic. Judge Welch also has presided over many bench trials.

Playing a prominent role in the development of the Indiana Commercial Courts, Judge Welch has served as co-chair to the Indiana Commercial Court Committee since 2013. In that role, she has been involved with outlining proposals for the pilot project as well as drafting the Indiana Commercial Court Rules and the Indiana Commercial Court Handbook. In 2016, she was one of six judges selected to test the new Indiana Commercial Court. In 2019, the Indiana Supreme Court made the specialized docket permanent; and Judge Welch remains among a select group of judges across the state eligible to preside over a complex business litigation docket. As a Commercial Court judge, she has presided over more than 600 commercial cases.

Judge Welch further has served the Marion Superior Courts through her roles on the Marion Superior Court Executive Committee and other committees. From 2017 to 2019, she was an associate presiding judge on the Executive Committee and then served as presiding judge from 2019 through 2021. During her tenure on the Executive Committee, she collaboratively developed an operations plan in response to the COVID-19 pandemic; guided the courts in the design and building of a new Community Justice Campus in collaboration with other stakeholders; and assisted in executing other initiatives, such as reducing jail overcrowding, adding an additional judge to the juvenile court, and helping to establish the Child Permanency Pilot Project. Throughout her judicial career, Judge Welch has served on many Marion Superior Court committees. Currently, she is the chair of the Civil Division and the supervising judge of the Jury Pool.

In addition to her activities with the Commercial Courts and her administrative leadership of the Marion Superior Courts, Judge Welch has worked to improve the administration of justice through her involvement in transformative legislative initiatives and important court rule changes. Judge Welch helped draft and modify proposed

legislation that later was enacted to create Marion County's merit-based judicial selection process. She also led the effort to enact legislation to convert Marion County's twenty-seven master commissioners to magistrates. Additionally, as Chair of the Ethics and Professionalism Committee for the Judicial Conference of Indiana, she oversaw the proposed amendment to Code of Judicial Conduct Rule 2.11 to add a subsection and comment setting forth a procedure for parties to waive judicial disqualification in certain circumstances. This amendment was approved by the Indiana Supreme Court.

Judge Welch is committed to diversity and the professional development of law students, colleagues, and fellow judges. She has authored several legal articles, including a recent piece published in the *Indiana Court Times* titled "Race & Equity in Judicial, Legislative and Executive Branches." From 2014 to 2021, she co-chaired the American Bar Association's Diversity Judicial Clerkship Program; and she routinely has mentored law students from the I.U. McKinney School of Law Court Externship Program. She is a frequent speaker at Indiana Judicial Conferences as well as for national, state, and local bar associations, presenting on subjects such as commercial courts, ethics, continuity of operations, civil case management, expert testimony, and family law. She is an adjunct professor at the Indiana University Robert H. McKinney School of Law, teaching legal communication and analysis.

Her pro bono legal efforts include assisting two other judges with the Heartland Pro Bono Organization to help low-income individuals with family law matters. Also, when the Marion County Law Library closed in 2008, she created a partnership between the court and the Indianapolis-Marion County Public Central Library, in which the library would assist unrepresented litigants by providing access to legal publications and forms.

Her national memberships include the American Bar Association, in which she is the past chair of the National Conference of State Court Trial Judges and a past editor of the *Judicial Division Record* (a quarterly publication about current events in the judiciary). She also is a member of the American College of Business Court Judges (currently serving as Treasurer) and the National Association of Women Law Judges (currently serving as the District Chair for Indiana). At the state and local level, she is a member of the Indiana State Bar Association (currently serving on the Business Law Section), the Marion County Bar Association, and Sagamore American Inn of Courts. She also is a member of the Indianapolis Bar Association, an organization in which she previously has served multiple leadership roles, including Chair of the Pro Bono Committee. Judge Welch is a judicial fellow of the Litigation Counsel for America and a fellow of the Indianapolis Bar Foundation.

Judge Welch also has served on numerous committees for the Judicial Conference of Indiana. In addition to the committees already mentioned, she is a member of the Civil Litigation Taskforce, a member of the Resuming Court Operations Task Force COVID-19, and a member of the Judicial Administration Committee. In March 2020, she was asked to

participate in an informal work group, the Indiana Jury Committee, to explore for the Indiana Supreme Court whether remote jury trials could be a viable option. She serves as the current Secretary/Treasurer for the Indiana Judges Association, and she also conducts character and fitness interviews of law school graduates for the Board of Law Examiners.

For her contributions to the law and the administration of justice, Judge Welch received the Antoinette Dakin Leach Award from the Indianapolis Bar Association's Women and Law Division (2019); the Indiana Bar Foundation's service award (2018); and the Indiana State Bar Association's Outstanding Judge Award (2018). In 2012, she was named a Distinguished Barrister from the Indiana Lawyer Leadership in Law, and Judge Welch was recognized as the Indiana Trial Judge of the Year in 2011 by the American Board of Trial Advocates.

Akin to her commitment to the judiciary, Heather Welch's dedication to her local community can be seen in myriad efforts. She currently serves as a Quality Assurance Task Force member for Big Brothers Big Sisters of America. She is a past president and board member of the Dynamo FC Soccer Club; a past board member of the Catholic Charities' Spirit of Development Committee; a past president of the Cathedral High School Men's Soccer Upper Ninety Club; and a past member of the advisory and steering committees for the National High School Mock Trial Competition. She has volunteered at the Boulevard Place Food Pantry, regularly spoken to area schools on Constitution Day, volunteered for "We the People" (a citizen and constitution program for high school students), assisted with the Reach for Youth Teen Court, and participated in various parish activities.

In her spare time, Heather Welch enjoys traveling with her family, watching local soccer, listening to audiobooks, and exercising.

I would be pleased to discuss any of these candidates with you in greater detail. I am confident you will conclude that all three nominees are of a high caliber and would be a lasting credit to the Court of Appeals of Indiana.

Sincerely,

A handwritten signature in black ink that reads "Loretta H. Rush". The signature is fluid and cursive, with the first name being the most prominent.

Loretta H. Rush  
Chief Justice of Indiana