

In the
Indiana Supreme Court

Cause No. 18S-MS-141



Order Amending Indiana Rules of Trial Procedure

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, the Indiana Rules of Trial Procedure are amended as follows (deletions shown by striking and new text shown by underlining):

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Rule 4. Process

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(F) **Limits of effective service.** Process may be served anywhere within the state and outside the state as provided in these rules.

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Rule 4.14. ~~Territorial limits and service under special order~~Service Under Special Order of Court

~~(A) — **Territorial limits of effective service.** Process may be served anywhere within the territorial limits of this state and outside the state as provided in these rules.~~

(B) Service under special order of court. Upon application of any party the court in which any action is pending may make an appropriate order for service in a manner not provided by these rules or statutes when such service is reasonably calculated to give the defendant actual knowledge of the proceedings and an opportunity to be heard.

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Rule 5. Service and filing of pleading and other papers

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(H) Distribution of Orders

(1) Unless otherwise provided by statute or these rules, the clerk shall distribute signed orders to non-defaulting parties for whom an e-mail address has not been provided.

(2) All orders in Trial Rule 69 Proceedings Supplemental, Execution, and Foreclosure Sales shall be distributed for service by the party who submitted the proposed order.

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Rule 64. Seizure of person or property

(A) Ancillary remedies to assist in enforcement of judgment.

(1) At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law and existing at the time the remedy is sought. The remedies thus available include, without limitation, arrest, attachment, attachment and garnishment, lis pendens notice, ejectment, replevin, sequestration, and other corresponding or equivalent legal or equitable remedies, however designated and regardless of whether by existing procedure the remedy is ancillary to an action or must be obtained by an independent action. Such remedies are subject to the provisions of this rule, and, except as herein otherwise provided, the action in which any of the foregoing remedies is used shall be commenced and prosecuted pursuant to these rules.

(2) The court may issue a writ of attachment, bench warrant, or body attachment if:

(a) a rule to show cause has been issued by the court and served upon the judgment debtor by delivering a copy of the same to the judgment debtor personally. Personal service under this rule includes certified mail signed by the judgment debtor;

(b) if service is not made in open court, the person making service has filed a return or affidavit stating that personal service was made upon the judgment debtor and setting forth the time, place, and manner thereof; and

(c) the judgment debtor has failed to appear at the rule to show cause hearing as ordered.

In addition to statutory requirements, the writ of attachment, bench warrant, or body attachment shall contain sufficient information to identify the judgment debtor.

(3) A person taken into custody in a civil action must be brought before the court that issued the writ, bench warrant or body attachment, or before a judicial officer having jurisdiction over the person within forty-eight (48) hours, excluding weekends and holidays, following the person being taken into custody. The person shall be advised of the procedures ~~under IC 34-47-4-2 or IC 31-16-12-6.5~~ for release, including any

bond, escrow amount set by the issuing court in the writ, bench warrant or body attachment.

(B) Attachment or attachment and garnishment. Attachment or attachment and garnishment shall be allowed in the following cases in addition to those where such remedies prior to judgment are now permitted by law:

(1) It shall be a cause for attachment that the defendant or one of several defendants is a foreign corporation, a nonresident of this state, or a person whose residence and whereabouts are unknown and cannot be determined after reasonable investigation before the commencement of the action.

(2) Any interest in tangible or intangible property owned by the defendant shall be subject to attachment or attachment and garnishment, as the case may be, if it is subject to execution, proceedings supplemental to execution or any creditor process allowed by law. Wages or salaries shall not be subject to pre-judgment attachment and garnishment, except as otherwise provided by law under Indiana Acts, ch. 38, §§ 197-244 [FN1].

(3) Attachment or attachment and garnishment shall be allowed in favor of the plaintiff suing upon a claim for money, whether founded on contract, tort, equity or any other theory and whether it is liquidated, contingent or unliquidated; or upon a claim to determine the rights in the property or obligation attached or garnisheed.

(4) It shall not be objectionable that the property or obligation being attached or garnisheed is in the possession of the plaintiff or is owing by the plaintiff to the defendant or by the defendant to the plaintiff.

(5) A governmental organization, or a representative, including a guardian, receiver, assignee for the benefit of creditors, trustee or representative of a decedent's estate may be named as a garnishee and bound by the duties of a garnishee.

(6) A writ of attachment against the defendant's real estate or his interest therein is effectively served by recordation of notice of the action in the appropriate lis pendens record, and, unless vacant, by serving the writ of attachment or notice thereof upon a person in possession of the land.

(C) Defendant's title raised by denial--Effect of dismissal. In action where the plaintiff is required to establish title to any fund or property, including without limitation any ejectment, replevin, quiet title, partition, equitable, legal or other action, the defendant in his answer may deny the plaintiff's claim of title and thereby place in issue the defendant's title or interest therein. If the defendant prevails under such an answer he shall be entitled to a judgment or decree enunciating his title or interest and any proper negative or affirmative relief against the plaintiff consistent with his proof.

Unless the defendant joins in the notice of dismissal, no voluntary dismissal by the plaintiff in such cases shall be allowed without prejudice after the plaintiff has obtained possession of the property or fund or other relief with respect thereto by posting bond, or after the

defendant by answer (whether by denial, affirmative defense, counter-claim or cross-claim) has placed title in issue.

~~[FNI] IC 34-1-11-1 to 34-1-11-48.~~

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Rule 69. Execution, proceedings supplemental to execution, foreclosure sales

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(E) Proceedings supplemental to execution. Notwithstanding any other statute to the contrary, proceedings supplemental to execution may be enforced by verified motion or with affidavits in the court where the judgment is rendered alleging generally:

- (1) that the plaintiff owns the described judgment against the defendant;
- (2) that the plaintiff has no cause to believe that levy of execution against the defendant will satisfy the judgment;
- (3) that the defendant be ordered to appear before the court to answer as to his non-exempt property subject to execution or proceedings supplemental to execution or to apply any such specified or unspecified property towards satisfaction of the judgment; and,
- (4) if any person is named as garnishee, that garnishee has or will have specified or unspecified nonexempt property of, or an obligation owing to the judgment debtor subject to execution or proceedings supplemental to execution, and that the garnishee be ordered to appear and answer concerning the same or answer interrogatories submitted with the motion.

If the court determines that the motion meets the foregoing requirements it shall, ex parte and without notice, order the judgment debtor, other named parties defendant and the garnishee to appear for a hearing thereon or to answer the interrogatories attached to the motion, or both.

The motion, along with the court's order stating the time for the appearance and hearing or the time for the answer to interrogatories submitted with the motion, shall be served upon the judgment debtor as provided in Rule 5, and other parties and the garnishee shall be entitled to service of process as provided in Rule 4. The date fixed for appearance and hearing or answer to interrogatories shall be not less than twenty [20] days after service. No further pleadings shall be required, and the case shall be heard and determined and property ordered applied towards the judgment in accordance with statutes allowing proceedings supplementary to execution. In aid of the judgment or execution, the judgment creditor or his successor in interest of record and the judgment debtor may utilize the discovery provisions of these rules in the manner provided in these rules for discovery or as provided under the laws allowing proceedings supplemental.

Writs of attachment, bench warrants, and body attachments are governed by Trial Rule 64(A).

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Rule 86. Electronic filing and electronic service

(G) Service of Pleading and Other Papers:

- (1) Except as otherwise provided in this Rule, all process shall be served in accordance with Trial Rules 4 and 4.1 through 4.17.
- (2) *Issuance of Summons and Service of Initial Complaint or Equivalent Pleading.*

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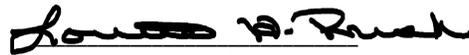
(f) When fees and other court costs are waived ~~under I.C. 33-37-3-2~~, and the clerk has received the required notification that the filer is entitled to this waiver, the clerk shall serve the complaint and summons(es).

Additionally, for service of separate or additional summons (alias summons) by the clerk, the filer shall provide documentation establishing that the filer is entitled to waiver of the fee for service.

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These amendments shall take effect upon January 1, 2019.

Done at Indianapolis, Indiana, on 7/26/2018.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.