

# In the Indiana Supreme Court

CAUSE NUMBER: 94S00- -MS-

ORDER AMENDING INDIANA RULES FOR ADMISSION TO  
THE BAR  
AND THE  
DISCIPLINE OF ATTORNEYS

Under the authority vested in this Court pursuant to Article 7, Section 4 of the Indiana Constitution providing for the admission and discipline of attorneys in this state, Rules 3, 23, 25, 29 and 30 of the *Indiana Rules for Admission to the Bar and the Discipline of Attorneys* are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

**INDIANA RULES FOR ADMISSION TO  
THE BAR  
AND THE  
DISCIPLINE OF ATTORNEYS**

...

**Rule 3. Admission of Attorneys**

...

**Section 2. Temporary Admission on Petition.**

...

(f) *Scope and Effect of Automatic Exclusion from Practice Within the State.*

(1) When an attorney is automatically excluded from practice within the state under Section 2(b) or (c), any further action taken by that attorney in any case in the state shall constitute the unauthorized practice of law.

(2) An attorney may seek relief from the automatic exclusion from practice within the state by filing a "Petition for Relief from Automatic Exclusion" with the Supreme Court. The petition shall be captioned: "In re Temporary Admission of [Attorney's name]." The petition shall describe the circumstances causing the exclusion, shall list all pending

cases, including court and case number, in which the attorney had been granted temporary admission prior to the automatic exclusion, and shall be accompanied by a "Notice of Temporary Admission" if the exclusion is under Section 2(b) or a renewal admission fee if the exclusion is under Section 2(c).

(3) If the Supreme Court grants the petition, the exclusion from practice shall be lifted and the Clerk of the Supreme Court shall notify all courts in which the attorney had been granted temporary admission to practice in cases pending at the time of the automatic exclusion. Unless the Supreme Court directs otherwise, all actions taken by the attorney during the period of automatic exclusion from practice shall be deemed valid to the extent the actions would have been valid if the attorney had not been subject to automatic exclusion. However, the attorney remains subject to a charge of the unauthorized practice of law for actions taken during the automatic exclusion.

...

### **Rule 23. Disciplinary Commission and Proceedings**

...

### **Section 27. Protection of Clients' Interests.**

Whenever an attorney has been disbarred or suspended and has not fully complied with the provisions of Section 26 above, or if an attorney has disappeared or died or is otherwise unable to comply with said section, the judge of the circuit court of the county in which said attorney maintained a practice shall, upon proper proof of such facts, appoint an attorney or attorneys to inventory the files of said attorney and take such action as may be appropriate to protect the interests of said attorney and his or her clients.

Any attorney so appointed shall not disclose any information contained in any such files without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed the attorney.

### **Attorney Surrogates**

(a) Definitions for purposes of this section only:

“Attorney Surrogate” means a senior judge certified by the Indiana Judicial Nominating Commission or another member of the bar of this State, in good standing, who has been appointed by a court of competent jurisdiction to act as an attorney surrogate for a lawyer.

“Court of competent jurisdiction” means a court of general jurisdiction in the county in which a Lawyer maintains or has maintained a principal office.

“Disabled” means that a Lawyer has a physical or mental condition resulting from accident, injury, disease, chemical dependency, mental health problems or age that significantly impairs the Lawyer’s ability to practice law.

“Fiduciary Entity” means a partnership, limited liability company, professional corporation, or a limited liability partnership, in which entity a Lawyer is practicing with one or more other members of the Bar of this State who are partners, shareholders or owners.

“Lawyer” means a member of the Bar of this State who is engaged in the private practice of law in this State. “Lawyer” does not include a member of the Bar whose practice is solely as an employee of another Lawyer, a Fiduciary Entity or an organization that is not engaged in the private practice of law.

*(b) Designation of Attorney Surrogate*

- 1) At the time of completing the annual registration required by Ind. Admission and Discipline Rule 23 Section 21 (D), a Lawyer may designate an attorney surrogate on the annual registration form provided by the Clerk of the Supreme Court by specifying the name, office address and residence address of the attorney surrogate and certifying that the attorney surrogate has agreed to the designation in a writing in possession of both the lawyer and the surrogate. The designation of an attorney surrogate shall remain in effect until revoked by either the designated attorney surrogate or the Lawyer designating the attorney surrogate. The Lawyer who designates the attorney surrogate shall notify the Clerk of the Supreme Court of any change of designated attorney surrogate within thirty (30) days of such change. The Clerk shall keep a list of designated attorney surrogates and their addresses.

- 2) A Lawyer, practicing in a Fiduciary Entity, will be deemed to have satisfied the requirements of this rule by stating the name and address of the Fiduciary Entity in the attorney surrogate designation section of the Lawyer's annual registration form. Because of the ongoing responsibility of the Fiduciary Entity to the clients of the Lawyer, no attorney surrogate shall be appointed for a Fiduciary Entity.
- 3) Unless otherwise designated on the annual registration form required by Ind. Admission and Discipline Rule 23 § 21(D) pursuant to subsection (1) above, a Lawyer not practicing in a Fiduciary Entity will be deemed to designate a senior judge or other suitable member of the bar of this State in good standing appointed by a court of competent jurisdiction to perform the duties of an attorney surrogate.

(c) Role of Attorney Surrogate

1) Upon notice that a Lawyer has:

- (a) died;
- (b) disappeared;
- (c) become disabled; or
- (d) been disbarred or suspended and has not fully complied with the provisions of Ind. Admission and Discipline Rule 23, Section 26

any interested person (including a local bar association) or a designated attorney surrogate may file in a court of competent jurisdiction a verified petition (1) informing the court of the occurrence and (2) requesting appointment of an attorney surrogate.

2) A copy of the verified petition shall be served upon the Lawyer at the address on file with the Clerk of the Supreme Court of Indiana or, in the event the Lawyer has died, upon the personal representative, if one has been appointed. Upon the filing of the verified petition, the court shall, after notice and opportunity to be heard (which in no event shall be longer than ten (10) days from the date of service of the petition), determine whether there is an occurrence under (a), (b), (c) or (d), and an attorney surrogate needs to be appointed to act as custodian of the law practice. If the court finds that an attorney surrogate should be appointed then the court shall:

- a) appoint either the designated attorney surrogate as set forth pursuant to subsection (b)(1) or a suitable member of the Bar of this State in good standing as attorney surrogate, or
- b) appoint a senior judge or other suitable member of the Bar of this State in good standing deemed designated pursuant to subsection (b)(3).

3) Upon such appointment, the attorney surrogate may:

- (a) take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;
- (b) notify persons and entities who appear to be clients of the Lawyer that it may be in their best interest to obtain replacement counsel;
- (c) apply for extensions of time pending employment of replacement counsel by the client;
- (d) file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;
- (e) give notice to appropriate persons and entities who may be affected, other than clients, that the attorney surrogate has been appointed;
- (f) arrange for the surrender or delivery of clients' papers or property;
- (g) as approved by the court, take possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) deliver the file to the client; make referrals to replacement counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and
- (i) do such other acts as the court may direct to carry out the purposes of this section.

4) If the attorney surrogate determines that conflicts of interest exist between the attorney surrogate's clients and the clients of the Lawyer, the attorney surrogate shall notify the court of the existence of the conflict of interest with regard to the particular cases or files and the attorney surrogate shall take no action with regard to those cases or files

(d) Jurisdiction of Court

A court of competent jurisdiction that has granted a verified petition for appointment under this section shall have jurisdiction over the files, records and property of clients of the

Lawyer and may make orders necessary or appropriate to protect the interests of the Lawyer, the clients of the Lawyer and the public. The court shall also have jurisdiction over closed files of the clients of the Lawyer and may make appropriate orders regarding those files including, but not limited to, destruction of the same.

*(e) Time Limitations Suspended.*

Upon the granting of a verified petition for appointment under this section, any applicable statute of limitations, deadline, time limit or return date for a filing as it relates to the Lawyer's clients (except as to a response to a request for temporary emergency relief) shall be extended automatically to a date 120 days from the date of the filing of the petition, if it would otherwise expire on or after the date of filing of the petition and before the extended date.

*(f) Applicability of Attorney-Client Rules.*

Persons examining the files and records of the law practice of the Lawyer pursuant to this section shall observe the attorney-client confidentiality requirements set out in Ind. Professional Conduct Rule 1.6 and otherwise may make disclosures in camera to the court only to the extent necessary to carry out the purposes of this section. The attorney-client privilege shall apply to communications by or to the attorney surrogate to the same extent as it would have applied to communications by or to the Lawyer. However, the attorney surrogate relationship does not create an attorney/client relationship between the attorney surrogate and the client of the Lawyer.

*(g) Final Report of Attorney Surrogate; Petition for Compensation; Court Approval.*

When the purposes of this section have been accomplished with respect to the law practice of the Lawyer, the attorney surrogate shall file with the court a final report and an accounting of all funds and property coming into the custody of the attorney surrogate. The attorney surrogate may also file with the court a petition for reasonable fees and expenses in compensation for performance of the attorney surrogate's duties. Notice of the filing of the final report and accounting and a copy of any petition for fees and expenses shall be served as directed by the court. Upon approval of the final report and accounting, the court shall enter a

final order to that effect and discharging the attorney surrogate from further duties. Where applicable, the court shall also enter an order fixing the amount of fees and expenses allowed to the attorney surrogate. The amount of fees and expenses allowed shall be a judgment against the Lawyer or the estate of the Lawyer. The judgment is a lien upon all assets of the Lawyer (except trust funds) retroactive to the date of filing of the verified petition for appointment under this section. The judgment lien is subordinate to nonpossessory liens and security interests created prior to its taking effect and may be foreclosed upon in the manner prescribed by law.

(h) Immunity

Absent intentional wrongdoing, an attorney surrogate shall be immune from civil suit for damages for all actions and omissions as an attorney surrogate under this section. This immunity shall not apply to an employment after acceptance of representation of a client with the agreement of the client under subsection (c)(3)(h) above.

...

**Rule 25. Judicial Disciplinary Proceedings**

...

**VIII. Disciplinary Procedure.**

...

B. *Confidentiality.*

(1) Before the filing and service of formal charges, the Commission shall not publicly disclose information relating to a complaint, inquiry, or investigation, except that the Commission may disclose information:

- (a) upon waiver or agreement by the judicial officer; or
- (b) where the Commission has determined that there is a need to notify another person or agency in order to protect the public or to assure the proper administration of justice; or
- (c) where the Commission elects to respond to publicly disseminated statements by a complainant or a judicial officer.

(2) After the filing of formal charges, all pleadings and proceedings are public unless the Masters or Supreme Court find extraordinary circumstances warranting limitations on the public nature of the proceedings.

(3) Commission deliberations, settlement conferences, and proposed settlement agreements shall remain confidential. Settlement agreements submitted to the Supreme Court for approval shall become public when the Supreme Court accepts the agreement in whole or in part and issues an order or opinion resolving the judicial disciplinary case.

...

### **Rule 29. Mandatory Continuing Legal Education**

| ...

### **SECTION 3. EDUCATION REQUIREMENTS.**

| (a) Every Attorney, except as provided below, and every Judge of a city, town or Marion County small claims court, who is not licensed as an Attorney, shall complete no less than six (6) hours of approved continuing legal education each year and shall complete no less than thirty-six (36) hours of approved continuing legal education each Educational Period. At least three (3) hours of approved continuing legal education in professional responsibility shall be included within the hours of continuing legal education required during each three (3) year Educational Period. Such hours may be integrated as part of a substantive program or as a free standing program. All credits for a single educational activity will be applied in one (1) calendar year. No more than twelve (12) hours of the Educational Period requirement shall be filled by Non Legal Subject Matter Courses.

(b) Every trial judge of a circuit, superior, probate or county court first elected or appointed to the bench after January 1, 2006 shall attend the next regularly scheduled New Judge Orientation Program following the date of the judge's election or appointment unless the Chief Justice of Indiana, for good cause shown in a written request, excused the judge.

(c) Attorneys admitted to the Indiana Bar before December 31, 1998, on the basis of successfully passing the Indiana Bar examination, shall have a grace period of three (3) years commencing on January 1 of the year of admission and then shall commence meeting the



minimum yearly and Educational Period requirements thereafter. Attorneys admitted after December 31, 1998, shall commence meeting the yearly and Educational Period requirements starting on January 1 after the year of their admission by completing programs designated by the Commission as appropriate for new lawyers.

For attorneys admitted after December 31, 1998, at least six (6) of the thirty-six (36) Educational Period Requirements shall be satisfied by attending an Applied Professionalism Program for Newly Admitted attorneys which has been accredited by the Commission.

(d) Attorneys admitted on foreign license or Attorneys who terminate their inactive status shall have no grace period. Their first three year Educational Period shall commence on January 1 of the year of admission or termination of inactive status.

(e) For Judges of city, town and Marion County small claims courts, who are not Attorneys, the first three year Educational Period shall commence on January 1 of the first full calendar year in office.

A Judge who fails to comply with the educational requirements of this rule shall be subject to suspension from office and to all sanctions under Section 10. A Judge so suspended shall be automatically reinstated upon compliance with Section 10(b) "Reinstatement Procedures". The Commission shall issue a statement reflecting reinstatement which shall also be sent to the Clerk to show on the Roll of Attorneys that the Judge is in good standing.

(f) In recognition of the nature of the work, commitment of time, and the benefit of attorney participation in the Indiana General Assembly, during an attorney's Educational Period, for each calendar year in which the attorney serves as a member of the Indiana General Assembly for more than six (6) months, the attorney's minimum number of continuing legal education hours for that Educational Period shall be reduced by six (6) hours.

...

### **Rule 30. Indiana Certification Review Plan**

...

**Section 3. Authority and Discretion of CLE.** In furtherance of the foregoing powers and subject to the supervision of and, where appropriate, appeal to the Supreme Court of Indiana, CLE shall have authority and discretion to:

...

(b) adopt and interpret rules and policies reasonably needed to implement this rule and which are not inconsistent with its purposes;

...

**Section 4. Qualification Standards for Independent Certifying Agencies.**

...

(b) The ICO shall be a non-profit entity whose objectives and programs foster the purpose of this rule ~~and which is governed by lawyers who, in the judgment of CLE, are experts in the field of certification~~ . A majority of the body within an Applicant organization reviewing applicants for certification of lawyers as specialists in a particular area of law shall consist of lawyers who, in the judgment of CLE, are experts in the field of certification.

...

(e) The ICO shall provide the following assurance to the continuing satisfaction of CLE with respect to its certified ~~members~~ practitioners:

(1) that ~~members~~ certified practitioners have ~~extraordinary competence and efficiency~~ a demonstrated proficiency in the field of certification that is:

- i. comprehensive;
- ii. objectively demonstrated;
- iii. peer recognized; and
- iv. reevaluated at appropriate intervals;

...

**INDIANA SUPREME COURT DISCIPLINARY  
COMMISSION RULES GOVERNING ATTORNEY  
TRUST ACCOUNT OVERDRAFT REPORTING**

...

**Rule 7. Miscellaneous Matters**

...

C. All communications from financial institutions to the Disciplinary Commission shall be directed to: Executive Secretary, Indiana Supreme Court Disciplinary Commission, ~~115 West Washington~~ 30 South Meridian Street, Suite ~~1165~~ 850, Indianapolis, Indiana 46204.

...

**Exhibit A. Trust Account Overdraft Reporting Agreement**

TO: INDIANA SUPREME COURT DISCIPLINARY COMMISSION  
~~115 West Washington Street~~ 30 South Meridian Street  
Suite ~~1165~~ 850  
Indianapolis, Indiana 46204

...

These amendments shall take effect January 1, 2008.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this \_\_\_\_\_ day of September, 2007.

---

Randall T. Shepard  
Chief Justice of Indiana

All Justices concur.