COURT REPORTER'S HANDBOOK

FIFTH EDITION (Third Revision 2018)

Disclaimer

This Handbook must not be construed as constituting any part of the court reporter's employment contract with the judge. Delivery and receipt of this Handbook is not to be construed as a modification of the court reporter's employment contract.

The information and suggested procedures set forth in this Handbook are subject to constant change and do not attempt to consider the impact of any local rules. Much of the material represents broad general statements of practice that are subject to the individual discretion of the judge who may properly choose to follow or not to follow the suggested practices contained herein.

This Handbook is only intended to assist the courts by providing basic answers to a court reporter's general questions and should serve only as a foundation for further investigation and consultation with the judge. The forms contained within this Handbook are only intended to serve as samples. All information, procedures, and forms should be carefully reviewed with the judge to determine both acceptability and applicability to any specific situation.

The Indiana Judicial Center and the contributing authors hereby disclaim any and all responsibility or liability, which may be asserted or claimed arising from or claimed to have arisen from:
reliance upon the procedures, practices, or information contained in this Handbook
the utilization of the forms set forth in this Handbook, by the court reporter or any other non-attorney.

After consultation with the judge, the court reporter may refer specific questions either to the Indiana Judicial Center, the Indiana Supreme Court Office of State Court Administration, or the Office of the Administrator of the Indiana Court of Appeals.

Indiana Judicial Conference Board of Directors:
https://www.in.gov/judiciary/iocs/2386.htm

Indiana Office of Court Services:
https://www.in.gov/judiciary/iocs/

COURT REPORTER TASK FORCE
2018

Jennifer Applegate
Court Reporter
Noble Superior Court No. 2

Sylvia Favors
Court Reporter
Shelby Superior Court

Kristie Mosier
Court Reporter
Henry Circuit Court No. 1

Rhonda Rohrer
Court Reporter
Wayne Superior Court No. 1

Christa Coffey
Clerk
Tippecanoe Circuit & Superior Courts

Kyle Gillaspie, Chair
Chief Staff Attorney
Indiana Court of Appeals

Tonya Muckerheide
Court Reporter
Rush Superior Court

PREFACE

The responsibility of a court reporter is to preserve what is said or occurs in a court proceeding when an official record must be made. This task must be performed without disruption or delay of the proceedings. The equipment used by reporters in Indiana is not uniform nor is their training but their work product must be the same: a printed transcription of the record that is accurate organized and delivered in as short a period of time as possible.

A court reporter's responsibilities are often overlooked, misunderstood and taken for granted. Many reporters spend considerable time after normal work hours and away from family in order to complete requested transcripts.

Almost forty years have passed since the publication of the first Court Reporter Handbook by the Indiana Judicial Center. Indiana's court system still does not have an agency responsible for the creation of standards for court reporting services, equipment or the education of its court reporting personnel. Indiana's courts continue to be served by a variety of reporters, varying in experience and training but dedicated to creation of a true and accurate record of court proceedings.

In 2003, a task force revised the previous edition in light of changes made to the Trial Rules and Rules of Appellate Procedure and changes in technology available for reporting services. The members were all volunteers with years of experience as reporters who came from all geographic areas of the state and from counties, both rural and metropolitan.

In 2009 a new edition was produced with the assistance of many members of the 2003 Taskforce who have once again given of their time and experience. In the years that followed yearly updates kept the 2009 Edition current.

Although this manual is not official, it is offered as an approach and guide to the reporters who work, often in isolation, to handle the technical, ethical and management issues related to reporting. To paraphrase the Hon. James E. Letsinger, former judge of Lake County Superior Court (Criminal Division), this is a book of recipes compiled by cooks who have spent a lot of time in the kitchen.

Richard T. Payne, Chair
May, 2014

PREFACE II

There have been many changes affecting Court Reporters since the Publication of the 2015 First Revision of the Fifth Edition of the Court Reporter's Handbook. The handbook has been updated to reflect the changes. In order to assist Court Reporters with an overview of the changes, a summary of what has changed and what stays the same is included in Appendix G of the handbook. Also, in Appendix H, the handbook includes sample transcripts and instructions on how to create, in both Word and Word Perfect, a transcript which complies with Appendix A of the Rules of Appellate Procedure.

Julie Fessel Flanigan, Chair
June, 2016

TABLE OF CONTENTS

Chapter 1 – Ethical Considerations 9
- **Definitions** 10
- **History of Reporting and Development of Reporting Systems** 10
- **Preparation for a Career as a Court Reporter** 12
- **Ethics and Professionalism** 13
- **Special Requirements** 14

Chapter 2 - Statutes, Rules and Case Law Governing Court Reporters 30
- **Judges General Authority to Hire a Court Reporter** 31
- **Statutes Defining Requirements for Office** 31
- **Duties of a Court Reporter** 32
- **The Court Reporter in Criminal Cases** 47
- **Selected Statutes Requiring a Record in Criminal Cases** 51
- **Pre-Trial Civil and Criminal Discovery** 54
- **Special Rules/Statutes Requiring a Record in Civil Cases.** 57
- **The Court Reporter and Jurors** 58
- **The Court Reporter as a Witness** 59
- **Rules Governing the Preparation of a Transcript** 59
- **The Court Reporter and the Rights of the Indigent** 60
- **The Court Reporter and the Right of Public and Press to Access Public Records** 63
- **The Court Reporter and the Appellant–Statutes and Rules Governing Charges and Costs** 64

Chapter 3 – Pre-Trial Preparation and Procedure 65
- **The Case File** 66
- **Bench Trial or Jury Trial** 67
- **Pre-Trial Proceedings in Criminal Cases-Court Reporter's Duties** 67
- **Pre-Trial Proceedings in Civil Cases-Court Reporter's Duties** 68
- **Suggested Pre-Jury Trial or Pre-Bench Trial Preparation** 68

Chapter 4 – Making the Record in the Courtroom 73
- **Introduction** 74
- **Professionalism and Demeanor** 74
- **Recording Methods** 74
- **Scope** 74
- **Court Reporting Techniques** 74
- **Common Reporting Problems** 77
- **Special Situations** 80
- **Exhibits** 81

Chapter 5 – Preparation of the Transcript of Evidence 84
- **Introduction – The Transcript in Relation to the Appellate Process.** 85
- **Overview** 85
- **Initiation of an Appeal – The Notice of Appeal** 85
- **Issues Related to Payment** 87
- **Supplementation of the Record on Appeal** 89
- **Preparation of a Transcript – What is Verbatim?** 89
- **Appearance and Quality of the Transcript** 92

Technical Requirements Appendix A, Appellate Rules 92
Exhibits, Appellate Rule 29 98
Administrative Rule 9 and Transcripts… 98
Transcripts Prepared by Others than the Reporter Who Recorded the Evidence ... 99
Time and Extensions of Time 99
Retention of a Copy of the Transcript 100

Chapter 6 – Retention and Destruction of Court Records and Exhibits 101
Introduction 102
Purpose of Retaining Court Records 102
Court Records in Criminal Cases 102
Court Records in Civil Cases 103
What Happens if a Court Record has been Destroyed? 103
Retention of Depositions – Civil and Criminal Cases 103
Retention of Evidence 103
Microfilming 105
Optical Disk Imaging 105

Chapter 7 – Issues Related to Employment 106
Introduction 107
Court Rules Governing Court Reporter Services 107
Guidelines Concerning Fees 111
Trial Rule Provisions Regarding Method of Reporting and other Responsibilities 112

Appendices

Appendix A 114
General References 114
Glossary 114
Commonly Used Terms in Drug Cases 134
Commonly Used Genetic Terms 137

Appendix B 143
Internet Reference Sites 143

Appendix C 145
Forms of Citation 145

Appendix D 148
Witness and Exhibit List 149
Exhibit Log 150

Appendix E 151
Certificates and Affidavit… 151
Reporter's Certificates… 152
Motion for Extension to File Transcript 156
Notice of Filing Transcript 158

Appendix F… 159
Sample Billing Forms (2016)

Appendix G 165
Summary Highlights of 2016 Rule Changes

Appendix H.....175
Instructions in Word and Word Perfect for Transcripts
Transcript Samples

CHAPTER 1

ETHICAL CONSIDERATIONS

CHAPTER 1

ETHICAL CONSIDERATIONS

Definitions

The phrases "make a record", "made a record" and "making a record" refer to the process of using one or more of the means specified by T. R. 74 and Crim. R. 5 in order to preserve: (1) statements and objections, and arguments of counsel; (2) verbal expressions and verbal testimony of the judge, the witnesses, the parties, the jurors, and any members of the public that may occur during any proceeding, hearing, bench trial, or jury trial.

The word "record" refers to the result obtained after the process of "making a record" has been completed. The meaning of the word will vary depending upon the means of preservation used by the court reporter. The method could be handwritten longhand notes, handwritten shorthand notes, stenographic paper notes, stenographic computer disks, an audio electronic recording tape or digital recording to computer hard drive or compact disk.

The phrases "audio electronic tape recording(s)", "audio recordings", "electronic tape" and "electronic tape recording(s)" refer to "electronic . . . device" language of T.R. 74 and the "electronic recording" and "recording device" language of Crim. R. 5.

A "transcript" refers to a typed document intended to constitute the transcription of the record of a particular proceeding, bench trial or jury trial conducted in either a civil or criminal case.

A transcript is in the form specified by App. R. 27 – 29 and Appendix A. A transcript is filed with the clerk of the court as required by T.R. 74, Crim. R. 5, and App. R. 11. The language of the Notice of Appeal determines the content of a transcript.

The phrase "Record on Appeal" refers to the definition found in App. R. 2.

History of Reporting and Development of Reporting Systems

Early History

Reporting has been traced back more than 2,000 years. From notes found on the margins of Ancient Greek and Egyptian manuscripts, we know that it was practiced as early as the Fourth Century B.C. Marcus Tullius Tiro, a freedman of Ancient Rome, developed a system with which he recorded the speeches of the great orator Cicero.

Tironian, as his system became known, was learned by the emperor Augustus, who later taught it to his grandchildren. It was also used by other writers in recording speeches in the Roman Senate.

The story of reporting as it exists today begins with the 16th Century. The first system of reporting approaching fully phonetic writing was devised by Timothy Bright, who in the year 1588 published a treatise on shorthand dedicated to Queen Elizabeth I. Shorthand characters were then used for more than a century by ministers and scholars to write their sermons and letters, and even used in diaries, because some believed it afforded more privacy than longhand. Samuel Pepys' diary, the first entry of which was made in 1660, and the last in 1669, was written in shorthand to attain secrecy.

The year 1750 saw the publication of the system of Thomas Gurney, the first official reporter of parliamentary debates in Great Britain - a post that was held by members of his family down to recent times. About 1786 the system of Taylor became immensely popular. Before he became a famous author, Charles Dickens, practiced as a parliamentary reporter and used the Taylor system. His struggles in acquiring speed, as described in "David Copperfield," continue even today in modern reporting as a paramount labor, together with the acquisition of accuracy.

Shorthand

Modern shorthand began with the introduction of Pitman shorthand in 1837, followed some fifty years later by Gregg shorthand. These are known as manual systems that is, written with pen or pencil using graphic symbols to represent phonetic speech. The Century system of shorthand also continues in existence, as a manual system, but with characters different from Gregg. In 1913, a method was introduced for the writing of shorthand by machine, known as machine shorthand, stenotype or touch shorthand. In this method a touch of keys in various combinations produces phrases, as a touch of piano keys produces chords.

In addition to manual shorthand and stenotype, there are five other methods for producing a transcript in use today. "Audio recordings" preserve court proceedings by recording participants' voices over microphones onto tapes, either reel-to-reel or cassette. Both single and multi-track machines are used. A "steno mask" reporter uses a single-track audio recording machine and repeats the words spoken in the courtroom into a microphone encased in a soundproof mask much like a simultaneous interpreter or language reporter in court. The Gemelli voice-writing technique is an adaptation of the steno mask. A multi-track recording machine is used to record both the reporter's whispers (there is no mask) and the voices of the participants.

The two remaining methods are the most recent developments in reporting. A "video record" of court proceedings can be made by electronically recording on to videotape the participants' voices and images. It is most often used in taking depositions and not for the production of a written transcript. Videotaped depositions are sometimes taken in evidence at trial upon qualification. "Computer Aided Transcription (CAT)"

uses a modified stenotype machine which electronically records the symbols on a magnetic disc. The disc is inserted into a computer, which produces an on-screen draft for editing by the reporter. The computer-printer then prints a transcript from the edited disc material. The CAT system promotes speed in transcript production. It enables, for example, the speedy preparation of "same day transcripts" during the course of litigation for a multitude of purposes. More and more court reporters in the State of Indiana are being trained in, and utilize, the CAT system. Success using either of these systems requires two (2) skills: speedy and accurate disc production and accurate on-screen editing of disc material.

In the article "Technology and Access to the Courts" appearing in the summer, 1994 issue of Court Review," American Judges Association; Roger Miller, President of the National Court Reporters Association states:

> "Many important by-products have appeared with CAT: keyword indexing, rapid or instant building, and interfacing the digital record with computer systems."
>
> "But the unique capability of CAT is production of the real time record. Real time is translation in its purest form, defined as the conversion of the spoken word simultaneously into printed format. Never before have we been able to convert the spoken word to the written word almost simultaneously. This represents a magnificent achievement in verbatim reporting."
>
> "In the late 1970s, the first practical system for real time translation appeared in the marketplace. And by 1981, it was sophisticated enough to be used for real time closed-captioning."

The caseload of the majority of courts in Indiana is increasing drastically each year. Just as our court system is changing to keep up with times and demand, so must the professions that serve.

There is an increased burden on court reporters to produce more transcriptions in less time. If an efficient court system is to be maintained, it must remain staffed with skilled personnel and up-to-date equipment. Alexander B. Aikman, Senior Staff Attorney, N.C.S.C., in his article, "Measuring Court Reporter Income and Productivity," supports the importance of skilled court personnel and their burdensome task: "No other person in the courtroom must concentrate on and follow the proceedings to the same degree."

Preparation for a Career as a Court Reporter

The court reporter must possess three distinct skills: (1) an accurate typing speed in an electronic environment, (2) language interpretation/translation skills and (3) basic familiarity with court processes and procedures. The court reporter is usually hired on

the strength of demonstrated abilities in these areas and educational credentials. A person preparing for this demanding career will need both specialized training and a good general education.

Attaining adequate skill in reporting by shorthand or stenotype involves an estimated 24 months of study and practice, an extremely demanding and expensive process. Court reporters who have mastered the shorthand and stenotype speed necessary for verbatim reporting are in great demand in the free-lance field.

Some judges, who work within limited budgets, may expect the court reporters to perform a variety of other general duties. The judge may rely heavily upon the electronic recording method of court reporting. The judge might utilize a typist, who might not have undergone a strenuous formal educational process.

A high school diploma is a required minimum educational background. An associate college degree coupled with some law related experience is desirable. The person seeking a position should take training relating to basic courtroom procedure, legal terminology and pleadings. An extensive vocabulary, a good understanding of English grammar, punctuation, and technical terminology are desirable

Continuing professional education, whether formalized or self-developed, is an essential ingredient for the continuing betterment of the justice system and the professional and personal attributes of the court reporter.

Ethics and Professionalism

Court reporters look to Indiana's Code of Judicial Conduct for guidance and decorum and performance, both in and out of the courtroom. That Code, found in the Indiana Court Rules, is binding on judges and contains several sections, which are specifically directed to court reporters and other court personnel. Other canons therein, though not directly applicable to the judge's staff, serve as guidelines for addressing situations where political, personal and business involvements, both past and present, might conflict with professional responsibility. The court reporter must always be cognizant of the overriding requirements of propriety of action, impartiality of treatment, and balance in approach.

The court reporter is a public servant. See I.C. 35-31.5-2-261. The court reporter must follow the court rules, case law, and statutes, as they apply to an officer of the court. The court reporter is responsible to the judge for production of records and transcripts, and for related deportment.

Upon the acceptance of an appointment as a court reporter, the court reporter should be aware that there are certain specific rules of conduct unique to this position. The best source of knowledge relating to specific rules of conduct is the judge.

A court reporter, like other court employees who interact with the public as well as the Bar, represent the judicial system. A reporter who exhibits appropriate demeanor, decorum and professionalism will serve the court well.

Use of Social Media

Some courts and county governments have adopted specific policies regarding the use of social media during work hours. Reporters must be attentive to existing policies.

Even if a court or county has not adopted such a policy, a reporter will be wise to consider how use of social networking media may reflect upon them and their court.

Special Requirements

Private Communications

The court reporter, privy to the judge's verbal legal reasoning off the record as a part of the decision-making process, must keep such information in the strictest confidence.

Media

If the court reporter is assigned to handle the dissemination of information to news media, the court reporter must relate only what the record reveals without interpretation, personal comment, or related comment. The optimum practice is to invite media representatives to inspect the record and make their own discernment. In the event that the record has been ordered sealed by the judge, the court reporter must not reveal the contents of the record. See Chapter 2.

Record Maintenance and Safekeeping

The court reporter has the responsibility for the maintenance and safekeeping of the record and exhibits. Exhibits or tapes should not leave the custody and control of the court reporter and should not be removed from the court facility, except for an emergency or upon authorization of the judge. It is acceptable practice to allow litigants, represented or pro se, counsel, members of the press and members of the public, to listen to the tapes in accordance with procedures designed to guarantee the integrity of the record. The court reporter must exercise diligence at all times to maintain and protect the genuineness of the tapes against either potential tampering or loss.

During the course of a trial, exhibits are treated differently. See Chapter 2, Section: The Court Reporter and the Right of Public and Press to Access Public Records, subsection Public Access to Records. After the conclusion of the trial or proceeding, members of the public and the press may view the exhibits unless the judge has issued an order that prevents access. During the trial, counsel and parties may examine the exhibits. The court reporter is required to be personally present during any exhibit examination and must exercise diligence at all times to maintain and protect the

genuineness of the exhibits against potential removal, tampering, alteration, damage, or loss.

Necessity of a Notice of Appeal

The court reporter should not undertake the preparation of a transcript unless the court reporter has received a timely and proper notice of appeal, a written order from counsel during trial, or an order from the judge.

Preparation of Transcript

The court reporter who makes the record of a trial or proceeding is generally responsible for the preparation of the transcript of that trial. Reasons of style and interpretation dictate that this practice results in a more complete and accurate record.

Both T. R. 74 and Crim. R. 5 authorize a judge to use "other" persons to prepare a transcript from a trial or hearing. Other persons may be utilized to type a transcript in compliance with orders from the Indiana Supreme Court and to avoid a possible contempt sanction. See Matter of Hatfield, 607 N.E.2d 384 (Ind. 1993). In the event that a person (other than the reporter who made the record of the trial or proceeding) types the transcript, the person who types the transcript signs a Reporter's Certificate that the transcript is complete and accurate.

Examination of the NORMAL CERTIFICATION REPORTER'S CERTIFICATE form in the Appendix reveals that the word "true" is omitted from the NORMAL CERTIFICATION REPORTER'S CERTIFICATE in the event that a person other than the court reporter types the transcript from an audio tape(s). In other words, the assumption behind the NORMAL CERTIFICATION REPORTER'S CERTIFICATE is that the court reporter, who attended and witnessed the trial or proceeding and who made the record, also prepared the transcript. This revision contains a form certification for a typist preparing the transcript and a form certification for a typist and court reporter preparing the transcript.

Procedure in the Event of an Ethical Violation

If an inadvertent ex parte communication is made by the court reporter, it should be remedied by prompt disclosure to all parties, after immediate consultation with the judge. If an ex parte communication is solicited from the court reporter, the court reporter must refuse to respond and immediately notify the judge.

When Not to Be Involved in Preparation of a Transcript

A newly hired court reporter who has just left employment of a law firm or lawyer should not be involved in the preparation of a transcript concerning a case in the law office on which they worked or had some supervisory capacity. Similarly, a reporter should avoid involvement in cases in the court that involve family members or close

friends. In this way, the reporter will avoid any hint of bias or conflict of interest in the work of the court as dealt with in Code of Judicial Conduct Canon 1, Rules 1.2 and Canon 2, Rules 2.4, 2.11 and 2.12.

Code of Judicial Conduct – Selected Provisions

Preamble

"An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence…"

The preamble establishes the philosophical tone for judicial and staff conduct, and the relationship between judge and staff relative thereto. It promotes the independence and separateness of the judicial branch of government as the essential for propriety of life and action, and requires the continuing goal of high standards of conduct for this entire branch of government, judges and staff alike.

Canon 1

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.1: *Compliance with the Law*

A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.2: *Promoting Confidence in the Judiciary*

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.3: *Avoiding Abuse of the Prestige of Judicial Office*

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Canon 2

A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule 2.2: *Impartiality and Fairness*

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.3: *Bias, Prejudice, and Harassment*

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.
(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.
[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.
[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Rule 2.4: *External Influences on Judicial Conduct*

(A) A judge shall not be swayed by public clamor or fear of criticism.
(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Comment

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Rule 2.5: *Competence, Diligence, and Cooperation*

(A) A judge shall perform judicial and administrative duties competently, diligently, and promptly.
(B) A judge shall cooperate with other judges and court officials in the administration of court business.

Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office, including the benefits and risks associated with the technology relevant to service as a judicial officer.
[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.
[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.
[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Rule 2.6: *Ensuring the Right to Be Heard*

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Rule 2.8: *Decorum, Demeanor, and Communication with Jurors*

(A) A judge shall require order and decorum in proceedings before the court.
(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

Rule 2.9: *Ex Parte Communications*

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.
(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

Rule 2.10: *Judicial Statements on Pending and Impending Cases*

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.
(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.
(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).
(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.
(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Rule 2.12: *Supervisory Duties*

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.
(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

<u>Comment</u>

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Rule 2.13: *Hiring and Administrative Appointments*

(A) In hiring court employees and making administrative appointments, a judge:
(1) shall exercise the power of appointment impartially* and on the basis of merit; and
(2) shall avoid nepotism, favoritism, and unnecessary appointments.
(B) [Reserved]
(C) A judge shall not approve compensation of appointee beyond the fair value of services rendered.

Comment

[1] "Appointees of a judge" includes but is not limited to assigned counsel, officials such as referees, commissioners, special masters, receivers, special advocates, and guardians, and personnel such as clerks, secretaries, and bailiffs.
[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.
[3] A judge should consult the staff of the Indiana Commission on Judicial Qualifications or its advisory opinions to determine whether hiring or appointing a relative as defined by Comment [2] may be justifiable under the circumstances.
[4] Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraphs (A) and (C).

Canon 3

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Rule 3.1: *Extrajudicial Activities in General*

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:
(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
(B) participate in activities that will lead to frequent disqualification of the judge;
(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
(D) engage in conduct that would appear to a reasonable person to be coercive; or
(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use or for activities that concern the law, the legal system, or the administration of justice.

Comment

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities.

Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

Rule 3.6: *Affiliation with Discriminatory Organizations*

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

Comment

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges

should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.
[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.
[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.
[5] This Rule does not apply to national or state military service.

Canon 4

A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Rule 4.1: *Political and Campaign Activities of Judges and Judicial Candidates in General*

(A) Except as permitted by law, or by Rules 4.1(B), 4.1(C), 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

(1) act as a leader in or hold an office in a political organization;
(2) make speeches on behalf of a political organization;
(3) publicly endorse or oppose a candidate for any public office;
(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;
(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
(6) publicly identify himself or herself as a member or candidate of a political organization;
(7) seek, accept, or use endorsements from a political organization;
(8) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;
(9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;
(10) use court staff, facilities, or other court resources in a campaign for judicial office or for any political purpose;
(11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;
(12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or
(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

(C) A judge in an office filled by partisan election, a judicial candidate seeking that office, and a judicial officer serving for a judge in office filled by partisan election may at any time:

(1) identify himself or herself as a member of a political party;

(2) voluntarily contribute to and attend meetings of political organizations; and

(3) attend dinners and other events sponsored by political organizations and may purchase a ticket for such an event and a ticket for a guest.

(D) A judge in an office filled by nonpartisan election other than a retention election, a judicial candidate seeking that office, and a judicial officer serving for a judge in an office filled by nonpartisan election may at any time attend dinners and other events sponsored by political organizations and may purchase a ticket for such an event and a ticket for a guest.

Rule 4.2: *Political and Campaign Activities of Judicial Candidates in Public Elections*

(A) A judicial candidate* in a partisan, nonpartisan, or retention public election* shall:

(1) act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination;

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1; and

(5) notify the Indiana Commission on Judicial Qualifications in writing, within one week after becoming a candidate, of the office sought and of the candidate's address and telephone number.

(B) A candidate for partisan elective judicial office may, in addition to those activities permitted at any time under Rule 4.1(C) and unless prohibited by law,* and not earlier than one (1) year before the primary or general election in which the candidate is running:

(1) establish a campaign committee and accept campaign contributions pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3) publicly endorse and contribute to candidates for election to public office running in the same election cycle;

(4) attend dinners, fundraisers, or other events for candidates for public office running in the same election cycle and purchase a ticket for such an event and a ticket for a guest;

(5) seek, accept, or use endorsements from any person or organization, including a political organization; and

(6) identify himself or herself as a candidate of a political organization.

(C) A candidate for nonpartisan elective judicial office may, in addition to those activities permitted at any time under Rule 4.1(D) and unless prohibited by law, and not earlier than one (1) year before the primary or general election in which the candidate is running:

(1) establish a campaign committee and accept campaign contributions pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3) publicly endorse, contribute to, and attend functions for other candidates running for the same judicial office for which he or she is running; and

(4) seek, accept, and use endorsements from any appropriate person or organization other than a political organization.

(D) A candidate for retention to judicial office whose candidacy has drawn active opposition may campaign in response and may:

(1) establish a campaign committee and accept campaign contributions pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature; and

(3) seek, accept, and use endorsements from any appropriate person or organization other than a political organization.

Rule 4.3: *Activities of Candidates for Appointive Judicial Office*

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency;

(B) seek endorsements for the appointment from any person or organization other than a partisan political organization; and

(C) otherwise engage only in those political activities permissible at any time under Rule 4.1 for judges holding the type of judicial office sought.

Rule 4.4: *Campaign Committees*

(A) A judicial candidate, subject to partisan or nonpartisan election, and a candidate for retention who has met active opposition, may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.

(B) A judicial candidate shall direct his or her campaign committee:

(1) to solicit and accept only such campaign contributions as are reasonable;

(2) not to solicit or accept contributions for a candidate's current campaign more than one (1) year before the applicable primary election, caucus, or general or

retention election, nor more than ninety (90) days after the last election in which the candidate participated; and
(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.

Rule 4.5: *Activities of Judges Who Become Candidates for Nonjudicial Office*

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.
(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

Rule 4.6: *Political Activities of Nonjudicial Court Employees*

(A) An appointed judge in an office filled by retention election must require nonjudicial court employees to abide by the same standards of political conduct which bind the judge.
(B) A judge in an office filled by partisan or nonpartisan election must not permit nonjudicial court employees to run for or hold nonjudicial partisan elective office or to hold office in a political party's central committee.

Comment

[1] Limitations on political activities by court employees are necessary to protect the public's confidence in the independence and impartiality of the judicial system.
[2] Unlike appointed judges subject to retention, judges in partisan and nonpartisan elective office are not required to hold their employees to the same limitations on political conduct which apply to the judges.
[3] The standards for employees of retention judges set out in Rule 4.6(A) are those which apply to the judges when they are not running in an election.
[4] Unlike nonjudicial court employees, court employees who perform judicial functions are bound directly by the Code of Judicial Conduct unless exempted under the Application Section.

The Canons establish reasonable control over the conduct of the judge and the court reporter during both work hours and following work. Consideration must always be given to the obligation to respect and comply with the law, the maintenance of confidentiality, propriety, and impartiality.

Rule 2.3 requires a judge and court staff and others under the judge's direction and control perform their duties without bias or prejudice. Rule 2.12 clearly establishes the tone of relationship between judge and court reporter because it mandates the judge to require court staff and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under the Code of Judicial Conduct.

A court reporter must maintain an operational balance between interests that may conflict and compete. The court reporter is required to provide equal and fair service to lawyers, litigants, and members of the public. The court reporter is prohibited from engaging in conduct that might be perceived as providing an unfair advantage to any interest. An ethical duty of diligence is created and imposed upon the court reporter.

Rule 2.8 addresses the personal attributes of character and demeanor required of those in the judicial system. The behavior expected of the court reporter both while making a record in court, and while dealing with attorneys, members of the media, or members of the public outside of court are also addressed. Patience, dignity and courtesy should be endorsed as high standards of conduct in the judicial system.

As outlined in Rule 2.9, a judge has an obligation not to engage in *ex parte* communications regarding pending cases. Exceptions are provided for emergencies, administrative or scheduling purposes. The judge may communicate with the staff, including the court reporter. The line between an administrative purpose or a scheduling purpose and an improper ex parte communication may be narrow. Caution should be used in all communications concerning a pending matter because a communication posed under the guise of a scheduling or other administrative question may, in fact, be a disguised effort at an ex parte communication.

See Pro-Lam, Inc. v. B & R Enterprises, 651 N.E.2d 1153 (Ind. Ct. App. 1995) where an out-of-state attorney asked a court reporter if it was proper to file an appearance and a motion for an extension of time that was not in proper form. The court reporter told the attorney to file the documents. The attorney attempted to utilize the discussion with the court reporter as an excuse to obtain relief from a default judgment. The Court of Appeals admonished the out-of-state attorney.
The court reporter should consider these canons when engaging in communications with attorneys. The court reporter must refrain from expressing opinions regarding the performance of counsel and must refrain from expressing legal advice.

Several cases discuss the requirements pertaining to *ex parte* communications.

Matter of Guardianship of Garrard, 624 N.E.2d 68 (Ind. Ct. App. 1993).
The judge *ex parte* discussed a submitted written child custody report with its therapist author; held: a new trial was required.

Mahrdt v. State, 629 N.E.2d 244 (Ind. Ct. App. 1994).
The judge placed an *ex parte* telephone call to Sheriff to reschedule examination of breath machine used to measure quantity of alcohol in a person's blood; judge promptly informed State and defendant of information received during the call. Held: call was "administrative" and was "not improper".

Bell v. State, 655 N.E.2d 129 (Ind. Ct. App. 1995).
The judge placed ex parte telephone call to Sheriff; held: improper contact occurred because judge did not disclose fact of call or contents of call to defendant and judge did not allege that purpose of call was for administrative or scheduling purposes.

Matter of Johnson, 658 N.E.2d 589 (Ind. 1995).
The judge and court reporter engaged in ex parte communications regarding rescheduling of a trial with a deputy prosecutor without consulting defense counsel; defense counsel was given two days advance notice of trial. Held: a public reprimand was issued. The test is: "whether an objective person, knowledgeable of all the circumstances, would have a reasonable basis for questioning a judge's impartiality". See Bell, supra at 655 N.E.2d 132.

In Re Kern, 774 N.E.2d 878 (Ind. 2002).
The judge was found to have considered improper ex parte communication from a litigant when court staff assisted step-parent to prepare an affidavit which led to the issuance of an ex parte custody order that did not comply with the requirements of TR 65(B)(1) against the mother.

Cases from other jurisdictions also illustrate the problems created by ex parte communications that occur through court staff. See:

Mallory v Hartsfield, Almand & Grisham, LLP, 86 S.W.3d 863 (Arkansas 2002).
Telephone communication occurred between litigant counsel and the judge's law clerk concerning an issue ruled upon by the judge that prompted a change in the ruling and a motion seeking recusal of the judge.

Kamelgard v American College of Surgeons, 895 N.E.2d 997 (Ill. App. 2008).
The trial judge engaged in ex parte communication by requesting her law clerk to call the College's attorney to obtain disputed documents for an unannounced in camera review by the court. After review the court entered an order without further notice or hearing.

Rule 2.10 regulates statements by the judge concerning pending and impending cases. Similarly, the court reporter may not make a public comment about a pending matter, even during the appeal process, if that comment might reasonably be expected to affect outcome or impair fairness. The court reporter must be vigilant when dealing with members of the media. This rule should be read in connection with others relating to after-hours private comments and confidentiality requirements. The court reporter may not always be able to discern the impact that a seemingly innocent remark might have on the perception of a fair trial. Given the overriding requirements of propriety and fairness, silence outside of the courtroom will afford the best protection.

Rule 3.1 encourages judges to participate in appropriate extrajudicial activities. See Comment 1. A court reporter may participate in activities that tend to promote, nurture, encourage, teach, help, and guide other court reporters. This Handbook would not exist

without the efforts of many court reporters who, in the spirit of this rule, shared their experiences for the purpose of benefiting other court reporters.

Rule 3.5 regulates the actions of a judge concerning use of nonpublic information. The court reporter must not take advantage of nonpublic information gleaned during the course of official duties either for direct personal benefit or for indirect personal benefit by aiding another. This rule should be read in connection with others relating to after-hours private comments and confidentiality requirements After-hours disclosure of confidential material is prohibited.

Canon 4 regulates the election activities of judicial candidates and imposes upon the judge an obligation to be sure that court staff do not act in a manner that the judge may not. See Rules 4.1(B), 4.2(A) and 4.6.

CHAPTER 2

STATUTES, RULES & CASE LAW GOVERNING COURT REPORTERS

CHAPTER 2

STATUTES, RULES AND CASE LAW GOVERNING COURT REPORTERS

Judge's General Authority to Hire a Court Reporter

Although there may exist specific statutory authority to hire a court reporter within a specific statute that creates a particular court, I.C. 33-41-1-1(a) generally authorizes the judge to hire a court reporter. I.C. 31-31-6-1 authorizes the hiring of a court reporter to serve in a court with juvenile jurisdiction.

Statutes Defining Requirements for Office

Oath and Bond

I.C. 33-41-1-3 requires that a court reporter undertake an oath of office at the time of appointment.

I.C. 33-41-1-6(c)(1) & (2) require a court reporter to post the bond required of a notary public and to obtain a seal "before performing any official duty".

Some counties have procured blanket bonds. See I.C. 5-4-1-18(b). The court reporter should check with the judge to confirm whether a blanket bond has been procured and whether the court reporter is within the scope of coverage.

Age, Sex, Anti-Nepotism, and Residency Requirements

I.C. 33-41-1-6(a)(4) expressly authorizes a court reporter to perform any duty conferred by statute upon a notary public. General Indiana requirements for the status of a notary public may be incorporated by reference. I.C. 33-42-12-1(d)(1) requires that a notary public must be at least eighteen (18) years of age. A court reporter may be required to meet this requirement.

I.C. 33-41-1-2 expressly prohibits discrimination based upon gender. A judge must act "without bias or prejudice" in fulfilling "administrative responsibilities". See Indiana Judicial Canon 2, Rule 2.13.

I.C. 33-41-1-2(b) expressly prohibits the judge from hiring a son or daughter as a court reporter. Jud. Cond.R.2.13 requires that a judge shall avoid nepotism and favoritism.

I.C. 33-42-12-1(d)(3) requires that a notary public be a resident of or primarily employed in Indiana.

Lucrative office

In the past concern was expressed due to an Attorney General's Opinion that the position of court reporter constituted a "lucrative office" within the scope of Article 2 § 9 of the Indiana Constitution, which requires that a person not hold more than one "lucrative office" at one time.

The 2007 case of Thompson v. Hays, 867 N.E.2d 654 (Ind. Ct. App. 2007) appears to have resolved the issue. The Court of Appeals determined that a Deputy Sheriff did not hold a lucrative office but rather was an employee and subject to the control of the Sheriff. Similarly, a court reporter does not hold a lucrative office because their actions are controlled by statutes and rules and are appointed by and subject to the control of the appointing judge. *See also* I.C. 33-42-12-1(k) ("For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, a notary public commission is not a lucrative office.")

Private Practice

A court reporter must not charge a fee to notarize any document during regular office hours. In the event that a court reporter engages in private practice as a notary public after regular office hours, the maximum fee that may be charged for notarization of a signature on a document is ten dollars ($10.00). See I.C. 33-42-14-1

The scope of a notary public's private practice may include the making of a record and/or transcript of a deposition. In the event that an election is made to engage in private practice, a court reporter should become familiar with both the Federal Rules of Civil Procedure and the Indiana Rules of Civil Procedure governing depositions. See F.R.C.P. 26, 27, 30, 32, 37 and 45 and Ind. Trial Rules 26, 27, 30, 31, 32, 37 and 45.

A court reporter may not use any court equipment, work space or supplies in a private practice unless such use is authorized by their contract with the court pursuant to Admin. R. 15(C).

Duties of a Court Reporter

Statutes

I.C. 33-41-1-1 generally describes the duties of a court reporter. This statute provides as follows:

> a) To facilitate and expedite the trial of causes, the judge of each circuit, superior, probate, and juvenile court of each county shall appoint an official reporter.
>
> (b) The official reporter shall, when required by the recorder's appointing judge, do the following:
>
> > (1) Be promptly present in the appointing judge's court.

(2) Record the oral evidence given in all causes by any approved method, including both questions and answers.
(3) Note all rulings of the judge concerning the admission and rejection of evidence and the objections and exceptions to the admission and rejection of evidence.
(4) Write out the instructions of the court in jury trials.

(c) In counties in which the circuit or probate court sits as a juvenile court, the official reporter of the circuit court or probate court, as the case may be:

(1) shall report the proceedings of the juvenile court as part of the reporter's duties as reporter of the circuit or probate court; and
(2) except as provided in subsection (d), may not receive additional compensation for the reporter's services for reporting the proceedings of the juvenile court.

I.C. 33-41-1-5 provides:

(a) If requested to do so, an official reporter shall furnish to either party in a cause a transcript of all or any part of the proceedings required by the reporter to be taken or noted, including all documentary evidence.

(b) An official reporter shall furnish a typewritten or printed transcript described in subsection (a) as soon after being requested to do so as practicable.

(c) The reporter shall certify that the transcript contains all the evidence given in the cause.

(d) The reporter may require payment for a transcript, or that the payment be satisfactorily secured, before the reporter proceeds to do the required work.

I.C. 33-41-1-6 provides:

(a) Every official circuit, superior, criminal, probate, juvenile, and county court reporter appointed under section 1 [IC 33-41-1-1] of this chapter may do the following:
(1) Take and certify all acknowledgments of deeds, mortgages, or other instruments of writing required or authorized by law to be acknowledged.
(2) Administer oaths generally.
(3) Take and certify affidavits, examinations, and depositions.
(4) Perform any duty conferred upon a notary public by Indiana statutes.
(b) Any official reporter taking examinations and depositions may:
(1) take them in shorthand;
(2) transcribe them into typewriting or longhand; and
(3) have them signed by the deposing witness.
(c) Before performing any official duty as authorized, an official reporter must:
(1) provide a bond as is required for notaries public; and

(2) procure a seal that will stamp a distinct impression indicating the reporter's official character, to which may be added any other device as the reporter chooses.

I.C. 33-41-1-7 relates to transcripts in small claims courts and provides:

(a) This section applies to the small claims court established under IC 33-34.

(b) The person who is designated by a judge of the court to prepare transcripts may collect a fee of not more than five dollars ($5) for each transcript from a person who requests the preparation of a transcript.

A court reporter possesses the power to administer oaths; a court reporter may take and certify affidavits, examinations, and depositions. See T. R. 30.

T. R. 74(C) and Crim. R. 5 describe the basic duties of a court reporter during a jury trial. T. R. 74(C) requires that "it shall be the duty" of each court reporter:

> ….to be promptly present in court, and take down . . . the oral evidence given in all causes, including both questions and answers, and to note all rulings of the judge with respect to the admission and rejection of evidence and the objections . . . thereto, and write out the instructions of the court in jury trials. The court reporter, when so directed, shall record the proceedings and make a transcript as provided in subdivision (A) of this rule…

These duties are discussed in detail in Chapters 3 and 4. The duties of a court reporter with respect to preparation of a transcript are discussed in detail in Chapter 5.

Various other criminal rules describe the duty of a court reporter during a criminal jury trial in greater detail. See Crim. R. 5, 10, 11, 24, and Ind. Post- Conviction Rule 1, herein.

As noted in Chapter 1, a court reporter is an officer of the court under the Ind. Code of Judicial Conduct canons. A court reporter is required to use common sense and powers of observation in order to spot situations where the fair and impartial administration of justice may be threatened. A court reporter is under a continuing obligation to raise any perceived concerns to the judge's attention.

The judge may assign additional duties, including but not limited to the duty to aid in the administration of the judge's calendar in order to ensure that matters taken under advisement are ruled upon in a timely manner. A court reporter should clearly understand the scope of the duties assigned, and a court reporter should clearly distinguish those duties from duty assignments made to other court personnel.

However, a Court Reporter may not undertake judicial functions. See Reynolds v. Capps, 968 N.E.2d 789 (Ind. Ct. App. May 23, 2012). In this case the Court Reporter, at the Judge's direction, conducted prepossession hearings in an ejectment case without the judge being present. The judgment signed by the Judge was vacated on appeal.

Chronological Case Summary (CCS) Entries

The judge of the case, whether they are the regular judge of the court or a Special Judge or Senior Judge, shall cause Chronological Case Summary entries to be made of all judicial events. In some courts, the reporter participates in the creation of CCS entries for cases before the court. If this task is delegated to a reporter, any question concerning what an entry should say should be resolved by the judge.

The CCS is an official record of the judicial events of a court with regard to each case. T.R. 77(B) provides that a CCS entry shall be made promptly and shall set forth the date of the event and briefly define any documents, orders, rulings, or judgments filed or entered in the case. The date of every notation in the Chronological Case Summary should be the date the notation is made, regardless of the date the judicial event occurred.

Frequently the workload will interfere with their ability to create an entry on the date an event actually occurs. The entry should be made as soon as possible but when it must wait for another day, then the date of the entry is always the date it was created and the entry will note that the event actually occurred on an earlier date e.g., entry dated December 1, 2011: Defendant's Motion for Extension of Time granted and order extending time entered on November 29, 2011. **CCS entries are never backdated**.

Custody of Recordings of Oral Evidence and Material Evidence

Each court has the legal obligation to properly store and maintain the integrity of evidence that is submitted in a hearing or trial of its docketed cases. Within the Court, the Reporter has the responsibility to maintain custody and control of the evidence – the recordings of oral testimony and the material evidence.

Courts are served principally by the regular judge of the court but other judges may be appointed to preside over a particular case. Special Judges are judges from another court who are appointed to hear a case because the regular judge is disqualified from presiding. Senior Judges are former judges appointed to assist the regular judge to more efficiently handle the court caseload.

Sometimes, Special Judges and the parties find it more convenient to hold the hearing at another location rather than in the regular courtroom. In these instances, a different court reporter may record the hearing and receive the material evidence. Regardless of the location of the hearing or whether a different reporter recorded the evidence, the recordings and the material evidence remain the obligation of the trial court and its reporter to store and preserve. All recordings of evidence and exhibits must be

forwarded to the court of jurisdiction and retained. A reporter should retain originals of exhibits and provide the Special or Senior Judge with copies for their use in ruling.

Confidentiality

A relationship of utmost loyalty and trust exists between a court reporter and the judge. The judge is ethically responsible for the acts and omissions of the court reporter. Jud. Cond. R. 2.12. A court reporter is permitted access to confidential information. A court reporter expressly undertakes the duty to preserve the confidentiality of matters that come before the judge. See Jud. Cond., R. 2.4, 2.8, 2.9, 2.10 and 2.12.

Ind. Administrative Rule 9 lists and describes various confidential court matters. Admin. R. 9(G) (with amendments as of January 1, 2018) with Commentary appears below:

(G) Excluding Court Records From Public Access.

(1) *Court Records That Must Be Excluded From Public Access In Entirety*. The following must be excluded from Public Access:
   (a) Entire cases where all Court Records are declared confidential by statute or other court rule;
   (b) Entire cases where all Court Records are sealed in accordance with the Access to Public Records Act (I.C. § 5-14-3-5.5);
   (c) Entire cases where all Court Records are excluded from Public Access by specific Court order entered in accordance with 9(G)(4).
   (d) All Mental health cases filed pursuant to I.C. § 12-26

(2) *Individual Case Records That Must Be Excluded From Public Access.* The following must be excluded from Public Access:
   (a) Case Records declared confidential or excluded from Public Access pursuant to federal law;
   (b) Case Records excluded from Public Access or declared confidential by Indiana statute or other court rule;
   (c) Case Records excluded from Public Access pursuant to 9(G)(1) or by specific Court order entered in accordance with 9(G)(4);
   (d) Case Records sealed in accordance with the Access to Public Records Act (I.C. § 5-14-3-5.5);
   (e) Case Records for which a statutory or common law privilege has been asserted and not waived or overruled;
   (f) Complete Social Security Numbers of living persons;
   (g) With the exception of names, information such as addresses (mail or e-mail), phone numbers, and dates of birth which explicitly identifies:
      (i) natural persons who are witnesses or victims (not including defendants) in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings, provided that juveniles who are victims of sex crimes shall be identified by initials only;
      (ii) places of residence of judicial officers, clerks and other employees of courts and clerks of court, unless the person or persons about whom the information pertains waives confidentiality;

(h) Complete account numbers of specific assets, loans, bank accounts, credit cards, and personal identification numbers (PINs);

(i) All personal notes, e-mail, and deliberative material of judges, jurors, court staff, and judicial agencies, and information recorded in personal data assistants (PDAs) or organizers and personal calendars.

(j) Arrest warrants, search warrants, indictments, and informations ordered confidential by the trial judge, prior to return of duly executed service.

(k) All paternity records created after July 1, 1941, and before July 1, 2014, as declared confidential by statutes in force between those date, which statutes were amended by P.L. 1-2014, effective July 1, 2014.

(3) *Court Administration Records That Must Be Excluded From Public Access.* The following Court Administration Records are confidential and must be excluded from Public Access:

(a) Case Records excluded in 9(G)(2);

(b) Court Administration Records excluded from Public Access or declared confidential by Indiana statute or other court rule.

(4) *Excluding Other Court Records From Public Access*. In extraordinary circumstances, a Court Record that otherwise would be publicly accessible may be excluded from Public Access by a Court having jurisdiction over the record, provided that each of the following four requirements is met:

(a) Verified written request. A verified written request to prohibit Public Access to a Court Record may be made by any person affected by the release of the Court Record. The request must demonstrate that:

(i) The public interest will be substantially served by prohibiting access; or

(ii) Access or dissemination of the Court Record will create a significant risk of substantial harm to the requestor, other persons or the general public; or

(iii) A substantial prejudicial effect to on-going proceedings cannot be avoided without prohibiting Public Access.

When this request is made, the request and the Court Record will be rendered confidential for a reasonable period of time until the Court rules on the request.

(b) Notice and Right to Respond.

(i) The person seeking to prohibit access has the burden of providing notice to the parties and such other persons as the Court may direct.

(ii) The person seeking to prohibit access must provide proof of notice to the Court or the reason why notice could not or should not be given consistent with the requirements found in Trial Rule 65(B).

(iii) A party or person to whom notice is given shall have twenty (20) days from receiving notice to respond to the request.

(c) Public Hearing.

(i) A Court may deny a request to prohibit Public Access without a hearing.

(ii) If the Court does not initially deny the request, it shall post advance public notice of the hearing consistent with the notice requirements found in I.C. § 5-14-2-5.

(iii) Following public notice, the Court must hold a hearing on the request to prohibit Public Access to a Court Record.

(d) Written Order. Following a hearing, a Court may grant a request to prohibit Public Access by a written order that:

(i) States the reasons for granting the request;

(ii) Finds the requestor has demonstrated by clear and convincing evidence that any one or more of the requirements of 9(G)(4)(a) have been satisfied;

(iii) Balances the Public Access interests served by this rule and the grounds demonstrated by the requestor; and

(iv) Uses the least restrictive means and duration when prohibiting access.

(5) *Procedures for Excluding Court Records From Public Access*.

(a) Notice to maintain exclusion from Public Access.

(i) In cases where the Court Record is excluded from Public Access pursuant to 9(G)(2), 9(G)(3), or 9(G)(4), the party or person submitting the confidential record must provide the following notice that the record is to remain excluded from Public Access:

a. *Pleadings or Papers*. A Court Record filed with the Clerk of Court that is to be excluded from Public Access must be accompanied by separate written notice identifying the specific 9(G)(2) or 9(G)(3) ground(s) upon which exclusion is based. See Form 9-G1.

b. *Exhibits*. A Court Record tendered or admitted into evidence during an *in camera* review, hearing, or trial that is to be excluded from Public Access must be accompanied by separate written notice identifying the specific 9(G)(2) or 9(G)(3) ground(s) upon which exclusion is based. See Form 9-G2.

c. *Oral statements in transcript on appeal*. If any oral statement(s) contained in the transcript on appeal is to be excluded from Public Access, then during the hearing or trial, the Court Reporter must be given notice of the exclusion and the specific 9(G)(2) or 9(G)(3) ground(s) upon which that exclusion is based. If notice was not provided during the hearing or trial, any party or person may provide written notice in accordance with Appellate Rules 28(F)(3 or (4). The Court Reporter must comply with Appellate Rules 28(F) and 29(D) when preparing the transcript on appeal.

(ii) In cases where all Court Records are excluded from Public Access in accordance with Administrative Rule 9(G)(1), no notice of exclusion

from Public Access is required.

(b) Green paper requirements. Where only a portion of the Court Record has been excluded from Public Access pursuant to 9(G)(2) or 9(G)(3), the following requirements apply:

(i) *Public Access Version.* If a portion of a document filed or exhibit tendered contains confidential Court Records to be excluded from Public Access, the document or exhibit must be filed on white paper and any Court Record to be excluded from Public Access shall be omitted or redacted from this version. The omission or redaction shall be indicated at the place it occurs in the Public Access version. If the entire document is to be excluded from Public Access, the 9(G)(5)(a) Notice filed with the document will serve as the Public Access Version.

(ii) *Non-Public Access Version.*

a. If the omission or redaction in accordance with 9(G)(5)(b)(i) is not necessary to the disposition of the case, the excluded Court Record need not be filed or tendered in any form and only the Public Access version is required. The Administrative Rule 9(G)(5)(a) Notice should indicate this fact. See Form 9-G3.

b. If the omission or redaction in accordance with 9(G)(5)(b)(i) is necessary to the disposition of the case, the excluded Court Record must be separately filed or tendered on green paper and conspicuously marked "Not for Public Access" or "Confidential," with the caption and number of the case clearly designated and:

i. If the Court Record is omitted or redacted from an exhibit, attachment, appendix, transcript, evidentiary designation, or similar document, then the separately filed or tendered Non-Public Access version shall consist only of the omitted or redacted Court Record on green paper, with a reference to the location within the Public Access Version to which the omitted or redacted material pertains.

ii. If the Court Record is omitted or redacted from a motion, memorandum, brief, or similar document containing substantive legal argument, then the separately filed Non-Public Access version shall consist of a complete, consecutively-paginated replication including both the Public Access material on white paper and the Non-Public Access material on green paper.

(iii) The green paper requirements set forth in 9(G)(5)(b) do not apply to cases in which all Court Records are excluded from Public Access pursuant to 9(G)(1).

With respect to documents filed in electronic format, the Court may, by rule, provide for compliance with this rule in a manner that separates and protects access to Court Records excluded from Public Access.

(6) *Waiver, Failure To Exclude, Improper Exclusion, and Sanctions.*

(a) Waiver of right to exclude Court Record from Public Access.

(i) The party or person affected by the release of the Court Record may waive the right to exclude the Court Record from Public Access.

(ii) After waiver, a party or person seeking to reassert the right to exclude the Court Record from Public Access may do so only by complying with 9(G)(4).

(b) Failure to exclude Court Record from Public Access.

(i) Unless waived, the right to exclude a Court Record that is expressly declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3) is never forfeited by the failure to comply with any provision of 9(G).

(ii) Immediately upon learning that a Court Record declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3) was not excluded from Public Access, the party submitting such Court Record must comply with the requirements of 9(G) to ensure proper exclusion.

(c) Improper exclusion of Court Record from Public Access.

(i) Only Court Records declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3) may be excluded from Public Access.

(ii) If a court determines that Court Records are excluded from Public Access without first satisfying 9(G)(1), 9(G)(2), or 9(G)(3), the Court Records shall be made available for Public Access seven (7) days after notice to the parties and any person affected by the release, unless the requirements of 9(G)(4) are thereafter satisfied.

(iii.) If a court denies a 9(G)(4) request to exclude a Court Record from Public Access or if a Court Record is required to be made available for Public Access pursuant to 9(G)(6)(c)(ii), the party that originally submitted the Court Record as a Non-Public Access document is responsible for immediately resubmitting the Court Record as a Public Access Document.

(d) Sanctions. The failure to comply with any provision of 9(G) can subject counsel or a party to sanctions.

(7) Obtaining Access to Court Records Excluded from Public Access.

(a) A Court Record that is excluded from Public Access under this rule may be made accessible if:

(i) Each person affected by the release of the Court Record waives confidentiality by intentionally releasing such Court Record for Public Access pursuant to 9(G)(6)(a); or

(ii) A Court with jurisdiction over the case declares:

a. the Court Record should not have been excluded from Public Access;
b. the 9(G)(4) order was improper or is no longer appropriate;
c. the Court Record is essential to the resolution of litigation; or
d. disclosure is appropriate to further the establishment of precedent or the development of the law.

(b) A Court Record that is excluded from Public Access under this rule also may be made accessible provided the following four conditions are met:

(i) Verified written request. The person seeking access to the Court

Record must file with the Court having jurisdiction over the record a verified written request demonstrating that:

a. Extraordinary circumstances exist requiring deviation from the general provisions of this rule;
b. The public interest will be served by allowing access;
c. Access or dissemination of the Court Record creates no significant risk of substantial harm to any party, to third parties, or to the general public;
d. The release of the Court Record creates no prejudicial effect to on-going proceedings; or
e. The Court Record should not be excluded for Public Access under 9(G)(1), 9(G)(2) or 9(G)(3).

When a request is made for access to Court Records excluded from Public Access, the Court Record will remain confidential until the Court rules on the request.

(ii) Notice and Right to Respond.

a. The person seeking access has the burden of providing notice to the parties and such other persons as the Court may direct.
b. The person seeking access must provide proof of notice to the Court or the reason why notice could not or should not be given consistent with the requirements found in Trial Rule 65(B).
c. A party or person to whom notice is given shall have twenty (20) days from receiving notice to respond to the request.

(iii) Public Hearing.

a. A Court may deny a request to provide access without a hearing.
b. If the Court does not initially deny the request, it shall post advance public notice of the hearing consistent with the notice requirements found in I.C. §5-14-2-5.
c. Following public notice, the Court must hold a hearing on the request to allow access to the Court Record.

(iv) Written Order. Following a hearing, a request to allow access to Court Records may be granted upon the issuance of a written order that:

a. States the reasons for granting the request;
b. Finds the requestor has demonstrated by clear and convincing evidence that any one or more of the requirements of 9(G)(7)(b)(i) have been satisfied; and
c. Considers the Public Access and the privacy interests served by this rule and the grounds demonstrated by the requestor.

(c) A Court may place restrictions on the use or dissemination of the Court Record to preserve confidentiality.

Commentary

As noted previously, Rule 9 starts from the presumption of open public access to court records. To address those limited circumstances where federal statute, state statute,

or court rule has declared Court Records to be confidential, this section provides the mechanism by which these confidential Court Records are to be excluded from Public Access.

Section G(1) begins by recognizing that, in some instances, an entire case must be excluded from Public Access because all Court Records have been declared confidential, but Sections G(2) and (3) make clear that in most instances it is only individual Case or Administrative Records that have been declared confidential. As provided in Ind. R. Evid. 201(b)(5), a court can take judicial notice of the records of any court of this state, which includes the juvenile records of another court of this state.

This section does not limit the authority of a judge in a particular case to order the sealing of particular records pursuant to the specific requirements of I.C. §5-14-3-5.5 or to enter an order excluding Court Records from Public Access in accordance with the specific requirements of G(4). No other type of court order is sufficient to seal or exclude Court Records from Public Access.

Section G(4) addresses those extraordinary circumstances in which information that is otherwise publicly accessible nonetheless is to be excluded from Public Access. This section generally incorporates a presumption of openness and requires compelling evidence to overcome this presumption, as well as public notice, a public hearing, and a written order containing specific findings. While a request made under Section G(4) treats the Court Record as confidential from the time of filing or tendering until the court rules on the request, parties should be aware that their request is not retroactive. Copies of the Court Record already may have been disseminated prior to any G(4) request, and action taken under G(4) will not affect those records.

Section G(5) provides the specific procedures for excluding Court Records from Public Access. The party or person submitting the confidential record has the burden of providing separate, written notice identifying the grounds upon which exclusion is based. See Forms 9-G1 and 9-G2. The act of filing a Court Record on green paper does not constitute the required notice.

The 9(G)(5)(a)(i)(c) notice requirements for excluding oral statements contained in a transcript apply only to transcripts that are filed with the Clerk by the Court Reporter for use on appeal. The requirements of this provision do not apply to private transcripts that are never filed with the Clerk. If a party or person thereafter files or tenders that private transcript to the Clerk or Court, then the notice requirements in 9(G)(5)(a)(i)(a) or (b) will apply.

In addition to the separate written notice, in most instances, Section G(5)(b) requires filing or tendering of both a Public Access version and a Non-Public Access version. The Public Access version is to be on white paper, with the confidential information redacted (if it is only part of a page) or omitted (if it is a whole page). If a whole page is omitted, some type of notation must be made at the precise place in the Public Access version indicating where the omission occurred. The Non-Public-Access version is to be on green paper and must contain the confidential material redacted or omitted from the Public Access version, unless the omitted or redacted confidential material is not necessary to the disposition of the case (such as a social security number, a bank number, etc.), in which instance the redacted or omitted material need not ever be separately tendered or filed on green paper and only a Public Access version is required.

Section G(6) permits waiver of confidentiality by the party or person affected by the release of the Court Record, but in all other instances in which a Court Record has been declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3), such confidentiality is not forfeited.

If a court determines that a party has improperly excluded Court Records from Public Access without first satisfying G(1), G(2), or G(3), those records shall be made available for Public Access unless, within seven days after notice of the improper exclusion has been sent, the party or person affected by the release of such records files a verified request to exclude pursuant to G(4).

Section G(7) is intended to address those extraordinary circumstances in which confidential information or information which is otherwise excluded from Public Access is to be included in a release of information. In some circumstances, the nature of the information contained in a record and the restrictions placed on the accessibility of the information contained in that record may be governed by federal or state law. This section is not intended to modify or overrule any federal or state law governing such records or the process for releasing information.

In situations involving preparing a transcript on appeal, Administrative Rule (G) must be read together with Appellate Rule 23(F).

Appellate Rule 23

F. Confidentiality of Court Records on Appeal.

(1) Court Records are accessible to the public, except as provided in Administrative Rule 9(G).

(2) If a Court Record was excluded from Public Access in the trial court in accordance with Administrative Rule 9(G), the Court Record shall remain excluded from Public Access on appeal unless the Court on Appeal determines the conditions in Administrative Rule 9(G)(7) are satisfied.

(3) Procedures for Excluding Court Records from Public Access on Appeal. Any Court Record excluded from Public Access on appeal must be filed in accordance with the following procedures:

(a) Notice to maintain exclusion from Public Access.

(i) In cases where the Court Record is excluded from Public Access pursuant to Administrative Rule 9(G)(2), 9(G)(3), or 9(G)(4), the party or person submitting the confidential record must provide the separate written notice required by Administrative Rule 9(G)(5)(a) identifying the specific 9(G)(2) or 9(G)(3) ground(s) upon which exclusion is based. (See Form # App.R. 11-5).

(ii) In cases where all Court Records are excluded from Public Access in accordance with Administrative Rule 9(G)(1), no notice of exclusion from Public Access is required.

(b) Public Access and Non-Public Access Versions. Where only a portion of the Court Record has been excluded from Public Access pursuant to Administrative Rule 9(G)(2) or 9(G)(3), the following requirements apply:

(i) Public Access Version.

a. If an appellate filing contains confidential Court Records to be excluded from Public Access, the confidential Court Record shall be omitted or redacted from this version.

b. The omission or redaction shall be indicated at the place it occurs in the Public Access version. If multiple pages are omitted, a separate place keeper insert must be inserted for each omitted page to keep PDF page numbering consistent throughout.

c. If the entire document is to be excluded from Public Access, the Administrative Rule 9(G)(5)(a) Notice filed with the document will serve as the Public Access Version.

(ii) Non-Public Access Version.

a. If the omitted or redacted Court Record is not necessary to the disposition of the case on appeal, the excluded Court Record need not be filed or tendered in any form and only the Public Access version is required. The Administrative Rule 9(G)(5)(a) Notice should indicate this fact. (See Form # App.R. 11-6).

b. If the omitted or redacted Court Record is necessary to the disposition of the case, the excluded Court Record must be separately filed or tendered as follows.

1. The first page of the Non-Public Access Version should be conspicuously marked "Not for Public Access" or "Confidential," with the caption and number of the case clearly designated.

2. The separately filed Non-Public Access version shall consist of a complete, consecutively paginated replication including both the Public Access material and the Non-Public Access material.

3. Use of green paper is abolished for E-Filing. Pages in the Non-Public Access version containing Court Records that are excluded from Public Access shall instead be identified with a header, label, or stamp that states, "CONFIDENTIAL PER A.R. 9(G)" or "EXCLUDED FROM PUBLIC ACCESS PER A.R. 9(G)."

(iii) The requirements in Rule 23(F)(3)(b) do not apply to cases in which all Court Records are excluded from Public Access pursuant to Administrative Rule 9(G)(1).

(4) E-Filing document security codes settings.

(a) Where only a portion of the Court Record has been excluded from Public Access pursuant to Administrative Rule 9(G)(2) or 9(G)(3), the E-Filing document security codes setting for the Public Access Version shall be "Public Document."

(b) Where only a portion of the Court Record has been excluded from Public Access pursuant to Administrative Rule 9(G)(2) or 9(G)(3), the E-Filing document security codes setting for the Non-Public Access Version shall be "Confidential document under Admin. Rule 9."

(c) In cases in which all Court Records are excluded from Public Access pursuant to Administrative Rule 9(G)(1), the E-Filing document security codes setting shall be "Confidential document under Admin. Rule 9."

Certain statutes declare particular documents and proceedings confidential. Examples include, but are not limited, to the following:

(1) AIDS [IC 16-41-8-1 and I.C. 35-38-1-9.5 [(after conviction);
(2) pre-sentence reports [I.C. 35-38-1-12 and I.C. 35-38-1-13, including those prepared by the offender I.C. 35-38-1-11];
(3) grand jury proceedings [I.C. 35-34-2-4(i) and I.C. 35-34-2-10];
(4) certain marriage records [I.C. 31-11-1-6], [I.C. 31-11-2-3], and [I.C. 31-11-4-12];
(5) mental health records [IC 16-39-2-6, IC 16-39-2-8, IC 16-39-2-3, IC 16-39-3-6, IC 16-39-3-7, and IC 16-39-3-10];
(6) juvenile records [I.C. 31-39-1-1, I.C. 31-39-1-2, and I.C. 31-39-2-8], and
(7) public employee personnel records [I.C. 5-14-3-4(b)(8)].

The content of a court's audio electronic recording tape or of a court's computer disk determines whether that tape or disk is confidential.

Local practice of the court may vary with respect to the scope of material that is released to the public, including the media, during a trial. One local practice may be that no electronic recording tape and/or transcript is released to any member of the public, including the press, unless the court reporter has first obtained the express verbal consent of the judge. See Chapter 1. The court reporter must check with the judge and obey any policy established with respect to release of materials during trials.

The list contained in Admin. R. 9 is not inclusive of all Indiana statutory confidentiality provisions. See subsection Crim. R. 5, subsection Crim. R. 10, and subsection, Access to Public Records, herein.

I.C. 5-14-3-10(a) and (b) and Admin. R. 10(C) provides for both criminal and civil disciplinary sanctions for the disclosure of confidential material; particular statutes may provide specific civil and/or criminal penalties.

The judge may exercise discretion and take action to seal or otherwise make confidential records that would otherwise be public under T.R. 26(C) and I.C. 5-14-3-9. In the event that a judge should utilize one or more of these procedures to enter an order declaring that a record is confidential, this order must be followed.

Confidentiality of Juvenile Proceedings

Admin. R. 9 generally lists juvenile records as confidential "except those specifically open under statute". *See also* I.C. 31-39-1-2. I.C. 31-39-1-1(b) lists types of juvenile records declared

as "confidential". Transcripts are not listed in that statute. I.C. 31-39-1-1 contains no direct expression that transcripts are open to the public and transcripts are not expressly excluded from the scope of the statute. The present practice is to treat any audio tape recording or transcript in a juvenile proceeding as confidential.

If certain equipment requirements are met, certain detention hearings may be videotaped pursuant to Admin. R. 14(A).

Civil Liability; Tort Immunity

As a member of the judge's staff, a court reporter may enjoy federal absolute judicial immunity as long as the court reporter is acting pursuant to a valid order issued by the judge. See J.A.W. v. State, 687 N.E.2d 1202 (Ind. 1997).

As a member of the judge's staff, a court reporter may be entitled to: state common law absolute judicial immunity, see legal authority cited by the Court of Appeals in the case of Poole v. Clase, 455 N.E.2d 953 (Ind. Ct. App. 1983), opinion vacated upon other grounds 476 N.E.2d 828 (Ind.); state common law tort claim immunity for acts and omissions within the scope of employment pursuant to the Indiana Tort Claims Act. See I.C. 34-13-3-1 et seq.; and immunity from arrest upon civil process while traveling to the courthouse. See I.C. 34- 29-2-1(5).

In the event that the court reporter is sued, a court reporter is not entitled to legal defense counsel paid for at public expense. See I.C. 33-38-12-1, et seq. However, a court reporter may be covered by a county's general liability insurance policy.

Liability Insurance

Legislation permits a county to purchase comprehensive general liability insurance. See I.C. 34-13-3-20. Legislation passed in 1995 permits the fiscal body of a county to purchase crime insurance. See I.C. 5-4-1-15.1 and I.C. 5-4-1-18. A court reporter should check with the judge to ascertain whether such insurance has been procured by ordinance and whether the court reporter is a named insured. A court reporter should inquire whether either the judge or the county has obtained errors and omissions insurance coverage.

Contempt

A court reporter is subject to the contempt power of the Indiana Supreme Court. See Matter of Hatfield, 607 N.E.2d 384 (Ind. 1993). Neither a judge nor a court reporter may withhold any portion of the record from an appellant. See Crown Aluminum Industries v. Wabash Co., 174 Ind. App. 659, 369 N.E.2d 945, 947 (1977). A court reporter may receive orders from the Clerk of the Court of Appeals; these orders are enforceable by contempt. Penalties for contempt may include fines and imprisonment. See I.C. 34-47-3-8.

The Court Reporter in Criminal Cases

Crim. Rule 5

Crim. R. 5 states as follows:

> Every trial judge exercising criminal jurisdiction of this state shall arrange and provide for the electronic recording or stenographic reporting with computer-aided transcription capability of any and all oral evidence and testimony given in all cases and hearings, including both questions and answers, all rulings of the judge in respect to the admission and rejection of evidence and objections thereto, and any other oral matters occurring during the hearing in any proceeding ...
>
> The judge . . . may direct the court reporter . . . in his discretion, to make a transcription of recorded oral matters and certify the accuracy of the transcription ...

The specific duties of a court reporter with respect to making a record in criminal trials are addressed in this rule. Criminal trials may be recorded either by an electronic recording device or by stenographic reporting with computer-aided transcription. The present practice is to accompany the audio electronic tape record with stenographic paper notes.

The duties of the court reporter described in Crim. R. 5 are substantially similar to those quoted from T. R. 74. Crim. R. 21 requires that both rules be read together in harmony.

Under language of Crim. R. 5 with respect to criminal trials, either the electronic recording tapes, the stenographic paper, notes, log, computer disks, or copy of the transcript must be retained by the court reporter, as follows: (a) ten (10) years for misdemeanors, and (b) fifty-five (55) years for felonies.

In the event that the audio electronic tape recording method is used, "a log denoting the individuals recorded and meter location of crucial events" shall be maintained. In the event that the stenographic reporting with computer-aided transcription method is selected, "disk and stenographic paper notes" shall be retained. Retention of records is discussed in more detail in Chapter 6.

In some instances, the tapes, paper notes and disks generated during the process of making a record are declared to be "confidential court" records; the content determines whether the tape or the disk is confidential. See subsection, Public Access to Records, herein.

Crim. Rule 24(D) & (I) - Criminal Death Sentence Cases

The specific duty of a court reporter in a trial of a case involving the possible imposition of a sentence of death is addressed in the language of Crim. R. 24(D). The rule requires "stenographic reporting with computer-aided transcription" of all oral testimony, argument or other matters for which a record is made under Crim. R. 5 in any trial or in any post-conviction proceeding. In the event a death sentence is imposed, the court reporter is required to begin the preparation of a transcript immediately. See Crim. R. 19 and Crim. R. 24(I). The requirement of filing a written praecipe is waived in capital cases. See Crim. R. 11, Crim. R. 19 and App. R. 9(B). A copy of a transcript shall be produced, filed and retained in accordance with Crim. R. 5 in death sentence cases.

Crim. Rule 8(C) - Criminal Instructions

This rule describes a court reporter's duty to make a record of instructions presented by the judge to the jury in criminal cases. The rule requires that a court reporter make a record of any objections to instructions. Crim. R. 21 requires that Crim. R. 8 be read in connection with T. R. 51(C). Because a wide variance regarding the practice of judges with respect to instructions exists, a more detailed discussion of making a record of instructions and objections is contained in Chapter 3.

Crim. Rule 10 - Guilty Plea

This rule requires that a court reporter make a record by "electronic recording device" of "the entire proceeding in connection with such plea and sentencing, including questions, answers, [and] statements" in both felony and misdemeanor cases where a guilty plea "is accepted". A judge may order that a transcript of a guilty plea hearing and sentencing hearing be prepared and filed with the clerk of the court. If a transcript is not prepared and filed, either the audio electronic recording tape or the stenographic paper notes and computer disks, accompanied by a log denoting individuals recorded and meter location of crucial events must be retained by the court reporter, as follows: (a) for misdemeanors ten (10) years, and (b) for felonies fifty-five (55) years.

I.C. 35-35-1-2 lists certain advisements that a judge must give a defendant before the judge may accept a guilty plea; the court reporter must make a record of the advisements stated by the judge to the defendant. See Griffin v. State, 617 N.E.2d 550 (Ind. Ct. App. 1993). In the event that the duties of a court reporter include assisting the judge in the preparation of Chronological Case Summary (CCS) entries, a CCS entry for

a guilty plea hearing should expressly reflect that each of the listed advisements was presented by the judge to the defendant.

If certain equipment requirements are met, Admin. R. 14(A)(2) permits the use of video tape in a variety of hearings including "the taking of a plea of guilty to a misdemeanor charge, pursuant to I.C. 35-35-1-2" by a "trial court".

Missing Records

In the event that the electronic recording tapes, the stenographic paper notes, computer disks, (or a filed transcript) are unavailable for a particular guilty plea and sentencing proceeding, an offender may be entitled to have the conviction vacated. Availability of this relief may be pre-conditioned upon offender's attempt to reconstruct the missing record. The case of Curry v. State, 650 N.E.2d 317 (Ind. Ct. App. 1995) describes efforts made by one offender to reconstruct a missing record. The Court of Appeals held that offender showed sufficient diligence in the attempt to reconstruct the record and vacated the offender's conviction. In that case, the court reporter gave the offender an affidavit regarding the unavailability of the audio electronic recording tape; the tape had been destroyed after ten (10) years.

Crim. Rule 11 - Felony Guilty Plea and Sentencing or Probation Revocation; Advisements Required

Whenever a judge imposes a criminal sentence upon an offender after conviction in a felony trial, or after probation has been ordered revoked after a contested revocation hearing pursuant to I.C. 35-38-2-3, the judge must provide the offender with certain advisements regarding offender's constitutional right to appeal. Crim. R. 11 describes the advisements. In each such felony case, a transcript of "the entire proceedings in connection with such sentencing or probation revocation, including questions, answers, [and] statements shall . . . promptly" be prepared, certified, and filed in the same manner as other transcripts.

The language of the rule appears consistent with the requirements of I.C. 35-38-1-3 which requires that a court reporter prepare a transcript of the sentencing hearing in felony cases.

If certain equipment requirements are met, if offender files a written waiver of the right to be present and if the prosecutor consents, a sentencing hearing may be videotaped. See Admin. R. 14(A)(1)(d).

The current practice is to apply the requirements of Crim. R. 11 to sentencing hearings and revocation of probation hearings involving misdemeanor convictions.

Although not expressly required, Crim. R. 5 should be read in conjunction with Crim. R. 11. The court reporter should create and retain either a "log denoting the individuals recorded and meter location of crucial events" or the "disks and stenographic paper notes" for all sentencing and revocation of probation hearings.

Crim. R. 15.2. Abstract of Judgment

Upon sentencing a person for any felony conviction, the court shall complete an abstract of judgment in an electronic format approved by the Indiana Office of Judicial Administration (IOJA). The IOJA will maintain an automated system for purposes of submitting the electronic abstract of judgment.

Under this rule, all Abstracts of Judgment in criminal cases must be prepared via INCITE.

Crim. Rule 17 - Newly Discovered Evidence; Juror Misconduct

Crim. R. 16 permits an offender to file a Motion to Correct Error before filing a Notice of Appeal. Generally, a Motion to Correct Error is filed when offender claims that new evidence has been discovered or when offender claims to have discovered misconduct by a juror. See Crim. R. 16 (A). The judge may hold hearings on the motion. In the event that a hearing is held, the court reporter "shall . . . record all such evidence" and prepare and file a transcript in the same manner as other transcripts.

If the offender elects to file a Motion to Correct Error, the time in which to file the Notice of Appeal is extended until thirty (30) days after the court's ruling on the motion is noted in the Chronological Case Summary or thirty (30) days after the Motion to Correct Error is deemed to be denied. See App. R. 9(A)(1), T. R. 53.3, Crim. R. 21 and Crim. R. 19.

Crim. Rule 19

An offender must file a Notice of Appeal within thirty (30) days of the date of sentencing, or the date of notation in the Chronological Case Summary of an order of dismissal or an order of acquittal. If a Motion to Correct Error is filed, the Notice of Appeal must be filed within thirty (30) days after the ruling on the Motion to Correct Error is noted in the Chronological Case Summary or within thirty (30) days after the Motion to Correct Error is deemed denied under Trial Rule 53.3, whichever occurs earlier. If the Notice of Appeal is not timely filed, the right to appeal is forfeited. App. R. 9(A)(5).

P.C.R. 1(5), (6), (7), and (9)

These rules govern the right of an offender to seek relief after the right to appeal has been forfeited (Crim. R. 19), waived (guilty pleas), or exhausted. P.C.R. 1(4)(g) permits the judge either to enter a judgment of summary dismissal or to enter an order for an evidentiary hearing. P.C.R. 1(5) describes the hearing; a "record of the proceedings

shall" be made and "preserved". P.C.R. 1(6) describes the judge's duty to enter findings of facts and conclusions of law "whether or not a hearing is held". P.C.R. 1(7) provides that the State or an offender may appeal from either the denial or the granting of relief.

P.C.R. 1(9)(b) describes the right of an unrepresented indigent offender to a transcript of a guilty plea and a guilty plea sentencing hearing before a P.C.R. 1(5) "hearing". See subsection The Court Reporter and the Rights of the Indigent and subsection Guilty Pleas - Crim. R. 10, herein. If a transcript was prepared, certified and filed immediately after a guilty plea and sentencing hearing, the offender would contact the clerk of the court to obtain it. The more common practice is that offender files a petition for post-conviction relief followed by a praecipe or motion for a copy of the guilty plea and sentencing transcript, and the court reporter prepares a transcript from the preserved audio electronic recording tape or the stenographic notes and computer disks.

P.C.R. 1(9)(b) also provides that petitioners who are indigent and proceeding in forma pauperis are entitled to a record of the post-conviction proceeding at public expense for appeal of the denial or dismissal of the petition. Thus, a transcript of the post-conviction proceedings should be prepared for and provided to the petitioner at county expense.

If the parties file a consent in writing and if certain equipment requirements are met, a post-conviction hearing may be videotaped, pursuant to Admin. R. 14(A)(1)(e).

Selected Statutes Requiring a Record in Criminal Cases

I.C. 35-33-2-1 - Arrest upon issuance of a Warrant

A judge may hold a probable cause hearing before issuing an arrest warrant. In the event that a hearing is held, the court reporter may be required to make a record of the hearing pursuant to Crim. R. 5.

Verbal testimony supporting issuance of an arrest warrant may be presented by radio or telephone; in that event, I.C. 35-33-5-8(d) and (e) governs the procedure. See Cutter v. State, 646 N.E.2d 704 (Ind. Ct. App. 1995). The court reporter is required to transcribe the audio electronic tape made of the telephone conversation between the judge and the caller giving verbal testimony that supports the issuance of the warrant. If an affidavit is submitted by fax, the court reporter may be required to retype the fax transmission.

I.C. 35-33-3-2 - Fresh Pursuit; Arrest without a Warrant

In the event that a duly authorized police officer from a State outside of Indiana pursues a person into Indiana and arrests that person in Indiana, a hearing to determine the lawfulness of the arrest of that person shall be held. The judge may require that the court reporter make a transcript of this hearing pursuant to Crim. R. 5.

I.C. 35-33-5-1 - Search Warrants

A judge may hold a hearing to determine the existence of probable cause to issue a search warrant.

I.C. 35-33-5-5(d) & (e) governs the disposition of items seized pursuant to a warrant. If a seized item is admitted into evidence so that the court reporter becomes responsible for it, the judge will issue an order regarding disposition. See Chapter 6.

I.C. 35-33-7-2(a) - Probable Cause Hearing after an Arrest without a Warrant

After an arrest without a warrant, a probable cause affidavit may be filed by the prosecutor, or I.C. 35-33-7-2 authorizes an oral hearing to determine the existence of probable cause. If a probable cause hearing is held, the court reporter is required to make a record of this hearing. A judge or any party may request that the court reporter prepare a transcript. See Crim. R. 5.

If certain equipment requirements are met, an initial hearing may be videotaped pursuant to Admin. R. 14(A)(1)(a).

I.C. 35-33-7-5 & I.C. 35-33-7-6 - Initial Hearing; Indigent Right to Counsel

In both felony and misdemeanor cases, the judge is required to hold an initial hearing. At this hearing, the defendant is provided an explanation of applicable constitutional rights. At the initial hearing, the judge enters a preliminary plea of not guilty for the defendant. If the judge finds that the defendant is unable to pay for legal counsel, legal counsel is provided at public expense. The judge may also set bail. At the initial hearing the judge may schedule pre-trial hearings and a pre-trial conference. See I.C. 35-36-8-3 (a), I.C. 34-10-1-2 and I.C. 35-36-8-1. The judge may require the court reporter to make a record of the initial hearing pursuant to Crim. R. 5.

The judge may schedule trial dates. It is very important to accurately make a record in any situation where the judge personally informs the defendant of a trial date. This protects the defendant's right to a speedy trial, and this allows the court reporter to testify as a witness as to the receipt of advance notice of the trial date by the defendant. See section, The Court Reporter as a Witness, herein.

If certain equipment requirements are met, an initial hearing may be videotaped pursuant to Admin. R. 14(A)(1)(a).

Defendant's Right to Waive Counsel; Unrepresented Party Status

A defendant does possess a constitutional right to waive the right to counsel and to proceed as an Unrepresented Party. If the defendant makes such a request, the judge must hold a hearing; certain advisements are given by the judge to the defendant. The judge may require that the court reporter make a record pursuant to Crim. R. 5. In the event that unrepresented status is granted, the court reporter should accord the defendant the same treatment provided to attorneys. See Jud. R. 1.1, 1.2, 1.3, 2.2, 2.3, 2.4, 2.6, 2.8 and 2.12. The unrepresented defendant is bound to follow all rules and procedures in the same manner as other attorneys.

I.C. 35-34-1-4, I.C. 35-34-1-6, & I.C. 35-34-1-8 - Motion to Dismiss

In both felony and misdemeanor cases, a defendant may file a motion to dismiss the information based upon either constitutional or statutory grounds. A motion to dismiss may also be filed in cases where an indictment was issued by a grand jury. See I.C. 35-34-1-7. A summary disposition is permitted under limited circumstances. A hearing is usually required. The judge may require that the court reporter make a record of the hearing pursuant to Crim. R. 5. A motion to dismiss may be argued on the omnibus hearing date. See I.C. 35-36-8-1.

Either the State or the defendant may elect to take an interlocutory appeal of the judge's ruling. *See* State v. Peters, 637 N.E.2d 145 (Ind. Ct. App. 1994). (interlocutory appeal by State is authorized); and Benham v. State, 637 N.E.2d 133 (Ind. 1994) (interlocutory appeal by defendant; lack of territorial jurisdiction over crime), and Wheeler v. State, 662 N.E.2d 192 (Ind. Ct. App. 1996) (interlocutory appeal by defendant); Crim. R. 4(C) speedy trial.).

I.C. 35-36-3-1 - Competency to Stand Trial

In both felony and misdemeanor cases, the judge may decide under I.C. 35-36-3 that a defendant lacks mental ability to understand the nature of the proceedings and lacks ability to assist counsel. In that event, at least one (1) hearing is held. The judge may require that the court reporter make a record of the competency hearing pursuant to Crim. R. 5.

I.C. 35-34-2-10 & I.C. 35-34-2-14 - Grand Juries and Special Grand Juries

Either the prosecutor or the judge may convene a grand jury. See I.C. 35-34-2-2(b). Upon motion of the prosecutor and for good cause shown, the judge may order a special grand jury to convene; the powers and duties of a special grand jury are the same as those of a grand jury. See I.C. 35-34-2-14(b). The court reporter may be requested to make a record and to prepare a transcript of a grand jury or a special grand jury proceeding. See I.C. 35-34-2-3(d), I.C. 35-34-2-4(e) and I.C. 35-34-2-10(b). See subsection Confidentiality, herein.

I.C. 35-38-4-2 - The State May Bring an Appeal

The State is permitted to bring an appeal in a criminal case under the circumstances listed in I.C. 35-38-4-2.

Pre-Trial Civil and Criminal Discovery

Discovery Defined

Discovery refers to that portion of a civil or a criminal case during which one party may attempt to use certain methods authorized by the rules to determine before trial what evidence an adverse party may offer at trial.

Differences between Civil and Criminal Cases - Immunity

Criminal discovery has constitutional aspects that are not generally present in civil cases. In criminal cases, trial by ambush is prohibited as a denial of a fundamental right to a fair trial. Upon proper request, the prosecutor has a duty to disclose all of the evidence favorable to the State and favorable to the defendant. A defendant possesses a constitutional right to be personally present at any critical stage of the case; a defendant possesses a constitutional right to a face-to-face confrontation with the witnesses against him.

A prosecutor may offer immunity from prosecution to a reluctant witness in order to procure testimony. Usually, a witness elects to refuse to answer a question based upon the exercise of the Fifth Amendment constitutional privilege against self-incrimination. See I.C. 35-34-2-8 (grand jury); I.C. 35-37-3-3 (during a hearing or a trial).

If a witness invokes their privilege against self-incrimination during a criminal jury trial, a hearing is conducted outside of the presence of the jury. In the event the witness is granted immunity, any continued refusal to respond to the question may be punished as direct criminal contempt. See I.C. 35-37-3-3(c) and I.C. 34-47-2-2. The court reporter is required to make a record of any such situation.

In a civil trial, a witness may claim the constitutional privilege against self-incrimination and refuse to testify. The judge may not confer immunity. The witness may be punished by being held in direct criminal contempt. See I.C. 34-47-2-2.

Motions to Suppress

The Supreme Court of the United States has developed the exclusionary rule for the purpose of excluding evidence seized in violation of defendant's constitutional rights. The rule mainly applies to evidence seized during warrantless searches, including searches incident to arrest, and to involuntary confessions. Usually, the defense will seek the application of the exclusionary rule pursuant to following steps: (1) filing a motion to suppress the tainted evidence prior to trial; (2) if that motion is overruled after an evidentiary hearing, filing a motion in limine immediately before trial; and (3) if that motion is overruled after an evidentiary hearing, making an objection to the evidence when offered at trial. The court reporter is required to make a record of any such hearing(s) and any at-trial objection(s) made. Steps one (1) and two (2) may be omitted, and the motion to suppress may be made during the course of the criminal bench or jury trial. In the event that the motion to suppress is made during a jury trial, a hearing is conducted outside of the presence of the jury. The judge may require that a court reporter

make a record of any such hearing pursuant to Crim. R. 5.

Motions in Limine

In both criminal and civil cases where a jury trial is held, a motion in limine may be filed. Generally, a motion in limine is filed shortly before the commencement of trial. The purpose of filing a motion in limine is to obtain an advance preliminary ruling from the judge regarding the admissibility of a disputed item of evidence.
In the event the judge grants a motion in limine, the ruling requires parties and witnesses to adhere to special trial procedures regarding references to the contested item of evidence in the presence of the jury. If a motion in limine is granted by the judge, the contested item of evidence may not be mentioned during the trial.

Counsel may seek relief from an order in limine during trial. In order to seek relief the following procedure is used: (1) the offeror asks the judge to excuse the jury, (2) the judge may hear new argument concerning the admissibility of the disputed item of evidence, and (3) in the event admission of the evidence is denied, an offer to prove is made in order to preserve error for appeal. If the judge determines the disputed item of evidence is admissible, the item is admitted after the jury returns to the courtroom. Adverse counsel may object to the admission of the item. See Crim. R. 21 and T. R. 43(D).

Discovery Disputes - Protective Orders

In the event pre-trial disputes arise regarding discovery, the judge may become involved. A party may file either a motion for protective order, a motion to compel discovery, and/or a motion for sanctions. The protective order is designed either to prevent discovery or to obtain some limit on the scope of discovery; a party may seek a protective order to preserve the confidentiality of a document. See Crim. R. 21 and T. R. 26(C). A hearing may be required and the court reporter may be required to make a record of the proceeding.

If a party's right to inspect documents becomes contested, the judge may be required to hold an in camera inspection of documents. The court reporter has a duty to make a record concerning both the identity of the documents before the judge and the judge's ruling concerning the existence of a right of access. See Pilarski v. State, 635 N.E.2d 166 (Ind. 1994).

Discovery Disputes - Sanctions

A motion to compel discovery and a motion for sanctions are utilized as methods to seek relief for violations of pre-trial discovery rules. See Crim. R. 21 and T. R. 37. A hearing may be required and the court reporter may be required to make a record of the proceedings.

Pre-Trial Order - T. R. 16, Crim. R. 21, and I.C. 35-36-8-3

A pre-trial conference resulting in the entry of a pre-trial order may occur in both civil and criminal cases. Crim. R. 21, T. R. 16 and I.C. 35-36-8-3 provide that either a judge or any party may move for a pre-trial conference. The purposes of a pre-trial conference are listed in T. R. 16(A) and include "simplification of the issues", "obtaining admissions of fact and of documents", and "exchange of names of witnesses". T. R. 16(J) provides that "the court shall make an order" describing any agreements made at a pre-trial conference. Usually, the judge will require a party to prepare the order. After the judge signs the order, it is entered on the Chronological Case Summary (CCS). The order "shall control the subsequent course of the action, unless modified".

In a criminal case, a pre-trial conference may be videotaped if certain equipment requirements are met. See Admin. R. 14(A)(1)(b).

In a civil case, a pre-trial order may contain: (1) stipulations concerning the admissions made in an answer of a defendant, (2) stipulations relating to the admission of exhibits, and (3) lists of witness names and of exhibits. See Chapter 3.

Stipulations

"A stipulation of facts is an express waiver made in court or preparatory to trial, by the party or his attorney, conceding for the purposes of the trial, the truthfulness of some alleged fact. It has the effect of a confessor pleading, in that the fact is thereafter to be taken for granted, so that one party need offer no evidence to prove it and the other is not allowed to disprove it." County Department of Public Welfare of White County v. Trustees of Indiana University, 145 Ind. App. 392, 251 N.E.2d 456, 461 (1969).

A stipulation may be utilized in preparation of a preliminary or a final instruction by either a judge or any party. Counsel may request that the court reporter read a stipulation to a jury. The court reporter is required to make a record of any stipulation made during the course of a civil or criminal proceeding.

Special Rules and Statutes Requiring a Record in Civil Cases

T. R. 51

This rule describes the court reporter's duty to make a record of the instructions presented by a judge to the jury in civil cases. See T. R. 74. This rule requires that the court reporter make a record of any objections to the instructions presented by the judge to the jury. Because a wide variance regarding the practice of judges with respect to instructions exists, a more detailed discussion of instruction procedures is contained in Chapter 3.

T. R. 59

A party to a civil case may file a motion to correct error. The filing of a motion to correct error is no longer a prerequisite to an appeal unless the losing party asserts: (1) a claim of newly discovered evidence (including juror misconduct), or (2) asserts a claim that the damages were either excessive or inadequate. See T. R. 59(A) & (H).

In a civil case, a party who lost after a jury trial may request that the judge act as a 13th juror [7th juror] and not enter judgment on the verdict. In the event that this request is filed, the court reporter may be requested to aid the judge in preparing a summary of the trial testimony. See T. R. 59(J).

App. R. 9

App. R. 9 describes the time periods in which a Notice of Appeal must be filed in civil cases. There is no trial rule counterpart to Crim. R. 19.

A party who desires to appeal in a civil case must file a Notice of Appeal within thirty (30) days of the entry of final judgment is noted in the Chronological Case Summary, or within thirty (30) days after the judge's ruling on a Motion to Correct Error is noted in the Chronological Case Summary, or within thirty (30) days after the Motion to Correct Error is deemed to be denied. There is a special time period for interlocutory appeals. See subsection, Interlocutory Appeals, herein.

I.C. 34-13-5-6 & I.C. 34-13-5-8 - Public Lawsuits

A public lawsuit is filed by citizens or by taxpayers to challenge the expenditure of public funds, usually for a public works construction project. A party is permitted to file a motion for a special reporter so that preparation of a Record of Proceedings may be expedited. An interlocutory appeal may arise out of the judge's ruling. See subsection, Interlocutory Appeals, herein.

T. R. 56 - Summary Judgments

If the judge grants a motion for summary judgment in favor of one party, the other party may appeal, depending upon the language of the judgment entry. See T. R. 56(C). If the judge denies a motion for summary judgment, the party who filed the summary judgment may seek an interlocutory appeal. The judge must conduct a hearing on a motion for a summary judgment. See T. R. 56(C). A proper designation of evidentiary matters, which constitute a material issue of fact, may be made during the hearing. See Pierce v. Bank One-Franklin, NA, 618 N.E.2d 16, 18 (Ind. Ct. App. 1993). There is no statute or rule requirement that a court reporter make a record of a summary judgment hearing. The court reporter should ask either the judge or counsel whether a record is required in each case. See Chapter 3.

Interlocutory Appeals - App. R. 14

Appeals may be taken as a matter of right with regard to matters defined in App. R. 14 (A) and in these cases the Notice of Appeal must be filed within thirty (30) days after the notation of the interlocutory order in the Chronological Case Summary. All other interlocutory appeals are discretionary under App. R. 14(B) and require certification by the trial judge except for class action certification orders under App. R. 14(C), and acceptance of the appeal by the Court of Appeals. The appellant must file a petition to certify the ruling for interlocutory appeal within thirty (30) days after the notation of the interlocutory order in the Chronological Case Summary. If the Court of Appeals accepts jurisdiction of the appeal after certification by the trial court, a Notice of Appeal must be filed within fifteen (15) days of the acceptance by the Court of Appeals

The Court Reporter and Jurors

The bailiff has charge of the jury. The court reporter should only have very minimal contact with jurors.

In the event a question arises during the deliberation, the judge, the parties, counsel, the sworn bailiff, the court reporter, and the jurors reconvene in the courtroom. The court reporter makes a record of any such proceeding. The court reporter should note and identify any juror member who speaks in the log.

In the event the judge elects to send admitted exhibits to the jury room, the court reporter does not deliver the exhibits to the jury room. Upon the order of the judge, the exhibits may be delivered to the sworn bailiff. The bailiff has the duty to see that the exhibits are returned to the custody of the court reporter. See Chapter 4.

The Court Reporter as a Witness

Contempt

I.C. 34-47-1-1 et seq. governs contempt actions. Direct contempt, as defined by I.C. 34-47-2-1, occurs during open court in the presence of the judge or outside of the courtroom but within the hearing of the judge. A witness who refuses to testify at a hearing or a trial may be punished by a direct contempt. See I.C. 34-47-2-2. I.C. 34-47-2-4(b)(2) provides that the court reporter may be required either to testify or to give an affidavit regarding observations of contumacious conduct. A court reporter may testify in cases where the judge holds a courtroom spectator in contempt for disrupting a proceeding. A court reporter may testify regarding any observation of attorney, witness, or juror misconduct in or close to the courtroom. Arrangements will have to be made for another court reporter to make a record in the event the court reporter is called to testify as a witness.

Trial In Absentia

In subsection I.C. 35-33-7-5 & I.C. 35-33-7-6 - Initial Hearing; Indigent Right to Counsel, supra, the importance of making a record of occurrences when the criminal defendant appeared before the judge and received personal notice of the trial date was noted. In the event a defendant fails to appear for trial, the prosecutor may call the court reporter as a witness to testify that the defendant had received actual advance notice of the trial date. Once this fact has been established, the judge may proceed to try the defendant.

When a party fails to appear in a civil case, the judge may either dismiss the case, proceed with the trial or enter a default judgment depending upon the state of the record. The judge may institute contempt proceedings.

The court reporter must make arrangements for another court reporter to make a record in the event the court reporter is called to testify as a witness.

Rules Governing the Preparation of a Transcript

An appeal is initiated by the filing of a Notice of Appeal with the Clerk of the Supreme Court, Court of Appeals and Tax Court and the appealing party is responsible to immediately provide the reporter with a copy of the Notice of Appeal. See App. R. 9 and App. R. 24. The burden of requesting an adequate Record on Appeal is imposed upon the party taking the appeal.

The Notice of Appeal must be filed within thirty (30) days after the entry of a final judgment is noted in the Chronological Case Summary or, in the case of an interlocutory appeal as a matter of right, the notation of the interlocutory order in the Chronological Case Summary. In cases of discretionary interlocutory appeals, the Notice of Appeal must be filed within fifteen (15) days of the Court of Appeals' acceptance of the interlocutory appeal. See App. R. 9 & 14.

The court reporter's duty to prepare a transcript is strictly limited by the language contained in the body of the Notice of Appeal. The Notice may either seek preparation of a transcript that contains only selected portions of what transpired or seek the preparation of a transcript containing all matters where the court reporter made a record in a particular proceeding. See App. R. 9 (F).

Both T. R. 74 and Crim. R. 5 authorize a judge to use "other" persons to prepare a transcript.

The transcript becomes one (1) of the four (4) major sections of the Record on Appeal, which consists of volumes containing the transcript of evidence, exhibits, table of contents, and the Clerk's Record. Once separately certified as accurate and complete by the court reporter, the transcript is filed with the clerk of the trial court. See I. C. 33-41-1-5 & App. R. 11.

It is the obligation of the appellant (or appellant's counsel) to prepare the appendix containing the table of contents and copies of applicable documents. See App. R. 49, 50 and 51.

Original Actions

Ind. Original Action Rules 2(F) and 3(C) require that the party seeking relief must file a verified petition applying for the issuance of the writ with the Supreme Court Administrator. Any transcript must accompany the petition of application and must be separately certified by the judge, the court reporter, and the clerk of the court. See Orig. Act. R. 3(C), I.C. 33-41-1-5 and Crim. R. 5.

The Court Reporter and the Rights of the Indigent

Indigent's Right to File a Cause of Action without the Payment of Filing Fees

An indigent may file a civil action, including a guardianship petition without the payment of filing fees. See I.C. 33-37-3-2. However, there is a special rule for actions filed by inmates of the Indiana Department of Correction. See I.C. 33-37-3-3.] The indigent elects to file a verified written petition with the clerk of the court to waive filing fees. The judge may conduct a hearing to hear evidence regarding the present extent of indigent's financial resources and may require a court reporter make a record of this hearing.

In the event that the judge denies the petition, the aggrieved indigent may undertake a direct appeal. The indigent is required to file a Notice of Appeal. The indigent is required to file a second petition to waive appellate filing fees with the Clerk

of the Court of Appeals. If this petition is conditionally granted by the Court of Appeals, the indigent uses either App. R. 28, 31 or 33 to prepare a Record of the Proceedings.

If a transcript will not be available, the judge and the parties settle the transcript by agreement or by filing affidavits and counter affidavits pursuant to App. R. 31. Although judges generally take notes during a proceeding, a court reporter may be required to assist the judge in preparation of an affidavit. Normally, a court reporter should have no direct involvement in preparation of the transcript. See Campbell v. Criterion Group, 605 N.E.2d 150, 160-161 (Ind. 1992); and Elliot v. Elliot, 634 N.E.2d 1345, 1349-1350 (Ind. Ct. App. 1994).

Indigent's Right to Legal Counsel at Public Expense

A criminal indigent's right to legal counsel at public expense was noted in subsections, I.C. 35-33-7-5 & I.C. 35-33-7-6 - Initial Hearing; Indigent Right to Counsel and Crim. R. 11.

The right to free counsel exists in civil cases. See I.C. 34-10-1-2.

In civil cases if an indigent elects to file a petition for the appointment of counsel that contains some of the elements of a petition for waiver of filing fees, the judge may conduct a hearing to hear evidence regarding the present extent of indigent's financial resources. The judge may require that a court reporter make a record of this hearing. If the judge denies the petition for counsel, aggrieved indigent may undertake a direct appeal and is required to file a Notice of Appeal. The indigent is required to file a second petition to waive appellate filing fees with the Clerk of the Court of Appeals.

Indigent's Right to a Transcript at Public Expense

In civil cases, the indigent is permitted to file a petition asking for a complete transcript. A petition contains some of the elements of a petition for waiver of filing fees. The judge may conduct a hearing to hear evidence regarding the present extent of the indigent's financial resources. The indigent must demonstrate both indigence and that the procedures contained in either App. R. 31 or 32 are not sufficient to preserve the right to appeal. The judge may require that a court reporter make a record of this hearing.

In the event that the judge denies the petition, the aggrieved indigent may undertake a direct appeal. The indigent is required to file a Notice of Appeal. The indigent is required to file a second petition to waive appellate filing fees with the Clerk of the Court of Appeals. If this petition is conditionally granted by the Court of Appeals, the indigent uses either App. R. 28, 31 or 33 to prepare a Record of the Proceedings.

Procedures regarding the method by which a reporter will be paid for the transcript vary among courts and counties. The reporter should discuss this issue with the judge.

Guilty Pleas

Crim. R. 10 requires the electronic recordation of a guilty plea hearing and a sentencing hearing in all criminal felony and misdemeanor cases. At the judge's discretion, the record may be made by shorthand or stenotype. Depending upon whether the judge orders a transcript made and filed, the rule makes different provisions regarding the official record and retention. P.C.R. 1 permits an offender who has pleaded guilty to file a petition for post-conviction relief. P.C.R. 1(9) entitles a unrepresented indigent offender to a transcript of a guilty plea and sentencing hearing at public expense.

The present practice is that the right to a transcript does not arise until: (1) after the offender has actually filed a petition for post-conviction relief, (2) after the judge has determined that a summary denial is not appropriate, and (3) after the judge has scheduled a hearing on the petition. See subsection, P.C.R. 1(5), (6), (7), and (9) herein. The petition for post-conviction relief must contain an affidavit of indigency. See P.C.R. 1(9)(a).

Office of Public Defender Has Right to a Transcript at Public Expense

I.C. 33-40-1-5 authorizes the Indiana Office of the Public Defender to obtain a transcript at public expense for a criminal defendant. It is the reviewing court's responsibility to approve the expense of a transcript.

State Pays for Transcript in Civil Cases

In the event that the State files a Notice of Appeal to initiate an appeal in a civil case, the State does pay for a transcript. See 33-41-1-5. The State does not pay the clerk of the court fees for the clerk's portion of the Record. See I.C. 33-37-3-1

Indigent's Right Not to Pay Restitution, Fines and Costs Imposed as a Part of the Sentence in Criminal Cases

The judge may impose restitution, fines and costs as a part of the judge's sentencing discretion in a criminal case. Before any of these sanctions may be imposed, the judge must hold a hearing and take testimony regarding offender's ability to pay. The court reporter must make a record of this hearing. See Crim. R. 11, I.C. 35-38-1-18.

Indigent's Right to Obtain Transcript Submitted to an Administrative Law Judge for the Purpose of Judicial Review

For the purpose of judicial review of a final decision of an administrative agency of a governmental entity, an indigent may apply to a judge for a transcript at public expense. The transcript contains evidence or testimony presented to an administrative law judge. The judge must conduct a hearing to hear evidence regarding the present

extent of indigent's financial resources. The court reporter may be required to make a record of this hearing. If the judge denies the petition, the aggrieved indigent may undertake an appeal. See I.C. 4-21.5-5-13(c) and (d) and I.C. 33-37-3-2.

The Court Reporter and the Right of Public and Press to Access Public Records

Public Access to Records

Indiana has adopted a public access to records law. See I.C. 5-14-3-1 et seq. I.C. 5-14-3-2 defines the term "public agency"; the term includes any office exercising judicial power in a limited geographical area. I.C. 5-14-3-2 defines the term "public record" broadly to include any writing, paper, tape recording that is either created, received, maintained, used, filed, or generated on magnetic or machine-readable media. I.C. 5-14-3-3 provides that the agency may require that the request for access identify with reasonable particularity the information sought and that the agency may require a written request for access.

I.C. 5-14-3-4(a) lists categories of records that are excepted from disclosure requirements. Chief exclusions include: (a) records declared confidential by state statute [examples: wiretap information and juvenile records]; (b) trade secrets [see IC 24-2-3-2]; (c) confidential financial information; (d) patient medical records and charts without a written consent; and (e) those records declared confidential by rule adopted by the Indiana Supreme Court. See Admin. R. 9.

I.C. 5-14-3-5.5 defines the term "judicial public record"; the judge may order a judicial public record to be sealed. I.C. 5-14-3-9 describes the procedure applied in the event that a member of the press or a member of the public claims to have been wrongfully denied access to a public record.

The current practice is that an audio electronic recording tape or computer disk of any proceeding, hearing or trial is not released to any member of the public, including members of the press, unless the court reporter has first obtained the express verbal consent of the judge. This practice allows the judge the option to initiate the statutory procedure to seal the record. If the judge permits access, members of the press and members of the public may have the right to a transcript or copy of any audio electronic recording tape or computer disk at their expense.

The present practice is that members of the public and the press are not entitled to access to trial exhibits during the course of a trial. This practice is based in the inherent power of the judge to control the conduct of the trial. Here, the practice is designed to prevent possible alteration or other tampering. See Chapter 1, **Special Requirements**.

Counsel for a Party

Occasionally, counsel for a party may request that a transcript of a portion of the record be prepared during a jury trial. Usually, the transcript of a portion of the record is read to the jury during final argument. Counsel is permitted access. See I.C. 33-41-1-5 (party may request preparation of a transcript).

Open Door Law

I.C. 5-14-1.5-2 defines the term "public agency" without reference to judicial power. It appears that courts may not be subject to the Indiana Open Door statute.

The Open Courtroom

The Sixth Amendment to the U.S. Constitution and Article 1 § 13 of the Indiana Constitution grant the right of a public trial to a defendant in a criminal case. Article 1 § 12 of the Indiana Constitution requires that courts shall be open. Members of the public and the press have access to any proceeding before the judge. The right of access to an open courtroom is expressly limited by statute in juvenile cases. See I.C. 31-32-6-1 et seq. Occasionally, a judge may close the courtroom. I.C. 5-14-2-1 et seq. permits a judge to close the courtroom. A hearing may be required. The court reporter must make a record of any such hearing, and the court reporter must make a record of any finding announced by the judge from the bench.

The Court Reporter and the Appellant - Statutes and Rules Governing Charges and Costs

Statutes and Rules Governing Charges for Preparation of a Transcript

The legislature has specifically directed that a court reporter make a record of certain proceedings; some of these are listed in the section **Selected Criminal Statutes Which Require the Court Reporter to Make a Record**. The Rules of Criminal Procedure mandate that certain transcripts be prepared. The present practice is that no fee is charged for the preparation of any transcript expressly ordered by the judge or by the language of a rule of criminal procedure; other persons or entities that order the preparation of a transcript may be charged a fee pursuant to I.C. 33-41-1-5.

Private persons may be required to pay in advance for the preparation of a transcript. See I.C. 33-41-1-5. This provision does not apply to governmental entities, including the State since it is not permitted to pay in advance for services. See I.C. 5-11-10-1 and I.C. 4-13-2-20.

A court reporter is permitted to charge a fee for the preparation of any transcript, except those required to be prepared by the judge or by operation of either rule or statute. See I.C. 33-41-1-5. Fees charged are set by local rule. See Admin. R. 15(C).

CHAPTER 3

PRE-TRIAL PREPARATION AND PROCEDURE

CHAPTER 3

PRE-TRIAL PREPARATION AND PROCEDURE

Caution: The following chapter broadly describes civil and criminal procedures affecting the duties and responsibilities of court reporters. The court reporter is strongly advised to discuss any potential questions about specific applications of rules or statutes with the judge.

The Case File

Each case filed with the clerk will be assigned a case number. See Trial Rule 77(C) and Crim. Rule 21. Ind. Administrative Rule 8 describes the components of a case number.

In a civil case, the file is opened and the case number is assigned when an entity seeking relief submits an initial pleading, called the complaint, accompanied by summons and filing fee to the clerk of the court.

Some actions may be commenced without the payment of a filing fee. See Chapter 2; section **The Court Reporter and the Rights of Indigents**. An entity may seek either monetary relief or equitable relief. Examples of equitable relief that may be sought in a complaint include: (a) a temporary restraining order with or without notice, (b) an injunction, (c) a declaratory judgment, and (d) issuance of a protective order either with or without notice.

In a civil case, an entity from whom relief is sought is called a defendant. At least one (1) defendant is named in a complaint. Any named defendant may file an answer to the complaint. In their answer, defendant may admit or deny the truthfulness of certain allegations that are contained in the complaint.

Failure to file an answer may enable the judge to enter a default judgment. In civil cases where the relief sought is monetary damages, the judge may require the plaintiff to prove the amount of damages in an evidentiary hearing. The court reporter may be required to make a record concerning the entry of a default judgment. In the event a default judgment is entered against a defendant, it may seek relief from the entry of judgment pursuant to T. R. 60(B). The court reporter should make a record of a T. R. 60(B) proceeding.

A criminal case may be initiated utilizing one (1) of two (2) procedures. A file is opened and the case number is assigned either: (a) when the county prosecutor files an information with the clerk of the court, or (b) when an indictment is filed with the clerk of the court.

A grand jury verdict or a special grand jury verdict should be signed either: (a) by both the prosecuting attorney and either the grand jury or special grand jury foreperson,

or (b) by five (5) members of the grand jury or special grand jury. When a grand jury verdict or special grand jury verdict is properly signed, when the language of either verdict contains the words "true bill", and when either verdict has been delivered to the clerk of the court and filed, the document is called an indictment.

Bench Trial or Jury Trial

In certain civil and in all criminal cases, any party is entitled to a trial by jury. The right to a trial by jury may be waived in both civil and criminal cases. If the right to a jury trial is waived, a bench trial is held. Bench trials in both civil and criminal cases are conducted in a manner that is similar to the manner in which a jury trial is conducted.

The major differences between bench trial procedure in civil and criminal cases and jury trial procedure in civil and criminal cases are listed below as follows:

1. In bench trials, there are no jury instructions;
2. In bench trials, the judge, not the jury, decides the case;
3. In civil bench trials, any party may file a written request for written findings of fact and conclusions of law before presentation of evidence. See T. R. 52;
4. In criminal trials, a defendant may file a motion to suppress the evidence;
5. In bench trials, motions in limine are rarely utilized because the judge rules on the admission of evidence, and on appeal, the judge is presumed to disregard erroneously admitted evidence.
6. In bench trials, a defendant may move for an involuntary dismissal of the case pursuant to T. R. 41(B); in jury trials, a defendant may move for a motion for judgment on the evidence pursuant to T. R. 50(A).
7. In bench trials, no voir dire is conducted.
8. In bench trials, no motions and hearings involving either juror misconduct or 13th (7th) juror issues are asserted.
9. In civil bench trials, final arguments may be verbal; the more common practice is for the judge to order both parties to prepare post-trial briefs and proposed findings of facts and conclusions of law.
10. In bench trials, the judge may take the matter under advisement; the court reporter may have the duty to assist the judge with the calendar because of the requirements of T. R. 53.2.

Pre-Trial Proceedings in Criminal Cases - Court Reporter's Duties

Grand Jury or Special Grand Jury Proceedings

A court reporter may be required to make a record of grand jury proceedings or of special grand jury proceedings. See Chapter 2. The record shall not be transcribed unless ordered by a court. All grand jury proceedings are secret.

Motions to Suppress Evidence

The motion to suppress is the means by which the issue of whether evidence should be excluded is presented to the judge. A hearing is required; the judge may order the court reporter to prepare a transcript. See Chapter 2, subsection Crim. R. 5.

Guilty Pleas

Many criminal cases are resolved by a plea agreement between the county prosecutor and the defendant. The court reporter must make a record of any guilty plea entered in felony or misdemeanor cases. See Chapter 2, subsection Crim. R. 10.

Pre-Trial Proceedings in Civil Cases - Court Reporter's Duties

Motions for Summary Judgment

In comparative fault personal injury cases, products liability personal injury cases, medical malpractice personal injury cases, governmental entity personal injury cases, and breach of contract cases, the defense may file one or more motions for summary judgment. A hearing must be held on each motion. Either the judge or counsel for any party may request that the hearing be recorded. Testimony may be offered during the hearing. The losing party may initiate an interlocutory appeal. See Chapter 2.

Suggested Pre-Jury Trial or Pre-Bench Trial Preparation

Inspection of the File

Several days before the trial of a case is scheduled to begin, the court reporter should inspect the case file, including the Chronological Case Summary (CCS). A review of the CCS may aid the court reporter by enabling the rapid identification of portions of the file necessary for a more intense review.

The general purpose or goal of a review of the file is to develop a general overview of the entire case. The review will provide the court reporter with the raw data necessary to construct a preliminary log and index discussed in Chapter 4. The review of the file should aid the court reporter in the preparation of a special dictionary for computer-assisted transcription. These activities will generally increase the speed of the trial and increase the accuracy of a transcript.

The court reporter should determine a proper caption. The caption identifies the parties and the case number.

The court reporter should examine the file for the entry of a pre-trial order. See Chapter 2. The court reporter should note the existence of any stipulations and notify the judge. During the file examination, the court reporter should make notes regarding the proper spelling of proper names and common nouns. A pre-trial order may contain

evidentiary stipulations and may describe the need to obtain an interpreter for a witness. The court reporter should alert the judge in the event that a review of the pre-trial order reveals such potential problems. A pre-trial order may also contain cut-off dates for submission of preliminary drafts of both preliminary and final instructions and motions in limine. The court reporter should note the existence of these cut-off dates. In the event that cut-off dates have not expired at the time of a first review of the file, a second review of the file may be necessary.

During the examination of the file, the court reporter should note the existence of any motions in limine. Motions in limine may be filed in either civil or criminal cases. See Chapter 2. The filing of a motion in limine alerts the court reporter to a situation where extra care may be necessary in order to insure the production of a quality transcript; filing of a motion in limine signals the existence of a dispute over admission of evidence, and common problems associated with making a record may arise during the trial.

Although the practice of the judge may vary, a court reporter may ask the judge for permission to arrange a date shortly before the trial for a meeting between the court reporter and counsel. At the meeting, the court reporter pre-marks exhibits and counsel exchange or examine exhibits. Usually, no record is made of the meeting. In this manner, an exhibit "information" sheet may be prepared in advance of trial.

In criminal cases, the court reporter should note when the defendant was personally notified of the trial date. See Chapter 2.

Pre-Trial Review of Instructions

In both civil and criminal cases, a jury receives formal communication from the judge on two (2) occasions: (1) before opening statements; and (2) either before or after the conclusion of final arguments. Jury communication between the judge and the jury takes the form of structured, carefully crafted written paragraphs, which are prepared in advance of trial. These written paragraphs are referred to as instructions. Instructions presented to a jury before opening statements are called preliminary instructions; instructions read to a jury before or after the conclusion of final arguments are called final instructions.

Practices regarding pre-trial preparation of both preliminary and final instructions vary widely. Some judges prefer to draft their own preliminary and final instructions and refuse all instructions submitted by counsel. Some judges order the parties to prepare and to submit drafts of proposed preliminary and final instructions shortly before trial; the judge uses the proposed drafts to research and to prepare either proper instructions or supplemental instructions to fill in any perceived gaps. Some judges permit the parties to control the instructions and merely enter a ruling regarding which will be given and which will be refused. The court reporter should discuss the judge's preferences regarding instructions before trial.

The judge may require that the court reporter prepare the preliminary issue instruction in a civil case. The judge may also require that the court reporter prepare standard court pattern preliminary instructions in both civil and criminal cases.

Unless the parties waive recording of the reading of the instructions, the court reporter is required to make a record of instructions as the judge reads the instructions to the jury. In the event that there is a variance between the language of the written form and the judge's spoken word, any aggrieved party must immediately object. The court reporter is required to make a record of any objection. In the absence of any objection, the words spoken by the judge to the jury control over the typed/written words contained on each instruction document.

In both civil and criminal cases, clean copies of the preliminary and final instructions will be provided to the jurors before or at the time they are read to the jury. See Crim. R. 8(D) and I.C. 35-37-2-2(6). A clean copy does not contain any authority references to statutes or case law or the identity of the drafter of an instruction.

Some judges require the parties to tender both a clean copy of the instructions and a copy containing citations of legal authority. A court reporter may save valuable judge and jury time if clean copies of preliminary and final instructions are prepared in advance. The clean copies of the instructions are delivered to the jurors at the direction of the judge or are placed in their juror notebooks.

The judge must indicate which preliminary and final instructions are to be read and which preliminary and final instructions are refused before presentation of arguments. See Crim. R. 8(B) and T. R. 51(C). The parties are permitted to make verbal objections to those instructions that the judge decides to present to the jury; objections must be made before deliberations commence. See T. R. 51(C) and Crim. R. 8(F) & (H).

On occasion, the court and the attorneys will agree that oral objections to the instructions will be presented to a court reporter during jury deliberations. The court reporter is required to make a record of the agreement and the objections to the instructions. Objections to instructions by counsel often pose difficult verbatim problems for a court reporter. The language of an instruction objection is frequently grammatically incorrect; an objection may contain erroneous citations to cases or to other legal authority.

The court reporter should have a clear understanding of the judge's expectations regarding instructions before trial commences.

Daily Check of the Court Reporter's Work Area and Bench

Before the commencement of either a jury or a bench trial, a court reporter should go into the courtroom and check the reporter's work area in order to ensure that all supplies necessary to make a record are available. The Judge may request that the Bench also be maintained with adequate supplies. The court reporter has the duty to ensure that

the recording equipment and software is properly maintained and in good working order. The court reporter is responsible for preparing and updating appropriate dictionaries and job dictionaries. If sound amplification is necessary, it is the reporter's responsibility to ensure that appropriate equipment is available and in proper working order.

Voir Dire

The court reporter should inquire whether the judge plans to order the court reporter to make a record of the qualification examination of each potential juror. The qualification examination is referred to as voir dire. The primary purposes of a voir dire examination are:

1. to determine if a juror possesses the statutory qualifications to serve as a juror,
2. to determine if a juror can decide the case based only upon evidence presented during the trial, and
3. to determine if any personal matter might cause a juror to become distracted from the evidence.
4. See I.C. 33-28-5-18(b) (age, citizenship, English familiarity, disability, employment, etc.),
5. I.C. 34-36-3-5 (interested in another suit, begun or contemplated, involving same or a similar matter),
6. I.C. 35-37-1-5 (bias, prejudice, opposition to imposition of death sentence, etc.),
7. I.C. 35-37-2-3 (personal knowledge of material fact).

A juror's employment may serve as a basis for disqualification. See IC 10-16-7-8 and Ind. Jury R. 5. Either the judge and/or the attorneys may conduct the voir dire examination. See I.C. 34-36-3-4, T. R. 47, Crim. R. 21.

Counsel may request the court reporter make a record of the voir dire examination. Because case law requires a record in order to preserve error for a subsequent appeal, it is likely that the court reporter will make a record of the examination.

Before voir dire begins, the entire panel of potential jurors is sworn as a group. The court reporter should determine whether a record should be made of the judge's administration of the oath to the panel of jurors. Each potential juror is treated as a witness if the court reporter makes a record of the voir dire. After a jury is selected, those jurors are sworn to try the case. See I.C. 34-36-3-6 and I.C. 35-37-2-2.

In some instances individualized voir dire will be utilized. Individualized voir dire is a rarely used discretionary procedure where each potential juror is examined in camera, outside of the presence of all other potential jurors.

If a disabled person is a member of a jury panel, the judge may be required to reasonably accommodate a known disability under the Americans with Disabilities Act,

42 U.S.C. 12101, 29 C.F.R. 1630 et seq. The judge may assign this task to the court reporter. Advance notice of the need to have a reasonable accommodation available may be contained in an individual's response to a juror questionnaire.

CHAPTER 4

MAKING THE RECORD IN THE COURTROOM

CHAPTER 4

MAKING THE RECORD IN THE COURTROOM

Introduction

Making the record is one of the most challenging but important functions of a court reporter. An accurate record is essential for trials and appeals. Because of an ever increasing volume of cases, a court reporter must find an efficient and accurate method. The court reporter should review T. R. 74 and Crim. Rule 5 in Chapter 2.

In murder cases where the death sentence is sought, Crim. R. 24 mandates the use of stenographic recording with computer-assisted transcription. See Chapter 2.

Professionalism and Demeanor

Active reporting in the courtroom often places the reporter in front of an audience larger than just the parties, witnesses, lawyers and judge. This is a time when vigil must be maintained to assist the court in maintaining the dignity and solemnity of the proceedings. See chapter 1 regarding Ethics and Professionalism.

Recording Methods

Traditionally, a court reporter transcribed the proceedings from notes taken in manual shorthand. See Chapter 1. Currently, T. R. 74 and Crim. R. 5 authorizes the judge to provide for the recording of the proceedings by electronic or mechanical devices, or by stenographic reporting with computer-aided transcription capability. The judge has discretion to eliminate shorthand or stenographic reporting of any recorded matter except death penalty cases.

Scope

The court reporter should review T. R. 51, T. R. 74, Crim. R. 5, and Crim. R. 8. See Chapter 2.

Modern technology continues to improve and expedite the recording process. Technological innovations will continue to permit a reduction in cost and time. A court reporter is encouraged to keep abreast of developing technology and be ever mindful of the rules, which are frequently amended. Rules exist to assure uniformity, reliability and accuracy.

Court Reporting Techniques

At present, most Indiana court reporters use one of the three basic techniques to record proceedings: shorthand (manual or stenotype), electronic tape recording and digital recording. To achieve maximum accuracy, many court reporters have elected to

utilize more than one technique. Computer-aided transcription will continue to make great strides.

Shorthand Reporting

Shorthand is the oldest court reporting technique. A shorthand court reporter uses graphic symbols, which represent phonetic speech. The symbols are very concise to permit the speed necessary to make a verbatim record.
A court reporter that uses a stenotype machine makes the record by striking a combination of keys on a special keyboard. The keys, representing phonetic speech sounds, imprint a paper tape with an inked ribbon. According to National Shorthand Reporting Association standards, a competent court reporter using either method should be able to record a minimum of 200 words per minute, averaging 4 words per second.

Shorthand Reporter Notes

In addition to recording every word of testimony, a shorthand court reporter must identify speakers, classify kinds of testimony, and make notes regarding places where the correct spelling of proper names and medical, legal and technical terms may be needed. Notes should include identification of objections, motions, rulings, instructions, stipulations and the admission and exclusion of exhibits.

Audio Electronic Tape Recording

Audio electronic tape recording has been the dominant reporting method, particularly in the smaller counties. The dominance of electronic tape recording has arisen for several reasons, including: unavailability of court reporters that have shorthand training, immediate playback capability, low cost, high accuracy and ability to use another person to prepare a transcript.

A complete and accurate record on electronic recording tape depends upon two criteria: (1) quality equipment, and (2) a trained, conscientious court reporter. A trained and conscientious court reporter must monitor the recording tape continuously and maintain a complete and legible log accompanied by an index. The judge must provide a storage facility. Even if a perfect electronic tape recording has been taken, a transcript will only be as good as the court reporter's listening and typing/transcription abilities.

Digital Electronic Recording

Digital recording systems are replacing audio tape recording systems. It is not a matter of the audio systems not working well enough, but the digital system is more efficient in recording, archiving, distributing, reviewing and storing. Digital systems can record up to 22 hours on a single CD where tape recorders usually record only three hours on a single cassette tape and decrease the amount of storage space needed. Log note software is also available with the digital recording systems. As with the audio

systems, it is imperative with the digital systems to have quality equipment and trained, conscientious court reporters.

Reporter Notes

In the era of recording through electronic means, reporter notes have expanded to include both a log and an index. Reporter notes should not be confused with the making of Chronological Case Summary entries as they are created to assist the reporter in preparation of a requested transcript or to locate within the record where an event occurred that needs to be reviewed.

Log

A log of a trial is essential for preparation of a complete and accurate transcript. A log is the equivalent of a table of contents. A properly constructed log of a trial should: (1) identify speakers, (2) classify kinds of testimony, (3) note places where correct spelling of proper names and medical or technical terms may be needed, and (4) locate where objections, motions, stipulations, rulings, instructions and the admission and exclusion of exhibits may be found. See Chapter 2.

Index

An index of a trial contains a caption and a list of counsel as well as a list of tape or digital reference points corresponding to the recording device's counter or display. The index should be kept with the electronic audiotape or the CD.

The tape counter or digital display provides a quick and reliable way to identify and locate particular statements or portions of testimony. The number on the counter or display should be noted frequently. This enables the court reporter to respond quickly to a "repeat the question" request from a witness, or a "play back that question and answer" request made by either the judge, counsel, or a juror during the trial.

Care of Electronic Tape Recording and Digital Recording Equipment

A court reporter is responsible for the maintenance of the electronic tape recording and digital recording equipment. See Crim. R. 5: "The recording device or the computer-aided transcription equipment shall be selected and approved by the court and may be placed under the supervision and operation of the official court reporter . . . ".

The court reporter must be very familiar with the operation of the equipment and must make certain it is functioning properly before the making of a record of any proceeding commences. The court reporter and the judge must have a plan to immediately access replacement equipment. See Chapter 3.

If a mechanical malfunction of the electronic tape or digital recording equipment occurs during the proceedings, the court reporter must immediately inform the judge of the problem.

Audio Electronic Tape and CD Storage

The Information Management Section, Division of State Court Administration recommends that the mixing of different case types on a single audio recording tape/CD should be avoided. Each case type has a different retention schedule, and the mixing of short-term retention cases with long-term retention cases adds to the number of cassettes for which storage is required and adds additional maintenance and storage effort and expense.

Certain tapes contain confidential information that must be made secure. Recording on segregated tapes/CDs is the most effective and efficient means for the proper storage of these records.

If electronic tapes/CDs used to make a record of a proceeding are not properly identified and stored, a court reporter may face sanctions. See Admin. Rule 10 and Chapter 2. Each electronic tape/CD should be identified by case number, caption, and describe the general nature of the procedure recorded, including the day, date, and time. Electronic tapes should not be stored for long time periods under conditions of extreme humidity, temperature or strong magnetic fields. Tapes/CDs will endure for many years if properly stored and handled.

Retention of Outdated Equipment

In the event a new method of recording equipment is implemented, it is essential to retain equipment needed for future transcription of proceedings previously recorded.

Common Reporting Problems

Audibility

Control of the proceedings in the court is the responsibility of the judge. The court reporter notifies the judge of the existence of a problem; the judge decides upon the appropriate remedy and notifies the parties and counsel. See Chapter 1.

In order for an accurate record to be made, each party, each witness, and each attorney must speak loudly and clearly. It is the responsibility of the judge to ensure that loud and clear voices are used. The court reporter must not hesitate to seek immediate consultation with the judge if the court reporter cannot hear or understand the speaker. An electronic tape recorder cannot pick up very low voices.

The court reporter must seek immediate consultation with the judge regarding other conditions, which may hinder production of a satisfactory record. Audibility

problems can be caused by traffic noise, a passing train, jewelry rattling near a microphone, unruly spectators, electronic devices, etc.

Simultaneous Speech

Simultaneous speaking or "overlapping" presents a major verbatim problem for a court reporter. In a heated cross-examination, an attorney may question a witness, the witness may anticipate the question and begin to respond, and opposing counsel's voiced objection may occur almost simultaneously. This rapid speech pattern cannot be recorded properly, and the audio electronic tape recording of the occurrence would be indiscernible.

Use of multi-track equipment may help to alleviate this problem, but only if each person involved remains physically located in the pre-assigned place and each person involved is speaking into the proper pre-assigned microphone. The court reporter must seek immediate consultation with the judge in the event that simultaneous speech occurs. The court reporter may suggest that the question, answer and objection be re-stated for the record.

Gestures

From time to time, both counsel and the witnesses may use gestures to clarify specific points instead of words. A witness may point "over there" or at "that person sitting there." A witness might state, “the car turned this way”. It is the responsibility of the judge and counsel to clarify these points. A court reporter is not expected to make a record of a gesture.

The proper courtroom practice requires that, immediately after a gesture, counsel should state, "Let the record show . . ." followed by a verbal description of the gesture. If this procedure is used, the court reporter makes a record.

If proper practice is not followed, the court reporter should note a very general description of the gesture in the log for later insertion into the transcript as a parenthetical note. See Chapter 5.

Demonstrative Evidence Not Admitted During the Trial - Example: The Black Board Drawing

If a witness draws a diagram on a blackboard to illustrate testimony, the drawing does not become an exhibit unless it is offered by a party and ordered admitted by the judge. If the drawing is offered and admitted, the court reporter should be prepared to take a photograph. If the drawing is not offered and admitted, counsel may stipulate that the drawing may be used during presentation of the evidence and during final arguments. The court reporter makes a record of such a stipulation.

"Off the Record"

Practices vary widely regarding the proper procedure to address this problem. The court reporter and the judge should reach an agreement regarding whether a record should be made in advance of each proceeding.

Recording conversation between attorneys at the counsel table or between counsel and the judge at the bench (a side bar conference) presents a problem for the court reporter.

Generally, the court reporter should not make a record of any conversations between counsel that occurs at counsel table. If the court reporter has a question regarding whether a record should be made, the court reporter must seek an immediate consultation with the judge.

If an agreement has not been reached before the proceeding, the court reporter should seek an immediate consultation with the judge either in the event that the judge calls to counsel to "approach the bench" or in the event that an attorney states that "leave to approach the bench" is sought.

At a sidebar conference, the judge should inform the court reporter when to go "off the record", and the judge should indicate when to resume making the record. Some court reporters indicate that the best practice is that all sidebar conversations in court during the course of a trial are "on the record". If there is uncertainty, the court reporter should not hesitate to seek an immediate consultation with the judge.

Testimony Stricken from the Record - "Strike That"

This problem usually arises out of a unilateral statement by counsel who begins a question directed to a witness. Counsel does not complete the question, but counsel directs the court reporter to “strike that” and begins to state a new question.

The court reporter makes a record of **all** questions, **all** answers, and **all** objections whether or not ordered to strike the subject matter from the record.

Rephrased Question

An attorney may express a desire to rephrase, withdraw, or strike a question. The court reporter makes a record of each such expression and preserves each question, even if rephrased, as a part of the record.

During examination, a witness may express a lack of understanding of a question. The court reporter makes a record of each such expression. In response to the witness’s expression, proper courtroom practice would require counsel to withdraw the previous question and proceed to ask a new question. The court reporter makes a record of the first question, counsel’s expression, the new question and the witness’s answer.

Motion to Strike

A motion to strike may address: (1) the situation where a witness has not properly responded to a question by making a volunteered statement during examination; (2) the situation where evidence was admitted "subject to connection" and counsel failed to make a proper foundation for admission; and (3) to correct an error regarding the admission of evidence.

The court reporter must not take these words literally. Usually, the process is initiated by an objection raised by counsel followed by a ruling from the bench by the judge. In the event that a motion to strike testimony is granted, the testimony ordered stricken remains part of the court reporter's record. The judge may issue a verbal instruction to the jury to "disregard" certain "testimony". The court reporter makes a record of each such occurrence. A log and index entry should be made of each such event.

Special Situations

The Non-English Speaking or Deaf Witness - Interpreters

I.C. 34-45-1-3, T. R. 43 (C), and Crim. R. 21 govern the use of interpreters at trial. Generally, counsel for the respective parties has raised the need for use of an interpreter before the trial at a pre-trial conference. The judge may delegate the task of obtaining an interpreter to the court reporter. The court reporter should follow the directives of the judge.

A special oath is utilized to swear in an interpreter. The oath appears below (see I.C. 34-45-1-5):

> Do you solemnly swear (or affirm) that you will justly, truly and impartially interpret to . . . (insert witness name) . . . the oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such questions, relative to the cause now under consideration before this court so help you God (or under the pains and penalties of perjury)?

In the case of a deaf witness, it may be necessary to obtain a person who has the ability to sign and to translate sign language. T. R. 43(C) expressly incorporates the Americans with Disabilities Act, "42 U.S.C. 12101, 29 C.F.R. 1630 et seq. A reasonable accommodation may include use of special voice recognition software.

Contempt

An outburst or other behavior disrupting court proceedings may precipitate the initiation of a direct contempt hearing. The court reporter should attempt to make a

record of any disruption. The court reporter may be required to be a witness in such a contempt hearing and should be alert and familiar with the proceedings. See Chapter 2.

If the judge issues an admonishment to the audience, the court reporter must make a record of the admonishment.

Clearing the Courtroom

Occasionally, the judge may order that the courtroom be cleared, and subsequent proceedings in the case be closed to the media and to the public. Usually, this situation may arise in a case where there may be some danger to a witness, and the situation will end after that witness has testified. In the event that a hearing is required before the courtroom is closed, the court reporter must make a record of any such hearing. The judge may announce findings of fact and conclusions of law from the bench. The court reporter must make a record of any such announcement by the judge. See I.C. 5-14-2-1 et seq. and Kendrick v. State, 661 N.E.2d 1242 (Ind. Ct. App. 1996). See Chapter 2.

Exhibits

Marking Exhibits before Offer and Ruling on Admissibility

Marking exhibits is the duty of the court reporter. Exhibits are marked in order to achieve clarity of identity and reference during the making of the record and the transcript. Clarity of identity refers to proper attribution of the exhibit to the party who offered the exhibit during a trial. Clarity of reference refers to the elimination of any confusion by achieving a common language reference to the exhibit which is thereafter used by all speakers.

Exhibits should be marked as follows: (1) exhibits for the plaintiff are marked as "Plaintiff's Exhibit" followed by consecutive whole numbers, and (2) exhibits for the defendant are marked as "Defendant's Exhibit" followed by consecutive letters. When the entire alphabet has been used, the letters are doubled for the next series of defense exhibits ("AA; AB; AC,").

A stipulated exhibit is referenced as “Stipulated Exhibit" and either numbers or letters may be used. See Chapter 2.

In the event the exhibits are not marked before commencement of the proceeding, (See Chapter 3), counsel delivers the exhibit to the court reporter during the testimony of a witness. The court reporter marks the exhibit for identification and makes separate appropriate log and index entries. After the exhibit is marked, questions and answers may contain references to the marked exhibit. Counsel may or may not offer a marked exhibit into evidence. Separate log and index entries must be made when each exhibit is offered into evidence. After the exhibit is offered into evidence, any adverse party has the opportunity to state an objection to the admission of the exhibit. Separate log and index references must be made for each objection made by each objecting party. One

party may join the objection of another party and state additional objections. The judge will announce a ruling regarding whether the exhibit is admitted or denied. Separate log and index entries must be made when the judge announces the ruling. Regardless of whether an exhibit is admitted or denied, possession of the exhibit is retained by the court reporter after the exhibit is offered.

An exhibit offered at trial may have been previously marked in a deposition. Generally deposition exhibits are marked in the same manner as trial exhibits. Usually, deposition exhibits are marked with the additional words "for identification". At trial, the marking given the exhibit at the deposition is usually ignored, absent a stipulation by the parties.

After an exhibit has been admitted, counsel may seek permission to withdraw the exhibit and substitute a copy. If the judge permits withdrawal and substitution, the court reporter should make separate log and index entries. The court reporter keeps custody of the copy instead of the original after a substitution has been permitted.

An "information" sheet should be maintained to keep track of the exhibits marked, offered, admitted, denied, withdrawn, or never offered. Examples are included in Appendix E.

After the offer, exhibits become the property of the court reporter. The court reporter should take special care to account for each exhibit at each recess. The court reporter does not take possession of exhibits that were not offered; these are returned to counsel.

Retention and Storage of Exhibits

Exhibits shall be retained by the court reporter under lock and key, according to time limits established by statutes and by the rules. See Chapters 2 and 6. The court reporter should not allow any person, except the judge, access to the storage room. The court reporter shall be present during any entry into the exhibit storage area that is made by either the judge or another member of the staff.

In civil cases where a timely Notice of Appeal has not been filed, exhibits may be released to counsel. As a precautionary measure, the court reporter should require a written receipt signed by the attorney before releasing the exhibits. See Chapter 6.

Exhibits to the Jury Room

The judge is permitted to allow the jury to take admitted exhibits to the jury room. If the judge designates the court reporter to carry out this function, the reporter has a special duty to ensure that only admitted exhibits are sent to the jury room. An error might serve as the underlying basis for a mistrial motion.

Public Access to Exhibits

Exhibits presented in a trial or hearing are generally accessible to the public unless specifically excluded from public access under Admin. R. 9.

CHAPTER 5

PREPARATION OF THE TRANSCRIPT OF THE EVIDENCE

CHAPTER 5

PREPARATION OF THE TRANSCRIPT OF THE EVIDENCE

Introduction

In Indiana, preparation of transcripts is controlled by the Indiana Rules of Appellate Procedure. App. R. 27-29 and Appendix A. Transcripts are submitted in electronic format and the standards for this process have been adopted by the Indiana Office of Judicial Administration and are published with the Appellate Rules.

The product of a court reporter's work is the transcript. The importance of a high quality and timely prepared transcript cannot be overemphasized. Delayed preparation and delivery of transcripts is a hindrance to the final disposition of cases.

This chapter addresses how transcripts are requested, prepared, certified and submitted for appeal. A court reporter should follow the requirements of the Indiana Rules of Appellate Procedure when preparing a transcript for any purpose.

Overview - The Transcript in Relation to the Appellate Process

The court reporter should review the definitions of the word "record" and the phrase "Record on Appeal" that appear in Chapter 1.

The transcript becomes one (1) of the four (4) major sections of the Record on Appeal, which consists of volumes containing the Transcript of Evidence, Volume of Exhibits and Index of Exhibits, Table of Contents and the Clerk's Record. Once separately certified as accurate and complete by the court reporter, the transcript is filed with the clerk of the court. See I.C. 33-41-1-5 and App. R. 11.

It is the obligation of the appellant (or appellant's counsel) to prepare the appendix containing the table of contents and copies of applicable documents. See App. R. 49-51.

Initiation of an Appeal - The Notice of Appeal

An appeal is initiated by the filing of a Notice of Appeal with the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court. See Chapter 2. The party taking the appeal is required to serve both the trial court clerk and the court reporter with a copy of the Notice of Appeal. *See* App. R. 24(A)(1). The Notice will contain both the Request for the Clerk's Record as well as the Request for Transcript which will specify the portion of the evidence to be transcribed. The burden of requesting an adequate Record on Appeal is imposed upon the party taking the appeal.

The trial court clerk is responsible to immediately provide the reporter with a copy of the Notice of Appeal. App. R. 10. **The reporter is required to file the Transcript of Evidence within 45 days of the date the Notice of Appeal was filed**

with the Clerk of the Supreme Court, Court of Appeals and Tax Court unless the period expires on a non-business day (Saturday, Sunday, holiday or a day the clerk is not open. See App. Rule 11(B) and App. Rule 25(A).

The court reporter's duty to prepare a transcript is strictly limited by the language contained in the body of the Notice of Appeal. The Notice may either seek preparation of a transcript which contains only selected portions of what transpired or seek the preparation of a transcript containing all matters where the court reporter made a record in a particular proceeding. See App. R. 10 .

Information concerning the filing and progress of an appeal is available online from the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court. See, https://mycase.in.gov .

When a Notice of Appeal is filed that requests a transcript containing less than all of the evidence, other parties may file a Supplemental Request for Transcript with the Clerk for additional portions of the transcript. See App. R. 9(G). The original Notice of Appeal together with any other Supplemental Requests for additional portions of the evidence determines the contents of the transcript of evidence. All evidence requested is assembled into one transcript of evidence.

If any interpretation question arises from the language of a Notice of Appeal, the court reporter should consult with the appellant (or appellant's counsel). **For the protection of the reporter, it is recommended that resolution of these questions be done in writing.**

Consolidated Appeals and Appeals Involving Multiple Appellants

Consolidation of multiple cases for trial is a common occurrence, particularly in criminal cases. Proper preparation of the transcript of evidence becomes a more difficult task for the reporter.

App. R. 38 sets forth a good answer on how to approach preparation of the transcript and provides:

> **A. Cases Consolidated at Trial or Hearing.** When two (2) or more actions have been consolidated for trial or hearing in the trial court or Administrative Agency, they shall remain consolidated on appeal. If any party believes that the appeal should not remain consolidated, that party may file a motion to sever the consolidated appeal within thirty (30) days after the first Notice of Appeal is filed.

> **B. Cases Consolidated on Appeal.** Where there is more than one (1) appeal from the same order or judgment or where two (2) or more appeals involve a common question of law or fact, the Court on Appeal may order a consolidation of the appeals upon its own motion, or upon the motion of any party.

The rule contemplates one appellate transcript but it may be that another party, plaintiff or defendant, may file an additional Notice of Appeal requesting portions of the proceeding that were not required by the initial Notice of Appeal. All portions requested in the Notices of Appeal should be assembled into a single transcript.

Issues Related to Payment

Overview

Depending upon the model chosen by a court for its court reporter services, reporters may be paid a per page fee for preparation of transcripts. This fee is established by local court rule and is subject to advance approval by the Supreme Court before it can be implemented. Yearly changes in per page fees may be sought by amendment of the local court rule. See Chapter 7, Guidelines Concerning Fees.

The court reporter's contract is created with the person or entity that files the Notice of Appeal or the Supplemental Request for Transcript. The person or entity that files the Notice or Supplemental Request for Transcript is liable for the cost of preparation. The attorney who files a Notice or Supplemental Request is personally liable for the cost of preparation.

Reporters are often asked to estimate the cost of the preparation of a transcript. These requests may come from a party trying to decide whether to appeal a judgment or an attorney gathering information in order for their client to decide whether to appeal. A reporter should make a good faith effort to provide a reasonable estimate of the cost of the preparation of the transcript.

Advance Deposits & Failure to Pay

Based upon past experience, a reporter may decide that the person or entity that has filed a Notice of Appeal or Supplemental Request for Transcript should make an advance payment toward the total cost of the preparation of the Transcript. In this circumstance the reporter should clearly state the amount of the deposit in writing as well as state that preparation of the transcript will not commence until the deposit has been made and that full payment must precede delivery of the transcript to the Clerk. If a written request for a deposit has been made but not paid, the reporter is under no obligation to commence work on the transcript.

Pro Se or Unrepresented parties will often present a special situation for a reporter in terms of preparation of a transcript. A reporter should communicate clearly in writing.

See Appendix F for examples of reporter communication with unrepresented parties. These tools also have application for communication with counsel.

When lack of payment results in the transcript not being commenced or the appellant discontinues communication with the reporter and the time for filing of the transcript has passed, the reporter does not need to file any notice with either the trial court or the court on appeal. The appellate rules place the burden of moving forward with the appeal upon the appellant and require filing of the Notice of Appeal plus a filing fee with the appellate clerk. Reporters can readily search the Court on Appeal website to determine whether an appellate case has been docketed or not as sometimes a party may simply file the Notice of Appeal to preserve the right to appeal but subsequently decide to abandon the effort.

BEST PRACTICE

Within ten (10) days after the filing of the Notice of Appeal, a party must enter into an agreement with the Court Reporter for payment of the balance of the cost of the Transcript. *See* App. Rule 9(H). If the party does not make payment arrangements for the transcript within ten (10) days of the filing of the Notice of Appeal or fails to pay the remaining balance after paying a retainer and is not entitled to a free transcript, then the Court Reporter should bring this to the attention of the court on appeal by filing either: (1) a motion for extension of time to complete the transcripts; or (2) a notice stating that payment arrangements have not been made for the transcript or that the requesting party has failed to fully pay for the transcript.

The court on appeal will then issue an order to show cause to the party requesting the transcript, which may result in the dismissal of the appeal.

The written documentation of communication with the appealing party or their attorney will protect the reporter as well as provide the court on appeal with a clear understanding of the situation.

Consolidated Appeals and Requests for Supplementation of the Record

These situations often create a dilemma for the reporter with regard to how to charge for a transcript. An easy rule of thumb to use is that whoever files the first Notice of Appeal is charged for the transcript at the normal rate. If another party requests supplementation of the record with other material, they are charged for the additional material included.

On occasion, the parties may be willing to split the cost or agree to a division of the total cost of the transcript. In situations where multiple transcripts will be produced, a reporter might add the cost of the original and the copy and equally divide the total between both appealing parties. In these instances, good communication with the involved parties will be essential.

Supplementation of the Record on Appeal

App. R. 9(G) provides …

> Supplemental Request for Transcript. Any party to the appeal may file with the trial court clerk or the Administrative Agency, without leave of court, a request with the Court Reporter or the Administrative Agency for additional portions of the Transcript.

The appellate court may issue an order for supplementation of the transcript. Questions concerning interpretation of the order should be addressed to the Clerk of Supreme Court, Court of Appeals and Tax Court. A supplemental transcript must be prepared in compliance with the order and is separately certified by the court reporter and filed with the Clerk of the Court. See App. R. 11(A).

Preparation of the Transcript - What is Verbatim?

Overview

In Chapter 4, the problem of "what is verbatim" was addressed in context of the court reporter's task in making a record. Having recorded all questions asked, all answers given at a proceeding, the court reporter is again confronted with the "verbatim" question during the process of preparing the requested transcript after receipt of a Notice of Appeal.

The goal is to produce a clear and readable transcript that accurately demonstrates exactly what transpired during the course of the proceeding. The readability of the transcript must be balanced against accuracy of the transcript. Not all judges and court reporters agree on where a balance lies between these concepts. All agree that it is the duty of the court reporter to produce a transcript that is both accurate and complete.

The question of editing or adjusting what was recorded to achieve a readable transcript is at the heart of the issue. For example, if the court reporter elects to "dress up" the transcript by correcting obvious grammatical errors or interpreting a dialect, is accuracy lost?

In order to resolve a "verbatim" dispute, the court reporter may use both common sense and discretion, involving a feeling for the language, to produce a readable and coherent transcript. The exercise of common sense and discretion generally requires the exact transcription of what was recorded during the process of making a record. Any deviation made should not alter or distort the accuracy of the content of the transcript.

The present practice is not to edit, but in fact produce a transcript that contains that which was recorded word for word during the process of making a record. Extreme caution should be exercised by the court reporter to avoid inadvertently editing or altering the substance of the proceedings. The verbatim problem may arise in the preparation of a transcript that contains opening statements of counsel, final arguments of counsel, and counsel's objections to both preliminary and final instructions.

Extraneous Conversation not Related to the Hearing

From time to time lulls occur once a hearing has commenced when evidence is not being presented while the court and counsel await the arrival of a witness, a document is copied or obtained or other circumstances cause a pause in the proceedings. During these times the court and/or counsel may converse with one another concerning matters unrelated to the issues of the hearing but were recorded because the court did not order the record turned off.

When preparing a transcript of the hearing, it is not necessary to transcribe these extraneous conversations since they do not relate to the issues heard. If a reporter has any hesitancy about what should not be transcribed, the judge should be consulted.

Grammatical Errors - "Sic"

The present practice is that grammatical corrections should not be made even if the changes would not have any impact on the total context. Ungrammatical speech or mispronounced or nonexistent words contained in counsel's question or in the witness's answer may be important. The court reporter should refrain from interpreting the intent or meaning of the speaker's choice of language. The existence of the inaccuracy may be noted by use of "(sic)" immediately after each inaccuracy. Use of "(sic)" prevents the reader from assuming that a court reporter made an uncorrected transcription error.

The use of "(sic)" indicates court reporter awareness that some improper condition exists with the language contained on the recording and signifies that the court reporter used best efforts to avoid mistakes during the transcription process. The use of "(sic)" emphasizes that incorrect language was accurately recorded. This practice is recommended over the practice of correcting any obvious mistakes during the transcription process. Before using "(sic)", the court reporter should:

1. determine if, in fact, an error was made;
2. determine whether the context of the surrounding record itself corrects the error; and
3. consult with the judge in the event that a misstatement by the judge is involved.

Accents

When testimony contains dialect or unfamiliar accents, it may be transcribed phonetically noted by the use of "(phonetic)" following the word or phrase in question.

Foreign Language Translation

When testimony is presented with the assistance of a translator, the testimony of the translator concerning their qualifications should be part of the transcript of evidence. Translation may be noted through the use of a parenthetical phrase; e.g. "[Translation English to (language)]".

The best practice is to transcribe the English spoken by the interpreter plus provide a recording containing the questions/responses spoken in the foreign language as the propriety of the translation may be an issue.

Profanity

A witness, a party, an attorney or the judge may occasionally use profanity in court. Recorded profanity should appear in transcripts rather than substitution of the parenthetical phrase "[expletive deleted]".

Inaudible Portion of an Electronic Tape

As discussed in Chapter 4, the problem of indiscernible or inaudible words and phrases may occur. These may appear as gaps in the court reporter's notes or on the court reporter's recording. The fact that something was said but what was said could not be heard or understood is a matter of record.

The present practice is to prepare a parenthetical note in the transcript that identifies that something is missing. The parenthetical words "(indiscernible)", "(unintelligible)", or "(inaudible)" may be used to indicate existence of the problem.

In the event lengthy passages are inaudible, a court reporter should confer with the judge first, and if permission is granted, a court reporter may then also consult with the attorneys. An attempt should be made to reconstruct the missing passage to assist appellate review.

If the inaudible portion cannot be reconstructed and is of significant duration, the parenthetical note should provide information about the length of time.

The court reporter may elect to combine one or more words indicating existence of an inaudibility problem with use of the word "(sic)".

Appearance and Quality of the Transcript

Punctuation and Capitalization

Naturally, clearly recorded words of each speaker should be transcribed correctly and accurately. In preparing the transcript, decisions on capitalization, compound words, punctuation and numbers must be correct.

Since there are many different ideas on proper capitalization, punctuation, compounding of words, and grammar, a court reporter may consult and follow a standard and accepted published authority, such as Strunk & White, Court Reporting Grammar and Punctuation by Diane Castilaw-Palliser or Morson's English Guide for Court Reporters by Lillian I. Morson.

Adopt an appropriate and recognized style and be consistent in its use.

Misspellings

A transcript should be devoid of misspellings. **Although computer spell check programs are extremely helpful, use does not ensure accuracy.** Some words may be spelled correctly but are erroneous in context; e.g. "statue" for "statute", "four" for "for", "pubic" for "public" and "trail" for "trial".

After computerized spell checking has been completed, each transcript must be proofread by the court reporter. Use of the computer word search function may aid a court reporter during the proofreading process.

If a typist has prepared the transcript, the transcript should be checked against the notes or the tape recording made by the court reporter that actually undertook the process of making a record of the proceeding. A detailed log of the trial will expedite this process. See Chapter 4.

Corrections should not be made in pen and ink. If a page contains an error, the error should be corrected and a new replacement page should be reprinted.

Technical Requirements

Indiana Appellate Rule 28(A) provides that the Court Reporter shall prepare an electronic transcript in accordance with Indiana Appellate Rule Appendix A. Instructions and example transcripts are included in the Appendix to the Handbook to assist Court Reporters working in Word and WordPerfect with the requirements of Indiana Appellate Rule Appendix A.

Indiana Appellate Rule Appendix A. Standards for Preparation of Electronic Transcripts

(1) ***Page Size.*** **The Transcript shall be prepared using 8 1/2 x 11 inch page size.**

(2) Numbering.

(a) Each volume of the Transcript shall be independently and consecutively numbered at the bottom. Each volume shall begin with numeral one on its front page.

(b) The lines of each page shall be numbered. Except as provided below, each page shall contain no less than twenty-five (25) lines unless it is a final page. Page numbers or header notations shall not be considered part of the 25 lines of text.

(c) Exception: A page break may be inserted before and after sidebar conferences, bench conferences, and hearings on motions. Court Reporters are required to reduce the page count for billing purposes by one-half page for every page of Transcript that includes a sidebar conference, bench conference, or hearing on motions that is marked by such a page break.

(3) *Margins.* The margins for the text shall be as follows:

Top margin: one (1) inch from the edge of the page.

Bottom margin: one (1) inch from the edge of the page.

Left margin: Text shall begin no more than one (1) inch from the edge of the page.

Right margin: Text shall end one (1) inch from the edge of the page.

(4) *Indentations.* Certain text may be indented as follows:

(a) Q and A. All "Q" and "A" designations must begin at the left margin. A period following the "Q" and "A" designation is optional. The statement following the "Q" and "A" must begin on the fifth (5th) space following the "Q" or "A" (or period if used following the "Q" or "A" designation). Subsequent lines must begin at the left margin.

(b) Depositions read at trial. The indentations for "Q" and "A" must be the same as described above. In the Transcript, each question and answer read from a deposition must be preceded by a quotation mark. At the conclusion of the reading, a closing quotation mark must be used.

(c) Colloquy. Speaker identification must begin on the tenth (10th) space from the left margin, followed immediately by a colon. The statement must begin on the third (3rd) space after the colon. Subsequent lines must begin at the left margin.

(d) Quotations. Quoted material other than depositions must begin on the tenth (10th) space from the left margin, with additional quoted lines beginning at the tenth (10th) space from the left margin, with appropriate quotation marks used.

(5) *Header Notations.* The Court Reporter shall note in boldface capital letters at the top of each page where a witness' direct, cross, or redirect examination begins. Header notations of other types of persons and/or events are permitted but not required. Listing the last name of the witness or other party and the type of examination or other event is sufficient.

(6) *Typeface and Line Spacing.* The font, which must be 12-point type or smaller, shall be one of the fonts listed in Appellate Rule 43(D) and black in color. Lines shall be double-spaced.

(7) *Interruptions of Speech*. Interruptions of speech must be denoted by the use of a dash at the point of interruption, and again at the point the speaker resumes speaking.

(8) *Reporting Verbal Expressions*. Except as noted below, the Transcript must contain all words and other verbal expressions uttered during the course of the proceeding.

(a) Striking of Portions of the Proceeding. No portion of the proceeding must be omitted from the record by an order to strike. The material ordered stricken, as well as the order to strike, must appear in the Transcript.

(b) Editing of Speech. The Transcript must provide an accurate record of words spoken in the course of proceedings. All grammatical errors, changes of thought, contractions, misstatements, and poorly constructed sentences must be transcribed as spoken.

(c) Indiscernible or Inaudible Speech. Every effort should be made to produce a complete Transcript; however, the Court Reporter may label a portion of the Transcript "indiscernible" or "inaudible" if it is impossible to transcribe the record.

(d) Private Communications. Private communications and off the record conversations inadvertently recorded must not be included in the Transcript.

(e) Standard Summary Phrases.

(i) Call to Order, Swearing in, Affirmation of Witnesses or Jurors, and other customary introductory statements must be noted in the Transcript using standard summary phrases.

(ii) Standard summary phrases must appear in parentheses or brackets and begin with an open parenthesis or bracket on the fifth (5th) space from the left margin, with the phrase beginning in the sixth (6th) space from the left margin.

Examples: (Call to Order of the Court)
(The Jury is Sworn)
(The Witness is Sworn)
(The Witness is Affirmed)

(f) Identification of Speakers. All speakers must be properly identified throughout the Transcript, initially by their full name, thereafter by the following designations or courtesy titles, in capital letters indented ten (10) spaces from the left margin.

The judge shall be identified as THE COURT
An attorney shall be identified as MR., MRS., MS., or MISS (last name)
A witness shall be identified as THE WITNESS
An interpreter shall be identified as THE INTERPRETER
The defendant in a criminal case shall be identified as THE DEFENDANT

(9) *Speaker/Event Identification*. References to speakers and events that occur throughout proceedings must be properly noted in capital letters and

centered on the appropriate line.

Examples: AFTER RECESS

DIRECT EXAMINATION
CROSS EXAMINATION
REDIRECT EXAMINATION
RECROSS EXAMINATION
FURTHER REDIRECT EXAMINATION
PLAINTIFF'S EVIDENCE
PLAINTIFF RESTS
DEFENDANT'S EVIDENCE
DEFENDANT RESTS
PLAINTIFF'S EVIDENCE IN REBUTTAL

(10) ***Parenthetical Notations*. Parenthetical notations must begin with an open parenthesis or bracket on the fifth (5th) space from the left margin, with the remark beginning on the sixth (6th) space from the left margin. Parenthetical notations in a Transcript are a Court Reporter's own words, enclosed in parentheses or brackets, recording some action or event. Parenthetical notations should be as short as possible but consistent with clarity and standard word usage.**

Parenthetical notations are used for (a) customary introductory statements such as a call to order of court or swearing in a witness, and (b) indicating non-verbal behavior, pauses, and readback/playback.

(a) The following parenthetical notations should be used to designate portions of proceedings:

(i) Proceedings Started, Recessed, and Adjourned, with Time of Day and Any Future Date Indicated where Appropriate.

Examples: (Recess at 12:00 p.m.)
(Recess at 12:00 p.m. until 1:30 p.m.)
(Proceedings concluded at 5:00 p.m.)

(ii) Jury In/Out.

Examples: (Jury out at 2:15 p.m.)
(Jury in at 2:40 p.m.)

If a jury is involved, it is essential to indicate by the proper parenthetical notation whether the proceeding occurred: in the presence of the jury, out of the presence of the jury, out of the hearing of the jury, prior to the jury entering the courtroom, or after the jury left the courtroom.

(iii) Defendant Present/Not Present. In criminal trials, this designation must be made if not stated in the record by the judge.

(iv) Bench/Side Bar Conferences. This designation must note whether the bench/side bar conference is on or off the record. If all the attorneys in court are not participating in bench/side bar conference, the parenthetical notation must so indicate.

Examples: (Bench conference on the record)
(Bench conference off the record with Mr. Johnson and Ms. Smith)

(At side bar on the record)
(At side bar)
(End of discussion at side bar)

(v) Discussions off the Record. This designation must note where the discussion took place.

(vi) Chambers Conferences. This designation must note the presence or absence of parties in chambers.

Examples: (Discussion off the record in chambers with defendant not present)
(Discussion on the record in chambers with defendant present)

(b) The following parenthetical notations should be used for nonverbal behavior, pauses, and readback/playback.

(i) Nonverbal Behavior, Pauses. Attorneys, and judges in some instances, should note for the record any nonverbal behavior (e.g. physical gestures, lengthy pauses by witnesses). Parenthetical phrases may be used to indicate physical gestures to which attorneys or judges refer.

Examples: (Nods head up and down)
(Shakes head from side to side)
(Indicating)

If an attorney or judge refers to a physical gesture, but the nature of the gesture is specified in the log notes, then the transcriber may use the parenthetical phrase "(inaudible response)."

(ii) Readback/Playback. All readbacks and/or playbacks and the party requesting must be noted parenthetically as follows:
If the question and/or answer requested to be read or played back appears on the same page as the request, the following parenthetical must be used: (The last question and/or answer was read/played back)

If the question and/or answer, or both, appear on a previous page, the Court Reporter should restate the question and/or answer in full, with appropriate quotation marks and parentheses.

(11) *Volume.* A Transcript volume shall be a single PDF or PDF/A file consisting of no more than the lesser of two hundred fifty (250) pages or fifty megabytes (50 MB). Each volume shall be numbered at the bottom starting with numeral one on each volume's front page.

(12) *Front Page.* The front page of each volume shall conform to Form #App.R. 28-1.

(13) *Table of Contents.* The Court Reporter shall prepare a table of contents listing each witness and the volume and page where that witness's direct, cross, and redirect examination begins. The table of contents shall identify each exhibit offered and shall show the Transcript volumes and pages at which the exhibit was identified and at which a ruling was made on its admission in evidence. The table of contents shall be a separate volume.

(14) *[Deleted, eff. January 1, 2017]*

(15) ***File Formatting and Size.*** **The electronic Transcript must be saved in one (1) or more files in either searchable Portable Document Format ("searchable PDF") or in searchable Portable Document Format for Long-Term Preservation ("searchable PDF/A"). Each file must be limited in size to the lesser of two hundred fifty (250) pages or fifty megabytes[1] (50 MB). Each file must be named using the following convention: *CaseNumber-DocumentType-volume#*.pdf (e.g., 53C031601MI00123-Transcript-1.pdf, 53C031601MI00123-Transcript-2.pdf, 53C031601MI00123-Exhibit-1.pdf, 53C031601MI00123-Exhibit-2.pdf). Valid document types include: Table of Contents, Transcript, Index, and Exhibit.**

(16) ***Electronic Storage Devices.*** **The Court Reporter shall transcribe the evidence on one or more sequentially numbered electronic data storage devices for each complete transcription. Approved media for electronic storage include USB flash memory drives, compact discs (CDs), and digital versatile discs (DVDs) specifically formatted to store electronic data in a File Allocation Table (FAT) or File Allocation Table 32 (FAT-32) file system. CDs and DVDs should be prepared for distribution (e.g., finalized, closed session) to ensure that the files can be opened by the Clerk. Each electronic data storage device shall be labeled or tagged to identify the names of the parties and case number in the proceedings in the trial court; the Court on Appeal case number, if known; the device sequence number, if more than one (1) device is required for a complete Transcript; the signature of the Court Reporter.**

(17) **Original Version. The Court Reporter shall retain a copy of the electronic Transcript in the original word processing version used for the transcription.**

(18) **Signature. All electronic documents that require a signature must include a person's signature using one of the following methods:**
(a) a graphic image of a handwritten signature, including an actual signature on a scanned document; or
(b) the indicator "/s/" followed by the person's name.

(19) **Malware. The Court Reporter shall take reasonable steps to ensure that the Transcript and other files do not contain malicious software ("malware"), such as viruses, worms, and Trojan horses. Any files that contain malware will be rejected . Rejection of a filing because it contains malware will not necessarily excuse a late filing.**

---

[1] Fifty megabytes equals 51,200 kilobytes and 52,428,800 bytes of storage.

Exhibits:

Indiana Appellate Rule 29 deals with exhibits. Exhibits are considered part of the Transcript. *See* App. R. 2(K). Documentary exhibit volumes may be submitted in electronic or paper format. *See* App. R. 29(A). All documentary exhibit volumes, whether submitted in electronic or paper format, must conform to the requirements of Indiana Appellate Rules Appendix A(1), (2)(a), (11), (12), and (14). Documentary exhibit volumes submitted in electronic format shall also conform to the requirements of Indiana Appellate Rules Appendix A(15)-(19).

Rule 29. Exhibits

A. Documentary Exhibits. Documentary exhibits, including testimony in written form filed in Administrative Agency proceedings and photographs, shall be included in separate volumes that conform to the requirements of Appendix A(1), (2)(a), (11), (12), and (14). The Court Reporter shall also prepare an index of the exhibits contained in the separate volumes, and that index will be placed at the front of the first volume of exhibits. Documentary exhibit volumes may be submitted in either electronic or paper format. Documentary exhibit volumes submitted in electronic format shall additionally conform to the requirements of Appendix A(15)-(19). The documentary exhibit volumes shall be transmitted to the Clerk with the electronic Transcript, using the same method of transmission as the electronic Transcript.

B. Audio and Video Recordings. Exhibits in the form of audio or video recordings shall be separately submitted to the Clerk on CD, DVD, flash drive, or other physical media at the same time as the Transcript and documentary exhibits are filed.

C. Nondocumentary and Oversized Exhibits. Nondocumentary and oversized exhibits shall not be sent to the Court, but shall remain in the custody of the trial court or Administrative Agency during the appeal. Such exhibits shall be briefly identified in the Transcript where they were admitted into evidence. Photographs of any exhibit may be included in the volume of documentary exhibits.

D. Administrative Rule 9(G). If an exhibit was accompanied by the separate written notice required by Administrative Rule 9(G)(5)(a)(i)(b), the Court Reporter must comply with the requirements of Appellate Rule 23(F) when the exhibit is thereafter filed with the Trial Court Clerk.

Administrative Rule 9 and Transcripts

If the parties fully comply with the applicable confidentiality rules, then the Court Reporter must prepare the transcript and exhibits in a manner that complies with Indiana Appellate Rule 23(F). *See* App. R. 28(F)(2) and 29(D).

When questions arise about confidentiality of court records, answers may be found by reference to the Public Access to Court Records Handbook or Frequently Asked Questions About Administrative Rule 9. A reporter would also be wise to consult the Court on Appeal about how it wants information like this handled because it may interpret the rule in a different manner. Consultation will also reduce the likelihood of having to return the transcript with redactions.

The intent of the rule is to establish a bright line as to what and when information is confidential but there is no harm in being extra prudent and cautious and treating information normally confidential in a confidential manner.

Transcripts Prepared By Others than the Reporter Who Recorded the Evidence

Changes in staff within a court may present a situation where the person who recorded the hearing is not available to prepare the transcript. The existing reporter may transcribe the hearing and certify the record.

The pressure of the court calendar and lengthy court hearings can create a situation where a court reporter has a backlog of Notices of Appeal. Crim. R. 5 or T. R. 74 provides a cure.

These rules allow a judge to farm out Notices to other responsible, competent persons, in their discretion, to make a transcription from recordings which shall be certified by the person making the transcriptions. In the event that the court reporter who made the record in a particular case cannot prepare the transcript by the deadline established by the Supreme Court, the Indiana Supreme Court may issue orders, which require the judge to assign preparation of a transcript to another court reporter. See Chapter 2.

If preparation of a transcript is referred to an individual that is not a court employee or to a company, a reporter should ensure that the preparer knows or has received notice of the requirements regarding transcript preparation set forth by the Appellate Rules.

Appendix E contains various certification forms to cover these situations that may be modified to suit the facts and circumstances.

Time and Extensions of Time

The court reporter owes an ethical duty and a statutory duty to supply the transcript as soon as "practicable" after the Notice of Appeal is filed. See I.C. 33-41-1-5 and Jud.Cond.R.2.5.

On occasion, counsel for an appealing party may ask the reporter to either not start on a transcript that has been ordered or will request the reporter to “go slow” or even

not file it until the period to file it is about to expire. Requests like these may be caused by their client not fully funding the cost of the transcript yet or counsel's perception of whether they can meet the appeal deadlines.

These requests often come from counsel well known to the reporter. A reporter should not place themselves in a predicament by agreeing to these requests but should advise counsel of their obligation under the Appellate Rules to proceed and complete the work promptly.

Often, a court reporter cannot complete the preparation of a transcript within 45 days**. In such cases, the court reporter must file a Verified Motion for Extension of Time to File Transcript with the Court of Appeals or Supreme Court.** See Form App. R. 11-2. **Filing for an extension of time is not the responsibility of the appellant's attorney.**

In preparing the Motion for Extension of Time, explain in detail when the Notice of Appeal or Supplemental Request was filed or you received notice of it, how much time will be required to complete the transcript, how many pages are involved and any complications related to payment that have delayed work on the transcript plus any circumstances related to transcripts sought earlier that may have delayed work on the transcript in question. By providing the appellate court with appropriate details, you are likely to receive a workable length of time to complete the transcript.

Motions for extension of time in interlocutory appeals, appeals involving worker's compensation, issues of child custody, support, visitation, paternity, adoption, determination that a child is in need of services, and termination of parental rights are disfavored and are only granted in extraordinary circumstances.

The motion must be filed with the Clerk of the Supreme Court, Court of Appeals and Tax Court. *See* Appellate Rule 23. The reporter is required to serve a copy of the motion on each party to the appeal by personal delivery or regular United States Mail. In order to promote communication, the trial court clerk should also receive a copy of the motion.

Retention of a Copy of the Transcript

The court reporter should always keep a copy of each transcript either in paper or electronic form. See Crim. R. 5, 10, Admin. R. 7, Chapter 2 and Chapter 6.

CHAPTER 6

RETENTION AND DESTRUCTION OF COURT RECORDS AND EXHIBIT

CHAPTER 6

RETENTION AND DESTRUCTION OF COURT RECORDS AND EXHIBITS

Introduction

A judge must establish a retention and destruction system to deal with a burgeoning collection of court records. Each judge is responsible for proper storage and retention of shorthand notes, stenographic notes and/or electronic tapes or disks containing recorded proceedings. Either photographs or the actual admitted exhibits must be retained. The court reporter has a unique role in that the job description may include the duties to aid the judge in the formulation of local storage space requirement standards, the formulation of standards for the re-utilization of electronic tapes, and the formulation of local court rules.

There are both standards and guides to assist the judges in determining which records to retain and the length of time that each must be retained. While I.C. 5-15-6 et seq., describing local public records commissions, offers standards for disposal of records, Admin. R. 7**, Judicial Retention Schedules supersede the county records commission regarding disposal of trial court records.**

Admin. R. 7 also states that "Clerks of Circuit Court, Judges, and other court officers shall dispose of records in the manner set out in this rule and in accordance with the retention schedules specified herein".

Purpose for Retaining Court Records

Court records, like other records, are written accounts of some act with the purpose of serving as a memorial and permanent evidence of the matter. Court records have two functions, the first being to keep evidence of past events.

The purpose and object of keeping records by a court of record, is to secure accurate memorial of all the proceedings in the case so that persons interested may ascertain the exact state thereof. State v. Davis, 226 Ind. 526, 82 N.E.2d 82, 85, (1948).

The clerk of the court has the duty to produce and preserve court records, but this is done under the supervision and control of the judge. See T. R. 77.

Court Records in Criminal Cases

Generally, in criminal cases, the court records should not be destroyed whenever any person has been convicted of a crime. This policy seems imbedded in various aspects of criminal procedure. For example, in Indiana the defendant may file a petition for post-conviction relief at any time after the conviction. See Chapter 2.

Of importance to a court reporter is Crim. R. 5, which supports the practice of maintaining detailed records in criminal cases. Crim. R. 5 and Admin. R. 7 provide the length of time that the record of a criminal trial must be kept. The possibility that post-conviction relief is shut off only by the death of the defendant requires that records of criminal convictions be maintained for a substantial period of time. In fact, schedules require retention of the record of a criminal felony trial for fifty-five (55) years after final disposition of the case. The Chronological Case Summary and the Record of Judgments and Orders (see T. R. 77) entries are retained as permanent records. In misdemeanor cases, records of a criminal trial must be kept for a period of ten (10) years. See Chapter 2.

Crim. R. 10 deals with the retention of records created during guilty plea and sentencing hearings. Crim. R. 11 deals with the retention of records of sentencing hearings and revocation of probation hearings in felony cases. The record of a guilty plea hearing and a sentencing hearing in cases involving murder or any felony must be retained for a period of fifty-five (55) years. The record of a guilty plea hearing in cases involving misdemeanors must be retained for a period of ten (10) years. See P.C.R. 1(4) & (9) and Chapter 2.

Court Records in Civil Cases

Crim. R. 5 and Crim. R. 10 do not have civil rule counterparts. Assuming a timely filed Notice of Appeal, an appeal in a civil case ends when the judge receives a certified copy of an appellate opinion. See App. R. 65(E).

What Happens if a Court Record Has Been Destroyed?

Generally, the criminal defendant has an obligation to attempt to reconstruct the record. See App. R. 31. The court reporter may be required to prepare an affidavit that the record of the trial or of the guilty plea has been destroyed. See Chapter 2. The defendant may obtain additional information by contacting the clerk of the court and making arrangements for the preparation of a Chronological Case Summary (CCS) and copies of documents from the file.

Retention of Depositions - Civil and Criminal Cases

Deposition(s) that were offered into evidence as exhibit(s) are the responsibility of the court reporter, and they should be treated like all other exhibit(s). Deposition(s) not offered into evidence are the responsibility of the clerk of the court. The retention of depositions is governed by Admin. R. 7.

Retention of Evidence

Any local court rule should require a judge to issue a specific order for the maintenance or disposition of all evidence. The local court rule should provide that after an appeal is concluded, the judge issues a disposition order requiring that material evidence objects may be returned to the owner or to the appropriate law enforcement agency for disposition or safe-keeping. See I.C. 35-33-5-5(d).

The court reporter retains physical possession and custody of the evidence admitted at trial if it is not part of the Record on Appeal. See App. R. 27.
The reporter retains non-documentary and oversized exhibits and pictures of them may be included in the Exhibits Volume. See Chapter 5 and App. R. 29 (C)

Disposal of material, three-dimensional objects causes concern because of bulk and the potential for causing physical harm, and because of the necessity to protect the individual rights of the offender and the rights of society.

The following types of evidence exist:

1. Evidence that may be lawfully possessed

   Disposition
   a. return to lawful owner, if known;
   b. if it is of little value or has spoiled (i. e., food), then the evidence is ordered destroyed;
   c. if of value and lawful owner is not found after a reasonable effort is made to ascertain the owner's whereabouts, such evidence is ordered to be turned over to the sheriff for sale at a public auction with proceeds going to the county's general fund.

2. Evidence which is contraband

   Disposition
   a. contraband evidence, such as a controlled substance quantity, is ordered destroyed, after being photographed and documented.

3. Evidence in the form of deadly weapons

   Disposition
   a. After the weapon has been photographed and documented, the Court may either order physical destruction of the weapon; or,

   b. order the weapon turned over to the sheriff for sale at a public auction with proceeds going to county's general fund.

4. Evidence containing biological materials

   Two problems on disposition

   a. proper, safe handling of such evidence;

   b. maintenance of evidence for DNA and other analysis for extended periods of time.

Microfilming

Microfilming is recommended as a solution to the problem of preserving old or inactive records which are still of value. Admin. R. 7 allows the following records to be microfilmed:

1. Records whose retention requires microfilming;
2. Records which may be retained either in original form or on microfilm, as provided in the retention schedules; and
3. Records that must be retained permanently, as provided in the retention schedules.

Microfilming is not authorized without the written permission of the Office of Judicial Administration because of the high cost involved. Admin. R. 6 contain standards for the microfilming of court records.

Optical Disk Imaging (O.D.I.)

A digital image is an electronic data file consisting of digital data, which appears as the original document when reconstructed either on a display screen or on a hard copy print out. The Indiana Supreme Court has adopted standards that the judge must meet if a decision is made to employ digital imaging technology (D.I.T.). See Admin. R. 6(E) & (H).

CHAPTER 7

ISSUES RELATED TO EMPLOYMENT

CHAPTER 7

ISSUES RELATED TO EMPLOYMENT

Introduction

Each judge of a Circuit, Superior, Criminal, Probate or Juvenile court within a county has the authority to appoint and hire a court reporter. A court reporter is an employee at will of the court.

Prior to commencement of their duties, a court reporter must take an oath to faithfully perform the duties of their office and procure a bond as required for a notary public as well as an official seal. A court reporter has the authority to administer oaths and otherwise perform the duties of a notary public.

Duties, pay, work hours and conditions vary from court to court and county to county within the State of Indiana. Reporters may also provide administrative, personnel, and clerical services for the judge.

Current Indiana law provides that a court reporter shall receive compensation through a salary set by the court and appropriated by the County Council. By statute reporters are also entitled to separate compensation for transcripts of court proceedings requested by a party or members of the general public. Court reporters may also engage in "private practice" by reporting and transcribing depositions.

"Private practice" activities and transcript preparation pose a variety of issues for both the reporter and the court. These issues as well as the determination of the methods used for reporting are determined by the trial courts subject to the general supervision of the Indiana Supreme Court through Administrative Rule 15 and Trial Rule 74, set forth below.

Court Rules Governing Court Reporter Services

Administrative Rule 15. Court Reporters

> **A. Application of Rule.** All courts of record in each county of the State of Indiana shall adopt for approval by the Indiana Supreme Court a local rule by which all court reporter services shall be governed. Should a county fail to adopt such a plan, the Supreme Court shall prescribe a plan for use by the county. The local rule shall be in substantial compliance with the provisions of this rule.
>
> **B. Definitions.** The following definitions shall apply under this administrative rule:

(1) A **Court reporter** is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.
(2) **Equipment** means all physical items owned by the court or other governmental entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes, and any other device used for recording and storing, and transcribing electronic data.
(3) **Work space** means that portion of the court's facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.
(4) **Page** means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 28(A).
(5) **Recording** means the electronic, mechanical, stenographic or other recording made as required by Indiana Rule of Trial Procedure 74.
(6) **Regular hours worked** means those hours which the court is regularly scheduled to work during any given work week. Depending on the particular court, these hours may vary from court to court and county to county, but remain the same for each work week.
(7) **Gap hours worked** means those hours worked that are in excess of the regular hours worked but hours not in excess of forty (40) hours per work week.
(8) **Overtime hours worked** means those hours worked in excess of forty (40) hours per work week.
(9) **Work week** means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year; i.e. Sunday through Saturday, Wednesday through Tuesday, Friday through Thursday.
(10) **Court** means the particular court for which the court reporter performs services. Depending upon the county, Court may also mean a group of courts; i.e. "X County Courts".
(11) **County indigent transcript** means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court.
(12) **State indigent transcript** means a transcript that is paid for from state funds and is for the use on behalf of a litigant who has been declared indigent by a court.

(13) **Private Transcript** means a transcript, including but not limited to a deposition transcript, that is paid for by a private party.

C. Court Reporter Models. The court or courts of each county shall uniformly adopt by local court rule one of the following Court Reporter Models:

(1) *Model Option One*. The local rule shall:

(a) designate that a court reporter shall be paid an annual salary for time spent working under the control, direction and direct supervision of the court during any regular work hours, gap hours or overtime hours;

(b) designate a per page fee for county indigent transcript preparation;

(c) designate that the court reporter shall submit directly to the county a claim for the preparation of the county indigent transcript;

(d) designate a maximum per page fee that the court reporter may charge for a state indigent transcript;

(e) designate a maximum per page fee that the court reporter may charge for a private transcript;

(f) require the court reporter to report at least on an annual basis to the Indiana Supreme Court Indiana Office of Judicial Administration (IOJA), on forms prescribed by the IOJA, all transcript fees (either county indigent, state indigent, or private) received by the court reporter;

(g) designate that if a court reporter elects to engage in private practice through recording of a deposition and/or preparing of a deposition transcript, and the court reporter desires to utilize the court's equipment, work space and supplies, and the court agrees to the use of court equipment for such purpose, the court and the court reporter shall enter into a written agreement which must, at a minimum, designate the following:

(1) the reasonable market rate for the use of equipment, work space and supplies;

(2) the method by which records are to be kept for the use of equipment, work space and supplies;

(3) the method by which the court reporter is to reimburse the court for the use of the equipment, work space and supplies;

(h) designate that if a court reporter elects to engage in private practice through recording a deposition and/or the preparation of a deposition transcript, that such private practice shall be conducted outside of regular working hours; and

(i) designate that the court shall enter into a written agreement with the court reporter which outlines the manner in which the court reporter is to be compensated for gap and overtime hours; i.e. either monetary compensation or compensatory time off regular work hours.

(2) *Model Option Two*. The local rule shall:

(a) designate that a court reporter shall be paid an annual salary for time spent working under the control, direction and direct supervision of the court during any regular work hours, gap hours or overtime hours;

(b) designate that subject to the approval of each county's fiscal body, the amount of the annual salary shall be set by the court;

(c) designate that the annual salary paid to the court reporter shall be for a fixed schedule of regular working hours;

(d) designate that a court reporter shall, if requested or ordered, prepare any transcript during regular working hours;

(e) designate that in the event that preparing a transcript cannot be completed during regular hours worked, a court reporter shall be entitled to additional compensation beyond regular salary under one of the two options set forth as follows:

(1)(a) Gap hours shall be paid in the amount equal to the hourly rate of the annual salary; and

(b) Overtime hours shall be paid in the amount of one and one-half (1 1/2) times the hourly rate of the annual salary; or,

(2)(a) Compensatory time off from regular work hours shall be given in the amount equal to the number of gap hours worked; and

(b) Compensatory time off from regular work hours shall be given in the amount of one and one-half (1 1/2) times the number of overtime hours worked;

(f) designate that the court and each court reporter may freely negotiate between themselves as to which of the preceding two (2) options in (e) shall be utilized and that the court and court reporter shall enter into a written agreement designating the terms of such agreement;

(g) designate that if a court reporter elects to engage in private practice through recording a deposition and/or preparing a deposition transcript, that such private practice shall be conducted outside of regular working hours;

(h) designate that if a court reporter elects to engage in private practice through recording a deposition and/or preparation of a deposition transcript, and the court reporter desires to utilize the court's equipment, work space and supplies, and the court agrees to the use of court equipment for such purposes, the court and the court reporter shall enter into a written agreement which must at a minimum designate the following:

(1) the reasonable market rate for the use of equipment, work space and supplies;

(2) the method by which records are to be kept for the use of equipment, work space and supplies;

(3) the method by which the court reporter is to reimburse the court for the use of the equipment, work space and supplies.

(i) designate a maximum per page fee that a court reporter may charge for private practice work;

(j) designate a maximum per page fee that the court reporter may charge for a private transcript; and

(k) require the court reporter to report at least on an annual basis to the State Court Administrator all transcript fees (either county indigent, state indigent or private) received by the court reporter.

(3) *Model Option Three*. The court(s) may, by adopting a local rule to that effect, elect to procure all court reporter services by private contract and submit such contract for approval by the Indiana Supreme Court in accordance with Section A of this rule. Any such procedure must conform with all applicable state and local statutes, rules and regulations.

Guidelines Concerning Fees

In December, 2001, the Indiana Supreme Court implemented guidelines for increased charges under local rules for court reporting services adopted pursuant to Administrative Rule 15. The guidelines provide:

1. Rate increases of up to $0.50 per page of any existing page rate are justifiable based upon the increased work product obligations (of the Appellate Rules).
2. A minimum fee up to $35.00 per transcript is permissible.
3. Index and Table of Contents pages should be charged at the per page rate being charged for the rest of the transcript.
4. An additional labor charge approximating the hourly rate based upon the court reporter’s annual court compensation may be charged for the time spent binding the transcript and the exhibit binders.
5. A reasonable charge for the office supplies required and utilized for the

binding and electronic transmission of the transcript, pursuant to Indiana Rules of Appellate Procedure 28 and 29, is permissible; the costs for these supplies should be determined pursuant to a Schedule of Transcript Supplies which should be established and published annually by the judge or judges of the county.

Any request for approval of increased fees should be accompanied by information specifying the changes, which have occurred justifying an increase in fees.

Per page fees for transcripts and private practice work established by local rules may not be implemented until approved by the Indiana Supreme Court.

Trial Rule Provisions Regarding Method of Reporting and Other Responsibilities

Rule 74. Recording machines; court reports; stenographic report or transcript as evidence.

(A) **Recording machines - Transcripts.** For the purpose of facilitating and expediting the trial of causes and the appeals therefrom, the judge of each circuit, criminal, superior, probate and juvenile court of each and every county of this state may arrange and provide for the recording by electronic or mechanical device, or by stenographic reporting with computer-aided transcription capability of, any and all oral evidence and testimony given in all causes and hearings, including both questions and answers, and all rulings of the judge in respect to the admission and rejection of evidence and objections thereto and the recording of any other oral matters occurring during the hearing in any proceeding. The recording device or the computer aided transcription equipment shall be selected and approved by the court and may be placed under the supervision and operation of the official court reporter or such other person as may be designated by the court. The court may, in its discretion, eliminate shorthand or stenographic reporting of any recorded matter.

A transcript, typewritten or in longhand, made in part or entirely from such recording, shall serve the same purpose as if made from shorthand notes and if certified, as in the case of a transcript of shorthand notes, shall serve the same purpose and be as valid as if made from shorthand notes.

Provided further, that the judge may authorize or direct the court reporter or any other responsible, competent person, in his discretion, to make a transcription from such recordings, and the same shall be certified by the person making said transcriptions in the same manner and have the same effect as if made from shorthand notes.

(B) **Reporter may serve as clerk and serve other judges.** When the circuit court judge and the judge or judges affected find that such duties will not affect the efficiency of the court, one [1] person may serve both as a court reporter and clerk for a judge or judges whose regular courtroom is located outside the courthouse or its environs; and a court reporter may serve more than one [1] judge. Appointment shall be made by the judge or judges affected and, if they cannot agree, by the circuit court judge.

(C) **Pay and duties of court reporters.** It shall be the duty of each court reporter whenever required by the judge, to be promptly present in court, and take down in shorthand or by other means the oral evidence given in all causes, including both questions and answers, and to note all rulings of the judge in respect to the admission and rejection of evidence and the objections and exceptions thereto, and write out the instructions of the court in jury trials. The court reporter, when so directed, shall record the proceedings and make a transcript as provided in subdivision (A) of this rule. Reporters shall be paid as provided by 1965 Indiana Acts, ch. 289[I.C. 33-15-26-1 to 33-15-26-9], but the circuit court judge with the approval of the judge or judges affected may allow the reporter additional pay up to $125 per month for serving more than one [1] judge or function, or serving as both clerk and reporter.

(D) **Statutes applicable to reporters and preparation of transcripts.** Except as provided otherwise by these rules, the provisions of 1899 Indiana Acts, ch. 169, §§ 2-7,[I.C. 33- 15-23-2 to 33-15-23-5.] 1939 Indiana Acts, ch. 11, §§ 1,[I.C. 33-15-24-1] 1935 Indiana Acts, ch. 218, § 1,[I.C. 4- 22-4-1.] 1893 Indiana Acts, ch. 33 § 1,[I.C. 33-1-4-1] and 1947 Indiana Acts, ch. 89, § 1,[I.C. 33-15-25-1 [Repealed]] relating to court reporters and preparation of transcripts, shall apply to court reporters provided by these rules.

(E) **Stenographic report or transcript as evidence.** Whenever the testimony of a witness at a trial or hearing, which was stenographical reported, is admissible on appeal or in evidence at a later trial, proceeding, or administrative hearing, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

APPENDIX A

GENERAL REFERENCES

Medical Dictionaries

Dorland's Medical Dictionary - http://www.dorlands.com/wsearch.jsp

Taber's Medical Dictionary - http://www.tabers.com/tabersonline/ub/

GLOSSARY

Reprinted from "The Reporter's Guide to Legalese and the Courts", Indiana State Bar Association

---

A

abstract of judgment---A sentencing summary in criminal cases sent to the Department of Correction.

abstract of record — A complete history in short. An abbreviated form of the case as found in the record.

abstract of title — An abbreviated chronological history of the ownership of a parcel of land.

abuse of process — The improper use by any party of legal proceedings for the sole purpose of forcing another party to yield to its demands.

accessory — A person who assists another in the commission of a crime, either before or after the fact.

action in personam — An action against the person, founded on a personal liability.

action in rem — An action for the recovery of a specific object, usually an item of personal property such as an automobile.

adjudication — Giving or pronouncing a judgment or decree. Also, the judgment given.

administrator (f. administratrix) — In probate law, a person appointed by the court to settle the estate of a dead person. Administrators are appointed when there is no will, or when there is a will but the executor has died, resigned or been removed from office. Duties of an administrator are similar to those of an executor.

adversary system — The system of trial practice in which each of the opposing (or adversary) parties has full opportunity to present and establish opposing contentions before the court.

adverse possession — A statutory method of acquiring title to land by possessing the land for a certain period of time and under certain conditions.

affirmative defense — In criminal law, a defense in which the facts are peculiarly within the defendant's own knowledge and which the defendant is required to establish by a preponderance of the evidence, *e.g.* the insanity defense. Occasionally the phrase is used to refer to defenses which the state must negate beyond a reasonable doubt when some evidence of probative value supporting the defense has been introduced by either party, *e.g.* self-defense, entrapment.

In civil cases, a defense that must be pleaded in the defendant's answer and the defendant must establish the defense by a preponderance of the evidence, *e.g.* discharge in bankruptcy, estoppel, fraud.

agent — One who acts for another. Similar to a servant under the rule of respondeat superior, in which a principal may be held liable for the wrongful acts or omissions of agents or servants.

aggravating circumstance---A circumstance which constitutes a justification or excuse for increasing the punishment for a criminal offense.

allegations — The declaration made in a pleading which presents what the party expects to prove.

allocution — The court's inquiry of a convicted person asking whether he has any legal reason why sentence should not be pronounced and whether he has anything he wishes to say to the court before sentence is pronounced.

amicus curiae *(a-mikus ku'-ri-e)* — "A friend of the court." One who interposes with the permission of the court to volunteer information on some legal matter.

ancillary bill or suit — A bill or suit growing out of an auxiliary to another action or suit.

answer — A pleading by which the defendant resists the plaintiff's allegations of fact.

appeal — A procedure in which a party seeks to reverse or modify, by a higher court, a judgment or final order of a lower court or administrative agency. Appeals generally must be made on the grounds that the lower court misinterpreted or misapplied the law, rather than on the grounds that it made an incorrect finding of fact.

appearance — The formal proceeding by which a party submits to the jurisdiction of the court.

appellant — The party appealing a decision or judgment to a higher court.

appellate court — A court having jurisdiction of appeal and review, not a “trial court.”

appellee — The party against whom an appeal is taken.

arraignment — In criminal cases, a proceeding in which the accused is brought into open court, informed of the charge against him and called upon to enter his plea to the charge.

assault — An intentional and unlawful offer to inflict bodily injury on another by force, or force unlawfully directed toward another person, under circumstances which created a well-founded fear of injury. There must be an ability present to execute the act if not prevented. "In criminal law, the conduct is properly denominated an attempted battery."

assumption of risk — In tort law, a defense in a personal injury suit. The defense asserts that the plaintiff assumed the risk of whatever dangerous condition caused his injury.

at issue — A case is said to be "at issue" when the pleadings have been completed and the case is ready for trial before either a judge or a jury.

attachment — The act of taking, apprehending or seizing persons or property by a writ, summons or order to bring the person or property into legal custody. Used to bring a person to court, acquire jurisdiction over seized property, compel appearances, furnish securities for a debt or costs and to seize a fund in the hands of a third person.

attorney of record — An attorney whose name appears in the permanent records or files of a case.

B

bail — The amount of security required to effect the release of a person arrested or imprisoned, for appearance at a specified time and place.

bail bond — A signed obligation with sureties to assure presence in court.

bailiff — A court attendant whose duties are to keep order in the courtroom and to have custody of the jury.

battery — Touching another person in a rude, insolent an angry manner.

bench warrant — A warrant issued from the court for the arrest of a person in either civil or criminal proceedings.

best evidence rule — A rule of evidence requiring the original of a written document to be produced unless, through the exercise of due diligence, the original is unavailable.

bind over — To hold for trial or for further inquiry. Usually refers to the action of a municipal court, county court or police court, in which the accused is held for trial in a criminal case following a preliminary hearing.

body attachment---a civil arrest warrant.

brief — A written or printed document prepared by counsel to file in court, usually setting forth both facts and law in support of a case.

burden of proof — The necessity or duty to prove a fact or facts in dispute.
burglary — Breaking into and entering a building with the intent to commit a felony.

C

caption — The heading on a pleading which shows the name of the court, the name of the parties and the number of the case, as well as other pertinent information.

cause — A suit, litigation or action which is civil or criminal.

certiorari *(s'er'shi-o-ra'ri)* — An original writ commanding judges or officers of inferior courts to certify or return records of proceedings for judicial review.

challenge to the array — Questioning the qualifications of an entire jury panel, usually on the grounds of partiality or some fault in the summoning process.

chambers — The private room or office of a judge.

change of venue — The removal of a suit begun in one county to another, or from one court to another in the same county.

charge — The judge's instructions to the jury on its duties, on the law involved in the case and on how the law in the case must be applied. The charge is always given just before the jury retires to consider its verdict. Also, meaning an accusation in a criminal case.

chattel — An item of tangible personal property, such as a car, television set or coat.

circumstantial evidence — All evidence of an indirect nature. Evidence which the court or jury may determine from known circumstances, or which is established by inference.

civil action — A lawsuit based on a private wrong, as distinguished from a crime, or the enforcement of rights through remedies of a private or non-penal nature.

clerk of courts — The elected official who acts as principal clerk of courts.

code — A collection, compendium or revision of laws systematically arranged and promulgated by legislative authority.

codicil — A supplement or addition to a will.

commit — To place custody of a person in the department of corrections, department of mental health or the county jail.

common law — Law derived from usages or customs of immemorial antiquity, or from the judgments or decrees of courts. Also called "case law."

commutation — The change of a punishment from a greater degree to a lesser degree, as from death to life-imprisonment.

competency — The presence of those characteristics which render a witness legally fit and qualified to give testimony. In criminal cases, the mental ability of the defendant to understand the nature of the proceedings and assist his attorney in the preparation of a defense.

complainant — Synonymous with "plaintiff."

complaint — The first or initial pleading on the part of the plaintiff.

concurrent sentences — Sentences for more than one crime in which the time of each is served jointly rather than separately.

condemnation — The legal process by which real estate is appropriated for public use without the owner's consent, but after the payment of just compensation.

consecutive sentences — Sentences imposed for more than one offense, one sentence to begin at the expiration of the other.

consent decree — A court order to which the defendant has acquiesced.

contempt of court — Any act calculated to embarrass, hinder or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity. Direct contempts are those committed in the immediate presence of the court. Indirect contempt is the failure or refusal to obey lawful orders.

continuance — A postponement granted by the court. A continuance may be granted only for a good cause, such as illness of counsel or a party, or the unavailability of a witness.

contract — An enforceable oral or written agreement between two or more parties.

conversion — The improper use of another's personal property for one's personal use.

corpus delicti — Literally, the body or material substance upon which a crime has been committed. For example, the corpse of a murdered person or the charred remains of a burned house. Commonly used to refer to a rule of evidence requiring the state to introduce some evidence, independent of a defendant's statements, to establish the elements of the crime charged were committed by someone.

corroborating evidence — Supplementary evidence tending to strengthen or confirm previous evidence.

costs — An allowance for expenses in prosecuting or defending a suit, usually not including attorney's fees.

counterclaim — A claim presented by the defendant in opposition to the claim of the plaintiff.

court of record — Courts whose proceedings are permanently recorded, and which have the power to fine or imprison for contempt. Courts not of record are those of lesser authority whose proceedings are not recorded.
court reporter — A person appointed by the court to report, maintain and transcribe testimony of court proceedings.

criminal insanity — The lack of mental capacity to do, or abstain from doing, a particular act. The inability to distinguish right from wrong.

cross-examination — The questioning of a witness in a trial or in the taking of a deposition by the party opposed to the one who produced the witness.

D

damages — Compensation which may be recovered in the courts by any person who has suffered loss, detriment, or injury to person, property or rights through the unlawful act or negligence of another.

damunum absque injuria *(dam'num abs'kwe in-joo'ri-a)* — Literally, "a wrong without injury." The doctrine that a person has no cause of action, and that the courts will not hear a case in which the wrongful acts of potential defendants caused no harm to person or property rights.

declaratory judgment — A judgment which states the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

decree — A decision or order of the court. A final decree is one which fully and finally disposes of the litigation. An interlocutory decree is a provisional or preliminary decree which is not final.

defamation — The use of false, derogatory statements about another. Verbal statements constitute "slander." Written statement constitute "libel."

default — When a defendant fails to plead within the time allowed or fails to appear at the trial.

defendant — The party against whom a civil or criminal action is brought.

de minimus no curat lex — Literally, "the law does not cure trifles." The doctrine that a minimal or trifling injury does not justify the time and trouble of a lawsuit, and the courts may properly refuse to hear such a case.

de novo — A new, fresh. A "trial de novo" is the retrial of a case.

deposition — The testimony of witness not taken in open court, but in pursuance of a rule of court.

devise — A gift of real property made in a will.

direct evidence — Proof of facts by witnesses who saw acts done or heard words spoken. Distinguishable from circumstantial evidence, which is indirect.

direct examination — The first interrogation of a witness by the party on whose behalf the witness is called.

directed verdict — An instruction by the judge to the jury to return a specific verdict.
discovery — A proceeding in which one party may be informed of facts known by other parties or witnesses.

dismissal without prejudice — A dismissal which permits the plaintiff to sue again on the same cause of action. Dismissal "with prejudice" bars the right to bring an action on the same claim or cause.
dissent — The disagreement of one or more judges of a court with the decision of the majority.

docket — To enter, or a brief entry made, into the formal record of a proceeding. Also, the

book containing the entries in brief and all the important acts done in court in the course of each case.

domicile — That place where a person has true and permanent home. A person may have several residences, but only one domicile.

double jeopardy — A common law and constitutional prohibition against more than one prosecution for the same crime.

due process — Law in its regular course through the courts. The guarantee of due process assures every person a fair trial in both civil and criminal actions, after notice is given and the person has an opportunity to be heard.

E

easement — The use the land by another for a special purpose. For example, a privilege, service or convenience which one neighbor has of another, such as a way over the neighbor's land, a gateway or a watercourse.

emancipation — The time when a child becomes legally free from parental control, which occurs automatically upon reaching the age of majority (18 for most purposes). It may occur earlier when the child is married or abandoned by parents and begins self-support.

embezzlement — The fraudulent appropriation for personal use or benefit of property or money entrusted by another.

eminent domain — The power to take private property for public use by condemnation.

en banc — Depending on the particular court, this phrase indicates a hearing or argument before all the judges of the court sitting together, or a panel of judges, as opposed to a hearing or argument before a single judge.

enjoin — To require a person, by injunction, to perform or abstain from some act.

entrapment — The act of officers or government agents, for the purpose of instituting a criminal prosecution, to induce a person to commit a crime not contemplated.

equitable action — An action brought to restrain threatened wrongs or injuries. The prevention of threatened illegal action with remedies not available in common law.

equity — The spirit and habit of doing to others as we desire them to do to us. The synonym for natural justice which is ethical rather than jural and whose precepts are those of the conscience not of positive law.

equity courts — Courts which administer a legal remedy according to a system of equity, as opposed to courts of common law.

escheat *(es-chet)* — The right of the state to an estate when no one makes a valid claim.
escrow — An arrangement whereby a deed or other writing, money or securities are placed in the hands of a third person to be held until the occurrence of a specified contingency, performance of a specified condition or receipt of a specified notice authorizing release.

estate — A collective term meaning all property owned by a person, both real and personal of any kind, as well as property rights and rights in an action.

estoppel — A person's own act or acceptance of acts, which precludes later claims to the contrary.

et al — An abbreviation of et alii, meaning "and others."

et seq — An abbreviation for et sequentes, or et sequentia, meaning "and the following."

et ux — An abbreviation for et uxor, literally "and wife." Used when a grantor's or grantee's wife joins in a transaction.

evidence — Anything tending to prove fact or disprove alleged fact. Some of the more valuable classes of evidence are: (1) testimony; (2) tangible evidence, or things which have a physical existence; (3) documentary evidence, which includes a wide range of letters, memoranda or other writings; (4) demonstrative evidence, in which a procedure, cause, effect, or event is shown or acted out. See also, circumstantial evidence, direct evidence, rules of evidence and parol evidence and parol evidence rule.

exclusionary rule — A rule prohibiting the use in criminal prosecutions of illegally obtained evidence. An example is the suppression of a defendant's confession if the defendant was not brought before a judge promptly after his arrest.

ex contractu — Rights and causes of acting arising from a contract.

ex delicto — Rights and causes of action arising from a tort.

executor (f. executrix) — A person named by the decedent in a will to carry out the will's provisions.

exhibit — A paper, document or other article produced as evidence in and exhibited to a court during a trial or hearing.

ex parte — By or for one party. Done on behalf of, or on the application of, one party.

expert evidence — Testimony given on some scientific, technical or professional matter by person qualified to speak authoritatively because of special training, skills or familiarity with the subject.

ex post facto — Literally, "after the fact." An act or fact occurring after some previous act or fact, and relating to it.

extenuating circumstances — Circumstances which render a crime less aggravated, heinous or reprehensible than it would otherwise be.

extradition — The surrender by one state to another of an individual accused or convicted of an offense outside its own territory, and within the other's territorial jurisdiction.

F

fair comment — In libel law, a statement made by a writer in the honest belief of its truth, even though the statement is not true in fact.

fair preponderance — Evidence sufficient enough to establish a case.

false arrest — Any unlawful physical restraint of another's liberty.

false pretenses — Designed misrepresentation of existing fact whereby a person obtains another's money or goods.

fee simple — Absolute ownership of real property.

felony — A crime of a graver nature than a misdemeanor. Generally, an offense punishable by death or imprisonment for more than one year.

fiduciary *(fi-du-she-a-re)* — Derived from roman law, a person standing in special trust, confidence or responsibility in obligations to others; for example, a company director.

forcible entry and detainer — A summary proceeding for restoring possession of land to one wrongfully deprived of possession.

foreclosure — A legal proceeding to enforce payment of a debt through the sale of property on which the creditor holds the lien.

forgery — Falsifying or altering, with the intent to defraud, any writing that might be a foundation for legal liability.

fraud — An intentional perversion of truth. A deceitful practice or device intended to deprive another of property or other rights, or to inflict injury in some manner.

G

garnishee — The person on whom a garnishment is served, usually a debtor of the defendant.

garnishment — A statutory proceeding where property, money or credits in possession or under the control of another are applied to the debts of the debtor.

general assignment — The voluntary transfer, by a debtor, of all property to a trustee for the benefit of all creditors.

gratuitous guest — A person riding at the invitation of the owner of a vehicle or an authorized agent, without payment of a consideration of a fare.

guardian ad litem — A person appointed by the court to represent the interests or potential interests of a minor, an incompetent or an unborn baby, whose interests may be affected by the court's decree.

H

Habeas corpus — Literally, "you have the body." A variety of writs intended to bring a person before a court or a judge. Generally directed to an official detaining someone, commanding the official to produce the detainee so the court may determine if that person has been denied liberty

without due process of law.

harmless error — An error committed by a lower court during a trial, which is not prejudicial to the rights of a party and for which the court will not reverse the judgment.

hearsay — Evidence not from the witness's personal knowledge.

holographic will — A will written in the testator's own handwriting, as opposed to the invalid nuncupative will which is declared orally by the testator before a sufficient number of witnesses and afterwards reduced to writing.

hostile witness — A witness subject to cross-examination by the party calling him to testify, because of evident antagonism exhibited during direct examination.

hung jury — A jury which cannot agree on a final verdict.

hypothetical question — A combination of assumed of proved facts and circumstances on which an expert can be asked to base an opinion.

I

impanel — To complete a jury. When the voir dire is finished and both sides have used their challenges, the jury is complete or "impaneled." The jurors are then sworn in, or given an oath to perform their duty, and the trial can proceed with the introduction of evidence.

impeachment of witness — An attack on the credibility of a witness by the testimony of other witnesses.

implied contract — A contract in which the promise made by the obligor is not expressed, but inferred by conduct or implied by law.

imputed negligence — Negligence which is not directly attributable to a person , but to another who has a joint legal interest and with whose fault he is chargeable.

inadmissible — That which, under the established rules of evidence, cannot be admitted.

in camera — In chambers. In private.

incompetent evidence — Evidence which is not admissible because, even if accepted, it would not tend to prove the allegation involved.

indeterminate sentence — An indefinite sentence of "not less than" and "not more than" so many years. The exact term to be served is later determined by parole authorities within the maximum and minimum limits set by the court or statute.

indictment — An accusation in writing presented by a grand jury charging a person with an act or omission which is a crime.

inferior court — Any subordinate court to the chief appellate court.

information — An accusation for a criminal offense which differs from an indictment only in being presented by a prosecuting attorney instead of a grand jury.

injunction — A mandatory prohibitive writ issued by a court.

innocent — Free from guilt and acting in good faith without knowledge of incriminating circumstances.

instruction — A direction given by the judge to the jury concerning the law of the case.

inter alia — Among other things or matters.

inter alios — Among other persons, between others.

interlocutory — Provisional or temporary orders and decrees of the court.

interrogatories — Formal written questions used in the judicial examination of a party, who must provide written answers under oath.

intervention — A proceeding which allows a third person to become a party to a lawsuit.

inter vivos — Literally, "from one living person to another." When property passes from one living person to another, as opposed to a case of succession or devise.

intestate — Dying without leaving a will.

irrelevant — Evidence not relating to or applicable to the matter at issue. Also, not supporting the issue.

J

jurisprudence — The philosophy of law, or the science which deals with the principles of positive law and legal relations.

jury — A certain number of persons selected according to law, and sworn to inquire about certain matters of fact to declare the truth from evidence presented.

grand jury — A jury whose duty it is to receive complaints and accusations in criminal cases, hear the evidence and issue indictments in cases where it feels a trial ought to take place.

petit jury — The jury of twelve (or fewer) persons for the trial of a civil or criminal case.

jury commissioner — The officer who selects names for the jury wheel, or who draws the panel of jurors for a particular term of court.

L

last clear chance — A rebuttal to the defense of contributory negligence, which states that although the plaintiff's own negligence may have been self-endangering, the defendant has the last clear chance to avoid injuring the plaintiff.

leading question — A question which instructs a witness how to answer, puts words into the witness's mouth to be echoed back or one which suggests to the witness the answer desired. Prohibited on direct examination.

letters rogatory — A request by one court of another court in an independent jurisdiction that a witness be examined with written questions (interrogatories) sent with the request.

levy — The legal process whereby property may be seized and sold to satisfy a judgment or debt.

liable — Responsible, answerable.

libel — A method of defamation expressed in print, writing, pictures or signs, and in its most general sense any publication that is injurious to an individual's reputation.

lien *(leen)* — Any of a variety of charges or encumbrances on property, imposed to secure the payment of a debt or the performance or nonperformance of some act. Liens are enforced by some kind of foreclosure proceeding, and can be imposed on real or personal property.

limitation — A certain time allowed by statute in which litigation must be brought.

lis pendens — Notice of a pending suit to third parties concerning specific property.

litigant — One who is engaged in a lawsuit.

locus delicti — The place of the offense.

M

malfeasance — Evil doing, ill conduct or the commission of some act which is positively prohibited by law.

malicious prosecution — An action instituted with the intention of injuring the defendant and without probable cause, and which terminates in favor of the defendant.

malpractice — A kind of lawsuit brought against a professional person, such as a doctor, lawyer or engineer, for injury or loss caused by the professional's failure to abide by accepted standards of practice.

mandamus — A writ issued from a court of superior jurisdiction to an inferior court which commands the performance of a particular act.

mandate — A judicial command or precept from a court or judicial officer directing another officer to enforce a judgment, sentence or decree.

mandatory instruction — An instruction which attempts to set out certain facts upon which the jury is directed to reach a certain result.

manslaughter — The unlawful killing of another. Manslaughter may be either voluntary, upon sudden impulse, or involuntary, in the commission of some unlawful act.

master — An officer of the court, usually an attorney, appointed for the purpose of taking testimony and making a report to the court, most frequently in divorce cases.

material evidence — Evidence that is relevant to the substantial issues in dispute.

mens rea *(menz re a)* — Literally, "guilty mind." One of the two basic requirements for a crime.

misdemeanor — An offense less serious than a felony and generally punishable by fine or imprisonment for less than one year.

misfeasance — A misdeed or trespass. The improper performance of a lawful act.

mistrial — A trial terminated by the court because of some error or prejudice developing during the trial.

mitigating circumstance — A circumstance which does not constitute a justification or excuse for an offense, but which may reduce the punishment.

moot — Unsettled, undecided. A moot point is one not settled by judicial decisions.

moral turpitude — Conduct contrary to honesty, modesty or good morals.

motion in limine --A motion made before or during trial to prohibit introduction of specific evidence or reference to specific actions.

multiplicity of actions — Numerous attempts to litigate the same issue.

municipal courts — Courts whose territorial authority is confined to the city or community.

murder — The unlawful killing of a human being by another with malice aforethought, either expressed or implied.

N

negligence — The omission of an act which a person guided by ordinary considerations would do. Also, doing something which a reasonable and prudent person would not do.

next friend — One acting for the benefit of an infant or another without being regularly appointed as a guardian.

no-fault divorce — A divorce based on irretrievable breakdown of a marriage and involving mutual consent of the parties or a three-year separation.

nolle prosequi *(nol'e pros'e-kwe)* — A formal entry into the record by the plaintiff in a civil suit, or the prosecuting officer in a criminal case, in which it is declared that he "will no further prosecute" the case.

nolo contendere — Literally, "I will not contest it." A pleading which denies the guilt but admits the facts on which the charge is based.

nominal party — One who joins as a party or defendant merely because pleading technicalities require his presence in court.

non compos mentis — Literally, "not of sound mind." Insane.

non obstante veredicto — Literally, "notwithstanding the verdict." A judgment entered for one party by the court despite a jury verdict against that party. (n.o.v.).

notice to produce — A written notice requiring the opposite party to produce a certain paper or document at the trial.

O

objection — The exception to some statement or procedure in a trial, which calls the court's attention to improper evidence or procedure.

of counsel — Applying to counsel assisting in the preparation or management of a case, or its presentation on appeal, as opposed to the principal attorney of record.

opinion evidence — Evidence of what the witness thinks, believes or infers regarding disputed fact as opposed to personal knowledge of the facts. Opinion evidence is not admissible except (under certain limitations) in the case of experts.

ordinance — A written law enacted by the legislative body of a city, town, or county.

out of court — One who has no legal status in court is said to be "out of court." For example, when a plaintiff, by some act or omission, is unable to maintain the action, that plaintiff has put himself out of court.

P

panel — A list of jurors to serve in a particular court, or for the trial of a particular action. The term denotes either the whole body or persons summoned as jurors for a particular term of court of those selected by the clerk by lot.

pardon — Action by an executive relieving a criminal of the sentence.

parole — A procedure in which a convict is released on good behavior before the expiration of the maximum sentence.

parol evidence — Oral or verbal evidence. The ordinary evidence given by witnesses in court.

parol evidence rule — When parties put an agreement in writing, all previous oral agreements merge with the writing, and subsequent oral evidence cannot modify the contract, in the absence of a mistake or fraud in the preparation of the writing.

parties — Persons actively participating in the prosecution or defense of a legal matter.

patent — A right, and the document evidencing the right, to the exclusive control for a term of years to a unique discovery, invention or process. Patents are regulated and issued by the federal government. Also, obvious, plain or evident.

peremptory challenge — A challenge used to reject a certain number of prospective jurors without stating any cause.

personal recognizance — Bail consisting of a written promise to appear in court when required. Generally, when there is no good reason to suppose the accused in a criminal case will not appear when required, he will be released on his own recognizance.

plaintiff — A person who institutes an action. The party who complains or sues in a personal action.

plaintiff in error — The party obtaining a writ of error to have judgment reviewed by an appellate court.

plea — In criminal cases, the formal response to a criminal charge. In the federal system the three formal responses are: (1) "guilty"; (2) "not guilty" — a complete denial; and (3) "no contest" (nolo contendere) — admission of the facts upon which the charge is based (generally used when the defendant is concerned that a guilty plea might be used against him in subsequent civil litigation). In the state system the three formal responses are: (1) "guilty"; (2) "not guilty"; or (3) "guilty but mentally ill".

plea bargaining — Pre-trial negotiations between the defense and the prosecution to obtain more lenient treatment for the accused. The accused will normally be permitted to plead guilty to a lesser charge or plead guilty to a principal offense and have other charges dismissed. The underlying basis for a negotiated plea must be stated in the court's records.

pleading — The process used by parties to present written contentions alternately, responsive to preceding points and narrowing the field of controversy, until a single disputed point evolves. This point is called "the issue" on which they then go to trial.

polling the jury — Asking the jurors individually whether they assented, and still assent, to the verdict.

post conviction petition — A petition by the defendant filed in the court where a conviction was had collaterally attacking the sentence or judgment after direct appeal has failed or after the time for perfecting an appeal has passed.

power of attorney — An instrument authorizing another to act as one's agent or attorney.

praecipe *(pra-si-pe)* — An original writ commanding the defendant to do the act required. Also, an order addressed to the clerk of the court, requesting the issuance of a particular writ.

prejudicial error — Synonymous with "reversible error." An error which requires the appellate court to reverse the judgment before it.

preliminary hearing — Synonymous with "preliminary examination." The hearing given a person charged with a crime by a magistrate or judge to determine whether that person should be held for trial.

preponderance of evidence — Greater weight of evidence. Evidence more credible and convincing but not necessarily the greater number of witnesses.

presentment — A written statement to a court by a grand jury indicating an offense has taken place. The statement arises from the grand jury's own knowledge or observation, without having a bill of indictment brought before it.

presumption of fact — An inference about the truth or falsity of a fact, reasoned in the absence of an actual certainty of its truth or falsity, or until such a certainty is ascertained.

presumption of law — A rule that courts and judges shall draw a particular inference from a particular fact or from particular evidence.

prima facie — Literally "on its face." Evidence is said to be prima facie when, standing alone, it amounts to the degree of proof needed to make a particular finding. In a criminal case, the state's case is said to be prima facie if the evidence introduced is sufficient enough to convict.

priority of liens — The precedence in which liens on property are honored and paid. The general rule is "first in time, first in priority," although certain liens such as those for unpaid taxes, may have priority regardless of when they attached to the property.

probate — The process of proving a will.

probation — Allowing a person convicted for some minor offense (particularly juvenile offenders) to go at large under a suspension of sentence during good behavior and generally under the supervision or guardianship of a probation officer.

pro bono publico — For the public good or for the welfare of the whole, usually referring to voluntary service rendered by attorneys.

promissory note — A written promise to pay specific sum of money to a named person.
property bond — A kind of security, usually real estate in the jurisdiction of the case, to guarantee one's appearance in court.

prosecutor — The instigator of prosecution against an arrested person of accusation against a suspect. Also, one who takes charge of a case as a trial lawyer for the people.

prospective juror---Citizen summoned by the court for jury selection.

proximate cause — One of the four requirements for a tort. In order to establish a right to recover in a civil action based on a tort, the plaintiff must show that an act or omission of the defendant was a proximate cause of the plaintiff's injury or loss.

Q

quash — To vacate an appeal, summons or subpoena.

quasi judicial — The nature of the authority or discretion of an officer when that officer's acts become judicial.

quid pro quo — Literally, "what for what." A fair return or consideration.

quo warranto — A judicial writ requiring an individual to show by what right he undertakes to exercise the authority of a particular office or position.

R

reasonable doubt — The state of the minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge. A defendant is entitled to acquittal if, in the minds of the jury, the defendant’s guilt has not been proved beyond a "reasonable doubt."

rebuttal — The showing that statements of witnesses as to what occurred are not true. Also, the stage of a trial at which such evidence may be introduced.

redact---Removal of prejudicial or inadmissible information from a written document.

redirect examination — Follows cross-examination by the party who first examined the witness.

referee — An officer to whom a pending cause is referred to take testimony and report back to the court. The referee exercised judicial powers as an arm of the court for that specific purpose.

removal, order of — An order by a court directing the transfer of a case to another court.
reply — The argument of the plaintiff in response to that of the defendant. A pleading in response to an answer.

res ipsa loquitur *(rez ip'sa lok'wi-ter)* — Literally, "a thing that speaks for itself." The doctrine which holds a defendant guilty of negligence without an actual showing of negligence. Its use is limited to cases in which the cause of the plaintiff's injury was entirely under the control of the defendant, and the injury presumably could have been caused only by negligence.

res judicata — A rule of civil law that once a final judgment has been rendered by a court, the matter cannot be relitigated by the parties. A court will use *res judicata* to deny reconsideration of the matter.

respondeat superior — Literally, "a superior (or master) must answer." The doctrine which holds that an employer or principal is responsible for the acts and omissions of employees or agents, when those acts are within the scope of their duties as employees or agents.

rest — A party is said to "rest" when all the evidence he intended to offer has been presented.

retainer — The act of the client to employ counsel. Also denotes the fee which the client pays the attorney.

robbery — The taking or stealing of property from another with force or the threat of force.

rule nisi, or rule to show cause *(ni'si)* — A decision or order of a court which will become final unless the party against whom it is directed files an exception or an appeal or otherwise complies with the order.

rule of court — An order concerning court procedures. General rules of court govern the court's practice.

S

search and seizure, unreasonable — Generally, an examination made of premises or person without legal authority, to discover stolen contraband, illicit property or some evidence of guilt.

search warrant — A written order issued by a justice or magistrate in the name of the state, directing an officer to search a specified house or other premises for stolen property. Usually required preceding a legal search and seizure.

self-defense — The protection of one's person or property against some injury attempted by another. When acting in justifiable self-defense in the belief of immediate danger, a person may not be punished criminally nor held responsible for civil damages.

sentence — The judgment in a criminal action, following a verdict or a plea of guilty.

separate maintenance — An allowance granted to a wife for support of herself and her children while she is living apart from her husband but not divorced from him.

separation of witnesses — A court order requiring all witnesses to remain outside the courtroom until each is called to testify.

servant — An employee or one who acts for another.

service of process — Official notification that a person has been named a party to a lawsuit or has been accused of some offense. Process consists of summons, citation or warrant to which a copy of the complaint or other pleading may be attached.

sheriff — A county officer chosen by popular election whose principal duties are to aid criminal and civil courts. The sheriff is the chief preserver of the peace, who serves processes, summons juries, executes judgments and holds judicial sales.

sine qua non *(si'ne kwa non)* — An indispensable requisite.

slander — Base and defamatory spoken words about another's reputation, business or means of livelihood.

sovereign immunity — The doctrine that a government or governmental agency cannot be sued without the consent of legislation.

specific performance — A mandatory order in equity. Where damages would be inadequate compensation for the breach of a contract, the contractor will be compelled to perform specifically what has been agreed upon.

stare decises *(sta're de-si sis)* — The doctrine that once a court has laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same.

state's evidence — Testimony given by an accomplice or joint participant in a crime, tending to incriminate others, and given under an actual or implied promise of immunity.

statute — The law enacted by the legislature.

statute of limitations — The time limit within which an action must be brought after its cause arises, depending on the kind of action involved. The unexcused failure to bring an action within that time bars it forever.

stay — A court order which stops or arrests a judicial proceeding.

stipulated exhibit---Any exhibit admitted into evidence by agreement of all parties.

stipulation — An agreement by opposing attorneys with respect to any matter involved in the proceedings. Stipulations must be either in writing filed with an approval by the court or read into the record during the proceedings.

subpoena — A process causing a witness to appear to give testimony before a court or magistrate.

subpoena duces tecum *(su-pe'na du sez te'kum)* — A process which commands a witness to produce certain documents or records in a court proceeding.

substantive law — Law dealing with rights, duties and liabilities as distinguished from laws which regulate procedures.

summary judgment - A judgment awarded without a trial based upon the law, where there is no genuine disagreement between the parties concerning the facts in the case.

summons — A writ directing a sheriff or other officer to notify the named person that an action has been instituted against him in court and that he is required to appear in court on a specific day to answer the complaint.

supersedeas *(su-per-sa-de-as)* — Literally, "stay of proceedings." A writ containing a command to stay legal proceedings, such as the enforcement of a judgment because of a pending appeal.

suppression hearing — A hearing caused by a defense motion to prohibit the use of evidence alleged to have been obtained in violation of the defendant's rights. This hearing is held outside of the presence of the jury, either prior to or at trial, and the state has the burden of going forward with the evidence and establishing that the defendant's rights were not violated in the process of obtaining the evidence. Suppression hearings are held only in criminal cases.

T

testate — A word used to describe a decedent who has left a valid will.

testator (f. testatrix) — The person who makes a will.

testimony — Evidence given by a competent witness under oath. Distinguished from evidence derived from writing or other sources.

theft — The unauthorized taking of personal property belonging to another.

tort — An injury or wrong committed, either with or without force, against the person or property of another.

transcript — The official record of a trial or hearing.

transitory — Action that might have taken place anywhere. "Local" actions can occur only in some particular place.

traverse — In pleading, traverse signifies a denial. When a defendant denies any material allegation of fact in the plaintiff's declaration, the defendant is said to traverse it.

trespass — A form of action seeking redress in money damages for any unlawful injury to person, property or rights.

trial de novo — A new trial or retrial in an appellate court in which the whole case is approached as if no trial had taken place in a lower court.

true bill — In criminal practice, the endorsement made by a grand jury of a bill of indictment when it finds the bill sufficient evidence to warrant a criminal charge.

trust — A transaction in which the owner of real or personal property gives ownership to a trustee, to hold and to manage for the benefit of a third party, called the "beneficiary." Also, the document setting up a trust.

U

undue influence — Whatever destroys free will and causes a person to do something he would not do if left to his own devices.

unlawful detainer — A detention of real estate without the consent of the owner or other person entitled to its possession.

usury — The act or practice of lending money at an exorbitant or illegal rate of interest.

V

venire *(ve-ni're)* — A writ summoning jurors to court. Popularly used to mean the body of names thus summoned.

venire facias do novo *(fa'she-as de no vo)* — A fresh or new venire which the court grants when there has been some impropriety or irregularity in returning the jury, or when the verdict is so imperfect or ambiguous that no judgment can be rendered.

venireman — Members of a panel of jurors.

venue — The particular county, city or geographical area in which a court with jurisdiction may hear and determine a case.

verdict — The formal and unanimous decision or finding made by a jury, reported to the court and accepted to it.

voir dire *(vwor der)* — Literally, "to speak the truth." The preliminary examination which the court or counsel makes of a potential juror or witness as to the prospective juror's or witness's qualifications.

W

waiver of immunity — The means by which a witness, in advance of giving testimony or producing evidence, renounces the fundamental right guaranteed by the Constitution that no person shall be compelled to be a witness against himself.

warrant of arrest — A writ issued by a magistrate, judge or other competent authority requiring a person's arrest to be brought before the magistrate or court to answer to a specified charge.

weight of evidence — The balance or preponderance of evidence. The inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.

willful — A "willful" act is one done intentionally, without justifiable cause, as distinguished from an act done carelessly or inadvertently.

with prejudice — Dismissal "with prejudice" bars the right to bring or maintain an action on the same claim or cause.

without prejudice — A dismissal "without prejudice" allows a new suit to be brought on the same cause of action.

witness — One who testifies to what has been seen, heard or otherwise observed.

writ — An order issued from a court requiring the performance of a specified act, or giving authority and commission to that act.

COMMONLY USED TERMS IN DRUG CASES

Cobalt Thiocyanate Color Test

Cobalt Chloride

Ammonium Thiocyanate

Dille-Koppanyi Color Test

Colbatous Acetate

Isopropyl Amine or Butylamine

Gas Chromatography

Microliter Syringe

Methanol

Infrared Spectroscopy

Sodium Chloride

Potassium Bromide

Levo and Dextro Optical Isomers

Marquis Color Test

Formaldehyde

Concentrated Sulfuric Acid

Mass Spectrometry

Mecke Color Test

Selenious Acid

Concentrated Sulfuric Acid

Para-Dimethylaminobenzaldehyde Color Test

Petroleum Ether, Para-Dioxane, Diethyl Ether, Hexane

Polarimetry

Tannic Acid

Thin Layer Chromatography

Idoplatinate Spray

Potassium Permanganate Spray

Mercuous Chloride Spray

Capillary Tube

Chloroform, Acetic Acid, Acetone

Ultraviolet Fluoresence Spectroscopy

Ultraviolet Spectroscopy

Absorption Maxima

<u>Commonly Used Terms in Marijuana and Hashish Cases</u>

Cannabidiol

Cannabinoid Resins

Cannabinol

Cannabis Indica

Cannabis Ruderalis

Cannabis Sativa

Linnaeus

Duquenois - Levine Color Test:

- Acetaldehyde
- Vanillin
- Ethanol, Methanol
- Hydrochloric Acid
- Chloroform

Microscopic Examination:

- Bear's Claws Hairs or Cystolithic Hairs
- Calcium Carbonate Deposit
- Glandular and Non-Glandular Hairs

THC or Tetrahydrocannabinol

Thin Layer Chromatography:

- Petroleum Ether
- Benzene Solvent
- Fast Blue B Spray

COMMONLY USED GENETIC TERMS

A Genetics

Copyrighted material reprinted with permission from the Judges' Journal Summer 1997, Vol. 36 No. 3, pp. 55, 56, 57

Our hope in presenting this special issue of The Judges' Journal is that you will become intrigued by the potential future impact of genetics. This may well lead you to further general and more scientifically oriented publications regarding genetics, molecular biology, biotechnology, and the like. To ease your transition into this brave new world, we decided to include this glossary, adapted from Understanding Gene Testing, an educational booklet prepared by the U.S. Department of Health and Human Services.

Acquired Mutation. Gene changes that arise within individual cells and accumulate throughout a person's lifetime; also called somatic mutations. (See Hereditary Mutation.)

Alleles. Variant forms of the same gene. Different alleles produce variations in inherited characteristics such as eye color or blood type.

Alzheimer's Disease. A disease that causes memory loss, personality changes, dementia and, ultimately, death. Not all cases are inherited, but genes have been found for familial forms of Alzheimer's disease.

Amino Acid. Any of a class of twenty molecules that combine to form proteins in living things.

Autosome. Any of the non-sex-determining chromosomes. Human cells have twenty-two pairs of autosomes.

Base Pairs. The two complementary, nitrogen-rich molecules held together by weak chemical bonds. Two strands of DNA are held together in the shape of a double helix by the bonds between their base pairs. (See Chemical Base.)

BRCA1. A gene that normally helps to restrain cell growth. It may also denote a Breast cancer susceptibility gene, a mutated version of BRCA1, which predisposes a person toward developing breast cancer.

Carrier. A person who has a recessive mutated gene, together with its normal allele. Carders do not usually develop a disease, but can pass the mutated gene on to their children.

Carrier Testing. Testing to identify individuals who carry disease-causing recessive genes that could be inherited by their children. Carrier testing is designed for healthy people who have no symptoms of disease but who are known to be at high risk because of family history.

Cell. A small, watery, membrane-bound compartment filled with chemicals; the basic subunit of any living thing.

Chemical Base. An essential building block of DNA. DNA contains four complementary bases: adenine, which pairs with thymine, and cytosine, which pairs with guanine. In RNA, thymine is replaced by uracil.

Chromosomes. Structures found in the nucleus of a cell that contain the genes. Chromosomes come in pairs, and a normal human cell contains forty-six chromosomes, twenty-two pairs of autosomes, and two sex chromosomes.

Clone. A group of identical genes, cells, or organisms derived from a single ancestor.

Cloning. The process of making genetically identical copies.

Contig Maps. Types of physical DNA maps that consist of overlapping segments of DNA (contigs) that, taken together, completely represent that section of the genome. (See Physical Maps.)

Crossing Over. A phenomenon, also known as recombination, that sometimes occurs during the formation of sperm and egg cells (meiosis); a pair of chromosomes (one from the mother and the other from the father) break and trade segments with one another.

Dementia. Severe impairment of mental functioning.

DNA. The substance of heredity; a large molecule that carries the genetic information that cells need to replicate and to produce proteins.

DNA Repair Genes. Certain genes that are part of a DNA repair pathway; when altered, they permit mutations to pile up throughout the DNA.

DNA sequencing. Determining the exact order of the base pairs in a segment Of DNA.

Dominant Allele. A gene that is expressed, regardless of whether its counterpart allele on the other chromosome is dominant or recessive. Autosomal dominant disorders are produced by a single mutated dominant allele, even though its corresponding allele is normal. (See Recessive Allele.)

Enzyme. A protein that facilitates a specific chemical reaction.

Familial Adenomatous Polyposis. An inherited condition in which hundreds of potentially cancerous polyps develop in the colon and rectum.
Familial Cancer. Cancer, or a predisposition toward cancer, that runs in families.

Functional Gene Tests. Biochemical assays for a specific protein, which indicates that a specific gene is not merely present, but active.

Gene. A unit of inheritance; a working subunit of DNA. Each of the body's 70,000 to 80,000 genes contains the code for a specific product, typically a protein, such as an enzyme.

Gene Deletion. The total loss or absence of a gene.
Gene Expression. The process by which a gene's coded information is translated into the structures present and operating in the cell (either proteins or RNA).

Gene Markers. Landmarks for a target gene, either detectable traits that are inherited along with the gene, or distinctive segments of DNA.

Gene Mapping. Determining the relative positions of genes on a chromosome and the distance between them.

Gene Testing. Examining a sample of blood or other body fluid or tissue for biochemical, chromosomal, or genetic markers that indicate the presence or absence of genetic disease.

Gene Therapy. Treating disease by replacing, manipulating, or supplementing nonfunctional genes.

Genetic Linkage Maps. DNA maps that assign relative chromosomal locations to genetic landmarks, either genes for known traits or distinctive sequences of DNA on the basis of how frequently they are inherited together. (See Physical Maps.)

Genetics. The scientific study of heredity; how particular qualities or traits are transmitted from parents to offspring.

Genome. All the genetic material in the chromosomes of a particular organism.

Genome Maps. Charts that indicate the ordered arrangement of the genes or other DNA markers within the chromosomes.

Genotype. The actual genes carried by an individual (as distinct from phenotype; that is, the physical characteristics into which genes are translated).

Germ Cells. The reproductive cells of the body, either egg or sperm cells.

Hereditary Mutation. A gene change in the body's reproductive cells (egg or sperm) that becomes incorporated in the DNA of every cell in the body; also called germ line mutation. (See Acquired Mutations.)

Human Genome. The full collection of genes needed to produce a human being.
Human Genome Project. An international research effort (led in the United States by the National Institutes of Health and the Department of Energy) aimed at identifying and ordering every base in the human genome.

Huntington's Disease. An adult-onset disease characterized by progressive mental and physical deterioration; it is caused by an inherited dominant gene mutation.

Imprinting. A biochemical phenomenon that determines, for certain genes, which one of the pair of alleles, the mother's or the father's will be active in that individual.

Inborn Errors of Metabolism. Inherited diseases resulting from alterations in genes that code for enzymes.

Leukemia. Cancer that begins in developing blood cells in the bone marrow.

Li-Fraumeni Syndrome. A family predisposition to multiple cancers, caused by a mutation in the p53 tumor suppressor gene.

Linkage Analysis. A gene-hunting technique that traces patterns of heredity in large, high-risk families, in an attempt to locate a disease-causing gene mutation by identifying traits that are co-inherited with it.

Melanoma. A cancer that begins in skin cells called melanocytes and spreads to internal organs.

Molecule. A group of atoms arranged to interact in a particular way; one molecule of any substance is the smallest physical unit of that particular substance.

Mutation. A change in the number, arrangement, or molecular sequence of a gene.

Newborn Screening. Examining blood samples from a newborn infant to detect disease-related abnormalities or deficiencies in gene products.

Nucleotide. A subunit of DNA or RNA, consisting of one chemical base plus a phosphate molecule and a sugar molecule.

Nucleus. The cell structure that houses the chromosomes.

Oncogene. Genes that normally play a role in the growth of cells but, when overexpressed or mutated, can foster the growth of cancer.

Penetrance. A term indicating the likelihood that a given gene will actually result in disease.

Physical Maps. DNA maps showing the location of identifiable landmarks, either genes or distinctive short sequences of DNA. The lowest resolution physical map shows the banding pattern on the twenty-four different chromosomes; the highest resolution map depicts the complete nucleotide sequence of the chromosomes. (See Contig Maps.)
Predictive Gene Tests. Tests to identify gene abnormalities that may make a person susceptible to certain diseases.

Prenatal Diagnosis. Examining fetal cells taken from the amniotic fluid, the primitive placenta (chorion), or the umbilical cord for biochemical, chromosomal, or gene alterations.

Probe. A specific sequence of single-stranded DNA, typically labeled with a radioactive atom, which is designed to bind to, and thereby single out, a particular segment of DNA.

Prophylactic Surgery. Surgery to remove tissue that is in danger of becoming cancerous, before cancer has the chance to develop. Surgery to remove the breasts of women at high risk of developing breast cancer is known as prophylactic mastectomy.

Protein. A large, complex molecule composed of amino acids. The sequence of the amino acids—and thus the function of the protein—is determined by the sequence of the base pairs in the gene that encodes it. Proteins are essential to the structure, function, and regulation of the body. Examples are hormones, enzymes, and antibodies.

Protein product. The protein molecule assembled under the direction of a gene.

Recessive Allele. A gene that is expressed only when its counterpart allele on the matching chromosome is also recessive (not dominant). Autosomal recessive disorders develop in persons who receive two copies of the mutant gene, one from each parent who is a carrier (See Dominant Allele.)

Recombination. (See Crossing Over.)

Renal Cell Cancer. A type of kidney cancer.

Reproductive Cells. Egg and sperm cells. Each mature reproductive cell carries a single set of twenty-three chromosomes.

Restriction Enzymes. Enzymes that can cut strands of DNA at specific base sequences.

Retinoblastoma. An eye cancer caused by the loss of a pair of tumor suppressor genes; the inherited form typically appears in childhood, since one gene is missing from the time of birth.

RNA . A chemical similar to DNA. The several classes of RNA molecules play important roles in protein synthesis and other cell activities.

Sarcoma. A type of cancer that starts in bone or muscle.

Screening. Looking for evidence of a particular disease, such as cancer, in persons with no symptoms of disease.

Sex Chromosomes. The chromosomes that determine the sex of an organism. Human females have two X chromosomes; males have one X and one Y.

Sickle Cell Anemia. An inherited, Potentially lethal disease in which a defect in hemoglobin, the oxygen-carrying pigment in the blood, causes distortion (sickling) and loss of red blood cells, producing damage to organs throughout the body.

Somatic Cells. All body cells except the reproductive cells.

Tay-Sachs Disease. An inherited disease of infancy characterized by profound mental retardation and early death; it is caused by a recessive gene mutation.

Transcription. The process of copying information from DNA into new strands of messenger RNA (mRNA). The mRNA then carries this information to the cytoplasm, where it serves as the blueprint for the manufacture of a specific protein.

Translation. The process of turning instructions from mRNA, base by base, into chains of amino acids that then fold into proteins. This process takes place in the cytoplasm, on structures called ribosomes.

Tumor Suppressor Genes. Genes that normally restrain cell growth but, when missing or inactivated by mutation, allow cells to grow uncontrolled.

X Chromosome. A sex chromosome; normal females carry two X chromosomes.

Y Chromosome. A sex chromosome; normal males carry one Y and one X chromosome.

APPENDIX B

INTERNET REFERENCE SITES

Court Reporter Resource Material And Supplies

National Court Reporters Association	http://www.ncraonline.org
Stenograph	http://www.stenograph.com
Martel Electronic Sales	http://martelelectronics.com
Pengad Inc.	http://www.pengad.com
J.M. Steno	http://www.jmsteno.com
Indiana Judicial System	http://www.in.gov/judiciary

Dictionaries, Glossaries & Thesaurus

Dictionaries – General	http://www.onelook.com/?d=all_gen
Dictionaries – Specialty	http://www.yourdictionary.com/diction5.html
Drug Manufacturers	http://www.druginfonet.com/index.php?pageID=manufacturers.htm
Genomes & Genetics	http://www.kumc.edu/gec/glossary.html
Michigan e-Library	http://mel.org/

National Drug Code Directory
http://www.fda.gov/Drugs/InformationOnDrugs/ucm142438.htm

Online Dictionaries, Glossaries & Encyclopedias http://www.encyberpedia.com/glossary.htm

Social Science https://www.icpsr.umich.edu/icpsrweb/ICPSR/support/glossary

Sports http://www.firstbasesports.com/
- Basketball
- Football
- Ice Hockey
- Soccer

APPENDIX C

FORMS OF CITATION - INDIANA APPELLATE RULE 22

The best general source of information concerning the proper form of a citation to legal authority contained in a transcript is The Bluebook - A Uniform System of Citation, published by: The Harvard Law Review Association Gannett House 1511 Massachusetts Ave, Cambridge Mass. 02138.

A transcript will be read by the Court of Appeals; the Court of Appeals has adopted guides to citation of authority to be used by counsel in the preparation of appellate briefs. Use of the citation methods for appellate briefs assures uniformity of citation form. See App. R. 22. The current version of App. R. 22 appears below as follows:

Rule 22. Citation Form.

Unless otherwise provided, a current edition of a Uniform System of Citation (Bluebook) shall be followed.

A. Citation to Cases. All Indiana cases shall be cited by giving the title of the case followed by the volume and page of the regional and official reporter (where both exist), the court of disposition, and the year of the opinion, e.g., *Callender v. State*, 193 Ind. 91, 138 N.E. 817 (1922); *Moran v. State*, 644 N.E.2d 536 (Ind. 1994). If the case is not contained in the regional reporter, citation may be made to the official reporter. Where both a regional and official citation exist and pinpoint citations are appropriate, pinpoint citations to one of the reporters shall be provided. Designation of disposition of petitions for transfer shall be included, e.g., *State ex rel. Mass Transp. Auth. of Greater Indianapolis v. Indiana Revenue Bd.*, 144 Ind. App. 63, 242 N.E.2d 642 (1968), *trans. denied by an evenly divided court* 251 Ind. 607, 244 N.E.2d 111 (1969); *Smith v. State*, 717 N.E.2d 127 (Ind. Ct. App. 1999), *trans. denied*.

B. Citations to Indiana Statutes, Regulations, Court Rules, and County Local Court Rules.

1. Citations to Indiana statutes, administrative materials, and court rules shall comply with the following citation format for initial references and subsequent references:

INITIAL	SUBSEQUENT
Ind. Code § 34-1-1-1 (20 xx)	I.C. § 34-1-1-1
34 Ind. Admin. Code 12-5-1 (2004)	34 I.A.C. 12-5-1

29 Ind. Reg. 11 (Oct. 1, 2005)	29 I.R. 11
Ind. Trial Rule 56	T.R. 56
Ind. Crim. Rule 4(B)(1)	Crim. R. 4(B)(1)
Ind. Post-Conviction Rule 2(2)(b)	P-C.R. 2(2)(b)
Ind. Appellate Rule 8	App. R. 8
Ind. Original Action Rule 3(A)	Orig. Act. R. 3(A)
Ind. Child Support Rule 2	Child Supp. R. 2
Ind. Child Support Guideline 3(D)	Child Supp. G. 3(D)
Ind. Small Claims Rule 8(A)	S.C.R. 8(A)
Ind. Tax Court Rule 9	Tax Ct. R. 9
Ind. Administrative Rule 7(A)	Admin. R. 7(A)
Ind. Judicial Conduct Rule 2.1	Jud. Cond. R. 2.1
Ind. Professional Conduct Rule 6.1	Prof. Cond. R. 6.1
Ind. Alternative Dispute Resolution Rule 2	A.D.R. 2
Ind. Admission and Discipline Rule 23(2)(a)	Admis. Disc. R. (2)(a)

Ind. Evidence Rule 301	Evid. R. 301
Ind. Jury Rule 12	J.R. 12

Effective July 1, 2006, the Indiana Administrative Code and the Indiana Register are published electronically by the Indiana Legislative Services Agency. For materials published in the Indiana Administrative Code and Indiana Register prior to that date, use the citation forms set forth above. For materials published after that date, reference to the appropriate URL is necessary for a reader to locate the official versions of these materials. The following citation format for initial references and subsequent references shall be used for materials published in the Indiana Administrative Code and Indiana Register on and after July 1, 2006:
Initial: 34 Ind. Admin. Code 12-5-1 (2006)
Subsequent: 34 I.A.C. 12-5-1
Initial: Ind. Reg. LSA Doc. No. 05-0065 (July 26, 2006)
Subsequent: I.R. 05-0065

2. Citations to County Local Court Rules adopted pursuant to Ind. Trial Rule 81 shall be cited by giving the county followed by the citation to the local rule, e.g. Adams LR01-TR3.1-1.

C. References to the Record on Appeal. Any factual statement shall be supported by a citation to the volume and page where it appears in an Appendix, and if not contained in an Appendix, to the volume and page it appears in the Transcript or exhibits, e.g., Appellant's App. Vol. II p.5; Tr. Vol. I, pp. 231-32. Any record material cited in an appellate brief must be reproduced in an Appendix or the Transcript or exhibits. Any record material cited in an appellate brief that is also included in an Addendum to Brief should include a citation to the Appendix or Transcript and to the Addendum to Brief.

D. References to Parties. References to parties by such designations as "appellant" and "appellee" shall be avoided. Instead, parties shall be referred to by their names, or by descriptive terms such as "the employee," "the injured person," "the taxpayer," or "the school."

E. Abbreviations. The following abbreviations may be used without explanation in citations and references: Addend. (addendum to brief), App. (appendix), Br. (brief), CCS (chronological case summary), Ct. (court), Def. (defendant), Hr. (hearing), Mem. (memorandum), Pet. (petition), Pl. (plaintiff), Supp. (supplemental), Tr. (Transcript).

APPENDIX D

THE FOLLOWING PAGES ILLUSTRATE:

WITNESS AND EXHIBIT LIST

EXHIBIT LOG.

Note – Some Reporters have found it convenient to use large envelopes for exhibit storage onto which they print or tape their Exhibit Log.

_____ **Court** **Page** _____

WITNESS AND EXHIBIT LIST

Case Name: _____

Case Number: _____

Hearing: _____

Date:

_____

WITNESS	PARTY	DIRECT/CROSS	EXH #	DESCRIPT	IDENT	ADM	TRANS PG
1							
2							
3							
4							
5							

_____

Judge _____

_____ File
Page _____
_____ Evidence Cabinet

EXHIBIT LOG

Title:

_____

Case No.:_____Senior/Special Judge:_____

Date:_____Reporter:_____Bailiff: _____

___ Jury Trial ___Sentencing ___Revocation ___Suppression

___ Bench Trial ___Final ___Contempt ___Modification ___Provisional

Hearing:_____

EXHIBITS

PLAINTIFF								DEFENDANT							
Ex #		marked	offer	reoffer	admit	denied	passed	Ex #		marked	offer	reoffer	admit	denied	passed

APPENDIX E
CERTIFICATES AND AFFIDAVITS

EXPLANATORY NOTE

Clerk's certifications are provided here for the purpose of avoiding potential delay. The court reporter does not prepare the clerk's certificate. Either the clerk or the appellant (or appellant's counsel) will prepare the clerk's certification.

NORMAL CERTIFICATION
REPORTER'S CERTIFICATE

STATE OF INDIANA)
) SS:
COUNTY OF_____)

IN THE_____COURT

CASE NO.: _____

_____,)
Plaintiff,)
v.)
_____,)
Defendant.)

FILE MARK

REPORTER'S CERTIFICATE

I,_____, Reporter of the _____ Court,_____County, State of Indiana, do hereby certify:

1. I am the Official Court Reporter of said Court, duly appointed and sworn to report the evidence of causes tried therein,
2. Upon the trial (by jury) of this cause, beginning on the____day of_____, 20 , I recorded and transcribed all statements by counsel, the evidence given during the trial of this cause, the objections of counsel thereto, and the rulings of the Court upon such objections, the introduction of exhibits, the objections thereto, and the Court's rulings thereon and
3. The foregoing transcript, as prepared, is full, true, correct and complete.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal, this_____day of_____, 20_____.

_____
Official Court Reporter

SEAL

_____Court

_____ County, Indiana

Both T. R. 74 and Crim. R. 5 authorize a judge to use "other" persons to prepare a transcript from a trial or proceeding where the record was made by the electronic, mechanical or computer aided stenographic transcription devices. However, the Court reporter must prepare the exhibits. Other persons may be utilized to type a transcript from such recordings in compliance with orders from the Indiana Supreme Court and to avoid a possible contempt sanction.

In the event that a person other than the reporter who made the record of the trial or proceeding types the transcript, the person who types the transcript signs a Reporter's Certificate that the transcript is complete and accurate with respect to all of the matters contained in the recording.

Examination of the **NORMAL CERTIFICATION REPORTER'S CERTIFICATE** form in the Appendix reveals that the word "true" is omitted from the **NORMAL CERTIFICATION REPORTER'S CERTIFICATE** in the event that a person other than the court reporter types the transcript from an audio tape(s). In other words, the assumption behind the **NORMAL CERTIFICATION REPORTER'S CERTIFICATE** is that the court reporter, who attended and witnessed the trial or proceeding and who made the record, prepared the transcript.

REPORTER'S CERTIFICATE WITH TYPIST CERTIFICATION
THIS CERTIFICATE MAY BE USED WHEN A TRANSCRIPT IS FARMED OUT

STATE OF INDIANA)
) SS:
COUNTY OF_____)

IN THE_____COURT

CASE NO.: _____

_____,)
Plaintiff,)
v.)
_____,)
Defendant.)

FILE MARK

REPORTER'S CERTIFICATE

I,_____, a Reporter of the _____ Court,_____County, State of Indiana, do hereby certify:

1. I am the Official Court Reporter of said Court, duly appointed and sworn to report the evidence of causes tried therein.
2. Upon the trial (by jury) of this cause, beginning on the____day of_____, 20 , I recorded all statements by counsel, the evidence given during the trial of this cause, the objections of counsel thereto, and the rulings of the Court upon such objections, the introduction of exhibits, the objections thereto, and the Court's rulings thereon. (INSERT NAME) transcribed all statements by counsel, the evidence given during the trial of this cause, the objections of counsel thereto, and the rulings of the Court upon such objections, the introduction of exhibits, the objections thereto, and the Court's rulings thereon,
3. I undertook and completed a review and comparison of the transcript prepared by (INSERT NAME) with my record of the trial and the foregoing transcript, as prepared, is [a] full, accurate, correct and complete [optional: transcription of all matters contained on the recorded proceedings].

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal, this day of_____, 20_____.

_____
Official Court Reporter

SEAL

_____Court

_____ County, Indiana

SEPARATE CERTIFICATION OF EXHIBITS
PERMITTED TO BE FILED BY COURT ON APPEAL

STATE OF INDIANA	)	IN THE_____COURT
	) SS:	
COUNTY OF_____	)	CASE NO.: _____
_____ ____,	)	
Plaintiff,	)	
v.	)	FILE MARK
_____,	)	
Defendant.	)	

REPORTER'S CERTIFICATE

I,_____, Reporter of the_____Court,_____County, State of Indiana, do hereby certify:

1. I am the Official Court Reporter of said Court, duly appointed and sworn to report the evidence of causes tried therein,
2. Upon the trial of this cause, beginning on the____day of_____, 20_____the attached [Videotape], [State's] Exhibit No,____, was offered into evidence.
3. The attached Exhibit No.___is the full, true, correct and complete exhibit offered into evidence and
4. This separate certification was necessary due to the size of the exhibit.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal, this day of_____, 20___.

_____
Official Court Reporter

SEAL

_____Court

_____ County, Indiana

MOTION FOR EXTENSION TO FILE TRANSCRIPT
Form App. R. 11-2

IN THE
INDIANA [SUPREME COURT/ COURT OF APPEALS]

Case No.: _____

Appeal from the_____Court

_____,	)	
	)	
	)	
Appellant(s),	)	
	)	Trial Court Case No: _____
vs.	)	
	)	
_____,	)	
Appellee(s).	)	The Honorable_____, Judge

COURT REPORTER'S
VERIFIED MOTION FOR EXTENSION OF TIME
TO FILE TRANSCRIPT

_____, the court reporter for_____court, respectfully petitions the Court for an extension of time in which to file the transcript in this appeal. In support of this Motion, the court reporter shows the Court as follows:

1. The Appellant filed a Notice of Appeal on_____, 20 . The notice of appeal requested the following transcript(s):_____.
2. Pursuant to Appellate Rule 11(B), the transcript is due forty-five (45) days after the Notice of Appeal is filed. Unless this Motion is granted, the transcript is due to be filed with the trial court no later than_____, 20 .
3. Arrangements have been made to pay for the preparation of the transcript.

OR

Satisfactory arrangements have not been made for the preparation of the transcript in that (explain).

4. I estimate the transcript will be_____pages long and will take_____ hours to prepare.
5. I began work on the transcript on_____and have completed pages and spent _____ hours.

6. I will not be able to complete the transcript because (state reasons specifically including case names and cause numbers and sizes of other transcripts, nature of the case)

7. I anticipate that I will complete the transcript on_____.

8. I request that the time within which to complete the transcript be extended to_ _____.

9. I have not previously been granted an extension of time to file the transcript,

(OR) I cannot complete the transcript in the time provided under previous extension(s) granted on _____, because_____

WHEREFORE,_____, court reporter for_____court respectfully requests an extension of time of_____(_____) days within which to file the transcript to_____, 20_.

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

_____
Court Reporter

_____Court

CERTIFICATE OF SERVICE

I certify that on [insert date] I served a copy of this document upon the following person(s) by (specify the means of service):

(Separately list name(s) and address(es) of person(s) served)

_____
Court Reporter

NOTICE OF FILING TRANSCRIPT
Form App. R. 11-1

IN THE
INDIANA [SUPREME COURT/COURT OF APPEALS]

Case No.: _____
[insert Supreme Court or Court of Appeals number]

	)	Appeal from the_____Court
	)	
_____,	)	
	)	
Appellant(s),	)	
	)	Trial Court Case No: _____
vs.	)	
	)	
_____,	)	
Appellee(s).	)	The Honorable_____, Judge

NOTICE OF FILING OF TRANSCRIPT

_____, the Court Reporter of_____Court, hereby notifies the parties, pursuant to Appellate Rule 11(A):

1. The Transcript in this case has been prepared and certified and is complete and
2. The Transcript was filed with the [clerk of the trial court/ Administrative Agency] on this_____day of_____, 20____in accordance with Appellate Rule[s] [28, 29 and/or 30].

_____
Court Reporter
_____Court

CERTIFICATE OF SERVICE

I certify that on [insert date] I served a copy of this document upon the following person(s) by (specify the means of service):

(Separately list name(s) and address(es) of person(s) served)

_____
Court Reporter

APPENDIX F

Methods of Invoicing Contact and Communication

Note – Chapter 5 stresses the importance of good, direct written communication between the Court Reporter and the Appellant - particularly the unrepresented Appellant. While the following forms are not exclusive, they demonstrate a method for a Reporter to make a solid record of their efforts to advise a potential Appellant of the anticipated costs of preparing the Transcript of Evidence but also the impact their failure to make payment arrangements will have on the preparation of their appeal.

(NOA – Notice of Appeal. CR – Court Reporter) Pursuant to Appellate Rule 24(A)(1) the party filing the NOA shall serve the CR. Appellate Clerk should provide notice of the filing of NOA to CR. Pursuant to Appellate Rule 11(B), after 7/1/16, the CR has 45 days after the filing of NOA to complete the transcript. Pursuant to Appellate Rule 9(H) payment arrangements must be made with the CR. Send estimate to requesting party *immediately* upon knowledge of NOA being filed. Create a paper trail in writing of your efforts to comply with the Appellate rules. Pursuant to Appellate Rule 11(B), Criminal Rule 5 and Trial Rule 74 provide a cure for backlog which require the Judge to assign preparation to another court reporter or person. Only the Judge or CR can farm out the transcript. *When a transcript is farmed out*: packet of all pertinent info [NOA, audio, pleadings, exhibits, CCS] must be sent to CR/Typist *immediately so they* can provide estimate to requesting party. *The contract is between the requesting party and the CR/Typist.*

COURT REPORTER/TYPIST NAME
ADDRESS
TELEPHONE NUMBER

DATE Invoice No. 1 ***ESTIMATE***

Name
Address

Title of Case(s)
Case Number(s)

Transcript of [Designate Hearing requested: Provisional, Sentencing, Bench Trial, Partial Bench Trial: Testimony of [witness], Closing Statements] in the [Court] for purposes of appeal.

Or

Transcript of Hearings held in the [Court] for purposes of appeal.

Volume(s) of Evidence
DATE Provisional Hearing
_____ pages at $_____per page for original . . . . . $ _____

DATE Rule to Show Cause Hearing
_____ pages at $_____per page for original . . . . . $ _____

DATE Final Hearing
_____ pages at $_____per page for original . . . . . $ _____

Table of Contents
_____ pages at $_____per page for original . . . . . $ _____

Volume of Exhibits
_____ pages at $_____per page for original . . . . . $ _____

Subtotal: $ _____

Additional cost if applicable:
Services for assembling and binding transcript, supplies, preparation of documents for filing and/or mailing at $ _____ per hour. [Refer to your local rule]

Payment arrangements must be made with the Court Reporter pursuant to Appellate Rule 9(H). Pursuant to Local Rule_____, transcription will commence upon receipt of ½ of the estimated cost - $_____. [Refer to your Local

Rule] A statement will be sent in the event additional monies are due in order to complete the transcript or a final statement will be sent upon completion. The total cost of the transcript shall be paid in full before the transcript is released by the Court Reporter. [A 3% late fee will be assessed if balance is not paid within 30 days.]

Send 2nd Notice of Estimate to requesting party 15 days after initial Notice of Estimate if CR is not retained pursuant to Appellate and Local Rules.

COURT REPORTER/TYPIST NAME
ADDRESS
TELEPHONE NUMBER

DATE Invoice No. 1A ***2nd NOTICE OF ESTIMATE***

DATE Invoice No. 1 ***ESTIMATE***

Name
Address

Title of Case(s)
Case Number(s)

Transcript of [Designate Hearing requested: Provisional, Sentencing, Bench Trial, Partial Bench Trial: Testimony of [witness], Closing Statements] in the [Court] for purposes of appeal.

Or

Transcript of Hearings held in the [Court] for purposes of appeal.

Volume(s) of Evidence
DATE Provisional Hearing
_____ pages at $_____per page for original . . . . . $ _____

DATE Rule to Show Cause Hearing
_____ pages at $_____per page for original . . . . . $ _____

DATE Final Hearing
_____ pages at $_____per page for original . . . . . $ _____

Table of Contents
_____ pages at $_____per page for original . . . . . $ _____

Volume of Exhibits
_____ pages at $_____per page for original . . . . . $ _____

Subtotal: $ _____

Additional cost if applicable:
Services for assembling and binding transcript, supplies, preparation of documents for filing and/or mailing at $__ per hour. [Refer to your local rule]

Payment arrangements must be made with the Court Reporter pursuant to Appellate Rule 9(H). Pursuant to Local Rule , transcription will commence upon receipt of ½ of the estimated cost - $_____. [Refer to your Local Rule] A statement will be sent in the event additional monies are due in order to complete the transcript or a final statement will be sent upon completion. The total cost of the transcript shall be paid in full before the transcript is released by the Court Reporter. [A 3% late fee will be assessed if balance is not paid within 30 days.]

Send Final Statement to requesting party immediately upon completion to ensure full payment preceding delivery of the transcript to the Clerk for filing. If the requesting party fails to make payment arrangements, or fails to pay the remaining balance after paying a retainer and is not entitled to a free transcript, the CR should bring this to the attention of the Court of Appeals by filing (depending on circumstances) (1) Motion for Extension of Time to complete transcript or (2) Affidavit and Notice of Non-Filing stating scenario: payment arrangements have not been made or remaining balance was not paid in full by requesting party. *Note in your pleading the issues referring to your paper trail and attach all pertinent info. CR/Typist is NOT required to file the transcript with the Trial Court if payment has not been paid in full.* Court of Appeals after review will consider the issuance of a show cause to the requesting party which may result in the dismissal of the appeal.

COURT REPORTER/TYPIST NAME
ADDRESS
TELEPHONE NUMBER

DATE Invoice No. 1C ***FINAL STATEMENT***

Name
Address

Title of Case(s)
Case Number(s)

Transcript of [Designate Hearing requested: Provisional, Sentencing, Bench Trial, Partial Bench Trial: Testimony of [witness], Closing Statements] in the [Court] for purposes of appeal.

Or

Transcript of Hearings held in the [Court] for purposes of appeal.

Volume of Evidence
DATE Provisional Hearing
_____ pages at $_____per page for original . . . . . $ _____

DATE Rule to Show Cause Hearing
_____ pages at $_____per page for original . . . . . $ _____

DATE Final Hearing
_____ pages at $_____per page for original . . . . . $ _____

Table of Contents
_____ pages at $_____per page for original . . . . . $ _____

Volume of Exhibits
_____ pages at $_____per page for original . . . . . $ _____

Subtotal: $ _____

Date Less retainer (method of payment: Check #_____or cash) - $ _____

Additional cost:
Services for assembling and binding transcript, supplies, preparation of documents for filing and/or mailing at $____ per hour. [Refer to your local rule] _____hour $ _____

Total: $ _____

The above total shall be paid in full before the transcript is released by the Court Reporter. [A 3% late fee will be assessed if balance is not paid within 30 days.]

APPENDIX G

New Appellate Rules Adopted in 2016 for Preparation of Transcripts Summary Highlights

What Stays the Same and What Changes

This is prepared as a summary of information and should not be relied upon without reading the Appellate Rules http://www.in.gov/judiciary/rules/appellate/index.html and Order Amending Rules http://www.in.gov/judiciary/2784.htm very carefully.

App. Rule 2. Definitions

- Remains the Same
  - Definitions like "Court Reporter" (a person who is designated by a court to perform official reporting services, including preparing the transcript) remain the same.
- Adds new terms
  - Adds the phrase "conventional filing" (meaning the physical non-electronic presentation of documents to the Clerk or Court) to the appellate rules.
  - Adds other new terms with definitions for purposes of electronic filing. See the new rule language.

App. Rule 9A. Initiation of the Appeal

- Adds language an appeal is initiated by "conventionally filing" a Notice of Appeal with the Clerk.

App. Rule 9 F (5). Request for Transcript

- Remains the same
  - A designation of all portions of the Transcript necessary to present fairly and decide the issues on appeal. If the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence.
  - In Criminal Appeals, the Notice of Appeal must request the Transcript of the entire trial or evidentiary hearing, unless the party tends to limit the appeal to an issue requiring no Transcript.
- What is new

- The appellant must include the email address of the Court Reporter **and** must send by electronic transmission to the Court Reporter the Notice of Appeal. **Note:** Your work email address will need to be readily available to the public and attorneys.

App. Rule 9 H. Payment for Transcript

- Remains the same
  - The party must enter into an agreement with the Court Reporter for payment of the cost of the Transcript.
  - Unless a court order requires otherwise, each party shall be responsible to pay for all transcription costs associated with the Transcript that party requests.
- What is new
  - The payment arrangements must be made within 10 days of the filing of the Notice of Appeal.
  - The Court Reporter may require from the appellant a fifty percent (50%) deposit based on the estimated cost of the Transcript. **Note:** No deposit may be charged for a state or county paid Transcript.

App. Rule 11 A. Preparation of the Transcript

- Remains the same
  - The Court Reporter shall prepare, certify, and file the Transcript designated in the Notice of Appeal with the trial court clerk or Administrative Agency in accordance with Rules 28 and 29.
  - Preparation of exhibits as required by Rule 29 is considered part of the Transcript preparation process.
  - The Court Reporter shall provide notice to all parties to the appeal that the Transcript has been filed with the clerk of the trial court or Administrative Agency in accordance with Rules 28 and 29. (See Form # App. R. 11-1)
- What is new
  - With the exception of the preparation of documentary exhibits pursuant to Rule 29 (A), the Court Reporter may engage the services of outside transcribers or transcription services to assist in all or part of the transcription.
  - **Note**: Criminal Rule 5 and Trial Rule 74 have not changed. The Judge of the court in which the oral matters were recorded may direct the Court Reporter or any other responsible, competent person in his discretion, to make a transcription of recorded oral matters and certify the accuracy of the transcription.
  - **Best Practice**: a Reporter should consult with the Judge **before** engaging the service of another transcriber.
  - Changes to Rule 28 and 29 (see below)

App. Rule 11 B. Deadline for Filing Transcript

- What is new
  - The Court Reporter shall have forty-five (45) days after the appellant files the Notice of Appeal to file the Transcript with the trial court clerk or Administrative Agency.

App. Rule 12 B. Transmittal of the Record

- What is new

- Within five (5) days of the Court Reporter filing the Transcript, the trial court clerk shall transmit the Transcript to the Clerk in accordance with Rules 28 and 29.

App. Rule 23 (F)

This Rule deals with the parties' responsibility to submit documents in a manner that complies with Administrative Rule 9 (G).

- Remains the same
  - Court records are accessible to the public, except as provided in Administrative Rule 9 (G).
  - If a court record was excluded from public access in the trial court in accordance with Administrative Rule 9 (G), the court record shall remain excluded from public access on appeal unless the court on appeal determines the conditions in Administrative Rule 9 (G)(7) are satisfied.
  - **Note:** If the party has not taken steps to comply with Administrative Rule 9 (G), then the Court Reporter is under no obligation to comply with the rule. The documents should be filed with the appellate court as they were submitted and should be accessible to the public.
- What is new
  - If the party has complied with Administrative Rule 9 (G), then the Court Reporter must file the documents with the appellate court in a manner that complies with Appellate Rule 23 (F).
  - In the public access version of a document, the confidential information should be omitted or redacted. Each omission or redaction should be indicated at the place it occurs in the public access version. If multiple pages are omitted, then a separate place holder page must be inserted for each page that is omitted.
  - In the non-public access version, the first page should be conspicuously marked "Not for Public Access" or "Confidential" and should include the case's caption and cause number. The non-public access version should consist of a complete, consecutively paginated replication of the document, including both the public access material and the non-public access material.
  - The use of green paper is abolished for e-filing. If the Transcript and exhibits are e-filed, pages in the non-public access version containing court records that are excluded from public access should be identified with a header, label, or stamp that states, "Confidential per A.R. 9 (G)" or "Excluded from Public Access per A.R. 9 (G)".

App. Rule 24. Service of Documents

- What is new
  - The Court Reporter shall be served with the Notice of Appeal by electronic transmission. See the summary of App. Rule 9 (F).

App. Rule 28. Preparation of Transcript by Court Reporter

- What is new
  - The Court Reporter shall prepare an electronic transcript in accordance with Appendix A (see below).

- Certification
    - The Court Reporter shall certify the Transcript is correct.
    - The Court Reporter's certification shall be the last page of the last volume of the Transcript, signed by the Court Reporter in accordance with Appendix A.

- Submission of Electronic Transcript

Following certification of the Transcript, the Court Reporter shall submit the electronic transcript using one of the following methods:

Submission by E-Filing. If e-filing is required in the trial court by Trial Rule 86(D)(1) and the documentary exhibits are in electronic form, then the Court Reporter shall transmit the electronic Transcript to the trial court clerk through the IEFS using a "Serve" filing type under the Court on Appeal case number.

Submission on Physical Media. If the Transcript is not submitted by e-filing, the Court Reporter shall seal two (2) copies of the Transcript in an envelope or package bearing the trial court case number and marked "Transcript." The envelope or package containing the electronic Transcript copies shall be filed with the trial court clerk in accordance with Rule 11. The Court Reporter shall also retain a copy of the electronic Transcript.

The separate Exhibit volume(s) and photographic reproductions of oversized exhibits (if included pursuant to Rule 29(C)) shall be filed with the trial court clerk in accordance with Rule 11.

❖ **Best Practice Note:** The Court Reporter's copy of the electronic transcript should be back up to a secure location.

– The electronic transcript copies, separate exhibit volume(s), and photographic reproductions of oversized exhibits (if included pursuant to Rule 29 (C)) shall be filed with the trial court clerk in accordance with Rule 11.

App. Rule 29. Exhibits

- Remains the same
    - Documentary exhibits, including testimony in written form filed in Administrative Agency proceedings and photographs shall in included in separate volumes.
    - Must conform to requirements of Appendix A (1), 2 (A), (11), (12) and (14).
    - Must prepare an index or the exhibits contained in the separate volumes with the index placed at the front of the first volume of exhibits.
    - Non-documentary and oversized exhibits remains the same.
- What is new
    - Documentary exhibit volumes may be submitted in either electronic or paper format.
    - Documentary exhibit volumes submitted in electronic format shall additionally conform to the requirements of Appendix A (15-19).
    - The documentary exhibit volumes shall be transmitted to the clerk with the electronic transcript, using the same method of transmission as the electronic transcript.

- Audio and video exhibits shall be separately submitted to the clerk on CD, DVD, flash drive, or other physical media at the same time as the Transcript and documentary exhibits are filed. (App. Rule 29 (B))
- If an exhibit was accompanied by the separate written notice required by Administrative Rule 9 (G)(5)(a)(i)(b), the Court Reporter must comply with the requirements of Appellate Rule 23 (F) when the exhibit is thereafter filed with the trial court clerk. (App. Rule 29 (B))

Appendix A. Standards for Preparation of Electronic Transcripts

- Remains the same
  - Page size 8 ½ x 11 inch page size.
  - No less than twenty-five (25) lines on each page, unless it is a final page.
  - Top, bottom and right margins remain one (1) inch from the edge of the page.
  - 12-point font or smaller.
  - Table of Contents
    - The Court Reporter shall prepare a table of contents listing each witness and the volume and page where that witness's direct, cross and redirect examination begins.
    - The table of contents shall identify each exhibit offered and shall show the transcript volume and page at which the exhibit was identified and at which a ruling was made on its admission into evidence.
    - The table of contents shall be a separate volume.
- What is new
  - Each volume of the Transcript shall be independently and consecutively numbered at the bottom. Each volume shall begin with numeral one on its front page. Appendix A (2)(a)
  - Page numbers or header notations shall not be considered part of the 25 lines of text. Appendix A (2)(b)
    - Exception: A page break may be inserted before and after sidebar conference, bench conferences and hearings on motions.
    - Court Reporters are required to reduce the page count for billing purposes by one-half page for every page of Transcript that includes a sidebar conference, bench conference, or hearing on motions that is marked by a page break. Appendix A (2)(c)
  - Left margin: one (1) inch from the edge of page. Appendix A (3)
    - Top = 1 inch
    - Bottom = 1 inch
    - Left = 1 inch
    - Right = 1 inch
  - Indentations: certain text may be indented as follows:
    - Q and A
      - Must begin at the left margin.
      - A period following the "Q" and "A" designation is optional.

        - The statement following the "Q" and "A" must begin on the fifth (5th) space following the "Q" or "A" (or period if used following the "Q" or "A" designation).
        - Subsequent lines must begin at the left margin.
    - Depositions read at trial:
        - The indentations for "Q" and A" must be the same as described above.
        - In the Transcript, each question and answer read from a deposition must be preceded by a quotation mark. At the conclusion of the reading, a closing quotation mark must be used.
    - Colloquy
        - Speaker identification must begin on the tenth (10th) space from the left margin, followed immediately by a colon.
        - The statement must begin on the third (3rd) space after the colon.
        - Subsequent lines must begin at the left margin.
    - Quotations – quoted material other than depositions
        - Must begin on the tenth (10th) space from the left margin, with appropriate quotation marks used. Appendix A (4)(a-d).
- Headers
    - The Court Reporter shall note in boldface capital letter at the top of each page where a witness' direct, cross or redirect examination begins.
    - Header notations of other types of persons and/or events are permitted by not required.
    - Listing the last name of the witness or other party and the type of examination or other event is sufficient. Appendix A (5)
- Typeface and Line Spacing
    - The font, which must be 12-point type or smaller.
    - Font must be: Arial, Baskerville, Book Antigua, Bookman, Bookman Old Style, Century, Century Schoolbook, Calisto MT, CG Times, Garamond, Georgia, New Baskerville, New Century Schoolbook, Palatino, Times New Roman.
    - Font must be black in color.
    - Lines shall be double-spaced. Appendix A (6)
- Interruptions of speech must be denoted by the use of a dash at the point of interruption, and again at the point the speaker resumes speaking. Appendix A (7)
- Transcript **must** contain all words and other verbal expression uttered during the course of the proceeding, **except as noted below**. Appendix A (8)
    - No portion of the proceeding must be omitted from the record by an order to strike.
    - The material stricken, as well as the order to strike, must appear in the Transcript.
    - The Transcript must provide an accurate record of words spoken in the course of the proceedings.
    - All grammatical errors, changes of thought, contractions, misstatements, and poorly constructed sentences must be transcribed as spoken.

    - Every effort should be made to produce a complete transcript; however, the Court Reporter may label a portion of the Transcript "indiscernible" or "inaudible" if it is impossible to transcribe the record.
    - Private communications and off the record conversations inadvertently recorded must not be included in the Transcript.
- Standard Summary Phrases. Appendix A (8)(e)
    - Call to order, swearing in, affirmation of witnesses or jurors, and other customary introductory statements must be noted in the Transcript using standard summary phrases.
    - Standard summary phrases must appear in parentheses or brackets and begin with an open parenthesis or bracket on the fifth (5th) space from the left margin, with the phrase beginning in the sixth (6th) space from the left margin. Examples: (Call to Order of the Court); (The Jury is Sworn); The Witness is Sworn); (The Witness is Affirmed)
- All speakers must be properly identified throughout the Transcript, initially by their full name, thereafter by the following designation or courtesy titles, in capital letters indented ten (10) spaces from the left margin. Appendix A (8)(f)
    - The Judge shall be identified as THE COURT
    - An attorney shall be identified as MR., MRS., or MISS (last name)
    - A witness shall be identified as THE WITNESS
    - An interpreter shall be identified as THE INTERPRETER
    - The defendant in a criminal case shall be identified as THE DEFENDANT
- References to speakers and events that occur throughout the proceedings must be properly noted in **capital letter and centered on the appropriate line**. Appendix A (9). Examples: AFTER RECESS; DIRECT EXAMINATION; CROSS EXAMINATION; REDIRECT EXAMINATION; RECROSS EXAMINATION; FURTHER REDIRECT EXAMINATION; PLAINTIFF'S EVIDENCE; PLAINTIFF RESTS; DEFENDANT'S EVIDENCE; DEFENDANT RESTS; PLAINTIFF'S EVIDENCE IN REBUTTAL
- Parenthetical notations
    - Must begin with an open parenthesis or bracket on the fifth (5th) space from the left margin, with the remark beginning on the sixth (6th) space from the left margin.
    - Parenthetical notation in a Transcript are a Court Reporter's own words, enclosed in parentheses or brackets, recording some action or event.
    - Parenthetical notations should be as short as possible but consistent with clarity and standard work usage.
    - Parenthetical notations are used for customary introductory statements such as a call to order of court or swearing in a witness, and indicating non-verbal behavior, pauses and read back/playback.
    - The following parenthetical notations should be used to designate portions of proceedings: Appendix A (10)
        - Proceedings started, recessed, adjourned, with the time of day and any future date indicated where appropriate. Examples: (Recess at 12:00

p.m.); Recess at 12:00 p.m. until 1:30 p.m.); (Proceedings concluded at 5:00 p.m.)

        - Jury In/Out. Examples: (Jury out at 2:15 p.m.); (Jury in at 2:40 p.m.). If a jury is involved, it is essential to indicate the proper parenthetical notation whether the proceeding occurred: in the presence of the jury, out of the presence of the jury, out of the hearing of the jury, prior to the jury entering the courtroom, or after the jury left the courtroom.
        - Defendant Present/Not Present. In criminal trials, this designation must be made if not stated in the record by the Judge.
        - Bench/Side Bar Conferences. This designation must note whether the bench/side bar conference is on or off the record. If all the attorneys in court are not participating in bench/side bar conference, the parenthetical notation must so indicate. Examples: (Bench conference on the record); (Bench conference off the record with Mr. Johnson and Ms. Smith); (At side bar on the record); (At side bar); (End of discussion at side bar).
    - Discussions off the Record. This designation must note where the discussion took place.
    - Chambers Conferences. This designation must not the presence of absence of parties in chambers. Examples: (Discussion off the record in chambers with defendant not present); (Discussion on the record in chambers with defendant present)
    - Nonverbal Behavior, Pauses, Read backs/Playback.
        - Attorneys, Judges in some instances, should note for the record any nonverbal behavior (e.g. physical gestures, lengthy pauses by witnesses).
        - Parenthetical phrases may be used to indicate physical gestures to which attorneys or Judges refer. Examples: (Nods head up and down); (Shakes head from side to side); (Indicating)
        - If an attorney or Judge refers to a physical gesture, but the nature of the gesture is specified in the log notes, then the transcriber may use the parenthetical phrase "(inaudible response)".
        - All read backs and/or playbacks and the party requesting must be noted parenthetically as follows:
        - ❖ If the question and/or answer requested to be read or played back appears on the same page as the request, the following parenthetical must be used: (The last questions and/or answer was read/played back)
        - ❖ If the question and/or answer, or both, appear on a previous page, the Court Reporter should restate the question and/or answer in full, with appropriate quotation marks and parentheses.

- Transcript Volume
    - A transcript volume shall be a single PDF or PDF/A file consisting of not more than the lesser of two hundred fifty (250) pages or fifty megabytes(50MG).

    - Each volume shall be numbered at the bottom starting with numeral one on each volume's front page. Appendix A (11)
    - **EACH VOLUME SHALL BE NUMBERED FROM PAGES 1-250. A SUBSEQUENT VOLUME SHALL BEGIN AGAIN WITH NUMBER 1.**
    - The front page of each volume shall conform to Form # APP. R. 28-1. Appendix A (12)
- Table of Contents
    - Prepare a table of contents listing each witness and volume and page where that witness's direct, cross, and redirect examination begins.
    - Table of contents must identify each exhibit offered and show the transcript volumes and pages at which the exhibit was identified and at which a rule was made on its admission into evidence.
    - Table of contents shall be a separate volume.
- Court Records Excluded by Administrative Rule 9 (G)
    - In cases where all of the courts records are excluded from public access pursuant to Administrative Rule 9 (G)(1), the Transcript shall be excluded from public access. App. R. 28(F)
    - If, during the hearing or trial a party or person identified any oral statement(s) to be excluded from public access, the Court Reporter must comply with the requirements of Appellate Rule 23 (F) with regard to the statement(s) and must note in the Transcript the specific Administrative 9 (G)(2) or 9 (G)(3) ground(s) identified by the party or person.
    - Additionally, until the time the Transcript is transmitted to the Court on appeal, any party or person may file written notice with the Trial Court identifying: the Transcript page and line number(s) containing any court record to be excluded from public access; and the specific Administrative Rule 9 (G)(2) or 9 (G)(3) grounds upon which that exclusion is based. (See Form #App. R. 11-3) This written notice must be served on the Court Reporter and, upon receipt of the written notice, the Court Reporter must refile the Transcript in compliance with the requirements of Appellate Rule 23(F) and must note in the Transcript the specific Administrative Rule 9 (G)(2) or 9 (G)(3) ground(s) identified by a party or person.
    - After the Transcript has been transmitted to the Court on appeal, any request by a party or person to exclude a court record in the Transcript from public access must be made to the Court on appeal and must contain specific Administrative Rule 9 (G)(2) or 9 (G)(3) ground(s) upon which that exclusion is based. Upon receipt of an order from the Court on appeal, the Court Reporter must re-file the Transcript in compliance with Administrative Rule 9 (G)(5)(b).
- File Format and Size
    - File saved in one or more files in searchable PDF or searchable PDF/A format.
    - File size limited to lesser of 250 pages or 50MB.
    - Specific naming convention for file names. See Appendix A(15).
    - Valid document types include: Table of Contents, Transcript, Index and Exhibit.
- Electronic Storage Devices

    - USB flash memory drive, CD or DVD formatted to store electronic data in a File Allocation (FAT) or File Allocation Table 32 (FAT-32) file system.
    - CD/DVD must be prepared for distribution (finalized, closed session) to ensure file can be opened by the Clerk.
    - Each storage devise must be labeled or tagged to identify the names of the parties and case number in the proceedings in the trial court; the Court on appeal case number, if known; the device sequence number, if more than one (1) device is required for a complete Transcript; the signature of the Court Reporter; and whether the device is the official record, official working copy, Court Reporter's copy, or party copy. See Appendix A (16)
- Original Version
    - The Court Reporter shall retain a copy of the electronic Transcript in the original word processing version used for the transcription. Appendix A (17)
- Signature
    - All electronic documents that require a signature must include a person's signature using one of the following methods: a graphic image of a handwritten signature, including an actual signature on a scanned document, or the indicator "/s/" followed by the person's name. Appendix A(18)
- Malware
    - Court Reporter must take reasonable steps to ensure that the Transcript and other files do not contain malicious software ("Malware"), such as viruses, worms, and Trojan horses.
    - Any files that contain malware will be rejected.
    - Rejection of a filing because it contains malware will not necessarily excuse a late filing. Appendix A(19).

APPENDIX H

THE FOLLOWING PAGES ILLUSTRATE:

(1) Instructions for Word 2013 Set Up for Transcript

(2) Sample Transcript (Word 2013)

(3) Instructions for Word Perfect Set Up for Transcript

(4) Sample Transcript (Word Perfect)

See Chapter 5 for the Appellate Rules concerning preparation of transcripts.

WORD TRANSCRIPT SET UP FOR 2013 VERSION

1. To create correct line spacing, click Home, under Paragraph Tab, click arrow in the right corner. Inside the Paragraph box under Indents and Spacing Tab, Spacing Section, under Line Spacing, click drop down box, click Exactly and at box fill in 18 pt, click Ok.
   Tip - This setting only allows for 25 lines per page.
2. To create margins click Page Layout Tab, in the Page Setup Group click Margins and set all margins for 1 inch. (If you do not already have that particular choice in the drop down, click Custom Margins, set top, bottom, left and right for 1 inch and Click ok.)
3. To create page numbering on the left, click Page Layout tab, in the Page Setup Group click Line Number, Restart Each Page.
4. To create line on left and right, under Home tab in the Paragraph Group, click Borders drop down arrow, click Left Border and Right Border.

5. For page numbering, under Insert Tab, in the Header & Footer Group, Click Page Number, Bottom of Page, Plain Number 2, close Header when finished.
6. Click Save.

AND

How do you add / change Headings in a Word document while in the middle of the transcript without changing the heading on the entire product?

Go to Page Layout tab, click on Breaks, and under section breaks-click on next page, clink on the Insert tab, click on Header, then click edit header, you must then click on "Link to Previous" to turn off, at that time you are able to change your header and when finished with header click close header.

IN THE

INDIANA COURT OF APPEALS

APPELLATE NO: []

[NAME],	] APPEAL FROM THE [COURT NAME]
	]
Appellant/[PLNT/DFNT],	] TRIAL COURT CASE NO.:
	] []
v.	]
	]
[NAME],	] BEFORE THE HONORABLE
	] [JUDGE NAME]
Appellee/[PLNT/DFNT].	]

TRANSCRIPT OF EVIDENCE

VOLUME I OF [#]

PAGES 1 TO [250]

ATTORNEY FOR APPELLEE:	**ATTORNEY FOR APPELLANT:**
[NAME]	[NAME]
[FIRM]	[FIRM]
[ADDRESS]	[ADDRESS]
[CITY, STATE ZIP]	[CITY, STATE ZIP]
[PHONE]	[PHONE]
[EMAIL]	[EMAIL]

[CT REPORTER NAME]
OFFICIAL COURT REPORTER
[COURT NAME]

STATE OF INDIANA) IN []COUNTY COURT

) SS:

COUNTY OF [ ]) CAUSE NO. [ ]

[NAME],)

)

Appellant/[PLNT/DFNT],

)

)

v.

)

[NAME],

)

)

Appellee/[PLNT/DFNT].

TRANSCRIPT OF [TYPE OF HEARING]

BEFORE THE HONORABLE [JUDGE NAME],

JUDGE OF THE [COURT NAME]

DATE: [DATE]

[CT REPORTER NAME]

OFFICIAL COURT REPORTER

[COURT NAME]

APPEARANCES

ON BEHALF OF THE PLAINTIFF, [NAME]:

[NAME]

[FIRM]

[ADDRESS]

[CITY, STATE ZIP]

[PHONE]

[EMAIL]

ON BEHALF OF THE DEFENDANT, [NAME]:

[NAME]

[FIRM]

[ADDRESS]

[CITY, STATE ZIP]

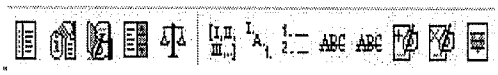
[PHONE]

[EMAIL]

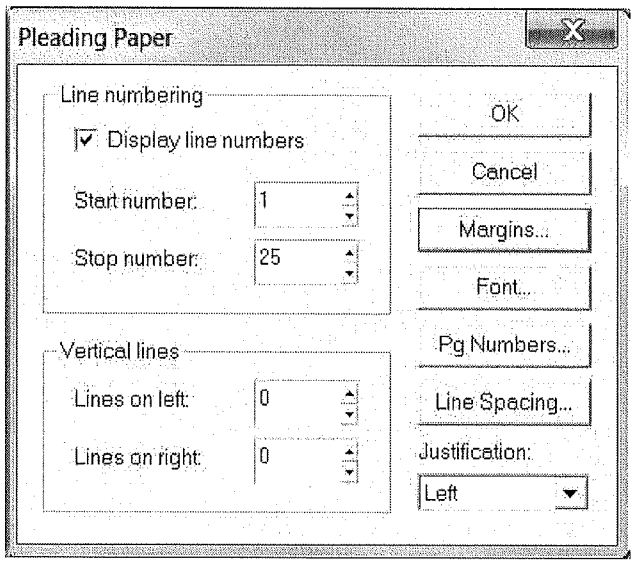
[redacted]

Instructions on how to set up a transcript using Word Perfect:

- Right click on your tool bar and select **Legal Tool Bar** if it is not already a part of your tool bar. It will look like this:



- From the **Legal Tool Bar** select **Pleading** (first item on the left) and you get this:



- As you can see from the box, you can set the number of lines, margins, font, page numbers and line spacing of the line numbers. If you prefer, you can also set it up to where you have lines running down the left and right margins (vertical lines). For purposes of this template, there are no lines and those boxes are set at zero.

- After you have set everything, hit okay and your document has been set up.

- In the event you need to switch to single spacing (i.e. title pages and face sheets) open **Reveal Codes**, and go to the end of the setting up of your template (after the end of "Document Style" and change line spacing to one. This will not affect your line numbering spacing.

How to start (create) headers, change headers and stop them:

- Set up your transcript using the above directions and save it.
- AT THE VERY BEGINNING OF YOUR DOCUMENT, ON THE FIRST PAGE, OPEN **REVEAL CODES** AND AFTER "OPEN STYLE: DOCUMENT STYLE"

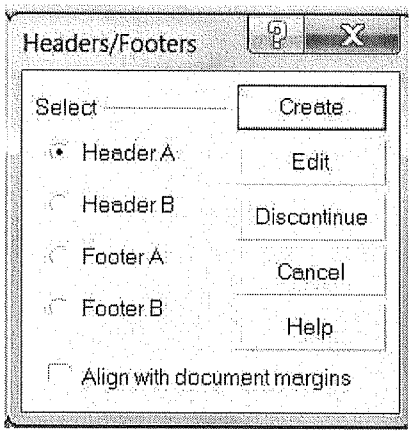
  Open Style: DocumentStyle

  do the following:

  - Go to tool bar and select **Insert**.

    File Edit View Insert Format Table Tools Window Help

  - Select **Header A,** then **Create**.



  - Change line spacing to 1 (while you're in the header) and make up to 3 returns (this allows for 3 lines of header if necessary). DO NOT TYPE ANYTHING IN HEADER A.

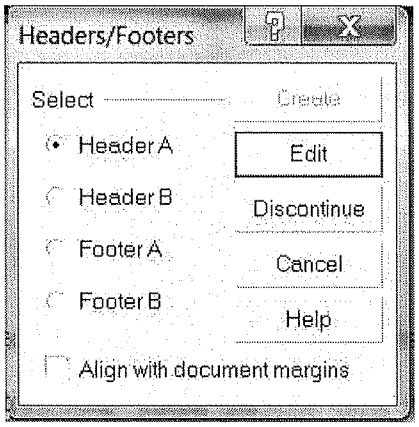
    At this point go back to the **Legal Tool Bar**, select **Pleading** (first item on the left)(See picture on page 196) then select **OK and only OK.**

The header has been saved and will appear ABOVE line 1.

To change the header:

- On the page that you want the header to change and anywhere within the document, repeat the above steps to create a header.
  - Select Header A (or the last header used) and

select **Discontinue.** The header will disappear.



- Select **Header B** (or the next header to be used) and then **Create.** Type in your header. Change line spacing to 1 (this is the line spacing for the header) and make up to 3 returns (MAKE SURE YOU MAKE THE SAME NUMBER OF RETURNS IN HEADER B AS YOU DID HEADER A). ——————————
  At this point go back to the **Legal Tool Bar**, select **Pleading** (first item on the left)(See picture on page 196) then select **OK.** (Just as you did to set up your very first header).

- Continue alternating Header A and Header B throughout the transcript using the above procedure.

When you are at the last page for headers and the next page doesn't require one, you will need to create a blank header (like you did at the beginning) to keep the line spacing consistent:

- Select **Header A** or **Header B** (the last one used) and select **Discontinue**.

- Then set up the blank header (see instructions on page 197)

This will allow the headers to be discontinued and leaves the same amount of space at the top of the page.

SAMPLE TRANSCRIPT

The sample transcript that appears following this page does not address every single situation that a reporter might encounter. It is designed to show a reporter how a transcript is to look and the reference where a reporter can verify such information. These standards come from Appendix A as attached to the Order issued by the Indiana Supreme Court filed April 12, 2016.

Vertical lines optional

Appendix A(1) - 8 1/2 x 11 inch paper size

A(2)(b) lines of each page numbered

IN THE
INDIANA COURT OF APPEALS

APPELLATE NO: [Insert cause number here]

APPELLANT'S NAME, APPELLANT/PARTY BELOW	)	APPEAL FROM THE NAME OF COURT
vs.	)	TRIAL COURT CAUSE NO.: INSERT CAUSE NUMBER
NAME OF APPELLEE, APPELLEE/PARTY BELOW	)	BEFORE THE HONORABLE NAME OF JUDGE

TRANSCRIPT OF EVIDENCE

VOLUME I OF IV

PAGES 1 to 250

ATTORNEY FOR APPELLANT:
Name
Attorney at Law
Street Address
City, State, Zip
Telephone No.:

ATTORNEYS FOR APPELLEE:
Name
Attorney at Law
(Or other appropriate title)
Street Address
City, State, Zip
Telephone No.:

A(2)(b) - each page must contain a minimum of 25 lines; may contain more than 25 lines of text; last page may have less than 25 lines

NAME OF COURT REPORTER
OFFICIAL COURT REPORTER
NAME OF COURT

A(2)(a) EACH volume independently and consecutively numbered at the bottom. EACH volume begins with numeral one.

A(6)-Font-12-point or smaller and black in color. Font shall be Arial, Baskerville, Book Antigua, Bookman, Bookman Old Style, Century, Century Schoolbook, Calisto MT, CG Times, Garamond, Georgia, New Baskerville, New Century Schoolbook, Palatino or Times New Roman [Appellate Rule 43(D)]

STATE OF INDIANA)
) SS:
COUNTY OF COUNTY)

NAME OF COURT
2016 TERM
CAUSE NO. [INSERT CAUSE NO. HERE]

NAME OF PLAINTIFF,
Plaintiff

v.

NAME OF DEFENDANT,
Defendant

JURY TRIAL

BEFORE THE HONORABLE NAME OF JUDGE
Dates of Jury Trial: [Insert date(s) here]

NAME OF COURT REPORTER
OFFICIAL COURT REPORTER
NAME OF COURT

1 APPEARANCES

2 FOR THE PLAINTIFF
Name of Attorney
3 Attorney at Law (Or other appropriate title, i.e. Prosecuting Attorney)
4
(Any other appearances, i.e. plaintiff)
5
6
7
FOR THE DEFENDANT
8 Name of Attorney
Attorney at Law (Or other appropriate title, i.e. Public Defender)
9
(Any other appearances, i.e. defendant)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1" top margin - A(3)

A(5) Header - boldface and capital

 - A(2)(b) - Header notations shall not be considered part of the 25 lines

SEPTEMBER 28, 2015

1" margin

A(6) lines double spaced

THE COURT: The Court would go on the record in cause number 00000-0000-MR-000000, this matter being called for trial, said matter being captioned State of Indiana versus John Doe. The Court would note that the State appears by Jack Smith, Prosecuting Attorney, William Jones, Deputy Prosecuting Attorney. Sir, you are indeed the defendant in this cause, John Doe?

DEFENDANT DOE: Yes, sir.

THE COURT: The Court would note the Defendant appears in person and with counsel Fred Black. At this time, the Court needs to address certain matters on the record before potential jurors are present. Counsel, I'm aware that there is a separation of witnesses that was done in this cause and - and that was filed by the Defendant, so it is on both sides of the aisle, so to speak, so again in that regard I'm depending on Counsel to be aware of - of who those witnesses are. Obviously you're going to know those folks better than myself and I note there are some individuals in the courtroom today, so in terms of that separation of witnesses, Counsel are aware of that, is that correct, Mr. Smith?

1" margin

MR. SMITH: Yes.

THE COURT: And Mr. Black?

MR. BLACK: Judge, I am aware of it. The Defendant's mother, Kenna Doe, is in the courtroom. I do not intend to call her and I talked to Jack and he's okay with her being in the courtroom.

1" inch

Subsequent lines have to begin at left margin

-3 spaces-
10 spaces THE COURT: All right. I just want to be clear that folks in here understand that I've granted an order for separation of witnesses, so if anyone is present in the courtroom and would be a possible witness in this case, they must wait outside the courtroom until you're called in to testify. Also you wouldn't discuss your testimony with anyone else or any other witness, you're permitted to talk to the attorney only. So, again, Counsel, I'm looking for you to assist the Court in policing this because there's going to be several folks in the courtroom today. Also my understanding, based on prior discussions with the Court and Counsel, that there have been certain individuals excused today or stricken from the jury list based on hardship or, as the case may be, in one Interruption of speech - A(7) there was someone who is deceased on the list, and there wasn't a whole lot of folks, but I think that was shared with Counsel. It's my understanding that the parties have no objection to those. Those were done, again, based on previous discussions with the parties, and there are no objections to the remaining jury panel or individuals in the jury pool, is that correct, Mr. Smith?

10 spaces MR. SMITH: Yes.

THE COURT: And Mr. Black?

MR. BLACK: Yes, sir.

THE COURT: All right. Then the Court's also provided some drafts at least at this point to some preliminary instructions, I believe they're one through twelve, and my understanding is the parties don't have any objections to those

preliminary instructions one through twelve, is that correct, Mr. Smith?

MR. SMITH: Yes.

THE COURT: And Mr. Black?

MR. BLACK: Yes, sir.

THE COURT: All right. Also the parties agree that when it comes that time, that a set of the preliminary instructions as well as the final instructions would be sent into the jury room with the jury during deliberations. Do you agree with that, Mr. Smith?

MR. SMITH: Yes.

THE COURT: And Mr. Black?

MR. BLACK: Yes, sir.

THE COURT: Thank you, Mr. Black. Is the State ready to proceed then with its evidence in chief?

A(8)(c)

MR. SMITH: Yes (indiscernible). Alan Garrod.

STATE'S EVIDENCE

A(9) - Speaker/Event identification - capital letters and centered

ALAN GARROD

having been duly sworn to testify to the truth, the whole truth and nothing but the truth was examined and testified as follows:

DIRECT EXAMINATION

By Jack Smith, Prosecuting Attorney

5 spaces

Q. ⟷ Please state your name.

Q & A must begin at left margin A(4)(a)

A. Alan Garrod.

Q. And, Alan, how old are you?

A. Twenty-one.

Q. And do you currently reside in Richmond?

A. Not any more.

Subsequent lines must begin at left margin A(4)(a)

Q. 5 spaces Okay. Were you residing in the Richmond area back on the date of Caleb Woosley's death?

A. Yes.

Q. And where were you living at the time?

A. Southwest 4th.

Q. And do you know Caleb Woosley?

A. Yes.

Q. And can you describe your relationship to Mr. Woosley?

A. We've been good friends since College Corner when we was younger kids.

Q. Okay. I'm going to have you - I'm going to stand back here because your voice isn't projecting very well, but I intentionally stand here so that I can hear you because sometimes jurors have difficulty hearing you. Okay. All right. So you mentioned you - you've known him how long?

MR. SMITH: And, Your Honor, could I take this over to the jury to show them what he's represented?

THE COURT: Is it marked in any fashion? Is it a demonstrative exhibit or otherwise?

MR. SMITH: Just demonstrative, yes, to illustrate his testimony.

MR. BLACK: I don't have any objection. It might be

1 better maybe to admit it but - .
2 MR. SMITH: I - I have no objection to that. Do you
3 want - if you want to mark it as State's 2 and admit it is fine.
4 THE COURT: I don't know per se about admitting it, but
5 at least marked - .
6 MR. SMITH: Sure.
7 THE COURT: - so we know what it is. And there's no
8 objection but I'm just going to show - Ms. Rohrer, do you have that
9 marked as State's Exhibit - State's 2 or - ?
10 MR. SMITH: State's 2, Your Honor.
11 (Mr. Smith displays State's Exhibit 2 to jury.)
12 CROSS EXAMINATION
13 By Fred Black, Counsel for Defendant
14 Q. Alan, you and I know each other. We've talked on a couple
15 of occasions, is that - is that right?
16 A. Yes.
17 Q. And just so we're clear, the conversation the night before
18 with Caleb, and I'm not asking you what he said, he was afraid of
19 some individuals that were - belonged to a gang, is that right?
20 A. Yes.
21 Q. In that conversation, Kore's name or Deandre's or Michael
22 Pruitt's name that never came up.
23 A. Never. Not once.
24 MR. BLACK: That's all the questions I'd have.
25 THE COURT: Anything else on redirect, Mr. Smith?

1 MR. SMITH: No.
2 (The witness was excused.)
3 MR. SMITH: I think we're ready, Your Honor.
4 (The playing of State's Exhibit 85, video deposition of Dr.
5 Paul Mellen, is transcribed as follows:)
6 STATE'S EXHIBIT 85
7 MR. SMITH: Okay, we are recording. Today's date is
8 August 5th, 2015 and we are here today at the Wayne County - at an
9 office in Wayne County, Indiana, and we are here to take a trial
10 deposition of Dr. Paul Mellen. Present is myself, Mike SMITH, who
11 is a representative of the State. Dr. Mellen is here as the
12 deponent. Also present is Pat Ragains and Austin Shadle. Their
13 clients are also present, those clients are Kore Buchanan and
14 Deandre Plant. The purpose of this proceeding is to preserve Dr.
15 Mellen's testimony because he will be unavailable for trial because
16 of the fact that he has moved out of the State and he's back in the
17 State today testifying - or he did testify at a different
18 proceeding and so as a matter of convenience to him, we are going
19 to take this trial deposition today and some ground rules, I
20 suppose, for the deposition are that because there are two co-
21 defendants who have the right to separate trials, both attorneys
22 for the defendants will be given the opportunity to conduct cross
23 examination and ask the appropriate questions, consult with their
24 client as they would during a trial. Procedurally we've also
25 agreed to a few things, one of which is that during the autopsy,

1 there were photographs taken of the deceased and that those
2 photographs are authentic. And so we don't anticipate any
3 objection based on authenticity, however, there may be other
4 objections that can be raised depending on the testimony, to those
5 photographs and we will also provide each defense counsel the
6 opportunity to raise any appropriate objections later in the
7 proceeding and also to question appropriately, so we'll go ahead
8 and begin. Sir, would you please raise your right hand? Do you
9 affirm under the penalties for perjury that your testimony will be
10 the truth?
11 DR. MELLEN: Yes, I do.
12 DIRECT EXAMINATION
13 By Jack Smith, Prosecuting Attorney
14 Q. Please state your name.
15 A. Paul F. Mellen - M-E-L-L-E-N.
16 Q. And what is your occupation?
17 A. Physician and medical doctor specializing in the field of
18 pathology and forensic pathology.
19 Q. What is the difference - well first of all what is
20 pathology?
21 A. Pathology means the study of disease. It's a medical
22 speciality dealing basically with laboratory testing.
23 Q. And what is forensic pathology?
24 A. Forensic pathology is a sub-specialty of anatomic pathology.
25 It deals basically with autopsy examinations to determine cause of

1 death, manner of death, evaluate injuries and toxicology findings.
2 Q. And how long have you worked in this field?
3 A. About 25 years.
4 MR. SMITH: The State rests.
5 MR. BLACK: Thank you, Your Honor. The defense would
6 rest.
7 (The Bailiff is sworn.)
8 (The jury retires to deliberate.)
9 AND THAT WAS ALL THE PROCEEDINGS
10 HAD IN THIS CAUSE.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF INDIANA) NAME OF COURT
)
COUNTY OF WAYNE) CAUSE NO.: [INSERT CAUSE NO. HERE]

NAME OF PLAINTIFF,
Plaintiff

vs.

NAME OF DEFENDANT,
Defendant

REPORTER'S CERTIFICATE

I, Name of Court Reporter, Reporter of the Wayne Superior Court No. 1, Wayne County, State of Indiana, do hereby certify that I am the Official Court Reporter of said Court, duly appointed and sworn to report the evidence of causes tried therein.

That I prepared the foregoing transcript from the machine recordings, and certify that the transcript is a true and correct transcript of the initial hearing, jury trial and sentencing hearing held in this cause.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal, this _____ day of _____, 20____.

_____
Name of Court Reporter
Official Court Reporter
Name of Court
Name of County, Indiana