

Court and Clerk Records

Access and Maintenance: Trial Rule 77 Quick Guide

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Introduction

Ind. Trial Rule 77 is the basic framework for clerks and courts related to court record creation and management. The rule was promulgated by the Supreme Court of Indiana and became effective January 1, 1991, replacing an earlier rule version that set standards for docket sheets and order books. This Quick Guide provides guidance to clerks and courts in handling situations encountered with court records by defining specific actions required to produce quality records and assisting with some frequently asked questions.

T. R. 77 requires four sets of judicial records to be maintained by the clerk for the trial courts:

- 1) the Chronological Case Summary (CCS).
- 2) the Record of Judgments and Orders (RJO).
- 3) indexes of all court actions and proceedings; and
- 4) the case file (pleadings and papers).

In addition, T.R.77 sets forth standards for maintaining statistics, replacing lost records, general record keeping, and electronic posting of court records.

Key Concepts Locator

- T.R.77 is the basic framework for court records and establishes four sets of records to be maintained. **Page 2**

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- The CCS is a sequential, brief, and official record of the activities and actions in a case. The CCS is the court's case management tool and should be accurate both as to the date events occurred as well as in summarizing the nature of events. **Page 3**
- CCS entries should **never** be backdated. They must reflect the correct date of entry on the CCS, and if an event occurred on a different date than the CCS entry date, refer to the earlier date in the text of the CCS entry. **Pages 4-5**
- The RJO (order book) is a daily, verbatim compilation of all judgments of the court, as well as designated orders. "Designated orders" are ones that have some substantive bearing on the case. Not all court orders are entered in the RJO, but all court orders must be entered on the CCS as an event. **Page 6**
- The judge issuing the order should decide whether an order is "designated." **Page 6**
- Except where the RJO is maintained electronically, a separate RJO is required for confidential materials. **Pages 6-7**
- Court records shall be maintained in accordance with the retention schedules in Ind. Administrative Rule 7. **Page 9**

Trial Rule 77(A) - Required records.

The clerk of the circuit court shall maintain the records for all circuit, superior, probate courts in the county.

The clerk of the circuit court shall maintain any record required by an act of the general assembly or a duly promulgated rule of any state agency, including the following:

- Lis pendens record - Ind. Code 32-30-11-1;
- Record of transcripts and foreign judgments – I.C. 33-32-3-2.
- Judgment Docket - (I.C. 33-32-3-2), wherein all orders requiring entry in the judgment docket shall include the term "judgment" in the title and shall set forth the specific dollar amount of the judgment in the body of the order.
- Execution docket – I.C. 33-32-3-5.
- Records specified under the probate code; and

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Records specified by the state board of accounts as to the fiscal matters relating to the court and clerk. The clerk of the circuit court shall also maintain the following records as specified under this rule:

- Chronological case summary (CCS).
- Case file.
- Record of judgments and orders (RJO or order book); and
- Indexes.

Records may be maintained in the following formats:

- Paper.
- Microfilm, provided the record is authorized to be microfilmed by the provisions of Admin. R. 7 (B), or
- Electronic which means the record is readable using an electronic device regardless of the way it was created.

Commentary

The form and requirements for subsection 1 are governed either by statute or by a state agency rule. These records are not considered judicial records, but are created as part of, or because of, a judicial action. Only those records required under Section 2 are judicial records and are governed by this rule.

- This rule corresponds to Admin. R. 10(B), which says that "[e]ach Clerk is responsible for the maintenance of court records in a manner consistent with the directives of the Supreme Court of Indiana, judge of court, and other pertinent authority. In all instances, the Clerk of the court must safeguard the integrity and security of all court records in his or her custody and diligently guard against any prohibited practice."
- The standards for the various media in which court records are preserved are covered under Admin. R. 6. Retention and disposition of all court records, including those required under T.R. 77, are covered under Admin. R. 7.

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Trial Rule 77(B) - Chronological Case Summary (CCS).

For each case, the clerk of the circuit court shall maintain a sequential record of the judicial events in such proceeding. The record shall include the title of the proceeding; the assigned case number; the names, addresses (including electronic mail address), telephone, facsimile, and attorney numbers of all attorneys involved in the proceeding, or the fact that a party appears pro se with address (including electronic mail address), telephone, and facsimile number of the party so appearing; and the assessment of fees and charges (public receivables). The judge of the case shall cause CCS entries to be made of all judicial events. Notation of judicial events 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 CCS should be the date the notation is made, regardless of the date the judicial event occurred. The CCS shall also note the entry of orders, rulings, and judgments in the record of judgments and orders, the entry of judgments in the judgment docket, and file status (pending/decided) under section (G) of this rule. The CCS may be kept in a paper format, or microfilm or electronically. The CCS is an official record of the trial court and shall be maintained apart from other records of the court and organized by case number, if maintained in a paper or microfilm format.

Commentary

- The CCS is the court's case management tool and must accurately record each event as it occurs. The key to understanding the function of the CCS is the need to understand the concept of an event. A judicial event is an action on the part of a litigant, the litigant's attorney, or the court. The court and clerk must accurately record each event as it occurs and enter each action on the CCS as of the date of such action. Some courts and clerks use a file stamp for recording events filed by litigants and attorneys and a "received" stamp for recording events performed by the court.
- The rule recognizes that not all events are entered on the CCS as they occur; however, the noting of the date of an event is equally important as noting the event itself. For example, the court may issue an order on one date, but the order does not arrive in the clerk's office for several days. Such an entry might

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be as follows: "order for discovery signed by the judge on January 4, 2017, and received in this office January 7, 2017."

- The requirement for maintaining a sequential record of events in a case means that **events are never backdated**.
- The date of a CCS entry should be the date that the entry is made, regardless of the date on the document or the date the activity occurred. The text of the CCS should indicate the effective date of the document or the activity.
- When a court order bears a date other than the one when it is delivered to the clerk's office for entry in the public record, the CCS entry must be made as of the date the order is given to the clerk for entry in the public record with a statement indicating when the order is dated.
- A CCS entry must be made on the date that an order is entered into the RJO, indicating that this is the date on which the order may be found in the RJO. [The CCS serves as the index, or locator, of orders, decrees, and judgments of the court, as the latter are entered in the RJO.] If the date the order is entered in the CCS is the same as the date it is entered in the RJO (as it should be), then the same entry will suffice if it indicates that the order is entered in the RJO of that day.
- Clerks must make CCS entries of filed documents and orders on the day that they are transmitted to the clerk's office.
- A CCS entry **should never be amended, corrected, or deleted once made**. It may be amended only by another corrective CCS entry. Some courts, with written approval of the Indiana Supreme Court, post CCS entries on the Internet, so it is important that the record in a case does not just change from one day to the next.
- In the instance of pleadings filed under T.R. 5(F) by registered, certified or express mail, return receipt requested OR by third-party commercial carrier for delivery to the clerk within three (3) calendar days, the pleadings should be stamped as received on the date the mail is received. The CCS entry should be the date received, and the text of the CCS entry should reflect that the filing is

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deemed complete as of the date of mailing or deposit and indicate what that date is.

- All documents handled by the clerk's office that will have a CCS entry should be stamped reflecting the date of receipt. This permits someone to associate the document correctly with its CCS entry.
- Entries in the CCS are intended to be very brief, while retaining enough detail to be meaningful to someone accessing the records. The full text of orders and judgments should never be entered into the CCS. The correct mixture of brevity and descriptiveness is one that must be left up to each individual jurisdiction; however, as a rule one should be able to discern from those entries not all the details of an action, but enough to correctly understand the activity. So, for example, a CCS that reads "Motion received" or "Motion granted" is not descriptive enough, but it should never be the case that the full text from the motion or the order is copied into the CCS.

CCS entries must never be to be backdated. Imagine the confusion that could result from backdating. For example, a person gets a certified copy of a CCS on December 1, which shows no activity in the case for the prior two weeks. On December 2, the clerk receives two orders dated November 30 that are entered on the CCS but are backdated to make it appear that they were entered on the CCS on November 30 rather than placed on the CCS in the correct chronological order (which would be the order of entry). Backdating makes it impossible to have confidence that the document one gets from the clerk's office on any date will not be changed later. For this same reason, all documents should be stamped as received, so that they have a visible date that can be cross-referenced to a CCS entry from that same date.

Trial Rule 77(C) - Case file.

In each case assigned a case number, the clerk of the circuit court shall maintain a file in a single format, unless it is necessary to maintain a case file in a combination of formats to accommodate a filing that cannot be maintained in a single format. The clerk shall make an entry on the CCS if it is necessary to maintain a single case file in a combination of formats.

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All case files, whether paper or electronic, shall contain a copy of any order, entry, or judgment in the case places in the RJO, if the clerk is required to maintain an RJO, and the original or electronic copy of all other documents relating to the case: including pleadings, motions, service of process, return of service, verdicts, executions, returns on executions and, if prepared, certified, and approved, the transcript of the testimony.

The RJO shall contain the original order, entry, or judgment and the case file shall contain a copy of such original. Unless it is necessary to detail the filing chronology, the case file need not include transmittal letters, instructions, envelopes, or other extrinsic materials unrelated to the issues of the case. The case file, if maintained in a paper format, shall contain an index tab listing the case number and an abbreviated designation of the parties and shall note the information required under section (G) of this rule. In the event the court does not maintain a separate evidence file, documents entered into evidence, including depositions, shall be placed into the case file.

Commentary

- Case files are important repositories of documents filed or prepared in a case. The case file should contain information relevant to the case's resolution.
- The CCS frequently is kept with the case file until final disposition upon which, under 77(B), the CCS is to be maintained separately.
- The original order, entry, or judgment is maintained as part of the Record of Judgments and Orders. The file contains a copy of the original.
- **The Indiana court system is currently in transition and during this period it will be very difficult to maintain records in a single format. The time in which the ideal of a single format will be achieved is flexible. However, it is recommended that by the time that a case has been closed and sent to storage that the entire case be in a single format as stated in T.R. 77 (C).**

Trial Rule 77(D) - Record of Judgments & Orders (RJO or Order Book).

Unless the court has a scanning, system approved under Admin. R. 6 that directly scans or electronically files documents into the court case management system and saves a

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digital image of a document as part of the electronic case file, the following provisions apply:

The clerk of the circuit court shall maintain a daily, verbatim, compilation of all judgments of the court, designated orders of the court, orders and opinions of an appellate tribunal relating to a case heard by the court, local court rules under T.R. 81, certification of the election of the regular judge of the court, any order appointing a special judge, judge pro tempore, or temporary judge, the oath and acceptance of any judge serving in the court, any order appointing a special prosecutor, and the oath and acceptance of a special prosecutor. The clerk may maintain a separate RJO as required for the functional management of the court's business. Except where the RJO is maintained electronically, the clerk shall maintain a separate RJO for confidential materials shall be maintained.

If the court has a scanning system approved under Admin. R. 6 that directly scans or electronically files documents into the court case management system and saves a digital image of a document as part of the electronic case file, the clerk need not maintain a separate RJO.

Commentary

- Much like the CCS, orders should be placed in the RJO on the date the clerk's office receives (and date stamps) them. The CCS's reference to the RJO's entry serves as a link or index to the RJO.
- All orders that conclude a case or orders that restrict the freedom of an individual must be placed in the RJO.
- The RJO should not have every order of the court placed in it. Instead, the RJO should contain final judgments of the court and "designated" orders of the court.
- A designated order reflects some substantive content such as a judicial action or opinion that contributes to the case's resolution. Procedural orders, such as orders granting a continuance, are not normally placed in the RJO.

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- The final decision-maker concerning whether an order should be placed in the RJO is the judge issuing the order even if the order appears to be one that would not ordinarily be placed in the RJO.
- In general, too many routine orders are placed in the RJO which, in turn, makes the RJO cumbersome to store and use effectively.
- A separate RJO for confidential materials must be maintained unless the RJO is maintained electronically.

Trial Rule 77(E) - Indexes.

In addition to any index required under the provisions of this rule, state statute, or duly promulgated rule of a state agency, the clerk of the circuit court shall prepare and maintain indexes of all actions and proceedings in the circuit, superior, and probate municipal courts in the county. This index shall be in an alphabetical format which notes the names of all parties, the date on which a party became part of the proceeding, and the case number of the proceeding. In the event courts are not located in the county courthouse, the clerk shall supervise the appropriate preparation of indexes for these courts and provide for the combination of indexes for all circuit, superior, and probate courts in the county. If the court has a case management system that is searchable by party name, date, and case number, or can produce an index upon demand, the clerk is not required to prepare and maintain indexes required by this rule.

Commentary

- The index is an essential tool because maintaining an accurate index allows members of the public to have meaningful access to court records.
- An index may be maintained in an electronic format if the data fields required in 77(E) are maintained.

Trial Rule 77(F) - Pleadings and papers: Where filed and entered.

All pleadings and papers shall be filed in accordance with Trial Rule 5 with the clerk of the circuit court. In the event a court is not located in the same facility as the clerk of the

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circuit court, all pleadings and papers shall be filed with the clerk serving that court. If an initial pleading or complaint is assigned to a court not within the facility where the initial pleading or complaint was filed, the clerk shall promptly notify the person filing the pleading and transmit the documents to the clerk serving the court where the matter will be considered, and all further papers will be filed with the latter court. In the event an initial pleading or complaint is filed with the clerk of the wrong court, the clerk, upon notice to the person filing the initial pleading or complaint, may transfer the case to the proper court before service of summons or appearance of other parties, or any opposing party may move for transfer as provided for under T. R. 12(B) or T. R. 75.

Commentary

- As the custodian of court files, pleadings and other papers filed in cases are filed with the clerk according to the provisions of T.R. 5.
- All documents shall be file stamped as of the date filed in the clerk's office except documents received by registered or certified mail or by third party commercial carrier are deemed filed upon mailing or deposit. This means the document is file stamped with the date it was posted or with some other official stamp on the face of the document indicating that, pursuant to T.R. 5(F), it is deemed filed on a specific date.
- Documents that are filed with a judge must be file stamped [T.R. 5(F)] and transmitted "forthwith" to the clerk's office. A CCS entry must be made as close to contemporaneously as possible.
- Court orders are file stamped as of the date they are filed in the clerk's office.
- **Confidential matters:** Pleadings, orders, or judgments may be confidential by statute or pursuant to Admin. R. 9.

Trial Rule 77(G) - Case File Status.

The clerk of the circuit court shall maintain the case files, as set forth under section (C) of this rule, in either a pending or decided status. Pending files, arranged by assigned case number, consist of all cases which have not been decided. Decided files consist of the

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actions concluded and no further proceedings remain as evidenced by the final judgment or other court order.

When a case has been decided, the file shall be assigned a disposition date pursuant to Admin. R. 7 of the Indiana Supreme Court and maintained under the original case number in a location apart from pending files. In the event a decided case is re-docketed for consideration by the court, the disposition date shall be deleted from the file and the case file returned to the pending cases in sequence with the case number originally assigned. A disposition date shall be reassigned when the case returns to a decided status.

Commentary

- A clerk's record keeping system should distinguish between cases pending before the court and cases that have been concluded.
- The clerk's office should maintain the closed case in accordance with the appropriate records retention schedule found in Admin. R. 7.

Trial Rule 77(H) - Statistics.

The clerk of the circuit court shall establish procedures to determine a statistical count of all actions filed, decided, and reinstated as required by the Office of Judicial Administration.

Commentary

- This section corresponds to Admin. R.1(B) which requires court preparation of quarterly case status reports and provides that "[t]he judge of the trial court may require clerks, court reporters, or any other officer or employee of the court to furnish the information needed to prepare the reports

Trial Rule 77(I) - Replacing lost papers.

If an original pleading or paper filed with the clerk of the circuit court cannot be located within the recordkeeping system set forth under this rule, the court may authorize a copy of such record to be filed and used as the original.

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Commentary

- This section provides a means for officially replacing documents that may be misplaced or are otherwise absent from the case file.
- It is important for clerks to be mindful of Admin. R. 10(B), which provides that “[e]ach Clerk is responsible for the maintenance of court records in a manner consistent with the directives of the Supreme Court of Indiana, judge of court, and other pertinent authority. In all instances, the Clerk of the court must safeguard the integrity and security of all court records in his or her custody and diligently guard against any prohibited practice.”

Trial Rule 77(J) - Method of record keeping.

Under the direction of the Supreme Court of Indiana, the clerk of the circuit court may, notwithstanding the foregoing sections, keep records in any suitable media. Records, whether required to be maintained permanently pursuant to Admin. R. 7 (D) (Retention Schedules) (T.R. 77 Schedules (10)), or not, must, if maintained electronically, be kept so that a hard copy can be generated at any time. The record keeping formats and systems and the quality and permanency requirements employed for the CCS, the case file, and the RJO (order book) shall be approved by the Office of Judicial Administration for compliance with the provisions of this rule.

Commentary

- Historically, records were maintained in paper format and then microfilmed for permanent storage.
- Computerization and digital media have created many new opportunities but also many potentially dangerous situations in terms of record security, storage, and retrieval.
- Admin. R. 6 sets forth very explicit standards for imaging and microfilming. In addition, new technological advances in information management must have

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adequate safeguards built into the process to ensure that records are not inadvertently lost or otherwise rendered unusable.

Trial Rule 77(K) - Electronic Posting of Court Records.

The clerk of the circuit court, with the consent of a majority of the judges in the courts of record, in that circuit, or the clerk of a city, town, or Marion County small claims court, with the consent of the city, town, or Marion County small claims court judge, may make available to the public through remote electronic access as the internet, those court records approved by the Supreme Court of Indiana for electronic posting. The records to be posted, the specific information that is to be included, its format, pricing structure, if any, method of dissemination, and any subsequent changes thereto must be approved by the Office of Judicial Administration under the direction of the Supreme Court of Indiana. Such availability of court records shall be subject to applicable laws regarding confidentiality.

Commentary

- Courts and clerks are encouraged to seek ways of improving access to court records by the public, attorneys, and parties.
- Any county wishing to post records to the Internet or otherwise make records available electronically must seek the approval of the Indiana Supreme Court.
- Approvals are given for electronic posting of court records annually and each approval permits the posting of court records electronically for a 12-month period. All electronic posting of court records is reviewed for content and pricing structure to ensure the integrity of Indiana's court record systems.

Trial Rule 5(F) - Filing with the Court Defined.

The filing of pleadings, motions, and other papers with the court as required by these rules shall be made by one of the following methods:

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- Delivery to the clerk of the court.
- Sending by electronic transmission under the procedure adopted pursuant to Admin. R. 12.
- Mailing to the clerk by registered, certified or express mail return receipt requested.
- Depositing with any third-party commercial carrier for delivery to the clerk within three (3) calendar days, cost prepaid, properly addressed.
- If the court permits filing with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk; or

Electronic filing, as approved by the Indiana Supreme Court pursuant to Trial Rule 86.

Filing by registered or certified mail and by third-party commercial carrier shall be complete upon mailing or deposit.

Any party filing any paper by any method other than personal delivery to the clerk shall retain proof of filing.

Commentary

- Filings received that comply with the strict requirements of T.R. 5(F) are considered officially filed on the date of mailing or deposit. This is usually recorded by the post-mark date stamped on the envelope or receipt.
- "Strict" requirements mean that not all filings received through the mail are considered filed when mailed. For example, a filing sent through regular first-class mail without a return receipt requested is considered filed when the clerk's office receives it and not when it was mailed.