

Rules of Appellate Procedure

Rule 69. Notices of Defect

A. Notice of Defect Procedure.

(1) When the Clerk receives a document that is noncompliant with one or more of the reasons set forth in this rule, the Clerk shall stamp the document as “received” (but not filed) as of the date it would have been deemed filed but for the defect(s). The Clerk shall then send a “Notice of Defect” to the attorney or unrepresented litigant that tendered the document, shall serve all other parties with a copy of the Notice of Defect, and shall note the transmission of the Notice of Defect on the docket if a cause number has been assigned to the matter.

(2) Individuals that are incarcerated in a penitentiary, prison, or jail and are not represented by an attorney must correct defect(s) no later than twenty (20) business days from the date of the Notice of Defect. All other persons have ten (10) business days from the date of the Notice of Defect within which to correct defect(s).

(3) If the attorney or unrepresented litigant corrects the defect(s) by the deadline provided in the Notice of Defect, and if the corrected document fully complies with the Appellate Rules in all other respects, the document shall be deemed filed as of the date the corrected document is filed with the Clerk’s Office pursuant to Appellate Rule 23(A) and shall be deemed timely for purposes of any applicable filing deadline. Any corrected document shall be served upon all other parties pursuant to Appellate Rule 24. Any time period for other parties to respond to the defective document shall be computed from the date the corrected document is served.

(4) If the attorney or unrepresented litigant fails to submit a fully compliant corrected document by the deadline provided in the Notice of Defect, the Clerk shall note this on the docket if a cause number has been assigned to the matter.

B. Tendered Documents That Do Not Comply with The Indiana Rules of Appellate Procedure.

(1) A Notice of Defect may be issued if one or more of the following is missing, insufficient, or incomplete:

(a) A certificate of service, see Ind. Appellate Rules 24, 57(G)(7), 68(F);

(b) A word count certificate, see App. Rs. 34(G)(2), 44(E) & (F), 54(E), 57(G)(6);

(c) A table of contents or table of authorities, see App. Rs. 46(A)(1) & (2), 46(B), 46(E)(1), 50(A)(2), 50(B)(1), 50(C), 57(G)(2);

(d) For the first document filed after the Notice of Appeal by a party proceeding *in forma pauperis*, the material required by Appellate Rule 40(C);

(e) For a motion to proceed *in forma pauperis*, a copy of any affidavit supporting the request to proceed *in forma pauperis* that was filed with the trial court or an affidavit conforming to Form #App. R. 40-2; or a copy of the order setting forth the trial court’s reasons for denying the *in forma pauperis* status on appeal;

(f) For an Appearance, information required by Appellate Rule 16(B);

(g) For an Appendix, a verification of accuracy, see App. Rs. 50(A)(2)(i), 50(B)(1)(f);

(h) For an Appellant's Brief, an accompanying copy of the trial court's written opinion, memorandum of decision, or findings of fact and conclusions relating to the issue(s) raised in appeal, see App. R. 46(A)(12);

(i) For an Appellant's Brief in a criminal appeal where the sentence is at issue, an accompanying copy of the sentencing order, see App. R. 46(A)(12);

(j) For a Petition to Transfer, a brief statement, set out by itself on the page immediately following the front page, identifying the issue, question presented, or precedent warranting transfer, see App. R. 57(G)(1);

(k) For a Petition for Review or brief in response, a brief section entitled *Reasons for Granting or Denying Review*, set out by itself immediately before the *Argument* section, explaining why review should or should not be granted, see App. R. 63(I).

(2) A Notice of Defect may be issued if one or more of the following prohibited items is included:

(a) For any Brief, any additional documents, other than the appealed judgment or order, see App. Rs. 46(F), 46(H);

(b) For any document, information excluded from public access when the document is not accompanied by a Notice to Maintain Exclusion from Public Access, see App. R. 23(F)(3).

(3) A Notice of Defect may be issued if the document is otherwise defective because:

(a) Document Production issues exist, see App. Rs. 43(C), 51(A), and/or 54(F);

(b) Page numbering issues exist, see App. Rs. 23(F)(3)(b), 34(G), 43(F) and/or 51(C);

(c) The document was conventionally filed but should have been electronically filed through the Indiana E-Filing System, see App. R. 68(C).